

VIS A VIS VISAS

How Accessible Is Canada's Refugee Determination Procedure?

By Michael Schelew

Canada prides itself on a humanitarian tradition toward the displaced and the persecuted throughout the world. In light of this tradition, Canada has established an inland refugee determination procedure to evaluate applications for refugee status in Canada. However, the tendency of the Canadian government to impose visa requirements on refugee-producing countries makes it extremely difficult for refugees from certain countries - including Chile, El Salvador, Haiti and Pakistan - to reach Canada to make a refugee claim. This in turn makes it extremely difficult for refugees from these countries to obtain Canadian protection at all.

Canada sometimes imposes visa requirements on other countries because they impose visa requirements on Canada. Canada may also impose visa requirements on other countries because nationals from those countries come to Canada to work illegally. As long as such countries are not refugee-producing, visa requirements may be justified.

In certain cases, Canada has also imposed visa requirements to prevent abuse of the inland refugee determination process. Sometimes people have come to Canada and claimed refugee status, knowing that they can work in Canada until they are deported for having made an unfounded claim. Since processing even an unfounded claim can take well over a year, by the time such a claimant is deported, he can have worked in Canada and made a considerable sum of money in comparison with what he could have made working in his home country. The best defense against such abuse, of course, is a streamlined inland refugee determination procedure, through which manifestly unfounded claims can be dealt with quickly, abusers deported immediately, and potential abusers thereby deterred. Again, as long as such countries are not in fact refugee-producing, a visa requirement may be justified, and is not relevant to refugee policy.

However, if a country is refugee-producing, a visa requirement can play a critical role in Canadian refugee policy.

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If nationals from refugee-producing countries are coming to Canada for the purpose of claiming refugee status and there is no past or present history of immigration abuse from nationals of these countries, then the imposition of a visa requirement is simply unjustified. It constitutes disguised refoulement, and runs counter to Canada's international obligations and humanitarian tradition toward the displaced and the persecuted.

The situation is more complicated when refugee claimants are coming to Canada from a country which does have a history of immigration abuse but is also refugee-producing. The imposition of a visa requirement may be necessary. But at the same time, the imposition of a visa requirement makes it very difficult for an individual to obtain a fair determination of his right to Canadian protection as a refugee.

WHICH COUNTRIES ARE VISA COUNTRIES?

Those countries whose citizens can enter Canada for a temporary period without a visa are indicated on the chart on page 9.

If a person wishes to be admitted to Canada as a refugee, but he is a national of a country on which Canada imposes a visa requirement, he has two options.

He could attempt to obtain a visitor's visa to come to Canada, and then make a claim upon arrival. But many refugee claimants would not be granted a Canadian visitor's visa because they would have to convince the visa-granting officer that, first and foremost, they simply wanted to visit Canada as tourists, which would not be true. Moreover, as proof of this intention to come to Canada simply for a visit, the Canadian government often requires that the applicant have sufficient funds to be self-supporting while in Canada, a requirement that is often impossible for refugee claimants to satisfy. If a refugee claimant lies about these matters to an immigration officer in order to obtain a visa, he may face credibility problems with the decision-makers who consider his refugee claim here in Canada.

Often several visits to a Canadian Embassy are necessary before a visa is granted. In some countries, the applicant must go once to the Embassy to obtain an appointment for an interview; again to attend the interview; and then, if the interview is a success,

still again to obtain the visa. If a person's life is in danger, this wait for a visa can be very serious. It is not beyond contemplation that a student or trade unionist in Guatemala, for example, could be murdered while waiting for a Canadian visa.

The situation is even more complicated when there are no Canadian diplomatic offices in a country where a visa requirement exists. The refugee claimant must then go to a third country where there is a Canadian diplomatic office in order to apply for a visa which he may not even be granted. For example, Salvadorans must go to Mexico to apply for Canadian visas. A refugee cannot simply board an airplane and fly to Canada without the necessary visa because Canada imposes sanctions on airline carriers which fly foreign nationals to Canada without the necessary documentation: the carriers must pay the removal, detention and medical costs of such passengers, and may also be fined.

The second option available to a national of a visa country who wants to be admitted to Canada as a refugee is to make a claim for refugee status at a Canadian Embassy in a third country or possibly in his home country. If he goes to a third country, a claimant may risk being deported while waiting for a decision to be made on his claim. For example, in Brazil, refugee claimants from neighboring countries are allowed six months to obtain refugee status in another country. After that, they are deported. Processing a claim for refugee status abroad often takes longer than six months.

