



Strategies for intervening in family reunification cases Practical guide

This practical guide is provided by the Canadian Council for Refugees (CCR) to assist member organizations in serving refugees and immigrants who are confronted with barriers as they attempt to reunite with family members.¹ This information complements CCR's advocacy work in favour of improved family reunification policies and practices. For more information about the CCR's family reunification campaign, go to www.reunification.ca.

Feedback on this guide is welcomed: please send your comments to jdench@ccrweb.ca.

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A. Children overseas separated from refugee parents in Canada

The issue

- This concerns refugees in Canada (recognized as protected persons by the IRB or through PRRA) who have children overseas who are separated from both their parents.
- The children overseas are by definition at risk because they are separated from their parents. They may also be at particular risk (e.g. if they are in a region affected by conflict or living with a sick relative who is no longer able to care for them).
- The parent(s) in Canada can include them in their application for permanent residence but the process should be expedited in the best interests of the children.

CIC policy

In response to advocacy from the CCR, CIC introduced into the Immigration Manual², in PP4, the following section:

11.3 When minor children of protected persons are at risk

When both parents are protected persons in Canada, or if only one parent is in Canada and the other parent is deceased or the whereabouts are unknown, officers must be alert to the risk to which their children abroad may be exposed, if there are delays in finalization of the application in Canada for permanent residence. The situation may be particularly acute, if the children are residing **without the care and protection of an adult guardian, such as an older sibling, aunt, uncle or**

¹ Please note that the CCR does not offer direct services to refugees and immigrants. Individuals seeking services should contact an organization in their region that serves refugees and immigrants.

² PP stands for Protected Persons. The manuals can be found on the CIC website. Look under Resources: Publications or go to <http://www.cic.gc.ca/english/resources/manuals/pp/index.asp>.

grandparent, in an area where a civil or international armed conflict is occurring.

Officers should arrange for the expedited medical examination of children [under the age of 18 years] **where the particular circumstances give rise to a heightened risk to their physical safety**. Once the medical examination is completed, or **where rapid medical clearance is not feasible and the child is at risk, officers should** consider the option of early admission to Canada through the use of a temporary resident permit.

The presence of siblings who are 18 years of age or older, and who are also included in the parent's application for permanent residence, will not be determinative of the need for expedited processing and early admission. The officer can, if warranted, authorize the early admission of all included family members, especially if background checks have been completed with respect to these older children.

This policy has been applied in a number of cases, with processing being expedited and/or temporary resident permits (TRPs) issued.

Continuing problems

- It is not clear that this policy is always being applied consistently.
- It is not clear how parents and NGOs assisting them can engage the process, including when the application is still at Vegreville Case Processing Centre and the visa post has not yet been notified of the children's files.
- The policy does not address the need to expedite the landing of the parent (the children overseas are rarely allowed to travel to Canada until a parent has been landed).
- The policy as written does not address situations where only one parent is a protected person in Canada but the other parent is also separated from the children (e.g. the other parent is in another country, or is a refugee claimant in Canada).
- There is some confusion over the rules surrounding TRPs. In one case, the family was wrongly charged for the TRP (and then refunded) and they were not at first informed that the children were eligible for the Interim Federal Health Program (IFH).

CCR advocacy

Having welcomed the introduction of the policy, the CCR has been urging CIC to put in place a mechanism by which people can identify separated children and apply for expedited processing. In response, CIC agreed:

- In January 2007 to assign officials from Case Management Branch in Ottawa to work with CCR on individual cases. (The CCR agreed to do this on an interim basis in order to identify the systemic problems. The CCR has since worked with Case Management on a number of cases of separated children).
- To work with CCR on a process to address the systemic issues. CIC has created a team with members from different branches within CIC to work on this.

What you can do

- In cases where the application is about to be sent to Vegreville, include a letter explaining that the children overseas are separated from both parents and asking for expedited processing in accordance with PP4, section 11.3. Give details about any particular risks relating to the children's situation.
- In cases where the application has already been sent to Vegreville, write to the visa post

covering the region where the children are, explaining that the children are separated from both parents and asking for expedited processing in accordance with PP4, section 11.3. Give details about any particular risks relating to the children's situation.

