

## **Proposal For The Regularization Of Individuals And Families Without Status in Canada** **November 2005**

### **BACKGROUNDER**

The STATUS Campaign would like to offer the following as a framework of possible approaches to the regularization of people without status in Canada.

These suggestions are informed by consultation with the Canadian Council for Refugees ( CCR ) members at their Spring 2005 Consultation, and by the draft proposal for regularization as submitted to the Minister of Citizenship and Immigration by the Ontario Council of Agencies Serving Immigrants ( OCASI ), FCJ Refugee Centre, Metro Toronto Chinese and Southeast Asian Legal Clinic and the National Anti-Racism Council of Canada ( NARCC ).

As we believe that the existence of non-status immigrants is a result of the unfairness and inequities which are found within our refugee and immigration system, any regularization plan should also address some of these systemic problems more generally.

We appreciate that any proposal will necessarily include the security screening required for permanent resident applicants, consistent with the Immigration and Refugee Protection Act (IRPA). But we would also expect that the processing of applications would be applied in a manner consistent with existing regulations for other applications, and should also be completed in a timely manner.

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**To that end, we suggest that there be several components of a comprehensive and consistently implemented regularization program:**

#### **1. Refugee Appeals Division**

Immediately implement the Refugee Appeals Division (RAD), which is specifically provided for in the Immigration and Refugee Protection Act (IRPA). On 14 December 2004, the Parliamentary Standing Committee on Citizenship and Immigration unanimously adopted a motion calling for immediate implementation of the RAD.

We propose that all refused refugee cases should be reviewed by the RAD, and that there should be a temporary suspension of removals while this review is in process.

#### **2. Re-introduce a program similar to the 1994 DROC Program**

Permit refused refugee claimants from countries where there is or had been a moratorium on removals within the last three years (countries to which Canada does not deport because country conditions are not safe) to apply for Permanent Resident Status.

Such a program would be similar to the Deferred Removal Order Class (DROC) Program of 1994 for refused refugee claimants from moratorium countries.

#### **3. Relaxed Humanitarian and Compassionate Application Process**

In general, all applications on Humanitarian and Compassionate grounds must again be processed in a timely manner.

- Excessive hardship – Relax the present process of application for permanent resident status in Canada on Humanitarian and Compassionate grounds (H&C), by removing the criteria of “excessive hardship”. At present, applicants have to show that they would suffer excessive hardship if they had to return to their home country. Excessive hardship is usually interpreted to mean that they would face risk to their life or security.
- Successful integration – The concept of what constitutes ‘successful’ has been linked only to economic criteria while ignoring other critical factors such as strong links with the communities in which people without status live, learn, work and worship. We suggest that this criteria should be removed entirely and instead a case should be reviewed not only on the basis of economic integration, but also consider factors such as social, cultural and familial integration in Canada.
- Rights of the individual – The “Singh Decision” of 1984 handed down by the Supreme Court of Canada found that refugees cannot be denied their Charter Rights. Canada has also signed many international covenants and conventions including the Convention on the Rights of the Child. Therefore, we suggest that every H&C application should be reviewed against the background of Canada’s international instrument and Charter obligations in order to protect the economic, social, cultural, civil and political rights of the individual.
- Recognize sponsorship – We suggest that the H&C application process needs to recognize the value of a sponsor that could include an employer, a labour union, faith group, community or non-governmental organization that would be able to both vouch for the applicant as well as support their continued integration in Canada. We suggest that immediate and extended family members should be included in these criteria as well.
- Length of time in Canada – We suggest that this category should be removed entirely. If an applicant is living and contributing here already and meets all the other criteria, the length of time becomes a redundant factor since they are already demonstrating their integration into Canadian society.

#### **4. Inland family sponsorship**

The Minister of Citizenship and Immigration recently (early 2005) introduced changes that would allow the inland sponsorship of a non-status spouse. While this is a welcome and positive change, we believe that the decision excludes others who should have the opportunity to qualify for a similar process.

This decision does not allow the inland sponsorship of a non-status spouse who is currently under a removal order. We suggest that there should be a review of such cases so that non-status spouses under a removal order that is unrelated to security concerns should be allowed to pursue the sponsorship option.

We also suggest that the family sponsorship program should be expanded to recognize inland sponsorship of other immediate or extended family members who are already living and working here without status.

As stated in the Metro Toronto Chinese and Southeast Asian Legal Clinic’s presentation to the Standing Committee on Citizenship & Immigration ( December 2004), the prevailing definition of family as the nuclear family clearly does not recognize the reality of many communities that have strong and positive ties with extended family members such as brothers, sisters, aunts, uncles, nieces, nephews, cousins, grandparents and grandchildren, which is similar to the list of extended family members identified in the Safe Third Country Agreement.