Moreover, whether in the home country or in a nearby country, people from repressive countries are sometimes afraid to enter a Canadian Embassy at all, let alone to make a refugee claim. Often they fear that the

SPECIAL MEASURES FOR CHILEANS

Chilean nationals who had been facing expulsion from Canada will be permitted to become permanent residents of Canada provided they entered Canada prior to the imposition of the visitor visa requirement in January 1980; can demonstrate an ability to support themselves; can comply with normal medical and security checks; and are free of serious criminal objections, according to special measures announced in April 1982 by Employment and Immigration Minister Lloyd Axworthy.

Among the Chileans affected are many whose claims for refugee status had been turned down and/or who had hoped to stay in Canada for humanitarian reasons.

Embassy might be under surveillance by their country's government or that local people working in the Embassy might advise the local authorities of their presence in the Embassy. Sometimes refugee claimants fear that Canadian officials might call the local police. Even though the Canadian government did this on one occasion in Chile, it is not Canadian government policy to report refugee claimants to the local authorities. But whatever the reality, the perception of danger exists, and very few will risk going into a Canadian Embassy, or the embassies of other countries, to make claims for refugee status.

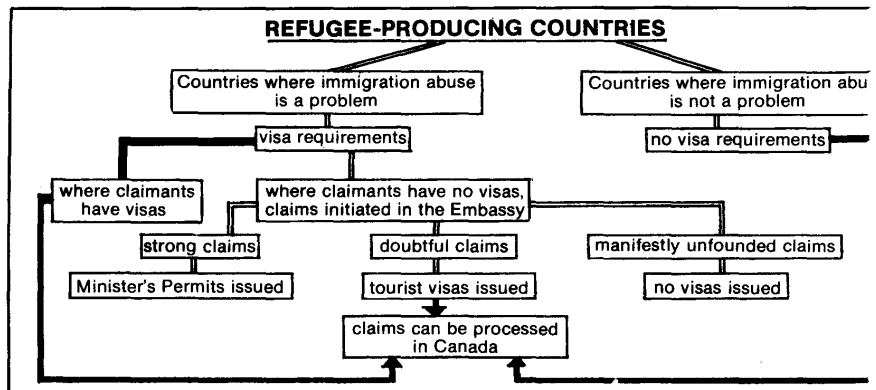
Those who do take these risks are by no means certain of having their claims evaluated as fairly as they would be in Canada. Practices vary from embassy to embassy and it is virtually impossible to document the circumstances of negative decisions, since the claimants never reach Canada. But accounts from successful claimants and from friends and relatives of unsuccessful claimants suggest that there are several difficulties inherent in the procedures for evaluating claims abroad.

To my understanding, the procedure used to evaluate refugee claims abroad is an interview with an immigration officer followed by a decision by that officer. All negative decisions are reviewed by a senior officer. On occasion senior officials in Ottawa or the Minister of Immigration may participate in cases which come to their attention; as may Canadian churches, the Canadian section of Amnesty International, etc.

An immigration officer abroad performs numerous functions. He may not always have the time required to hear and process a claim of more than minimal complexity. Also, he may not have the necessary training and experience in the legal criteria to be applied in evaluating a claim or in the appropriate methods of eliciting a claim.

A claimant's anxiety may impede his ability to divulge sufficient information to meet the level of detail required for a successful claim. Even in Canada many refugee claimants show continuous anxiety about the confidentiality of the information they give and fear possible danger in exposing all details of political involvement and persecution. This problem is greatly compounded when a claim is made in or near the country where the claimant fears that the persecution will take place.

A refugee making a claim at a Canadian Embassy has no right to independent counsel. In several cases, when a claimant has appeared at a Canadian Embassy with a representative, he has not been allowed to have that person attend the interview. Moreover, in many repressive countries, the local



bar has been intimidated, making it difficult if not impossible for a refugee claimant to obtain private legal counsel to act for him. This lack of counsel can result in a claimant not having adequate preparation for the interview, and in particular not being aware of the criteria to be applied in determining the claim and therefore not realizing the extent of the information and detail required or the importance of documentary or other corroborative evidence. Without counsel, a claimant may also lack the moral and psychological support so necessary to being able to relate to a government official details of the traumatic, psychologically disturbing and often deeply humiliating experiences that he may have had to endure.

Also, claimants abroad are not able to challenge the competency of a

translator, nor make written submissions of a persuasive nature. Often they are not given the opportunity to present corroborative evidence such as medical reports of physical abuse and torture or psychiatric assessments of the effects of torture. Even if such evidence were invited by the Canadian authorities, it is highly unlikely that a claimant would be able to produce such reports in his own country. Doctors and psychiatrists who could provide such reports might put their own security at risk if they gave corroborative evidence of torture and mistreatment. Furthermore, attempts by an immigration officer to verify a claimant's story by seeking corroborative testimony could jeopardize the claimant's security.

