

The Canadian Refugee Policy and Practice Towards Refugees from the Commonwealth of Independent States

Tanya Basok

In the general climate created by the Cold War, the Canadian government welcomed refugees from the former Soviet Union and Eastern Europe with open arms. It offered generous reception to thousands of Hungarians fleeing the 1956 Soviet invasion, to Czechoslovakians escaping the repression following the 1968 "Prague Spring," to Poles fearing persecution for participation in the Solidarity movement, and to Soviet Jews propelled to leave by state anti-Semitism.

Shattering political reforms in the Soviet bloc countries brought about the demise of the Community Party's totalitarian rule. One of the positive outcomes was the end of the Cold War. But the Gorbachev reforms opened a new can of worms. Nationalist movements erupted throughout the region, leading to the breakup of the Soviet Union, Yugoslavia and Czechoslovakia. Only the latter has so far been spared the violence between rival ethnic groups striving to create or strengthen their nation. Several newly independent states have engaged in bloody territorial disputes and violent repression of ethnic minorities. The rise of Russian nationalism has made life precarious for Russian Jews. Millions of people have been uprooted by these conflicts, yet the reaction of the Canadian government to the political processes in the region was to cancel its special refugee policy.

Prior to September 1990, most refugees from the Soviet Union and Eastern Europe came as members of the Designated Class. The 1976 Immigration Act allows for two categories of refugees to be admitted to Canada. Convention refugees are those who fall under the definition set out by the 1951 UN

Convention and 1967 Protocol on refugees. They have to demonstrate a well-founded fear of persecution for reasons of race, religion or membership in a political, social or ethnic minority group. In addition, they must be outside their country of origin and unable to get protection from their native government. The Canadian government recognizes that there are categories of people who do not fit this rigid definition, yet who may also find themselves in refugee-like situations. The 1976 Immigration Act therefore gives authority to the Governor-in-Council to designate such categories of people and admit them under the refugee class. In 1976 self-exiled Soviet and East European citizens were defined as falling under this category. Although most of these emigrés could not demonstrate a well-founded fear of individual persecution in their countries of origin, given the tight

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exit-control situation there, their departure would have been treated as an act of treason subject to severe reprisals.

Sweeping political reforms throughout the Soviet Union and Eastern Europe, and especially the removal or relaxation of the strict exit control, have prompted a significant policy change. On August 17, 1990, Employment and Immigration Minister Barbara McDougall announced that the Designated Class for self-exiled persons would be phased out. Instead she reinstated normal immigration processing for citizens of this region. This policy is still active, in spite of the

exploding refugee population in former Soviet bloc states. The rest of the article will deal with Canadian refugee policy towards the Soviet Union. Since the 1970s, most of those who have come to Canada from this country are Jewish. The article will focus on them.

Emigration Potential of Russian Jews

The sharp decline in living standards for most people in the former Soviet Union, combined with intense dissatisfaction with the existing political leaders, have produced a political vacuum that is easily filled by ultraright nationalist groups. Just a year ago, such organizations were insignificant in size, never exceeding a few hundred members. Within the last year, their numbers and membership experienced a dramatic growth. Now they enjoy the support of thousands of Russian people. According to some estimates, up to 30 percent of the population view them favourably.

The rise of nationalism poses a threat to democratic leaders, supporters and ethnic minorities, including Jews. There are over fifty nationalist, profascist and anti-Semitic publications and one radio station in Russia. The state can no longer contain them peacefully. It should not be surprising, under those circumstances, that thousands of Jews feel threatened and are considering leaving their country.

Severe shortages of employment and housing in Israel have discouraged many potential emigrants from choosing this country as their destination. Although Germany has committed itself to accepting 30,000 Jews from the former Soviet Union, many of them find it difficult to overcome their distrust of Germans and fear that history may repeat itself in Germany. Other countries do not seem to rush to the rescue of Russian Jews.

Tanya Basok is Professor of Sociology and Anthropology at the University of Windsor.

