

Migrant Mothers Project Submission:

Reducing Vulnerability to Abuse & Exploitation through Landed Status on Arrival for Migrant Caregivers

Submission to Immigration, Refugees and Citizenship Canada,
Caregiver Pilot Program Consultations

Submitted by Migrant Mothers Project, University of Toronto with
Community Partners

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The Migrant Mothers Project with our community partners are pleased to provide input on the Immigration, Refugees, and Citizenship Canada's (IRCC) review of the Caregiver Program. This submission draws from the following publication:

Bhuyan, R., Valmadrid, L, Panlaqui, E., Pendon, N. And Juan, P. (2018). *The structural violence of migrant care work: insights from participatory action research with migrant caregivers in Canada*. Manuscript submitted for publication to *Journal of Family Violence*.

As part of this submission, the Migrant Mothers Projects and community partners fully support the joint recommendations put forward by Caregivers Action Centre, Caregiver Connections Education and Support Organization CCESO, Committee for Domestic Workers and Caregivers Rights, GABRIELA Ontario, Migrant Workers Alliance for Change and Migrante Ontario. Available at www.migrantworkersalliance.org/wp-content/uploads/2018/04/Caregiver-Reform-Submissions_March2018.pdf

Our recommendations focus on the following priorities:

- 1) A comprehensive and transparent consultation process to reform the Caregiver Program.
- 2) A new Federal Workers Program – Caregiver Stream that provides caregivers with permanent status on entry and family unity.
- 3) Reforms to protect caregivers who are already in Canada and in the backlog to ensure that no one is left behind.

Background

This submission is informed by research and community consultations conducted through the *Caregivers' Journeys* study led by the Migrant Mothers Project at the University of Toronto. The Migrant Mothers Project is a university-community collaboration that involves a network of migrant caregivers, community leaders who have several decades experience supporting migrant caregivers, settlement service providers, and university-based academics who have expertise on immigration settlement and policy.

Caregivers' Journeys (2015-2018) is a participatory action research study that explores how changes in the Caregiver Programs have impacted migrant caregivers access to permanent residence and working conditions that contribute to vulnerability for employer abuse and exploitation. Since 2015, we have held consultations with migrant caregivers, community leaders, and service providers in Ontario and Alberta, to understand the impacts of policy changes introduced to the Live-in-Caregiver Program in 2014 along with the creation of the newer Caregiver Program. Using a peer-research model with trained caregivers, we conducted one-on-one interviews and focus group interviews with 33 migrant caregivers in Toronto and Calgary who were working in one of Canada's caregiver programs, on a closed or open work permit, to understand their working conditions in the program and access to permanent residence.

2014 Caregiver Program Policy Context

In November 2014, Citizenship and Immigration Canada (CIC) created a new “Caregiver Program” which removed the “live-in” requirement and introduced new language and education requirements for caregivers to be eligible for permanent residence after completing 24-months of work in the program. Under both the “older” Live-in-Caregiver (LIC) and the “newer” Caregiver Programs, migrant caregivers are issued a closed work permit with a specific employer, such that any change in employer requires the caregiver to apply for a new work permit. In both programs, caregivers may apply for an open work permit and permanent residence for themselves and their dependent children and/or spouse after completing the 24-month work requirement; open work permits are not restricted by occupation or employer.

In 2014, CIC stopped issuing work permits under the LIC but allowed caregivers to either continue working under the old rules or change to the “new” Caregiver Program. Since 2014, employers in both programs are required to submit a labor-market impact assessment (LMIA) with a fee of \$1,000 before they can hire a migrant caregiver (the fee was waived in January 2018 for families earning less than \$150,000).

A significant change under the new Caregiver Program concerned eligibility for permanent residence. The previous LIC program allowed any caregiver who completed the 24-month work requirement to apply for permanent resident status. Under the new program, caregivers must qualify for permanent residence through either the “Caring for Children” or the “Caring for People with High-Medical Needs Pathways (e.g., older adults and people with disabilities).

Both pathways require the applicant to demonstrate a level five and seven (respectively) in the Canadian Equivalency for English or French Language Proficiency Index and to have completed the equivalent of four years of post-secondary education overseas or one year of post-secondary education in Canada. Both pathways are now capped at 2,750 applicants per year for a combined total of 5,500; which is much lower than the previous average of 23,447 migrant caregivers from the LIC who were granted permanent residence annually between 2005 and 2014 (Immigration Refugees and Citizenship Canada, 2015).

