

**SUBMISSION TO STANDING COMMITTEE ON CITIZENSHIP AND IMMIGRATION  
by  
Ontario Council of Agencies Serving Immigrants (OCASI)**

**Family Reunification  
April 14, 2005**

**I. Introduction**

The Ontario Council of Agencies Serving Immigrants (OCASI) is the umbrella organization for the immigrant and refugee-serving sector in Ontario. It was formed in 1978 to act as a collective voice for immigrant serving agencies and to coordinate responses to shared needs and concerns. OCASI is a registered charity governed by a volunteer board of directors. Our membership is made up of more than 170 community-based organizations in the province of Ontario.

We would like to thank the Standing Committee for unanimously adopting the resolution calling for the implementation of the Refugee Appeal Division.

We commend the Standing Committee for identifying family reunification and the regularization of people in Canada without legal status amongst its priority issues. These and other priorities identified in the Standing Committee's workplan are important to all immigrants and refugees in Canada, and are issues of deep concern to OCASI members.

We would also like to thank the Standing Committee for granting us this opportunity to present our position with respect to family reunification. When the time comes for the Committee to consult on other issues of priority, we would appreciate having the opportunity to share our views on those issues as well.

**II. Family Reunification**

In this presentation, we plan to focus on family reunification as it affects all immigrants and refugees, and most especially as it affects those from racialized communities and those who are low income.

a. Principle of Family Reunification

Canada has many compelling reasons for promoting family reunification. These include our international legal obligations,<sup>1</sup> Canada's tradition of giving priority to family reunification in immigration policies and the importance of family reunification as a factor in promoting newcomer integration.

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<sup>1</sup> Notably the International Covenant on Economic, Social and Cultural Rights (Art. 10), International Covenant on Civil and Political Rights (Art. 23) and the Convention on the Rights of the Child (Art. 10). Canada has been criticized by the UN Committee on the Rights of the Child for its failure to comply fully with its obligations to facilitate the reunification of children with their parents.

Canada's Immigration and Refugee Protection Act (IRPA) makes a commitment to family reunification by giving a Canadian citizen or permanent resident the right to sponsor a family member. The objectives of the Act with respect to refugees commits,

*(f) to support the self-sufficiency and the social and economic well-being of refugees by facilitating reunification with their family members in Canada;*

Historically, family class immigrants comprised a significant portion of the overall immigrant population in Canada. Since the early 1990's when the current government came into power the percentage of family class immigrants coming to Canada has declined. For the past few years, the government has imposed a rule that 60% of immigration should be economic and 40% non-economic (i.e. family and refugees). By limiting admissions in these classes, this government has put all those who wish to be reunited with family into an intolerable situation, despite Canada's obligations, stated priorities and clear interests in promoting these admissions. This has especially negatively affected individuals, such as refugees, who may have no other family in Canada.

Despite all evidency to the contrary, it is unfortunate that only wealthy business people and entrepreneurs, described as the "best and brightest" in our immigration policy, are perceived to be of greater economic benefit to Canada than family class immigrants.

**Recommendation:** OCASI recommends that the 60-40 split should be reviewed with a view to reducing delays in family reunification.

#### b. Delays in Processing

The 60-40 split has resulted in applications under family reunification being delayed in order to allow more immigration in the economic class. The Canadian Council for Refugees (CCR) report *More than a Nightmare: Delays in Refugee Family Reunification*, published in November 2004, looks at processing times for applications from refugee family members abroad from the time at which a completed family application is received at a visa post. It identifies extensive delays in some visa posts, especially those located in Africa and the Middle East, with the greatest delays in the post in Abidjan – Ivory Coast.

The Abidjan post serves countries<sup>2</sup> with significant populations that speak French rather than English. In recognition of the delay, Citizenship and Immigration Canada (CIC) assigned an additional visa officer to the post. We hope that this will result in a reduction in waiting times at least this post. According to one anecdote, a family submitted a sponsorship application for their children in 1992 and had to wait until 2002 for approval and their arrival in Canada. This application was processed at the Abidjan post.

Other advocates have noted that resource allocation to visa posts are skewed in favour of Europe and the United States, despite changing trends that show increased immigration from Asia,

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<sup>2</sup> The Abidjan post covers Burkina-Faso, Cameroon, Cape Verde, Central African Republic, Chad, Democratic Republic of Congo, People's Republic of Congo, Equatorial Guinea, Gabon, Guinea-Bissau, Ivory Coast, Mali, Mauritania, Niger and Senegal.

Africa, Latin America and the Caribbean. The unequal allocation is consistent with increased waiting times in these regions where few resources are allocated.

Applicants who have to travel extensive distances to reach a visa post have to bear the additional cost of travel, often for more than one interview with the visa officer or to provide documentation and other proof. Applicants sometimes have to travel to another country to reach a visa post and then face the challenge of crossing a border with all the accompanying difficulties. In one anecdote, an applicant living in El Salvador was required to travel on 5 separate occasions to the nearest visa post which was in Guatemala to satisfy the visa officer that she was in a 'bona fide' relationship with the sponsoring spouse, and once because the visa office had lost her file with all the documentation. The applicant had to spend enormous amounts of money for travel, overcome barriers to cross the border and try to replace all of the original documentation (some could not be replaced) including redoing medical tests for which she had to pay again.