Soviet Arrivals Then and Now

Before the 1976 Immigration Act became effective in 1978, Soviet Jews were admitted to Canada mainly as independent immigrants. Starting in 1978 they started coming under the Designated Class category. Between 1978 and 1981 these refugees from the U.S.S.R. constituted an important part of the Canadian refugee flow (see Table 1). When Soviet authorities tightened exit visa regulations between 1982 and 1987, their inflow into Canada dropped significantly. The few who were allowed to leave the Soviet Union were sponsored by family members. In 1988 the flow increased again. In the last two years of the refugee program for the U.S.S.R., a large proportion of Soviet people came under the private sponsorship of the Jewish Immigrant Aid Service of Canada (JIAS) as members of the Designated Class.

For a number of reasons, until 1990 the Canadian policy towards refugees from the U.S.S.R. was very generous. First, the Canadian government's Cold

War mentality influenced its perception of those fleeing the Soviet Union as victims of Communist rule and in need of protection by the West. Soviet emigrants were used as an ideological weapon against the U.S.S.R. At the same time, Soviet immigrants provided ideological support for right-wing and centre-right-wing political parties in Canada. Thus in Canada they were preferred over those refugees who were persecuted because of their left-wing affiliations.

Second, Canadian resettlement of Soviet Jews was part of a multilateral arrangement with Austria, Italy, the U.S., Australia and New Zealand. Under this agreement, Austria and Italy provided temporary asylum to Soviet self-exiled Jews, while other countries offered them permanent resettlement.

Third, relatively high levels of the refugees' educational achievement (see Table 2) made Soviet-Jewish settlement in Canada attractive when Canada was making a significant effort to increase the number of skilled workers in the labour force.

Finally, Canadian-Jewish organizations pressured the government to increase the intake of Soviet Jews who, they felt, were denied the right to practise their religion and traditions and were subject to discriminatory practices at school and at work. In addition to its role as a lobby group, JIAS also provided significant settlement assistance to newly arrived immigrants. Furthermore, as mentioned earlier, it was successful in bringing many Soviet Jews under its sponsorship.

By 1990 the situation in the Soviet Union and Canada changed in a number of important ways. Dramatic political changes in the Soviet Union altered perception of its emigrés. They could no longer be viewed as opponents of Communist rule since the latter was crumbling. Soviet Jews lost their ideological attractiveness to Western countries. They were now regarded as economic immigrants in search of better material opportunities elsewhere in the world.

The Canadian government was aware of the rise of anti-Semitism in the

Table 1: Refugees from Major Refugee-Source Countries to Canada, 1978-87 (in percentages)

Country	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	Total
Vietnam	63.1	68.2	59.4	42.2	21.8	21.3	21.5	23.1	18.4	17.1	37.7
Poland	3.5	1.0	1.2	17.3	42.2	15.9	13.9	12.8	18.5	20.6	13.3
Kampuchea	0.2	4.2	8.8	8.9	7.8	9.8	8.0	7.0	6.2	5.7	7.2
Laos	0.1	13.9	14.9	5.4	2.0	2.8	5.2	1.8	2.9	1.8	7.2
El Salvador	0.0	0.0	0.0	0.3	1.6	12.7	13.6	13.9	12.2	10.7	6.0
Czechoslovakia	3.8	1.0	2.5	6.6	5.1	8.3	5.1	4.5	3.6	3.5	3.9
U.S.S.R.	4.5	4.1	4.7	5.0	1.6	0.9	0.3	0.4	0.4	0.6	2.4
Iran	0.0	0.0	0.0	0.1	2.0	4.7	4.5	4.6	4.6	4.5	2.3
Ethiopia	1.5	0.2	0.3	0.8	1.4	3.8	4.6	4.2	4.7	4.3	2.3
Romania	4.6	1.0	0.8	3.1	3.3	3.8	2.4	2.0	2.3	3.9	2.2
Hungary	1.7	0.7	0.7	2.5	2.2	2.6	1.7	3.0	2.8	2.5	1.8
Chile	10.7	1.0	0.9	2.1	2.0	1.5	0.9	0.8	0.9	1.5	1.3
Guatemala	0.0	0.0	0.0	0.0	0.0	1.2	2.9	2.8	3.5	2.5	1.2
Nicaragua	0.0	0.0	0.0	0.0	0.0	0.3	0.7	2.9	3.5	4.5	1.2
Afghanistan	0.0	0.0	0.0	0.2	0.4	0.5	0.6	2.0	2.7	3.5	1.0
Sri Lanka	0.0	0.0	0.0	0.0	0.0	0.0	0.3	0.7	1.4	2.7	0.5
Total number	848	27,517	40,348	14,981	16,927	13,970	15,345	16,754	19,147	21,530	187,367

