

Extract from New Immigration Regulations, re Bill C-86

Immigration Regulations, 1978 — Amendments

in Consequence of Bill C-86: Phase I

[The following extract is from the *Canada Gazette*, Part 1 (Extra No. 4, Vol. 126), December 23, 1992.]

(b) Post-Determination Refugee Claimants in Canada Class (PDRCC)

Previously, under the refugee determination system, persons who were refused refugee status by the Convention Refugee Determination Division (CRDD) of the Immigration and Refugee Board had their cases automatically reviewed by immigration officials to determine if they would be subject to unduly harsh or inhumane treatment in the country to which they were to be removed. If the assessment was positive, steps were taken to grant landing to the persons under the authority of the old subsection 114(2) of the *Immigration Act*.

This review was introduced by the Minister of Employment and Immigration of the day, to complement the coming into force in 1989 of legislative provisions creating a new refugee determination system (Bill C-55). The measure responded to concerns about persons who might fail to meet the Convention refugee definition, but who nonetheless should not be removed because they would be facing a personal risk of serious harm.

These amendments are designed to clarify the existing review process. Elaboration of the decision criteria in regulations will benefit both the refused refugee claimant and the decision maker. Specific immigration officers have been assigned to apply these criteria. Also, they have received the required training.

Eligibility criteria for the class are set out in the definition section of these amendments. All refused refugee claimants are included, with the exception of those whose claims have been determined to lack credible basis by the Convention Refugee Determination Division

pursuant to subsection 69.1(9.1) of the Act (as amended by Bill C-86), those who have withdrawn or abandoned their claims, or those who voluntarily leave after their claim has been refused.

The claimant must be subject to an identifiable risk if forced to leave Canada. The risk must be compelling, consisting of a threat to life, excessive sanctions or inhumane treatment. It must be personal, that is, directed at the individual rather than being based on generalized situations of risk faced by other individuals in the country of return. However, this risk cannot be caused by the inability of the country of return to provide adequate health care. It should be noted that claimants in this class will not be refused landing if they fail to meet medical requirements, if they are otherwise eligible for the class. Humanitarian and compassionate review is still available to such persons pursuant to section 114(2) of the *Immigration Act*.

It should be stressed that these requirements are not strictly speaking admissions criteria. The refugee determination system itself contains the eligibility criteria for the admission of in-Canada claimants. The criteria are intended to be narrowly drawn to avoid creating an admissions system on top of the refugee determination system.

Pursuant to landing requirements in the new section 11.4 of the *Immigration Regulations, 1978*, the review process is automatic: the refused claimant is deemed to have applied. The review is available only once. There is no provision for a claimant to apply again. Refused claimants are given 15 days after notification of the Convention Refugee Determination Division negative decision to make submissions. A decision may be made even if no submissions are received within the required time.

The provisions which govern health, security and criminality requirements

for members of this class are similar to those for successful refugee claimants contained in the *Immigration Act* (as amended by Bill C-86). Refused refugee claimants may be landed even if they do not meet medical requirements, since they cannot be removed from Canada. However, refused claimants who have been convicted of serious crimes, or who do not meet security requirements cannot be landed. Nor will landing be granted until the applicant provides a satisfactory identity document.

Applicants may apply on behalf of dependants in Canada. If any dependant, whether in Canada or outside the country, fails to meet criminality and security requirements, neither the applicant nor the dependants may be landed.

Section 7 of the Act (as amended by Bill C-86) requires the annual Immigration Plan to set out management numbers for each class. For some classes, these numbers are projections or estimates, for others, they are maximum numbers. The new section 11.5 of the Regulations provides that the Plan be tabled before Parliament not later than June 15 of each calendar year. By definition, members of the in-Canada classes are already in the country; there is no point in setting landing limits on them. A single number is assigned for both classes, representing estimates of all class members to be landed in the year—live-in caregivers, and refused refugee claimants.

Alternatives Considered

Amendments were necessary to give effect to the legislative provisions enabling admission on humanitarian and compassionate or public policy grounds (new section 6[5] of the Act). As indicated above, the definitions and landing requirements which make up these amendments are codifications and clarifications of existing practices.

Anticipated Impact

These amendments codify practices developed under the predecessor of section 114(2) of the *Immigration Act*. This provision allowed the Governor in Council to facilitate the admission of persons on public policy or humanitarian and compassionate grounds. The creation of classes and landing requirements in the *Immigration Regulation, 1978*, will provide more transparent criteria which should result in more consistent decision-making. It will also reduce resources required to prepare and review applications, and as a result, processing times will decrease by up to three months.

The amendments are expected to have no significant impact on the numbers of affected persons landed in Canada, since the provisions do not represent a significant change in the existing approach to live-in caregivers, or to the review of the situation of refused refugee claimants. In 1991, about 3,200 persons were landed in Canada as live-in caregivers. Preliminary data on case reviews of refused refugee claimants indicate that between January 1, 1989, when the review was introduced, and October 1, 1992, about 9,100 cases were reviewed, with 8,800 negative decisions, and 300 positive decisions (3.2%).

There was a great deal of confusion and misunderstanding surrounding the review of refused refugee claimant cases. Clarifying the decision criteria in the Regulations will reduce confusion and enhance the consistency of decision-making.