Processing delays are also putting at risk Canada's program for the private sponsorship of refugees, for which the people of Canada were awarded the UNHCR Nansen Medal in 1986. For many refugees, the private sponsorship program is the only effective means in Canada's immigration program to become reunified with family. The extent of processing delays over the last few years have served to put family reunification at risk, while also putting at risk refugee lives overseas. These concerns are well documented by the Canadian Council for Refugees in the report *No Faster Way?* published in November 2004.

At the end of December 2004, there was an inventory (or backlog) of 13,214 private sponsorship applications awaiting processing. At current processing rates, this means an average processing time of **more than two years**. Politicians and media complained that the IRB backlog was unacceptable when it represented only 1.6 years of processing<sup>3</sup>. The much longer waiting times endured by refugees waiting overseas deserves more attention from politicians and media.

Delays in family reunification causing prolong separation can carry risk for family members left behind in the case of refugee families, emotional distress that can affect the settlement process, loss of trust with the family, stress on the family relationship after reunification, and increased need for services among refugees who may have lived for years in a precarious situation.

**Recommendation:** OCASI recommends that CIC should review processing times for family reunification applications at overseas visa posts to identify problem sites and determine the reasons for delay; and that the department should implement a process to end unnecessary delays; and that the department should be given additional resources to address processing delays in visa posts in Africa and the Middle East.

#### c. Financial Barriers

Many immigrants and refugees are unable to reunite with family members because they simply cannot afford to pay the processing fees, and the Right Of Landing Fee (ROLF) in the case of immigrants. Family members in the global south are disadvantaged. While the \$975 ROLF represents a few weeks income for an individual from Europe or the United States, it is more

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<sup>3</sup> As of December 2004 the processing time had decreased to 8 months.

than one year's income for an individual doing similar work in most parts of Africa or South Asia.

The ROLF was first introduced as a mean to address Canada's deficit. With the deficit being eliminated and the federal government reporting a surplus for the last few years, Canada no longer has a valid reason to continue this practice. It is a special tax that is levied only against immigrants, thus discriminating against this group.

While refugees are now exempt from the ROLF, they would still have to pay the \$500 per adult administrative fee for a sponsored family member, regardless of the level of income. Given the challenges that refugees already face, this represent an added burden that prevents many refugees from reuniting with family, forcing them to live in continued isolation.

**Recommendation:** OCASI recommends that the Right of Landing Fee should be eliminated; and that the administrative fee should be eliminated for refugee sponsors or at least be applied on a scale consistent with income.

d. The experience of refugees

Refugees who have been recognized in Canada are, in theory able to reunite with immediate family members by including them on their own application for permanent residence. In practice, however, family members of refugees (most often wives and children) wait overseas for long periods, especially if they are in Africa, as described in the previously mentioned CCR report *More Than A Nightmare*.

Refugee Children in Canada have no way to reunite with family members. While adults can include a spouse or common law partner and children on their application, refugee children can only apply for themselves. Refugee children who arrive in Canada without family face the prospect of never being able to reunite with parents and siblings. If their parents or siblings are in Canada but have no independent entitlement to remain in Canada, they may be deported, imposing family separation on the refugee child. This situation puts Canada in violation of its obligations under the Convention on the Rights of the Child. These concerns have been identified in the CCR report, *Impacts on Children of the Immigration and Refugee Protection Act*, November 2004.

**Recommendation:** OCASI recommends that family members of refugees should be allowed to travel immediately to Canada so that processing of their applications can be done in Canada, thus avoiding delays and ensuring family unity and safety; and that regulations should be amended to allow refugee children to include their parents and siblings on their application for permanent residence.

e. Excluded family members

The increasingly narrow definition of family in IRPA limiting who can be sponsored as family also signifies the Canadian government's retreat away from the commitment to family reunification. It is alarming that the definition of family in the immigration act has become more narrower at a time that Canada is experiencing increased immigration from the global south where family relationships are often defined to include extended family members.

Canadians who wish to be reunited with families abroad must not only demonstrate that these individuals fit Canada's definition of 'family' but often must satisfy visa officers that the relationship is "genuine". Visa officers are allowed to exercise wide discretionary powers in making this determination in what is often an intrusive, lengthy and sometimes humiliating process. The lack of guidelines and/or accountability means that the determination process is often fraught with prejudices held by officers making the decisions, most of who do not share the same cultural, racial, social and/or economic background as the applicants.

Provision 117(9)(d) of the *Immigration and Refugee Protection Regulations* which came into effect in June 2002 excludes from the Family Class a family member if that person was not examined by a visa officer when the sponsor immigrated to Canada. There are many reasons, often compelling, why a family member might not have been examined, but the law provides no exceptions for cases where there are extenuating circumstances. Furthermore, the bar is permanent, unlike exclusions for misrepresentation or criminal offences, where after a certain amount of time, the past is forgiven.

