



# Proposed change to Age of dependent children: Comments

The following are the comments of the Canadian Council for Refugees on the **proposed amendments** to the *Immigration and Refugee Protection Regulations*, published in the Canada Gazette, Part I, on 29 October 2016.

28 November 2016

## 1. CCR welcomes proposed change to age of dependent children

CCR strenuously opposed the 2014 change reducing age of dependants.<sup>1</sup> We welcome the government's proposal to revert to the previous maximum age of under 22 years.

## 2. Particular impact on refugees

The reduction in the age has a particularly devastating impact on refugee families with young adult children. Refugees are forced to flee because of persecution, which often puts their young adult children at risk too. Leaving them behind may put their lives at risk. In other cases, they are left with precarious or no status in a third country. Refugee families separated in this manner usually cannot even visit each other from time to time.

The Regulatory Impact Analysis Statement (RIAS) speaks only to the experiences of immigrants, without referring to the specific realities of refugee families.

We note that in addition to the family reunification objective in the *Immigration and Refugee Protection Act* (IRPA) related to immigration, there is also an objective with respect to refugees (not mentioned in the RIAS):

3(2)(f) to support the self-sufficiency and the social and economic well-being of refugees by facilitating reunification with their family members in Canada.

## 3. Long delay in implementation

CCR is very disappointed to read that the proposed change in the regulations is not expected to take effect until fall 2017, particularly since this change was a commitment included in the current government's electoral platform. During this time thousands of young adult children will age out and be denied the opportunity to reunite with their families. We are particularly concerned about the numerous families of refugees and

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<sup>1</sup> See our comments [ccrweb.ca/en/age-dependency-comments](http://ccrweb.ca/en/age-dependency-comments)

individuals accepted on humanitarian grounds, who have been accepted by Canada based on their experiences of hardship.

**The CCR urges** the government to implement the change without delay.

#### **4. Transitional provisions**

We are concerned about the lack of transitional provisions to address the situation of hardship caused since 2014 by the lowered maximum age of dependent children and particularly the delayed implementation of the promised change.

Many families have been waiting anxiously and counting on the change promised by the government. CCR has repeatedly asked Immigration, Refugees and Citizenship Canada (IRCC) to clarify expectations, since member organizations have been facing questions about what to do, given the electoral campaign promise. Without any clarifications being forthcoming, people have not known whether to delay making an application in the expectation that the regulation would be changed, or to apply and include currently over-age children. This uncertainty will continue in the coming months, with some applicants, such as accepted refugees, wondering if they should delay applying for permanent residence until after the change is implemented in order to be able to include their young adult children.

The CCR is particularly concerned about the families of refugees and Live-in Caregivers. In many cases, the young adult children of refugees excluded since the August 2014 change remain in a precarious situation, either in the country of origin where they are at risk of the persecution their parents fled, or in a third country where they are living as refugees. Their parents in Canada are of course deeply preoccupied by the situation of their children. In the case of Live-in Caregivers, they have been required by Canadian law to leave behind their own children while they care for Canadians.

**The CCR urges** the government to introduce transitional provisions that allow an opportunity for parents to apply to reunite with any child who would have been eligible but for the lowering of the age from under 22 years from 1 August 2014 to the date of coming into force of the proposed change.

#### **5. Refugee claimants, including legacy claimants**

Legacy claimants (i.e. those who applied before December 15, 2012) are particularly badly affected by the changes in regulations combined with the extraordinarily long delays in processing their claim. Having made their claims before 1 August 2014, they do not benefit from 2014 change by which the age of the child was locked in at the date of the refugee claim. Yet thousands of them are still waiting for a hearing on their refugee claim, four years or more since they made their claim. In the meantime, their children are ageing out, because the lock-in date for the age of their children is at present the date at which they apply for permanent residence.

**The CCR urges** the government to make the lock-in date the date on which the claim was made for all refugee claimants, including those who claimed before August 1, 2014, so that they and their children are not penalized for the government's inability to give them a refugee hearing in a reasonable time.

## 6. Live-in Caregivers who applied before August 1, 2014

Live-in caregivers whose initial work permit application was made before August 1, 2014, are in a similar situation to legacy claimants, in that the current rules regarding to the lock-in date is the date of the application for permanent residence, which is several years after they first came to Canada.

**The CCR urges** the government to make the lock-in date the date of the initial live-in caregiver work permit for all Live-in Caregivers, including those who applied before August 1, 2014, so that those who applied before that date are not discriminated against.

## 7. Communications issues – cases in process at the time of change in regulations

The CCR is concerned about how the change in regulations will be communicated to those people who have applications in process at the time. How will people know that a family member is now a dependant under immigration regulations? What will be the consequences in terms of examination of the dependants, whether accompanying or not, for those categories where an inadmissible family member makes them inadmissible? What communication will there be with private sponsors?

**The CCR urges** the government to develop a clear and comprehensive communications strategy, in consultation with relevant stakeholders, including the CCR.

## 8. Risk of Excluded Family Members (R. 117(9)(d))

A particular concern relates to the application of R. 117(9)(d). Is it possible that persons with an application in process at the time the regulation is changed may arrive in Canada and find that their child is now an excluded family member because they failed to declare and have their child examined? There is a real danger of this happening. There are already frequent occurrences of family members being caught by R. 117(9)(d) due to innocent misunderstandings, particularly in refugee situations.

**The CCR strongly recommends that R. 117(9)(d) be eliminated**, but in the meantime **we urge** that the regulations specify that where persons did not declare and have examined a child who was not a dependant at the time of application that child should be exempted from R. 117(9)(d).

## 9. Lock-in date for H&C applicants

The regulations currently have lock-in dates for age of dependants which generally locks in at the earlier date when applicants go through a two-step process (e.g. live-in caregiver work permit, refugee claim, filing of private sponsorship or Family Class sponsorship). However, in the case of H&C applications, there is no such early lock-in date, even though H&C processing times are on occasion extremely long, through no fault of the applicant.

The CCR is recommending that the government reinstate concurrent processing for overseas dependants of H&C applicants, but in the meantime the **CCR urges** that the Regulations be amended to make the date of the in-Canada H&C application the lock-in date for the age of dependants.

## 10. Under-age marriages

The regulations were recently changed to raise the minimum age at which a marriage can count for immigration purposes. This had led to an absurd situation where a minor cannot be considered a dependant of either the parents (because the minor is married) or the spouse (because the marriage is not recognized for immigration purposes).

This problem is recognized by IRCC in its OB 605: “Raising the minimum age of a spouse from 16 to 18 may result in a scenario where someone who is 16 or 17 years old, married or in a common-law relationship, but financially dependent on their parent(s), may be left alone and potentially vulnerable overseas. When this situation arises, given the fact that these children would not be considered as spouses according to this regulatory amendment, they can continue to be able to be considered dependent children and/or de facto family members. This interpretation of the regulations is consistent with the policy intent of raising the age of a spouse to prevent the vulnerability of young women.”

Despite this instruction, the CCR is aware of at least one case where a visa officer refused a minor in this situation. This is not surprising given the lack of clarity in the regulations.

**The CCR urges** that the Regulations be amended to clarify that where a marriage or common-law relationship is not recognized for immigration purposes a dependant child continues to be a dependant child.