- If the case is still encountering delays or obstacles, contact the CCR (jdensch@ccrweb.ca) with details of the case so that the intervention of Case Management can be sought.

B. Excluded family members (s. 117(9)(d))

The Issue

Immigration and Refugee Protection Regulation 117(9)(d) states that a person is not a family member if they were not examined by a visa officer when the person sponsoring them immigrated to Canada.³ Since they are not a family member, they cannot be sponsored.

The following are some of the scenarios that can lead to excluded family members:

- Refugee family has a new baby after interview with visa officer and before departure for Canada. Someone advises them to go to Canada as planned and sponsor the baby after arrival. The baby is an excluded family member.
- A man marries his fiancée just days before immigrating to Canada. He does not realize he needed to declare his new wife and have her examined. His wife is an excluded family member.
- A man learns after he becomes a permanent resident in Canada that a woman had borne him a child. The child is an excluded family member.
- A woman who immigrates to Canada is pressured by a family member not to mention a child she has had out of wedlock. Her child is an excluded family member.
- A man immigrates to Canada because he knows that Canada provides for family reunification for same-sex couples. Because the man and his partner live in different countries, they don't meet the one-year cohabitation rule when he applies to immigrate to Canada. By the time the application is finalized and the man arrives in Canada, the couple have cohabited for a year. However, the man does not realize that he had to declare this. His partner is an excluded family member.

CIC policy

CIC has said that 117(9)(d) is necessary to deter fraud and to prevent the immigration of family members who would have been barred if they had been originally declared. CIC accepts that cases may arise where exemption from the excluded family member rule may be appropriate: their solution is to use humanitarian and compassionate consideration (H&C) – section 25 of the *Immigration and Refugee Protection Act*.

Immigration Manual OP2⁴ outlines how H&C may be used in these cases (at 5.12). The manual highlights the following types of cases as examples:

³ There is an exception (at 117(1)(10)) if the visa officer had determined at the time of the sponsor's own application for permanent residence that the family member did not need to be examined (this exception was added in July 2004 and could apply in particular to refugees who reported a family member but they couldn't be examined, for example, because their whereabouts was unknown).

⁴ OP stands for Overseas Processing. The manuals can be found on the CIC website. Look under Resources: Publications or go to <http://www.cic.gc.ca/english/resources/manuals/op/index.asp>.

- Cases involving the best interests of the child.
- Cases where family members were declared but not examined for reasons beyond the control of the person.
- Cases where a refugee believed a family member was dead or their whereabouts was unknown.
- Cases where it would have caused extreme hardship to disclose a child born out of wedlock.

Although the manual identifies these types of cases, officers are required to consider all relevant factors, so there is no limit on what arguments may be presented in an H&C application.

CCR advocacy

The issue of excluded family members is a key concern to the CCR. Advocacy includes:

- Calling for Regulation 117(9)(d) to be eliminated.
- Calling for improvements to OP2 re. H&C as an interim measure pending elimination of the Regulation.
- Submitting to CIC a series of case examples of excluded family members.
- Pressing CIC to conduct (as promised) a study of what happens in excluded family member cases.

What you can do

- If an application for Family Class sponsorship is refused based on 117(9)(d), be aware that there is generally no point in making an appeal to the Immigration Appeal Division. If according to regulation, the person is an excluded family member, the Immigration Appeal Division does not have jurisdiction to consider the case. (On the other hand, if CIC was wrong about the person having been an unexamined family member at the time of the sponsor's immigration to Canada, the IAD would have jurisdiction to hear the case).
- If an application has been – or is likely to be – refused based on 117(9)(d), apply for H&C. To do this, the person should submit an application for Family Class Sponsorship to the Mississauga Case Processing Centre in the regular way, but include a letter asking for exemption from 117(9)(d) under IRPA 25 (humanitarian and compassionate consideration – H&C). The letter should present all the arguments. If useful, refer to relevant points in OP2, 5.12. If children are involved, make sure there are full arguments about the best interests of the child (the law requires the visa officer to take into account the best interests of any child directly affected (IRPA 25)).
- If you know of cases of 117(9)(d) where there has been a decision on an H&C application (positive or negative), please inform the CCR (jdench@ccrweb.ca).
- Advocate with your local MP for elimination of 117(9)(d) (there are CCR materials you can use). Contact cfrench@ccrweb.ca for more information.