Soviet Union, yet it sought a remedy in Jewish repatriation in Israel. This solution was strongly advocated by Israel and was supported by a number of pro-Zionist organizations in the U.S. and Canada. Furthermore, as the Vienna-Rome pipeline for Soviet immigrants ceased to exist in October 1989, Canada was relieved of its international responsibility in assisting its allies in settling Soviet Jews. At that time, most Soviet emigrants were streamlined to Israel.

By cancelling its refugee policy for Soviet and Eastern European immigrants, the Canadian government felt it was responding to criticisms of favouritism expressed by the Canadian Council for Refugees and other interest groups concerned for refugees.

While JIAS continued to lobby on behalf of Soviet Jews, it did not challenge the government's decision to discontinue the refugee program, but insisted that those Jews applying under

family sponsorship or as independent immigrants should be given extra consideration by visa officers in Moscow. In April 1992 JIAS Montreal, along with Allied Jewish Community Services, entered into an agreement with the Quebec Ministry of Cultural Communities and Immigration to bring approximately one hundred Jewish families from the former Soviet Union over four months in the winter and spring of 1993. These families will have to qualify as independent immigrants according to the Quebec point system. At the same time, all of the selected families will have to have relatives in Montreal who are expected to help them with their settlement needs and employment. If this pilot project is successful—that is if the selected immigrants remain in Montreal, speak French, find employment and do not require public assistance—other Soviet-Jewish families will be accepted under the same agreement.

Inland Refugee Status Determination

The process of refugee selection by overseas visa officers is one of two venues for refugee admission set out by the 1976 Immigration Act. The second way is through an inland status determination of refugee claims. Until recently, very few Soviet citizens chose that route because of extreme difficulties in getting a visitor's exit visa from the Soviet Union. In the ten years following the introduction of the Immigration Act, only thirty people from the Soviet Union made refugee claims. Most of these claims were rejected. In 1989, 1990 and 1991 it became relatively easy for Soviet people to travel abroad. To get an exit visa, they needed an invitation from a friend or a relative. As long as at least one of the family members stayed behind, they were almost guaranteed an entry visa to Canada. Some of these visitors chose to stay in Canada. Not all of them applied for refugee status. Some were sponsored by JIAS, others by their relatives, while still others were admitted as independent immigrants. But the number of Soviet refugee claimants started rising as well. While in 1990 112 Soviet citizens applied for refugee status, their number reached 1,385 by the end of 1991.

In 1991 the perception of the situation in the U.S.S.R. and decisions made on refugee claims were uneven. Factors that explain the Canadian refugee policy for selecting refugees from overseas do not apply to the process of refugee status determination. Canadian refugee policy is influenced by foreign policy objectives, ideological and security concerns, economic interest, public opinion and lobbying by various pressure groups. Refugee status determination, while not completely devoid of these influences, seems to reflect individual panel members' perception of the general situation in a refugee's country of origin. This perception is shaped by the media coverage of a refugee-producing country, by the Immigration and Refugee Board (IRB) documentation centre's documents that are at the

Table 2
Educational Attainment of Refugees in Canada from
Major Refugee-Producing Countries, 1978-87
(in percentages)

Country	— Highest level of educational attainment —			Total
	Less than secondary	Secondary graduate	University graduate	
U.S.S.R.	46.8	31.8	21.4	100.0
Romania	33.3	46.5	20.2	100.0
Poland	41.3	38.8	19.9	100.0
Iran	56.7	26.3	17.0	100.0
Afghanistan	67.5	18.1	14.4	100.0
Czechoslovakia	47.7	40.2	12.1	100.0
Nicaragua	76.3	15.0	8.7	100.0
Hungary	41.6	50.5	7.9	100.0
Ethiopia	69.2	23.6	7.2	100.0
Sri Lanka	59.4	34.3	6.3	100.0
Guatemala	80.1	16.3	3.6	100.0
Chile	76.6	20.9	2.5	100.0
El Salvador	81.7	16.0	2.3	100.0
Vietnam	90.0	8.1	1.9	100.0
Laos	93.3	5.9	0.8	100.0
Kampuchea	94.9	4.5	0.6	100.0

disposal of legal counsel and panel members, and by country profile reports prepared by specialists. Before the attempted August coup, mass media emphasized positive changes in the Soviet Union. Not much information was available on the rise of nationalism at the time. It is no surprise that many IRB members felt that while Jews suffered from discrimination, they were not persecuted in the Soviet Union and were therefore ineligible for refugee status. Thus one IRB member writes in a summary report on a case heard in May 1991:

