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Senate of Canada
Standing Committee on Social Affairs, Science and Technology
Panel 1: February 7, 2024, from 4:15 p.m. to 5:15 p.m.

Re: S-235: *An Act of amend the Citizenship Act and the Immigration and Refugee Protection Act*

Madam Chair, honourable committee members, fellow witnesses, ladies and gentleman, good evening.

My name is Tamara Mosher-Kuczer, and I am speaking to you as a member of the Canadian Immigration Law Association (CILA). We would like to thank you for the opportunity to provide comment on Bill S-235 *An Act to amend the Citizenship Act and the Immigration and Refugee Protection Act*.

I was asked by CILA to speak to these proposed amendments because of my experience representing children in care in their immigration applications. This gave me the opportunity to see firsthand the many challenges children in care face in obtaining and keeping immigration status in Canada. Non-Canadian children who are put into the child protection system as minors routinely leave the system having never regularized their status or having just started the process of obtaining temporary or permanent status.

These children, not understanding the consequences of not having immigration status often do not have the knowledge or the financial means to pursue obtaining status on their own once they leave care. Without status they are not able to access provincial health insurance and other government supports. Even more problematic, some of these former children in care get involved in criminality, sometimes unintentionally (such as with a conviction for driving while intoxicated or assault), which jeopardizes their ability to obtain immigration status and puts them at risk of being deported to a country with which they have no connection, may not speak the local language, and where they would be extremely vulnerable to exploitation.

CILA supports the intention of Bill-235 *An Act to amend the Citizenship Act and the Immigration and Refugee Protection Act* to provide children who were formerly in care with citizenship as a right. Children who are in care, and adults who were in care are vulnerable and this vulnerability is compounded by the lack of security of citizenship. Without citizenship, these children are at considerable risk of deportation if they lose status or become involved in criminality, even if unintentional.

We have some concerns about the Bill as it is currently drafted and would recommend some amendments. In particular, many of the terms in the Bill are not defined or, as they are defined will unintentionally exclude persons who should be included and include persons who may not have been intended to be included.

"Minor"

The term "minor" is defined in the *Citizenship Act* as a "person who has not attained the age of eighteen years." This bill limits eligibility of the provision to those who were "minors" and therefore under the age of eighteen (18) on the day before the provisions "ceased to apply to that person." A plain reading of the bill would suggest that only people who aged out of care when they were under eighteen (18) are eligible for this provision.

However, child protection is governed by provincial law, and some provinces define the term "minor" as those under the age of nineteen (19)[1]. Children who ceased to be under the care of provincial welfare agencies at the age of eighteen (18) would be excluded from having a right to citizenship under this proposed bill.

Similarly, some child welfare agencies may provide care and or assistance to children in their care until the child reaches the age of twenty-one (21) or sometimes even the age of twenty-five (25)[2]. These children would also be excluded from citizenship under this proposed bill.

We would recommend that the requirement that a person have to have been a "minor" at the time the following situations "ceased to apply" be removed from the proposed bill. Instead, we would suggest that the bill be amended to require that "when a person was a minor, one of the following situations applied."

State in *Loco Parentis*, "Resided", "Maintained"

Though the preamble to the bill makes reference to situations where the State is *in loco parentis,* the proposed bill in its current form does not limit eligibility to those who were under the care and protection of the state.

We would instead recommend that the bill be limited to those who were "under the care of a child and family services provider under a provincial or territorial government's designated ministry for child protection" provided that they were not returned to the care and custody of their parents prior to reaching the provincial age of majority.

This bill as written would make citizens those who have "resided" in an institution, a group foster home, the private home of foster parents or the private home of a guardian, tutor or other person occupying a similar role, under a decree, order or judgment of a competent tribunal."

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[1] Immigration, Refugees, and Citizenship Canada: Provincial definitions of a Minor https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/refugee-protection/canada/processing-provincial-definitions-minor.html

[2] Peel Children's Aid Society Leaving Care https://www.peelcas.org/service/youth-success/leaving-care

However, neither the term "reside" nor the term "maintained" are defined in the provision or otherwise within the *Citizenship Act*.

Under the proposed provision, there is no minimum amount of a time a person has to have "resided" in one of the enumerated establishments provided that they were "maintained" by a government department or agency. As neither term is defined, a plain reading would lead to the conclusion that a person who while a minor child was on provincial support and was placed, even for a brief period of time, in an institution, including a psychiatric or addictions treatment facility would be a citizen as a right. They would not have had to have been in the care of child and family services.