The criteria applied abroad in determining who is a *bona fide* refugee

Dear Mr. Minister,

I am a Roman Catholic lay missionary. I returned in January from two years in Chiapas, Mexico. Chiapas, the southernmost state in Mexico, has as its southern neighbor, Guatemala . . .

In 22 out of Guatemala's 24 provinces, popular struggle has broken out, and the army, in desperation, has moved from selective to massive repression - massacring hundreds of people, even entire villages. 80,000 have been killed up to 1979, and up to 50 killings a day are now being reported . . .

The repression has caused Mexico, which shares an 800 kilometer border with Guatemala, to begin to feel the problem of a new type of refugee. Accustomed to receiving intellectuals in exile, Mexico is now faced with an influx of peasants and Indians . . .

The Mexican government, despite having made high-level declarations of solidarity with Central America and its popular struggles, still deports the refugees. Immigration vehicles are seen hunting refugees, charging 1,000 pesos (\$25.00) to not deport those found - a sum very few refugees have. The refugees feel constantly threatened with being returned to Guatemala and see the regularizing of their legal status as necessarily having priority, but for this to happen, the Mexican government must sign the United Nations Refugee Protocol . . .

We should offer to admit to Canada Guatemalan refugees now in Mexico under relaxed job criteria[*], and send economic resources to assist these refugees with the basic necessities of life.

Yours truly,

Dan Anstett
Dan Anstett



PRIME MINISTER • PREMIER MINISTRE

Dear Mr. Heape,

In response to your letter of January 14 regarding Guatemalan refugees in Mexico, I have had Canadian Embassy officials discuss the situation with the Mexican authorities.

The Mexicans apparently were deporting Guatemala last summer but have stopped and United Nations office have confirmed this. A new coordinator of the Mexican Refugee Commission has been appointed and he has as our officials that there will be no further deportations and that the Mexican Government is now providing assistance to refugees from both Guatemala and El Salvador.

With regard to your enquiry about Canadian acceptance of Guatemalan refugees, I can confirm that both Guatemalan and Salvadorans are being processed by our Embassy Mexico, both from within Mexico and from elsewhere in Central America, under relaxed criteria[*] as you suggest.

Yours sincerely,

Pierre Elliott Trudeau
Pierre Elliott Trudeau

GUATEMALAN REFUGEES: How Clear Is A Politician's Clarification?

* Mr. Anstett's suggestion and Mr. Trudeau's reply may leave one somewhat confused about Canada's policy on admitting Guatemalan refugees. The notion of "relaxed criteria" does not figure in Canadian refugee policy. Guatemalan refugees in need of resettlement are eligible for admission to Canada under the 1982 refugee quota for Latin America, if they appear likely to be able to settle in Canada successfully. This is the same policy that applies to Salvadorans or any other Convention refugees outside Canada, unless they are also members of a designated class.

The notion of "relaxed criteria" comes from the special humanitarian measures that Canada sometimes invokes to assist people to come to Canada during times of crisis in their home countries. For example, under special measures announced in 1981, Salvadorans with relatives in Canada who were sponsored as assisted relatives have been permitted to immigrate to Canada under relaxed job criteria.

No such special measures exist for Guatemalans. Assisted relative applications from Guatemalans are being dealt with on a case by case basis. Immigration officers have been instructed that family class applications (in which job criteria are never relevant) from both Guatemalans and Salvadorans should be dealt with as quickly as possible, particularly when the individuals may be in danger.

are not necessarily the same as those applied in Canada. For example, an officer evaluating an application made abroad for refugee status in Canada may take into consideration the claimant's ability to establish himself successfully in Canada. The successful establishment criteria applied to immigrants have no place in refugee determination and do not figure in the refugee determination process in Canada. A well-founded fear of persecution is the only relevant factor.

A negative decision abroad will be reviewed only by a senior immigration officer. Because there is no transcript of the interview and no written reasons are given to the claimant, there is no material to support judicial review. An unsuccessful refugee claimant abroad has no right or means to seek review at the Immigration Appeal Board or in the Federal Court.

For all these reasons, a refugee claim abroad may not be handled with the same degree of fairness as it would be in Canada. Therefore, no cases which involve any element of doubt should be determined abroad. Instead, claimants with strong claims should be given Minister's Permits, enabling them to leave for Canada as quickly as possible. If a claimant belongs to a target group that is being persecuted in his country and relates evidence of past persecution or justifiable fear of future persecution, but the immigration officer is not convinced that the person is a *bona fide* refugee, the immigration officer should issue a visa to allow that person to come to Canada to make a claim for refugee status. Only where there is no evidence whatsoever to support a claim should a claim be rejected abroad and a visa denied.

There has been much discussion recently about the need for an oral hearing to be introduced into Canada's inland refugee determination procedure, to ensure that it is as fair as possible. But it is pointless to discuss our inland refugee determination procedure if refugees cannot reach Canada to make their claims.