In our opinion, the evidence presented at this hearing does not lead us to conclude that there is a reasonable possibility that the claimants would suffer persecution should they return to the U.S.S.R. There have been rumours of pogroms; no pogroms have taken place, however. There have been threats of civil war; civil war has yet to erupt, however, and should such a war by some awful chance erupt, many nationals, including Jews, would be affected. We are not persuaded, moreover, on the basis of the evidence before us, that Jews would be at any greater risk than other citizens in a civil war situation in the U.S.S.R.

Another IRB member writes about another case heard at the same time:

...the freedom of expression has given rise to numerous controversial opinions, including anti-Semitism. However, this anti-Semitism is neither government sponsored nor approved by the Soviet authorities. Considering all this, the panel is of the opinion that the harassment and discrimination that the claimants may have received in the U.S.S.R. does not amount to persecution.

The coup brought much confusion and uncertainty, and thus cases scheduled to be heard shortly thereafter were adjourned until the situation in the Soviet Union became clearer. In the fall, the perception that Jews experienced discrimination rather than persecution persisted among some panel members. One Soviet-Jewish claimant states:

[Panel members] believe that just because I had five fights in the last ten years and heard one hundred insults, it is not

Table 3
Results of Refugee Claims Adjudicated in 1991
— Listed by Country of Origin —

	Claims heard to completion	Positive decision	Negative decision	Ratio pos./neg.
Sri Lanka	4,568	4,458	154	28.9
Iraq	248	234	11	21.3
Somalia	4,059	3,672	292	12.6
Iran	2,074	1,875	188	10.0
Sudan	177	150	21	7.1
Lebanon	2,086	1,794	283	6.3
Seychelles	254	196	33	5.9
Ethiopia	557	395	71	5.6
Afghanistan	185	137	26	5.3
Zaire	262	207	40	5.2
Cuba	142	98	27	3.6
Yugoslavia	117	82	23	3.6
El Salvador	1,735	1,351	417	3.2
Guatemala	489	352	116	3.0
Kenya	124	90	32	2.8
Peru	219	144	56	2.6
U.S.S.R.	763	433	172	2.5
Pakistan	716	446	193	2.3
Syria	125	81	43	1.9
Romania	668	392	212	1.8
Chile	144	89	50	1.8
Venezuela	100	38	26	1.5
Honduras	173	100	69	1.4
Algeria	103	48	44	1.1
Argentina	263	112	103	1.1
Haiti	248	103	122	0.8
Ghana	714	233	285	0.8
Bangladesh	425	146	216	0.7
Nicaragua	221	83	131	0.6
India	308	81	142	0.6
Bulgaria	1,510	517	1,064	0.5
Nigeria	283	72	160	0.5
China	2,498	537	1,951	0.3
Poland	183	33	148	0.2
Czechoslovakia	175	11	150	0.1
Others	1,265	635	445	1.4
Total	28,181	19,425	7,516	2.6

persecution. These were just accidents. No one broke into my apartment, no one put a knife to my throat, no one made a threat to my life. Well, yes, I got phone calls. Yet I got flyers in my mail. I've also been brought to a police station because I believe I should fight back. But they don't believe it is a serious crime, especially because there is anti-Semitism in Canada as well. But in Canada there is a law that makes it possible to sue someone who insults you. In the U.S.S.R. it does not exist. When I went to complain about a person insulting me, they told me at the police station, "Wake up! Who is going to listen to you if you have 'kike' written all over your face." So to whom should I appeal for help, if militiamen talk like this?