As an example, a person who while a minor was sentenced to a term of imprisonment would have resided in an institution by court order and would have been maintained by the province. Under the bill in its current form, provided they were released from prison before the age of eighteen (18) and not "returned to the care and custody of their parent" they would have a right to citizenship. We would note that "care and custody of their parent" is also not defined.

Another example would be a person under the age of eighteen (18), who is on Ontario Works[3] (Ontario's social assistance program) who has been ordered deported[4], and who was ordered to be assessed and then placed on an involuntary psychiatric detention in a psychiatric facility for at least seventy-two hours[5]. They would also qualify under this provision. Likewise, a person who was court ordered to complete a two-week additions treatment program as part of a criminal sentence and who was a minor and on Ontario Works would qualify. As "reside" is not defined, a seventy-two-hour hold or a stay at a court ordered addiction treatment facility could be found to qualify. As "maintained" is not defined, those on Ontario's social assistance program would qualify. The bill as it is currently drafted does not require a person to have been under the care of a child protection agency in order to qualify.

No Proof Required

The proposed amendment would also not require that a person provide evidence other that a "written statement by the applicant" of their eligibility. Children who have been in care in Canada should be able to obtain some form of confirmation from provincial child protection agencies, such as a letter, confirming that they were in care.

We would suggest amending the proposed paragraph 3(1)(p.1) that the applicant must provide proof of having been in care, or in the alternative a written statement by the applicant about the existence of any circumstances in clauses (A) to (C) may be accepted.

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[3] Eligibility for Ontario Works financial assistance https://www.ontario.ca/page/eligibility-ontario-works-financial-assistance

[4] Ontario Works Policy Directives 3.1. Residency Requirements https://www.ontario.ca/document/ontario-works-policy-directives/31-residency-requirements

[5] Ontario *Mental Health Act, R.SO., 1990, c.M.7 https://www.ontario.ca/laws/statute/90m07#BK10*

Children who were in care often face hurdles in obtaining the documents required for citizenship and immigration applications, such as birth certificates, passports, and other identity documents.

We would also suggest amending the bill to permit that alternative identity documents be accepted for children who are not able to obtain the required primary identity documents. An example could include a Statement Confirming Identity from a child protection agency worker. As child protection agency workers often change, we would recommend that that Statement not require that the worker have personally known the child for at set period of time, but that they can confirm that the child they have identified has been in care for a minimum period of time. In order to ensure proper identity management and security, this could be combined with a requirement that if alternative identity documents are provided, that the applicant would also voluntarily provide biometrics.

Possible Unintentional Consequences

We would also note a concern that this bill would make those subject to the change citizens of Canada as a right. Public knowledge of this change may encourage people to abandon their children in Canada in order to allow them to benefit from the automatic right to citizenship. This bill may unintentionally result in making children vulnerable to abandonment in Canada.

I can attest that some of the children in care who I have represented were abandoned in Canada by their families because their families knew that they would be taken into provincial care. Some families may abandon their children with the hope that they be given a better life in Canada. However, others may do so in the belief that their child's access to Canadian citizenship will provide their parents and siblings with a pathway to Canadian citizenship. We would note that we are raising this issue because of the possible increased vulnerability to children, not because this will realistically provide a pathway to citizenship for families of children who have been taken into care.

However, though this may make some children more vulnerable, we do not believe that the risk is substantial enough to outweigh the benefit that this bill would have on the lives of children who have been taken into care.

Move to "Grant of Citizenship" instead of "Right of Citizenship"!

Some witnesses have recommended that this proposed amendment be moved within the *Citizenship Act* to fall under the section on Grant of Citizenship instead of under Right of Citizenship. We would submit that doing so will make obtaining citizenship unattainable for many of the proposed former children in care that this Bill aims to assist.

Grants of citizenship are subject to a $630 government processing fee. This is a significant amount of money, particularly for a population who may not be able to work because they don't have status in Canada.

A grant of citizenship is also subject to s. 22 of the Act, which prohibits citizenship being granted while a person is under a probation order, a paroled inmate, serving a term of imprisonment, while they are on trial, or subject or party to an appeal. This can be a bar for many former children in care wanting to apply for citizenship.

Some children who are in care may also face learning difficulties and may not graduate from high school. This makes proving that they meet the language and knowledge requirements for citizenship difficult.

Though waivers could be granted from the fee and from applicants being subject to s. 22, as well as from the knowledge and language requirements most problematically, a grant of citizenship requires an application, and in the period of time prior to citizenship being granted, a person has no rights in Canada and is at risk of deportation.