Explanatory Notes

Post-Determination Refugee Claimants in Canada Class

"Member of the post-determination refugee claimants in Canada class" means an immigrant in Canada in respect of whom

(a) the Refugee Division has made a determination that the immigrant is not a Convention refugee and who is not the subject of an application for leave to com-

mence an application for judicial review or an application for judicial review following the determination, other than an immigrant

- (i) who has withdrawn the immigrant's claim to be a Convention refugee,
 - (ii) whom the Refugee Division has declared to have abandoned a claim to be a Convention refugee, pursuant to subsection 69.1(6) of the Act,
 - (iii) whom the Refugee Division has determined does not have a credible basis for the claim, pursuant to subsection 69.1(9.1) of the Act, or
 - (iv) who has left Canada at any time after it was determined that the immigrant is not a Convention refugee,
- (b) an immigration officer has not previously refused landing pursuant to section 11.4,
- (c) removal to a country to which the immigrant can be removed would subject that immigrant to an objectively identifiable risk, where the risk is not a risk that is faced generally by other individuals in or from that country,
- (i) to the immigrant's life, other than a risk to the immigrant's life that is caused by the inability of the country to which the immigrant can be removed to provide adequate health or medical care,
 - (ii) of extreme sanctions against the immigrant, or
 - (iii) of inhumane treatment of the immigrant, and
- (d) the objectively identifiable risk referred to in paragraph (c) would apply in every part of the country referred to in that paragraph.

Ministerial Exemptions

R.2.1 The Minister is hereby authorized to exempt any person from any regulation made under subsection 114(1) of the Act or otherwise facilitate the admission to Canada of any person where the Minister is satisfied that the person should be exempted from that regulation or that the person's admission should be facilitated owing to the existence of compassionate or humanitarian considerations.

PDRCC Regulations

R.11.4 (1) A member of the post-determination refugee claimants in Canada class and the member's dependants, if any, are subject to the following landing requirements:

- (a) the member and the member's dependants must not be persons described in paragraph 19(1)(c), (c.1), (c.2), (d), (e), (f), (g), (1), (k) or (1) or (2)(a) or subparagraph 19(2)(a.1)(i) of the Act;
 - (b) the member and the member's dependants must not have been convicted of an offence referred to in paragraph 27(2)(d) of the Act for which a term of imprisonment of more than six months has been imposed or a maximum term of imprisonment of five years or more may be imposed;
 - (c) the member and the member's dependants must have been in Canada on the day on which they became members of the post-determination refugee claimants in Canada class and must have remained in Canada since that day; and
 - (d) the member and the member's dependants must be in possession of valid and subsisting passports or travel documents or satisfactory identity documents.
- (2) For the purposes of subsection 6(5) of the Act, a member of the class referred to in subsection (1) shall be deemed to have submitted an application for landing to an immigration officer on the day on which the member became a member of that class.
- (3) The landing requirements referred to in subsection (1) shall not be applied before the expiration of the 15-day period immediately following notification by the Refugee Division to a member of the post-determination refugee claimants in Canada class that the member is not a Convention refugee, so that the member may make submissions to an immigration officer respecting the matters referred to in paragraphs (b) and (c) of the definition "member of the post-determination refugee claimants in Canada class" in subsection 2(1). ■

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RESEARCH FELLOWSHIP AND AWARDS

Centre for Refugee Studies York University

A. KATHLEEN PTOLEMY RESEARCH FELLOWSHIP

An annual Can. \$15,000 Kathleen Ptolemy Research Fellowship has been set up to permit a visiting scholar from a developing country to undertake research on refugees. Scholars interested in the study of refugee women who are in need of protection, and demonstrate commitment to refugee rights advocacy or service to the disfranchised will be given priority.

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Visiting scholars may use the facilities at the Centre for Refugee Studies for short-term or long-term projects. Short-term projects are those that can be completed within a few weeks or months. We will provide visiting scholars with office space and a computer. Long-term research projects are for the duration of the academic year, which extends from September to April and are also eligible for funding support.

Please submit your applications to:

Helen Gross, Student/Faculty Liaison

Centre for Refugee Studies

Suite 322, York Lanes, York University

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Canada M3J 1P3

Tel: (416) 736-5663 • Fax: (416) 736-5837

E-mail via BITNET, address: REFUGE@YORKVM1

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ANNUAL DINNER AND MEETING**

Jade Garden Restaurant, 222 Spadina Avenue, Toronto

February 4, 1993

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ANNUAL DINNER
AND MEETING**

FEBRUARY 4, 1993

Yes, it's that time of year again! The Centre for Refugee Studies (CRS) cordially invites you and your friends to join us at our Annual Chinese Dinner and Meeting. The dinner is being held on February 4, 1993 at the Jade Garden Restaurant, 222 Spadina Avenue, Toronto.

VINCENT KELLY AWARD

We are pleased to announce that we have invited the Honourable Kim Campbell, Minister of Justice and Attorney General of Canada, to present the Vincent Kelly Award.

This year's award will be presented to **Barbara Jackman** and **Pierre Duquette**, two lawyers who have performed outstanding work on behalf of refugees. The dinner will focus on the legal profession and its contribution in the area of refugee studies.

CRS ENDOWMENT FUND

Our annual dinner is an opportunity for CRS to bring together those interested and involved in refugee studies. This year the dinner will assist in funding two graduate legal students with their research through the CRS Endowment Fund.

We look forward to you joining us or your financial support through a donation, which will then enable people from the refugee community to attend our dinner on your behalf.

Please copy the registration form and send it to us at your earliest convenience. The CRS greatly appreciates your interest in and support of our endeavours.

Join Us!

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Applicants *will be* expected to have an academic appointment at York University and to have a distinguished record of scholarship and strong research interests in refugee studies or related issues. They must possess the capacity to administer and develop the research programs of this interdisciplinary unit.

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**Barbara Tryfos
Secretary of the Search Committee
Office of the Associate Vice-President (Research)
York University, S945 Ross Building
4700 Keele Street
North York, Ontario
Canada M3J 1P3**