Caregivers' Journeys – Research Findings

Since the Caribbean Domestic Scheme was launched in the 1950s, migrant caregivers have mobilized in Canada and transnationally, embracing a feminist politics of self-determination (Bonifacio, 2013) to fight isolation, enhance safety, and advocate for their rights to decent work and permanent resident status, for themselves and their families, in Canada (Tungohan, 2017). The majority of the migrant caregivers today are women from the Philippines, who are part of the transnational migration of care work. With the continued limited economic development in their home country, Filipino caregivers work abroad, remitting significant sums of money to support their family members back home.

In our study of 33 caregivers working in Toronto and Calgary, the majority (94%) identified as women; two-thirds had children. Two-thirds had previously worked overseas as a migrant caregiver in Asia, the Middle East, or North Africa. 10% of our sample had arrived to work in Canada within the previous two years, 63% had lived in Canada for two to five years, and 27 had been living in Canada for five to ten years.

Thirteen participants (37%) were working on a closed permit at the time of our study, in either the LIC or Caregiver Program. Fifteen had finished the program and worked on an open permit while waiting for the permanent resident application to be processed. Three participants had recently obtained permanent residence and two had recently lost their immigration status, as a result of the lengthy processing times associated with their permanent resident application.

Key issues & Recommendations

1. A More Transparent and Inclusive Policy Development Process

In 2014, the Caregiver Program was introduced after limited closed-door consultations with community groups and people working with caregivers. The majority of issues and recommendations community groups and caregivers raised at that time were *not* reflected in the policies governing caregivers, including the emphasis on permanent resident status on landing and family unity for migrant caregivers.

During our community consultations in February and March of 2018, community members similarly raised concerns about the lack of transparency and inclusion in the consultations hosted by IRCC staff. The Migrant Mothers Project and community partners appreciated the opportunity to participate in these consultations but we have concerns that many community members and people directly impacted by the Caregiver Program were not fully informed or invited to share their perspectives on the current program.

RECOMMENDATION—PUBLIC FORUMS FOR TRANSPARENT AND INCLUSIVE CONSULTATION.

- Announce a clear timeframe for consultations that allows communities and people directly impacted by the Caregiver Program to participate.
- Organize consultations on the weekend or evenings, to ensure participation of migrant caregivers who have limited flexibility with their work hours.

2. *Barriers to Permanent Residence due to Language and Education Requirements*

The contributions that migrant caregivers offer Canadian families and thus indirectly the Canadian economy cannot be defined by how much each individual earns on an income tax statement. The economic benefits to Canada include taking care of the most vulnerable people in our society and allowing parents of young children and family members of ailing elderly persons and disabled persons to go to work themselves. With Canada's reliance on migrant labor to fill the demand for care work, especially for Canada's aging population, it is evident that we need people of all incomes in Canada.

Migrant caregivers, however, are singled out as an occupation-based permanent residency program where they have to prove themselves by working in Canada before they can immigrate. Persons in the skilled-trades occupations and occupations that are deemed high-skilled are able to obtain permanent residency without having a job offer. It is unfair and unreasonable to require caregivers to work for two years in Canada before they can immigrate.

To require caregivers to pass English tests and provide education credentials, when they already demonstrate their qualifications to work as a caregiver in Canada at the time of applying to work from abroad, is also incongruous with the reasoning that they would not be able to successfully settle in Canada in the long run. The majority of migrant caregivers have already been working successfully in Canada for several years; this demonstrates high levels of continuous employment, despite the difficult conditions of providing care work while separated from one's own family. This is much better than many "high-skilled" immigrants who come under the Federal Skilled Program who are unable to find jobs in their intended occupations.

Finally, language and education eligibility requirements of the Caregiver Program are discriminatory and unnecessarily burdensome for caregivers. If they're good enough to work, they're good enough to stay. The education and language requirements should be cancelled.

RECOMMENDATION FOR PERMANENT RESIDENCE & FAMILY REUNIFICATION

- Create a New Federal Workers Program for Caregivers that provides permanent residence upon entry for Caregivers and their families.

- For migrant caregivers currently working in Canada, create an open work permit that allows caregivers to bring their dependent children and/or spouse to join them to live in Canada (with the ability to study and/or work).
- Reduce the work requirement in the current Caregiver Program to 1 year; while removing the education and language requirements.

