



## **PROPOSAL FOR THE REGULARIZATION OF INDIVIDUALS AND FAMILIES WITHOUT STATUS**

**June 2006**

### **PRINCIPLES -**

1. All human beings have fundamental rights, as recognized in international human rights instruments to which Canada is party and as recognized in the Canadian Charter of Rights and Freedoms. The 1985 Singh decision of the Supreme Court of Canada confirmed that basic charter rights apply to non-citizens in Canada. Canada's obligations towards non-citizens include the duty to respect their economic, social, cultural, civil and political rights.
2. People living without status in Canada are denied many of their basic rights, notably in access to health, education and full employment opportunities and in protection from discrimination. They are vulnerable to many forms of abuse, because the law often does not protect them, in principle and/or in practice.
3. The existence of non-status immigrants is a result of the unfairness, inequities and restrictiveness which are found within our refugee and immigration system. Any regularization plan should also address some of these systemic problems.
4. People find themselves without status in Canada for a variety of reasons, but most relate to their status as oppressed people on the basis of their race, gender, social status, economic status, age, and/or variation from gender or sexual norms.
5. Among the circumstances which in particular deserve highlighting are the following:
  - a) Refugees who should have been granted protection but who have been refused status due to flaws in the determination system.
  - b) Survivors of trafficking

- c) Persons with family with refugee or permanent status in Canada. Canada should comply fully with its obligations under the Convention on the Rights of the Child by giving primary consideration to the best interests of the child and ensuring that families are not separated. Furthermore, recognition should be given to what in Canada is called “extended family”, which in many communities reflects strong and positive ties with family members such as brothers, sisters, aunts, uncles, cousins, grandparents and grandchildren.[1]
  - d) Stateless persons.
  - e) Persons (often women) who were under a family sponsorship but who have left their spouse due to domestic violence.
  - f) Survivors of rape or torture who are at risk of being sent back to the country in which they suffered rape or torture.
  - g) Persons whose removal from Canada would involve a serious rights violation (e.g. persons with a serious medical condition for which treatment is available in Canada but not in the country to which they would be removed).
  - h) Persons from countries to which Canada generally does not deport because of a situation of generalized risk (moratorium countries)
  - i) Persons who have been continuously in Canada for several years
  - j) Persons who have integrated in Canada, where integration is viewed not from a narrow economic perspective but taking into consideration social, cultural and familial integration.
  - k) Persons who have worked for some time on temporary worker programs, notably as seasonal agricultural workers.
6. Regularization mechanisms will necessarily include the security screening required for permanent resident applicants, consistent with the *Immigration and Refugee Protection Act*. Processing of applications should be applied consistent with existing regulations for other applications, and should be completed in a timely manner.

## **PROPOSED MECHANISMS FOR REGULARIZATION -**

### **1. Refugee Protection**

Immediately implement the Refugee Appeals Division (RAD), which is specifically provided for in the *Immigration and Refugee Protection Act* (IRPA). 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. Nationals of moratorium countries

Create a regulatory class permitting nationals of countries to which there is a moratorium on removals and who have been in Canada for three years to apply for permanent residence.

## 3. Survivors of trafficking

Create a regulatory class permitting survivors of trafficking to apply for permanent residence.

## 4. Seasonal agricultural workers

Provide an opportunity for seasonal agricultural workers to apply for permanent residence, similar to the opportunity provided under the Live-In Caregiver Program.

## 5. Relaxed Humanitarian and Compassionate Application Process

- a) **Timely processing:** Process all applications on Humanitarian and Compassionate grounds in a timely manner.
- b) **Excessive hardship:** Remove the criterion 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.
- c) **Successful integration:** Remove criterion that are linked strictly to economic establishment. Instead, integration should be reviewed taking into consideration not only economic integration, but also consider factors such as social, cultural and familial integration (i.e. links with the communities in which people without status live, learn, work and worship).
- d) **Rights of the individual:** Review all applications 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.
- e) **Statelessness:** The fact that a person is de jure or de facto stateless should in itself be a deciding factor in favour of H&C.
- f) **Sponsorship:** 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. Immediate and extended family members could be potential sponsors.
- g) **Victims of domestic violence:** Persons who have left a relationship with a sponsor because of domestic violence should normally be granted H&C.
- h) **Survivors of rape and torture:** Persons who have survived rape or torture should normally be granted H&C to avoid return to the country where they were raped or tortured.
- i) **Length of time in Canada:** Length of time in Canada is a factor in favour of granting H&C. Those who have been continuously in Canada for three years should normally be landed. However, the fact that a person has not been long in Canada should not be an argument against landing when there are any other H&C factors.

## **6. Inland family sponsorship**

The Minister of Citizenship and Immigration introduced in February 2005 changes to 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 (notably children) or extended family members who are already living and working here without status. Family members such as brothers and sisters, uncles and aunts 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 in Canada without status.

## **7. 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.

## **GENERAL PROCESSING CRITERIA -**

### **1. 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 Citizenship and Immigration Canada 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 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.

### **2. DNA Testing**

There should be no requirement of DNA test in order to establish biological family ties. 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.

### **3. Identity documents**

Persons who are refugees or have fled refugee-like circumstances, as well as stateless persons, face serious or insuperable challenges in providing identity documents required in non-refugee categories. Officials should be directed to accept satisfactory alternatives as is done for protected persons.

### **4. Processing fees**

Processing fees represent a barrier for some applicants, especially in the case of a family with several children. The requirement should be reviewed, with discretion given to the immigration officer to take appropriate steps to prevent the fee from becoming a barrier. Processing fees should be eliminated for humanitarian cases.

### **5. Right of Permanent Residence Fee (formerly Right of Landing Fee)**

Groups such as the Canadian Council for Refugees and others have consistently opposed the application of the Right of Permanent Residence Fee. This fee, which is already waived for refugees, should be eliminated completely for all immigrants.

### **6. 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.

### **7. 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 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**, 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.

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[1] Similar to the list of extended family members identified in the Safe Third Country Agreement. Re. definitions of family, see Metro Toronto Chinese and Southeast Asian Legal Clinic's presentation to the Standing Committee.



The **STATUS Campaign** is a broad coalition of individuals and organizations advocating for a fair and equitable regularization process to be made available to all non-status immigrants living in Canada.

The **STATUS Campaign** is pursuing a commitment from the government of Canada to implement a program to allow all non-status immigrants living and working in Canada to apply for permanent resident status.

We believe that living without status is a human rights issue and we are asking the government to act now !

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