

Lawyers take feds to court over immigrant investor program

BY SHARON HO
For Law Times

Affraid that the federal government will terminate existing applications to the immigrant investor program, a group of lawyers is asking the Federal Court to disallow the minister of immigration from closing such files until it has assessed them.

Immigration lawyer Pantea Jafari is representing two of the 14 litigants from China, Britain, Germany, Spain, South Africa, and Venezuela. Another 46 investors are expected to join the litigation.

"For one reason or another, each of them has not been processed in a particular time," says Jafari.

"We were concerned that legislations going to come down closing those applications similar to the federal skilled-worker program."

The litigation undertaken by the organization Unfair CIC is asking the government to assess each litigant's application within a year. Unfair CIC also wants the government to reimburse litigants \$5 million if it terminates their applications.

Citizenship and Immigration Canada stopped accepting applications under the immigrant investor class on July 1, 2012, in order to focus on the backlog of files while it reviews the program. As of September 2012, there were approximately 86,000 investors in the backlog. The department estimates it has enough applications for 10 years.

Prior to December 2010, investors had to provide \$400,000 in investment and have a net worth of \$800,000. The government doubled those amounts after December 2010.

One of Jafari's clients, Canrong Li, applied in 2005 from China to come with his wife and son.

"It's been sent back for processing, but the government has made continuously excessive demands that almost signifies how unlikely it is that someone will be able to comply with that information requested in the

time that's given," says Jafari.

She has gone to court three times over Li's application asking it to bar Immigration Minister Jason Kenney from using the failure to fulfil the information requests as a reason to reject Li as an investor. Jafari says his application has stalled despite notations in his file showing he meets the criteria for the investor program.

"He feels like by choice or by operation of policy his file is stuck in limbo and not moving forward," says Jafari.

"The court needs to intervene to make sure this person's application is brought to a final determination in one way or another."

Lloyd Ament, an immigration partner with Basman Smith LLP, has had clients invest in other countries as a result of the backlog and uncertainty over when the government will make a decision on their applications.

"They're keeping the irons in the fire just in case it happens because it is so cheap," says Ament.

"But they're not standing still. Every one of them has made the decision to go into different projects in different countries. We've lost good people and good capital along the way."

Ament has had indications that the department continues to assess his outstanding applications based on communications with immigration officers who have asked for more information or who say they're still reviewing the files. But Ament worries the government could terminate the backlog of applications just as it did with the federal skilled-worker program in July 2012.



"We were concerned that legislation's going to come down closing those applications similar to the federal skilled-worker program," says Pantea Jafari.

When asked about a possible termination, the department would only say it's continuing to process the backlog of applications while not accepting new ones.

But immigration lawyer David Rosenblatt doesn't understand why Canada isn't doing more to encourage businesspeople to come to Canada. He also doesn't understand why there's a backlog of investor applicants given the benefits they can bring to Canada, in particular their wealth and lack of need for settlement services. Besides investing in Canada, he believes investors can help Canadian businesses abroad.

"These foreign investors are the ones that have the connections to facilitate doing business in other countries," says Rosenblatt.

"It's much easier for a Chinese businessman to sell Canadian products abroad rather than a Canadian trying to do it. They bring with them a wealth of connections and understanding of business."

The department says it's now consulting with stakeholders on how to reform the program.

Rosenblatt believes the government should modify the program to accept those who also invest in Canadian companies and ultimately help small businesses. But he thinks there shouldn't be any problems with letting affluent businesspeople come to Canada.

"Rich businesspeople, you let them in and they'll create opportunities," says Rosenblatt. "From my perspective, I don't see a downside to letting a rich businessperson into the country."

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