3. Hardships due to Delayed Permanent Residence, Prolonged Precarious Work Permits, and Lengthy Family Separation

Thousands of people continue to work under the older LIC program which peaked in 2008 with 32,601 permit holders. According to a Statistics Canada report, on average 70% of live-in-caregivers achieve permanent residence after five years; 87% after ten years (Prokopenko & Hou, 2018). While this is seen as sign of success as compared to other groups of migrant workers in the “low skilled” National Occupation Numbers 3 and 4 (most of whom have no pathway to permanent residence); for people in the caregiver program, working for five to ten years on a temporary work permit away from their families, or waiting several years for their permanent resident applications to be processed, contributes to significant economic stress, potential loss of status, children aging out of sponsorship eligibility, and demonstrated intergenerational trauma from the effects of family separation (Pratt, 2012).

As of December 2017, an estimated 30,000 caregivers had completed their work requirement and were still waiting for their permanent resident applications to be processed, some of whom have been waiting for eight to ten years. The number of permanent resident admissions for migrant caregivers has also decreased since the introduction of the new caregiver program in 2014. In 2017, only 555 migrant caregivers received permanent residence through the new caregiver program; 1,955 in total since the caregiver program was launched in 2014. The low numbers of applicants are a troubling indication that the education and language requirements are barring access to permanent residence, thus producing longer periods of precarity and increasing the risk for loss of status among migrant caregivers.

In our study, caregivers who changed employers had a minimum eight-month period without work authorization while they waited for both the new LMIA and work permits to be processed. There were a range of factors that contributed to a change in employer including: caregivers who were released by the employer listed on their work permit soon after arriving in Canada; a change in the employer’s family status (i.e. a maternity leave; hospitalization of the person in need of care); or caregivers who had to leave an abusive or exploitative employer. With an average eight months of waiting between valid work permits, many caregivers face financial stress and delay in completing the 24-month requirement for the Caregiver Program.

RECOMMENDATION—REDUCE BARRIERS TO PERMANENT RESIDENTS FOR MIGRANT CAREGIVERS ALREADY WORKING IN CANADA

- Clear the backlog of permanent resident applications and prioritize applicants who have waiting five years or longer.
- For people currently working in the Caregiver Program, reduce the work requirement to 1 year and remove the caps on the Caring for Children and Caring for People with High Medical Needs Pathway, so that all migrant caregivers may apply for permanent residence before the program expires in November 2019.
- For migrant caregivers who have lost their status, or forced to work without status, to provide full regularization for migrant caregivers.

4. Vulnerability for Employer Abuse and Exploitation

Most of the caregivers in our study reported experiencing different forms of employer abuse or labor exploitation in their caregiving jobs. In most cases, caregivers remained with their employers or delayed changing employers due to the fear of long periods of unemployment while waiting for the new LMIA and work permits to be processed and fear of now completing the 24-month requirement.

The most common forms of abuse and exploitation were related to work caregivers were required to perform outside of their contracts including: caring for extra children and working longer hours without extra pay. Several caregivers also reported psychological abuse, financial abuse (having to pay employers back for the LMIA fee), and sexual harassment. One caregiver in our study reported that she had been sexually assaulted by her employer. She was working with local police to prosecute this assault, but was fearful of returning to care work due to the trauma of this assault.

The vulnerability that care workers experience is exacerbated by their temporary work permits that are tied to individual employers. The lack of labor protections for domestic workers places caregivers who are tied to their employers at further risk. Issuing permanent residence upon entry for new caregivers and open work permits for migrant caregivers who are already in Canada would directly address the structural roots of migrant caregivers' vulnerability for abuse and exploitation. With permanent residence, caregivers would not be fearful that leaving an employer would jeopardize their immigration status or goal to reunify with their children in Canada.

In addition to addressing the precarious immigration status, we encourage the federal government to work collaboratively with provincial governments to increase accountability among employers to uphold employment standards and human rights.

RECOMMENDATIONS TO INCREASE EMPLOYERS AND CAREGIVERS' KNOWLEDGE OF EMPLOYMENT STANDARDS AND HUMAN RIGHTS LEGISLATION

- Provide information to new immigrants, including migrant caregivers, about the risks for abuse and exploitation and resources for getting help and support.
- Require employers to take a mandatory course on their obligations under Employment Standards and Human Rights legislation prior to hiring a caregiver.
- Regulate employers to provide one day compulsory time off for caregivers to access legal information to be provided by migrant worker support organizations.
- Periodically review employers to ensure they are meeting their obligations under Employment Standards and Human Rights law.
- Consult with migrant worker support organizations about best practices to increase Caregivers' ability to assert their rights.
- In addition to settlement agencies, IRCC should support and fund community-based, peer-based and informal organizations and networks helping migrant caregivers. These community-based groups provide invaluable and culturally appropriate services like peer support, mentoring and psycho-social support to migrant caregivers.