As more and more reports about the rise of profascist, anti-Semitic organizations began appearing in Soviet and Western media, panel members started concluding that Soviet Jews could be in jeopardy if they returned home, and even though pogroms had not started in Russia yet, Jews had genuine reasons to fear for their lives. This, of course, did not guarantee a positive decision in every case, even though some panel members observed that most Soviet cases are like "twins." Yet many seemingly strong cases were still rejected. But at the same time, some cases in which persecution was not evident received positive decisions. Decisions often depend on which IRB member is hearing the case (some are more predisposed to reach negative decisions than others), on the lawyer representing the case (some lawyers seem to have consistently positive decisions made on cases they represent), on how well claimants can serve as witnesses, and on other idiosyncratic features of the hearing. In the words of one claimant evaluating the outcome, "It depends on good weather and a good night's sleep. If the judge has slept well, he would grant the status. All these are human factors. All the stories that you come up with (and some say you've got to come up with a good story), well, it is all the same to them." Another claimant recalled, "I had an impression that the judges did not believe me, that they had made their decision already and that nothing I said was going to change it."

In adjudicating refugee claims, panel members often make use of country profiles prepared by area specialists. Such a report on the U.S.S.R. was prepared in the summer of 1991 and came out a few months later. Yet the situation in the region was so unstable that this report was outdated almost as soon as it came out. The breakup of the Soviet Union in December 1991 invalidated many points made in it.

IRB members were often guided by newspaper and magazine clippings collected in the documentation centre or presented by the claimant's legal representative. Since media coverage of this region in turmoil is often contradictory, so are the decisions reached. Canada and the United States supported independence of the former Baltic republics. Thus mass media coverage of Latvia, Lithuania and Estonia was generally positive, making it difficult for claimants from these states to prove persecution. Gradually, as the claimants supplied documentary evidence on discrimination against ethnic minorities in these states, panel members started lending an ear to their claims. Similarly in the case of Ukraine, many IRB members were influenced in their

decisions by Kravchuk's public statements, in which he regretted the genocide of Jews during the Holocaust and said that Jews were welcome in his country. It was up to refugee claimants and their legal counsel to supply the decision-makers with documents illustrating widespread anti-Semitism at the grassroots level in Ukraine.

In making decisions on Soviet-Jewish refugee claims, panel members were consistently preoccupied by three problems—proof of being Jewish, citizenship and migration to Israel. With respect to the first one, internal Soviet passports list one's nationality, while external travel passports lack this information. In order to detect fraudulent claims of anti-Semitic persecution by non-Jews, panel members inquired about observance of Jewish religion and traditions. Yet most Soviet Jews are secular and know very little about Jewish history and its traditions. Jewish identity is maintained more by discrimination than by maintenance of a separate culture and community. Yet ignorance of Jewish high holy days among some Soviet-Jewish claimants cast doubt on the validity of their claims.

Table 4
Regional Effect on Refugee Claims from the U.S.S.R. Adjudicated
January - September 1991

Decision	Atlantic	Quebec	Ontario	Prairies	B.C.	Total
Claims heard	77	232	105	16	12	442
Positive	62	168	28	9	1	268
Negative	12	29	41	4	9	95
Ratio pos./neg.	5.2	5.8	0.7	2.3	0.1	2.8

Table 5: Regional Effect on Total Refugee Claims Adjudicated
January-September 1991

Outcome	Atlantic	Quebec	Ontario	Prairies	B.C.	National
Claims heard	317	7,473	11,697	403	1,214	21,104
Rejected	94	2,184	2,376	115	508	5,277
Upheld	223	5,289	9,321	288	706	15,827
Ratio pos./neg.	2.4	2.4	3.9	2.5	1.4	3.0

Citizenship, the second issue, concerns those who were born in a Soviet republic different than the one from which they escaped. Some panel members insisted that if a claimant was born in Belorussia and experienced persecution in Russia, he or she should be able to claim Belorussian citizenship. No regard was given in this case to the fact that a claimant may not speak the language of this newly formed country and that the institution of *propiska* (residence permit) is still alive throughout the former Soviet Union and prevents one from moving freely within it.

