Conseil canadien pour les réfugiés
Canadian Council for Refugees

Family Reunification: 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.

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

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[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.

1. Children overseas separated from refugee parents in Canada

The issue

- This concerns refugees recognized in Canada who have children overseas who are separated from both their parents. One or both parents made a refugee claim in Canada and were recognized as refugees by the Immigration and Refugee Board (IRB) or were accepted through the Pre-removal risk assessment (PRRA). Convention refugees and accepted PRRA applicants are known as Protected Persons.
- The children overseas are by definition at risk if they are separated from both 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 or elderly 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 is often very slow.

CIC policy

Protected persons in Canada can apply for permanent residence and include all dependants, whether in Canada or overseas, in their application:

http://www.cic.gc.ca/english/resources/tools/perm/protect/index.asp[2]

Citizenship and Immigration Canada (CIC) instructions relating to processing of family members overseas are found here:

http://www.cic.gc.ca/english/resources/tools/perm/protect/family.asp

In response to advocacy from the CCR, these instructions include provisions relating to children separated from both parents:

> ***Protected persons' minor children who 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 their whereabouts are unknown, officers must be aware of the risks to which these children may be exposed if there are delays in finalizing 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 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) when the particular circumstances increase the 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, visa officers should consider the option of early admission to Canada through the use of a temporary resident permit.

[2] This is part of CIC's "Program Delivery Instructions", formerly known as the Operational Manual. This section was previously known as Protected Persons (PP) 4, section 11.3. http://www.cic.gc.ca/english/resources/manuals/index.asp

Application of the policy

- 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).
- The visa offices are very reluctant to issue TRPs. In practice, it is much more likely that CIC will expedite the processing of the child or children overseas, than that they will issue a TRP.

CCR interventions

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 the meantime, CIC has invited CCR to bring individual cases of separated children to Case Management Branch in Ottawa. (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).

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 the instructions cited above. 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 Vegreville and 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 the above instructions. Give details about any particular risks relating to the children's situation. If Vegreville has provided you with visa office file numbers for the children overseas, be sure to include those file numbers at the top of all communications.
- Contact the CCR (jdench@ccrweb.ca) with details of the case so that the intervention of Case Management can be sought.

Parental consent

In cases where children are being reunited with only one parent in Canada, it is necessary to provide consent of the other parent, or proof that the other parent is deceased. This can be problematic in cases where:

- The other parent is abusive or uncooperative and the parent in Canada does not have full court-ordered custody.
- The other parent abandoned the family and is not traceable.
- The other parent has died but there is no death certificate.

It is a good idea to start working on this issue as soon as possible so as to avoid delays later in the process. Sometimes, after some effort, a death certificate can be found, a court order obtained, or a parent traced and persuaded to sign the consent. In other cases, affidavits may need to be drafted to confirm that the other parent was never involved in the child's life, abandoned the family years ago, cannot be contacted despite active steps taken to trace the parent, or has died.

Preparing for travel especially of unaccompanied young children

Don't wait until the visa is ready to think about travel arrangements, including raising money for the flights. It is possible to ask for a CIC travel loan. However, there are mixed experiences with this: some people find that requests are routinely refused, while others have had success.

In the case of unaccompanied young children, it is also necessary to arrange for an escort. Some airlines provide escorts for children at a reasonable cost. The IOM may also be able to help.

Children travelling without a parent, or with only one parent, need proof of parental consent. You can find information and a template consent letter at http://travel.gc.ca/travelling/publications/travelling-with-children

2. 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 considered a "family member", they cannot be sponsored under the Family Class.

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

- A refugee family has a new baby after their interview with the 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.

[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, added in July 2004, could apply in particular to refugees who reported a family member but they couldn't be examined, for example, because their whereabouts were unknown. It could also apply where the immigrating parent proves they cannot obtain the consent of the custodial parent to have the child examined.

- 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. When he applies to immigrate to Canada, the couple have not cohabited for a year so the partner cannot be included as a dependant. 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 s. 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 considerations (H&C) under section 25 of the *Immigration and Refugee Protection Act*.

Immigration Manual OP2[4] outlines how H&C consideration may be used in these cases (at 5.12). The manual highlights the following types of cases as examples:

- 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 were 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.

What you can do

- If an application has been – or is likely to be – refused based on s. 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 s. 117(9)(d) under IRPA 25 (humanitarian and compassionate consideration – H&C). The letter should present all the arguments referring, if possible, 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), especially if the sponsor points these out).This application is as complex as an inland H & C application and should be prepared with the assistance of experienced legal counsel if at all possible.
- If an application for Family Class sponsorship is refused based on s. 117(9)(d), be aware that there is generally no point in making an appeal to the Immigration Appeal Division. If the person is an excluded

[4] OP stands for Overseas Processing. As of September 2015, this chapter of the immigration manual has not been "modernized" and is therefore still available as an operational manual: http://www.cic.gc.ca/english/resources/manuals/op/op02-eng.pdf.

family member according to regulation, the Immigration Appeal Division does not have H&C 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 you know of cases of s. 117(9)(d) where there has been a decision on an H&C application (positive or negative), please inform the CCR (jdench@ccrweb.ca).
- The CCR is working with a group of lawyers exploring a possible legal challenge to this excluded family member provision, including on the basis of its discriminatory impact on women and on refugees. We hope to do some public campaigning to draw attention to the human consequences, with the participation of affected people who are willing to speak out. For more information, contact Jennie Stone, stonej@lao.on.ca.

