

Convictions for Safety Offences Can Cost You Right to Stay in Canada



You already know that being held personally liable for a violation of the OHS laws can result in fines and, in rare cases, even jail time. But did you know that being convicted of a safety offence could prevent you from becoming a permanent resident of Canada?

That's the hard lesson a Russian citizen who applied for permanent residency in Canada recently learned.

He was the director of a company that owned a hotel in Spain. He hired a contractor to do renovation work on the hotel and permitted the work to begin knowing that:

- There was no required safety plan in place.
- No one had been appointed to manage and coordinate the safety issues.
- Workers didn't get training on the risks and precautions.

A worker for the contractor was operating a scissor lift that hadn't been properly secured and fell to his death. The Russian was convicted of violating the rights of workers under the *Spanish Penal Code* and gross negligence manslaughter and was sentenced to one year and six months in jail, which was suspended.

A Canadian immigration officer denied the Russian's application on the grounds that his criminal conviction in Spain was the equivalent of a criminal negligence causing death conviction under the *Canadian Criminal Code* (as amended by Bill C-45).

The Russian appealed but the federal court upheld the immigration officer's denial.

The court found that the officer's conclusion that the Russian failed in his duty to ensure work was done safely when he allowed it to start without a required safety plan in place was reasonable and thus could form the basis for a conviction under Canadian criminal law [*Ulybin v. Canada (Citizenship and Immigration)*, [2013] FC 629 (CanLII), June 11, 2013].

And the Russian's case isn't an aberration. The same thing happened to a Chinese citizen who applied for a permanent resident visa.

His application was denied on the grounds of 'serious criminality.' As the owner of a company, the citizen pleaded guilty to charges under the Chinese criminal and OHS laws after a metal box slipped off a trailer and crushed a worker to death while he and his co-workers were unloading equipment.

The federal court upheld the visa rejection. The officer had reasonably concluded that the Chinese criminal negligence conviction was the equivalent of a criminal negligence conviction under the *Canada Criminal Code*, which justified rejection of the visa application [*Lu v. Canada (Citizenship and Immigration)*, [2011] FC 1476 (CanLII), Dec. 21, 2011].