New Public Policies

On January 22, 2024, Immigration, Refugees and Citizenship Canada announced two new temporary public policies for foreign nationals who were in state care in Canada, the *Updated temporary public policy to grant permanent residence to certain individuals in Canada who came to Canada under the age of 19 and were under the legal responsibility of the child protection system*[6] and the *Updated temporary public policy concerning the fees for applicants of the updated temporary public policy to grant permanent residence to certain individuals in Canada who came to Canada under the age of 19 and were under the legal responsibility of the child protection system*[7]. These policies apply to foreign nationals who came to Canada while under the age of 19 and were under the legal responsibility of the child protection system. The application fees are waived for applications under both of these public policies.

In order to be eligible for permanent residence under the new Permanent residence pathway: Foreign nationals who were in state care[8], or for a Temporary resident permit for foreign nationals who were in state care[9] applicants must:

- have come to Canada before they were 19 years of age

[6]Updated temporary public policy to grant permanent residence to certain individuals in Canada who came to Canada under the age of 19 and were under the legal responsibility of the child protection system https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/public-policies/pr-minor-child-protection.html

[7]Updated temporary public policy concerning the fees for applicants of the updated temporary public policy to grant permanent residence to certain individuals in Canada who came to Canada under the age of 19 and were under the legal responsibility of the child protection system https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/public-policies/pr-minor-child-protection-fees.html

[8]Permanent residence pathway: Foreign nationals who were in state care: Service Delivery Instructions https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/service-delivery/pr-pathway-state-care.html

[9] Temporary Resident Permit for Foreign Nationals Who Were In State Care: Who Can Apply https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/inadmissibility/trp-state-care/who.html

- be physically present in Canada at the time of application
- have continuously resided in Canada for at least 3 years by the time of application
- have continuously resided in Canada since the age of 19 (if over the age of 19)
- have been under the legal responsibility of a child and family services provider under a provincial or territorial government's designated ministry for child protection for at least 1 year (cumulative)
- intend to reside in a province or territory other than the province of Quebec
- not be a person mentioned in section F of Article 1 of the Refugee Convention
- not be inadmissible to Canada, except for one or more of these reasons:

    - subsection 36(1) of the Immigration and Refugee Protection Act (IRPA) on serious criminality grounds
    - subsection A36(2) on criminality grounds
    - paragraph A38(1)(c) on health grounds for a health condition that might reasonably be expected to cause excessive demand on health or social services
    - section A39 for financial reasons
    - paragraph A40(1)(a) for no reasons other than misrepresentation related to their entry to Canada or overstaying their temporary resident status and working or studying without authorization
    - paragraph A40(1)(b) for being or having been sponsored by a person who has been found inadmissible for misrepresentation
    - subsection A41(a) for non-compliance
    - section A42 where the family member is inadmissible, except where the family member is inadmissible under subsections A34(1), A35(1) or A37(1)

Under both the new permanent residence pathway and the new temporary resident permit option, applicants must provide proof of having been in state care. The Document Checklist for the permanent residence pathway lists the following as acceptable forms of proof:

- Documentation such as court documents, attendance records from a child services institution, or a confirmation letter from the provincial or territorial authorities responsible for child and family services.
- The letter should indicate: • name of the provincial or territorial authorities responsible for child and family services • your name and date of birth • period of attendance you were under the legal responsibility of the child and family services provider • name and signature of the child and family services provider's authorized representative issuing the letter • date the letter was issued[10]

[10] Document Checklist Permanent Residence Pathway For Foreign Nationals Who Were In State Care (IMM 0203 (01-2024) https://www.canada.ca/content/dam/ircc/documents/pdf/english/kits/forms/imm0203e.pdf

Acceptable forms of evidence of having been in state care for the temporary resident permit application are listed as:

- court documents
- an attestation letter from a provincial or territorial child welfare agency that was granted legal responsibility for you
- an attestation letter from a child service institution, confirming your attendance during a specific period
- attendance records from a child service institution

These new public policies are laudable in the additional protection provided to children who were in care and they address some of the inequities that this bill seeks to address. However, without citizenship, former children in care are still at risk of deportation. Though former children in care who are able to obtain permanent residency under this new policy will be able to apply for a grant of citizenship once they have met the residency requirement, they may never be able to do so owing to the cost as well as the documents required for a grant of citizenship. Documents required include identity documents, proof of language proficiency, and proof of residency in Canada. They may also not qualify if they have not filed taxes during the requisite period if they were required to do so.

However, the eligibility requirements for the new public policies are more straightforward than those enumerated under this bill. We would recommend that this bill be amended to make the eligibility requirements easier to understand and more clearly defined.

The Canadian Immigration Lawyers Association and I would be happy to answer any further questions you may have.

Thank you for the opportunity to speak to this bill.

Tamara Mosher-Kuczer