The imposition of visa requirements on refugee-producing countries seems to be based on an assumption that without a visa requirement there would be a massive influx of claimants wanting to come to Canada. Argentina, Guatemala and Uruguay have been refugee-producing countries for a long time and there are no Canadian visa requirements. Yet over the years, Argentines, Guatemalans and Uruguayans have not been coming to Canada in large numbers to make claims for refugee status. The notion that large numbers of refugees want to come to Canada is a myth which must be dispelled. □

NEW U.S. POLICY ON SOUTHEAST ASIAN REFUGEES

Indochinese refugees arriving in countries of first asylum in Southeast Asia after April 30, 1982, are now eligible for resettlement in the United States only if they have close relatives in the U.S. or if they fear persecution because of having worked for the U.S. Government or for a former non-Communist government in Indochina. The new requirements, which do not affect refugees already in refugee camps, are intended to discourage people from leaving their homes. The U.S. has a quota of 100,000 Indochinese refugees for its 1981-82 fiscal year.

In the first four months of 1982, 18,849 people (15,843 by boat; 3,006 by land) sought asylum in various countries in Southeast Asia and 27,615 people (20,589 by boat; 7,026 by land) were either resettled in third countries or moved to Refugee Processing Centres pending resettlement in third countries. Canada's 1982 quota for Indochinese

refugees is 4,000, not including family and group sponsorships.

Also, in the first four months of 1982, 3,000 people left Vietnam under the Orderly Departure Program, of whom 644 have come to Canada.

Indochinese Refugee Camp Caseloads

April 30, 1982

Thailand	186,451
Land	87,604
Boat	6,630
Kampucheans	92,217
Malaysia	9,819
Hong Kong	9,816
Indonesia	5,511
Philippines	5,217
Macau	1,139
Other (Singapore, China, South Korea, Japan)	2,160
TOTAL	220,113

Source: United Nations High Commissioner for Refugees.

N.B. These figures do not include refugees in the Refugee Processing Centres in Indonesia and the Philippines.

The Will of Heaven

by Nguyen ngoc Ngan

by C.D. Le, Secretary-General, Canadian Federation of Vietnamese Associations.

Shortly before the fall of South Vietnam in April 1975, Tran van Huong, a 71-year-old former school teacher from the Mekong Delta, succeeded President Thieu to the presidency after the latter's resignation and departure from Vietnam. In his acceptance speech Huong said, "If this is the will of Heaven for our country to fall to the Communists, then Saigon will become a mountain of our bones and a river of our blood. And we will stand to fight together to the last drop of our blood." The statement made by Huong in the last hours of the Republic of Vietnam crystallized the mood of the Vietnamese people as they found themselves betrayed by their ally and abandoned by their leaders. When everything was collapsing around them, when their country was being swallowed by the Communists, when their families and their own lives were shattered beyond their comprehension and their control, the Vietnamese people could find only one explanation: the will of Heaven.

In *The Will of Heaven*, Nguyen ngoc Ngan has been able to depict the complex feelings of the Vietnamese people in the most turbulent years of their country's history. Twelve years ago he was a teacher of Vietnamese literature in a high school in Saigon. Now he works in a grain elevator in Prince Rupert, British Columbia. His account of his conscription into the South Vietnamese army; his brief effort at teaching under the new regime; his voluntary enrolment in a ten-day "re-education" program that turned out to

be a three-year internment in various labor camps; and his tragic flight from Vietnam tells a human story amid the story of the tumultuous events that swirled around him and thousands of other Vietnamese, like a tornado engulfing a willow tree in an open field.

Published by E.P. Dutton Publishing Co., Inc., New York, N.Y. 1982. Distributed in Canada by Clarke, Irwin and Co., Ltd., Toronto.

The Way of the Willow

written and directed by John Kent Harrison

This film dramatizes the events in the life of the Trans, a Vietnamese family, from the moment they meet their sponsors at Mirabel Airport through the turbulent first seven days of their life in Montreal in the middle of winter. For the Trans the experience has to do with freedom and the will to survive; for the Canadian sponsors, the issue is the extent and depth of commitment.

The Way of the Willow can be borrowed free of charge (for non-commercial use) from regional offices of the National Film Board.

Canada and the Indochinese Refugees

by Howard Adelman

This new book documents the role of Canada and the Canadian public in the Indochinese refugee movement, from 1975 to 1980. It includes chapters on the development of refugee policy at the federal and provincial levels; the role of the media; the roles of churches, ethnic groups and the grass-roots movement; and the opposition to Canada's policies toward the refugees.

Published by L.A. Weigl Educational Associates Ltd., Regina, 1982.