For more information:

CCR, *Submission on Excluded Family Members*, R. 117(9)(d), June 2007,
<http://www.ccrweb.ca/documents/excludedfam.pdf>

CCR, *Families Never to be United: Excluded Family Members*, April 2005,
<http://www.ccrweb.ca/excludedfammembers.pdf>

C. Landing of refugees with family members whose files are not finalized

The Issue

- Refugees recognized in Canada (by the IRB or through PRRA) sometimes face delays in getting their permanent residence because one member of the family is still undergoing background checks.
- However, a refugee (Protected Person) – unlike other applicants for permanent residence – is not inadmissible if a family member is inadmissible (IRPA s. 42). Therefore Protected Persons should be landed when their own file is ready and not have to wait for the completion of family members' files.

Example

Husband and wife come to Canada.

Both are recognized as refugees by the IRB.

They apply for permanent residence.

Husband's file is delayed for further criminality/security checks.

Wife should be able to get permanent residence without waiting for husband.

If they have children overseas, this is very important as the children can be issued visas to come to Canada once one parent is landed.

NB In the case of children, if they are part of one or both parents' landing application (paying \$150), at least one parent must have their application finalized, since in terms of the landing application the children are dependants of the parent who is the principal applicant. Alternatively, if they have been determined to be protected persons, the children could presumably make a new landing application as a principal applicant (paying \$550).

What you can do:

- When a refugee family is experiencing delays in getting landed, check to see if all family members were granted Protected Person status. If they were, find out from CIC whether delays are due to background checks etc that affect some family members but not others. If so, remind CIC that there is no reason to delay the landing of Protected Persons because of the potential inadmissibility of a family member.
- If it is not clear whose file is held up and why, make an Access to Information Request in order to get a copy of the entire file (make sure you include the signed consent of the person). This will give a better idea of the status of the family's files.
- Contact the CCR (jdench@ccrweb.ca) if you are not able to overcome a problem with a refugee in Canada having landing delayed because a family member's application is not complete.

D. DNA testing

The Issue

- Some families are asked to perform DNA tests to establish family relationship. Doing the tests is expensive and time-consuming. There are also sometimes disastrous consequences when the results show that the presumed father is not the biological father.
- In some cases, requests for DNA testing have led to extraordinary delays (e.g. one family waited nearly a year for an appointment at the visa post for a blood test) or hardships (having to travel to another country for the blood tests).

CIC policy

- DNA tests are requested only as a last resort after opportunities have been given for establishing the relationship through documents.

CCR Advocacy

- CCR has repeatedly and for many years criticized the reliance on DNA testing, the discriminatory way in which requests are made and the impact on families, especially children.
- CCR has pointed out that visa posts do not only ask for DNA testing as a last resort. CIC has invited CCR to provide specific examples.

What you can do:

- In cases where DNA tests are requested, check to see whether the family was given the opportunity to submit documentary evidence of the relationship and whether the documents were satisfactory evidence of a bona fide relationship. If not, contact the CCR (jdensch@ccrweb.ca).
- Contact the CCR also if families are facing particular obstacles in getting the DNA tests done.

E. Beginning processing of dependants overseas of protected persons

The Issue

- After a refugee sends an application for permanent residence to Vegreville Case Processing Centre, recent CIC procedure is to send immediately notice to the appropriate visa office about the files of any dependants overseas who were included in the application. They do not wait for approval in principle of the refugee in Canada.
- This allows processing of the applications of the family members overseas to begin as early as possible.
- However, there have been some cases where this does not appear to have happened.

What you can do

- Contact the CCR (jdensch@ccrweb.ca) if you are aware of cases where the notice has not been sent to the visa post.

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