In the case of sponsorship of a spouse, the process of satisfying a visa officer that the sponsor and applicant are in a 'bona fide' relationship is made more difficult when the officer operates with his/her own sets of values, assumptions, stereotypes and cultural norms. In one anecdote a sponsor reported that his application to sponsor his wife was rejected because they were married in a rental hall instead of the family home. According to the visa officer this contravened local practice and therefore could not be a genuine marriage. Some questions are blatantly intrusive with an officer asking the applicant when she first had intercourse with the sponsor. In many cases, when the spousal application is delayed because the visa officer is not satisfied with the quality or quantity of evidence provided, the relationship often falls apart.

**Recommendation:** OCASI recommends that the definition of family class should be expanded to include members of extended families, including but not limited to brother and sisters without restrictions on age and marital status.

OCASI further recommends that IRPA Regulations should be amended to remove the permanent bar to sponsorship in the family class of a person who was not examined by a visa officer when the sponsor immigrated to Canada. OCASI also recommends that the "bad faith"<sup>4</sup> clause in IRPA Regulations should be repealed and failing the repeal, that visa officers who assess family sponsorship cases should be given guidelines and appropriate training to eliminate any bias or prejudice that may otherwise inform their decision-making process.

f. DNA testing

Some families are asked to provide DNA testing to establish family relationship, even when there is no particular evidence putting the relationship in doubt. The requirement overwhelmingly negatively affects people from poor or war-torn countries. They are required to

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<sup>4</sup> (4) For the purposes of these Regulations, no foreign national shall be considered a spouse, a common-law partner, a conjugal partner or an adopted child of a person if the marriage, common-law partnership, conjugal partnership or adoption is not genuine and was entered into primarily for the purpose of acquiring any status or privilege under the Act. *IRPA, Division 2 – Family Relationships*

subject themselves to testing that is expensive, intrusive and that causes further processing delays, while the privileged are exempt. In some cases, the demand for a DNA test has led to suspicion, loss of trust and breakdown in the family relationship.

This problem was further elaborated on in the CCR report, *Impacts on Children of the Immigration and Refugee Protection Act*, published in November 2004.

**Recommendation :** OCASI recommends that the DNA test requirement should be eliminated altogether, or should be used only as a last resort. If the DNA test is to be retained, CIC should be required to develop clear and non-discriminatory guidelines and train visa officers in the application of such guidelines. In addition, the Department should be asked to monitor and report on the use of DNA tests.

g. Adopted children

Canadians can sponsor their adopted children to Canada, so long as they meet all the requirements as a sponsor, and they can prove that the adoption has not been entered into for the purpose of immigration and that at the time of adoption, there exists a genuine parent-child relationship. The process of adoption and sponsorship of a child who is abroad is usually straightforward for most Canadians.

Meanwhile, Canadians who adopt a member of their extended family (this type of adoption is more common among Canadians of Chinese, South Asian, African and Caribbean backgrounds) usually a niece or nephew are subject to a type of scrutiny that is rarely experienced by a white parent adopting a Chinese child. The former are expected to prove that there exists a genuine parent-child relationship, while the latter are subject to a more lenient assessment based on the presumption that adoption by a white family is 'genuine'. The inherent problem with this has been pointed out by at least one Federal Court decision.

**Recommendation:** OCASI recommends that the adoption of children related to adoptive parents must be treated in an equal manner as in cases involving strangers' adoption.

h. People without Status

OCASI is pleased with the Immigration Minister's recent announcement, allowing the inland sponsorship of non-status spouses or common-law partners in Canada. Consistent with the spirit of this announcement, we urge the Canadian government to consider a means of regularization for other non-status family members that are in Canada.

Many people without status in Canada, including failed refugee claimants, refugee claimants from countries where there is a moratorium on removals, as well as other individuals, have lived and worked here for many years. They have become an integral part of Canadian economy and society and are usually active, contributing members of the communities in which they live. Some non-status individuals have Canadian-born children and live and work here while raising their families. There have been many recent cases where these Canadian-born children were at risk of being separated from their parents when non-status parents are removed from the country, or at risk of losing their rights as a citizen because parents did not want to or could not leave minor children behind.

A process to regularize these individuals gives Canada a means to address the limbo situation in which many refugees live, to abide by Canada's obligations under the Convention on the Rights of the Child, and to legitimize the inclusion and participation of people without status in the wage economy and all other aspects of society. There is precedent in Canadian immigration legislation and practice to introduce such a process<sup>5</sup>.

**Recommendation:** OCASI recommends that the Canadian government should introduce a regularization process to include immediate and extended family members in an inland sponsorship application.

### **III. Conclusion**

OCASI thanks the Standing Committee on Citizenship and Immigration for this opportunity to share our concerns regarding Family Reunification in Canada. The Council would also like to acknowledge the contributions of the Canadian Council for Refugees and the Metro Toronto Chinese and Southeast Asian Legal Clinic that informed this presentation.

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<sup>5</sup> DROC Program – 1994 allowing refused refugees from moratorium countries to apply for permanent resident status; Adjustment of Status Program – 1972 allowing those in Canada for a certain period of time to apply for status.