Finally, the last stumbling block has been the issue of emigration to Israel. Several Soviet-Jewish claimants were asked why they did not go to the state that would give them the most protection

The Immigration and Refugee Board's treatment of Soviet refugee claimants reflects neither positive nor negative bias.

from anti-Semitism and that is willing to accept and settle as many Jews as possible. Apart from tremendous hardships experienced by recent *alia* in Israel, what often prevented Soviet Jews from choosing this alternative was the relatively lengthy procedure of getting an exit visa when one applied for permanent resettlement. Getting a visitor's exit visa may take a few months as well, but it is faster and is therefore preferred by someone who fears for his or her life.

The Immigration and Refugee Board's treatment of Soviet refugee claimants reflects neither positive nor negative bias. In 1991 the acceptance rate for the U.S.S.R. was at the national average (see Table 3). Among thirty-four countries (each of which had at least a hundred refugee claims adjudicated in 1991) ranked by the acceptance ratio, the U.S.S.R. is right in the middle.

There are regional differences in outcomes of claims made by Soviet citizens (see Table 4). In the first nine

months of 1991 they were most successful in obtaining refugee status in the Atlantic provinces and Quebec. Ontario and British Columbia had the lowest acceptance ratio for claimants from this country. It is interesting that while differences in the acceptance rate of all refugees existed between various provinces of Canada, they were less significant during the same period (see Table 5).

By the end of 1991 the acceptance ratio dropped consistently by a few decimal points in each province. In Ontario it went down most significantly to 3.1. It continued falling in the first quarter of 1992. The national ratio of positive to negative decisions went down to 1.6 and in British Columbia to as low as 0.4. In Ontario, where the ratio was the highest in 1991, it went down to 1.7. This affected Soviet refugee claimants as well.

On June 16, 1992 Canadian Immigration Minister Bernard Valcourt introduced Bill C-86 to Parliament. The proposed Bill advocates eliminating one of two existing status determination hearings in order to speed up the process of refugee status determination; fingerprinting all refugee claimants to prevent criminals from entering the country; and granting more power to immigration officers at borders, enabling them to reject refugee claims. Valcourt also proposes the cessation of welfare assistance and legal aid to refugee claimants. Critics of the proposed bill argue that it "eliminates all constitutional guarantees of the rights of refugees."¹ The proposed bill indicates that Canada wants to curb significantly the number of refugee claimants entering the country. In the case of Soviet claimants this has already been achieved to a significant degree. Within the last year, it was extremely difficult to obtain a visitor's visa at the Canadian Consulate in Moscow. What will Soviet Jews opt for under these circumstances? Will they go to Israel despite the problems of settlement and tension related to the Israeli-Palestinian conflict? Will they stay in Russia and other parts of the former Soviet Union and try to resist anti-Semitic attacks? Will they flood Europe? ■

*The Senate Standing Committee on Social Affairs, Science and Technology recently released its report on Bill C-86, An Act to Amend the Immigration Act. Several of the recommendations relating to refugee matters are as follows.**

1. Cases in which a person is not eligible to make a claim to refugee status, in the view of a senior immigration officer, should be referred to the Immigration and Refugee Board for a determination of eligibility.
2. The existence of bilateral or multilateral agreements specifying which state is responsible for examining a refugee claim and guaranteeing the admissibility of persons to be returned should be a precondition to any "safe country" return policy.
3. Compliance with the Convention relating to the Status of Refugees in general, rather than just Article 33 thereof, should be a precondition to the designation of any country as one to which claimants could be returned. All designated countries must have actually acceded to the Convention.
4. All countries to be prescribed as countries to which refugee claimants could be returned must agree to determine the claims of individuals returned to them on their merits, and must have refugee determination systems that comply with Canadian principles of fundamental justice.
5. Claimants recognized as Convention refugees elsewhere who claim to fear persecution in that country should be eligible to enter the Canadian determination system.
6. The provisions that would allow for the rejection of a refugee claim in the event of a split decision on the claim by the Refugee Division should be reconsidered.
7. The proposed inadmissibility provisions relating to security and criminality should be narrowed in order to target more precisely the individuals and activities intended to be excluded. In particular, "terrorism" should be redefined, and either the prohibited conduct in subsection 19(1)(k) should be specified or the provision should be removed.
8. In view of the very significant changes that the bill makes to applicants' expectations, retroactivity should be applied only to cases arising after the bill comes into force.

* As extracted by Leanne MacMillan, *Legal Programs, Centre for Refugee Studies, York University.*