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

3. 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 <u>not</u> 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 either parent in Canada 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 receive permanent residence, since, in terms of the landing application, the children are dependants of the parent who is the principal applicant. However, if the children themselves have been determined to be protected persons, and do not want to wait for the situation of the parent(s) to be resolved, the children could make a new application for permanent residence as a principal applicant (paying $550 each).

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 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 each person who is 18 or over). 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.

4. DNA testing

The Issue

- Some families are asked to perform DNA tests to establish family relationships. Doing the tests is expensive and time-consuming. There are also sometimes disastrous consequences when the results show that the presumed parent is not the biological parent.
- 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.

What you can do

- Encourage people submitting their applications to include as much documentation as possible if they do not have strong documentary proof (such as birth certificates with strong security features) establishing the family relationship. They can include affidavits from themselves and people who know the family, photographs, proof of continuing contacts with family members such as telephone calls and fund transfers to family members.
- 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 (jdench@ccrweb.ca).
- If the visa office asks for DNA testing, be aware that sending extra documentation at that point may simply add to delays. Some visa offices (notably Nairobi) rarely seem to back down once they have asked for DNA testing.
- Contact the CCR also if families are facing particular obstacles in getting the DNA tests done.

5. Age of dependants

The Issue

- Since 1 August 2014, the maximum age of dependent children has been 18 years (down from 21 years).
- Under the new rules, there is a "lock in date". This is to the advantage of refugees and others in two-step immigration procedures, since the date that counts is the lock in date.[5]

Immigration category	Lock in date for dependent children
Made refugee claim (and accepted)	Date refugee claim made
Privately sponsored refugee	Date undertaking received (with completed PR application)
Government Assisted Refugee	Date UNHCR made the referral
Live-in Caregiver	Date of initial work permit application
In-Canada child of H&C applicants	Date that permanent residence application is received
Dependant overseas of a person who made a successful H&C application in Canada	Date that Family Class sponsorship of dependant overseas is received
Family Class	Date that family class sponsorship is received
Provincial nominee	Date province or territory receives provincial nomination
Quebec economic immigrant	Date Quebec receives application for a Certificat de sélection du Québec

If the above lock in date occurs ON OR AFTER 1 August 2014:

- The new definition of dependant child applies (under 19 years, no exemption for full-time students)
- This is the lock-in date for the age of dependants.

Example: Man makes a refugee claim in August 2014. He has a daughter who is going to turn 19 in September 2014. Assuming he is accepted as a refugee, he will be able to bring his daughter, even if it takes several years before he is accepted and submits his permanent residence application.

If the above lock in date occurred BEFORE 1 August 2014:

- The definition of dependant child existing before 1 August 2014 continues to apply (under 22 years, older also possible if full-time students).
- The new rules about lock-in dates for 2 step processes do not apply.

[5] See http://www.cic.gc.ca/english/department/media/notices/2014-06-23.asp

Example: Woman makes a refugee claim in May 2014. The "old" definition of age of dependants applies to her. This means that she can include her children under the age of 22 when she applies for permanent residence after being accepted as a refugee, even if she is not accepted until many years later. However, her children must be under the age of 22 at the date she makes her permanent residence application.

Humanitarian and compassionate applications and dependants overseas

Children overseas of people who are accepted on humanitarian and compassionate (H&C) grounds go through a two-step immigration process, but unfortunately the lock-in date in these cases is **NOT** the date of the original application by the parent. It is instead the date at which the completed subsequent sponsorship application for the child under the Family Class is submitted.

Example 1: Parents in Canada applied for permanent residence on H&C grounds in August 2013. They have a child overseas who will turn 19 in November 2015. In January 2015 the parents were accepted in principle and they started the medical and security checks. Their child overseas had to do the admissibility screening too, as a dependant, even though she is not part of the permanent residence application at that point. In September 2015 the parents received permanent residence. They must submit the Family Class sponsorship for their child overseas before she turns 19 in November or she will no longer qualify as a dependant and cannot be sponsored.

Example 2: Same facts as above, but the daughter turned 19 in July 2015, i.e. before the parents received their permanent residence and could file a sponsorship. The daughter no longer qualifies as a dependent and cannot be sponsored.

What you can do

- Although results are far from certain, if you are assisting a parent (or parents) who have been accepted in principle, with a child overseas who is approaching age 19, you can contact the CIC office handling the parent's file to see if there is any way to expedite the landing of the parent. For example, the local CIC may be able to encourage the visa office to move more quickly with the medical exam for the child overseas, or, if the file is already complete, may be able to bump the up landing date of the parent.
- For situations in which the overseas child is already 19 or over when the parent (or parents) is landed, you can inform the parent(s) of the possibility of filing a sponsorship seeking an H&C exemption from the age limit for dependent children. This would be very similar to the procedure described above for sponsorship of excluded family members. This too can be very complex and should be prepared with the assistance of experienced legal counsel if at all possible.