5. Barriers to Permanent Residence due to Medical Inadmissibility and the Second Medical Exam.

During our community consultations, several caregivers and advocates shared concerns that migrant caregivers who have completed the program, were unable to qualify for permanent residence due to results on a second medical exam or because one of their dependents were deemed medically inadmissible. We commend Minister Hussen's remarks earlier this year that IRCC will amend the current policy that discriminates against immigrant families based on their health status or cognitive and/or physical abilities.

Caregivers and advocates have also called attention to the set-back introduced by the Caregiver Program, which reinstated the second immigration medical exam for migrant caregivers when they apply for permanent residence. Advocates had successfully advocated to remove this second medical exam from the LIC in the wake of Juana Tejada's death. Requiring caregivers to perform a second medical exam adds nearly \$1000 in costs to the \$550 processing fee (not including additional fees for processing a dependent spouse and children). Many caregivers experience a decline in their health due to the stress of family separation and the prolonged period working in the program. Many also delay seeking health care while they are working, due to limited flexibility in their work hours.

RECOMMENDATION TO REMOVE BARRIERS TO PERMANENT RESIDENCE

- Remove the Second Medical Requirement for migrant caregivers who are applying for permanent residence from within Canada.
- Immediately remove medical inadmissibility for caregivers and their family members in any case where an application for permanent residence is submitted.

6. Vulnerability for Migrant Caregivers who are Unable to Complete the 24-month Requirement.

The announcement that the Caregiver Program would expire in November 2019 has created a wave of panic and fear among caregivers who have not yet completed the 24-month requirement or who are a risk of not completing the program before November 2019. The lack of certainty about caregivers' options has also placed pressure on caregivers who are working in abusive or exploitative situations to remain with their employers despite the abuse.

Despite the removal of the live-in requirement and the four-year limit on migrant workers' permits, the new caregiver program continues to put migrant caregivers, mostly women, into precarious and vulnerable situations because of the temporary work permit and conditions of the Caregiver Program. Temporary status makes migrant workers' employment precarious, which compounds their vulnerability and marginalization. Furthermore, migrant caregivers in both the LIC and Caregiver Program who have experienced employer abuse and exploitation currently do not have adequate support to seek safety or support services, due to lack of eligibility for federally funded programs or fear that seeking help will jeopardize their status.

RECOMMENDATIONS TO REDUCE VULNERABILITY FOR ABUSE & EXPLOITATION

- Create a specific policy for caregivers who have lost their immigration status and have been forced to work without status that includes full regularization.
- Create a specific policy for caregivers to appeal a negative decision on their permanent resident application on Humanitarian & Compassionate grounds.
- Extend funding for settlement services to migrant workers so they may access support services or referrals related to settlement, employment, healthcare, and support for gender-based violence.

Conclusion

The transnational migration of care work creates opportunities for immigrants who seek employment in Canada, to provide for themselves and their children, with the hopes of settling

permanently in Canada. Migrant caregivers also provide invaluable labour to meet the rising demand for care work in Canada, especially due to the growing population of older adults or people with high medical needs. The current Caregiver Program, however, requires that these workers, who look after Canada's aging parents and young children must in most cases, leave their own children back home in the care of relatives. Restricting migrant caregivers from immigrating with their children is contrary to this government's feminist stated values.

Migrant caregivers provide essential labour to Canadian families; labour that makes other work possible. If indeed the current government is committed to advancing the welfare of women, it needs to do a comprehensive analysis of the program and implement substantial structural changes.

Towards ensuring that the Canadian government fulfills the principles of Gender-Based Analysis +, Canada should also immediately clear the remaining immigration backlog cases. The prolonged family separation has caused anxiety and vulnerability to thousands of migrant caregivers and their families. Considering the significant psychological and emotional impact for family separation, we urge IRCC to process all remaining permanent resident applications immediately; to make these women to wait for one more year will only create lasting harm for these caregivers and their families.

We commend the current government's efforts to be proactive in addressing concerns in the current Caregiver Program and commitment to protecting the rights of immigrants and refugees. The Canadian government can fulfill its obligations to protect migrant workers from abuse and exploitation by providing landed status upon arrival.

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