Therefore, we suggest that extended family members (such as brothers and sisters, uncles and aunts, and others as above) should be recognized as legitimate sponsors of their family members and that they be permitted to sponsor immediate and extended family members who are living and working in Canada without status.

### **5. Temporary workers**

All immigrants on a temporary work visa, such as seasonal agricultural workers, should be given the opportunity to apply for permanent resident status in Canada, similar to the opportunity provided under the Live-In Caregiver Program. This would help to remove the current inequity inherent between the existing temporary workers programs in Canada.

### **6. Adjustment of Status Program**

For those whose situations may not fit into any of the above categories, we suggest that the Government bring in an adjustment of status program similarly to that introduced in 1972, whereby anyone who was already in Canada by a date (e.g. two years prior) may apply for status.

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**In general we believe that the regularization programme should consider the following criteria:**

#### **a. No deadlines**

We believe that imposing a deadline on any regularization program will create unnecessary additional stress and pressure on people without status who would be scrambling to apply before such a target date; will burden non-governmental organizations which will be swamped with requests for assistance to put an application together in time to meet the deadline; and place a terrific additional load on the Department of Citizenship and Immigration who will face the nightmare of having to process hundreds or thousands of cases within their existing limited resource capacities.

We suggest that a process for regularization should be offered with the understanding that it is a temporary measure, but without deadlines to avoid the problems described above. We suggest that the government may set a timeframe for the purpose of reviewing the effectiveness of or the continuing need for such a program.

We believe that this criterion is important in order to give such a process the fair chance that it deserves. Such a provision will avoid the necessity of having to end the process after only a brief period because it was not possible to deliver on the intended or expected outcomes.

#### **b. Third Party Application**

The 1983-1985 administrative review program gave applicants the opportunity to anonymously submit their applications through a representative for initial assessment. A similar process would encourage applicants to come forward without fear of any negative repercussions.

Involving non-governmental organizations (NGOs) to assist in reviewing such applications would assist to relieve the potential burden on the Department of Citizenship and Immigration Canada, and ensure that the process is manageable. As members of the STATUS Campaign, the CCR, NARCC and other networks we would like to offer support

for such a process, with the understanding that NGOs would take responsibility to review applications to ensure that they are complete. This would be done with the intention of facilitating the process and to not exclude applicants.

#### c. Processing fees

Most concerned groups and organizations such as the Canadian Council for Refugees and the National Anti-Racism Council of Canada oppose in principle, the application of any processing fees. If the Government of Canada is determined to apply a fee, the STATUS Campaign would like to raise the following concern:

The processing fee could be a barrier for some applicants, especially in the case of a family with several children. We suggest that the processing fee should be waived, or at the very least the immigration officer should be given the discretion to apply an economic means test to determine ability to pay. An example of a comparable systemic is the economic means test administered by community legal clinics in Ontario to determine service eligibility.

#### d. Right of Permanent Residence Fee (RPRF)

Similarly groups such as the CCR and NARCC have consistently opposed the application of the Right of Permanent Residence Fee, known prior to IRPA as the Right of Landing Fee (ROLF). The RPRF which is already waived for refugees, should be eliminated completely for all immigrants.

And, as the ROLF was introduced as a deficit fighting measure to help pay for the supports and services as required by most newcomers, in the particular case of persons without status - who by definition have already been living and working in Canada – one would presume that they are already settled and therefore would not require the initial settlement and integration services for which the fee would be collected.

#### e. DNA Testing

Further to the comments in item 4 above (regarding Inland Family Sponsorship), we suggest that any requirement of a DNA test in order to establish biological family ties would be superfluous. New immigrants to Canada, and indeed many communities that have a longer presence in this country have long-traditions adopting and caring for the children of their extended family members and others. They should be allowed to sponsor such children, especially in the case of families and children without status, without having to provide DNA evidence to establish a biological relationship. Finally, the cost of a DNA test is well beyond the means of many families and would constitute unnecessary and undue hardship, if not an insurmountable barrier.

#### f. Moratorium on Removals

In all cases, we propose that as a general principle, there should be a suspension of removals where an applicant has come forward to have her or his status regularized, at least until the case has been reviewed. In order to ensure the success of any program, it would be important to assure the applicant that the simple act of coming forward and applying for consideration for regularization should not result in targeting for removal proceedings.

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Finally, we appreciate this opportunity to offer these suggestions, and look forward to the chance to discuss our proposed elements of a regularization framework in fuller detail at the earliest opportunity possible – so as to clarify, expand on and review together any of the above.