



CANADIAN COUNCIL FOR REFUGEES

table de concertation  
des organismes au service  
des personnes réfugiées et immigrantes



In collaboration with the refugee communities from the following countries, on which Canada has imposed a moratorium on removals: Afghanistan, Burundi, Democratic Republic of Congo, Haiti, Iraq, Liberia, Rwanda and Zimbabwe.

# LIVES ON HOLD

## The Faces behind Humanitarian and Compassionate Applications

Canada has imposed a moratorium on removals to eight countries: Afghanistan, Burundi, the Democratic Republic of Congo, Haiti, Iraq, Liberia, Rwanda and Zimbabwe, in recognition of the situation of generalized insecurity reigning in these countries. While nationals of these countries are not removed, they are not necessarily able to obtain permanent residence status, even after many years here. Over 6,000 people in Canada are currently living in this limbo - some for more than 10 years.

The Lives on Hold Coalition is calling on the Canadian government to resolve this problem by creating a regulatory class to grant permanent residence to persons from moratorium countries who have been in Canada for more than three years.

In response to this call, the government has recognized that the situation of moratorium country nationals in limbo is very difficult and deserves sympathy. However, the government has said that they should apply for humanitarian and compassionate (H&C) consideration in order to get permanent residence.

The attached profiles show that **H&C is not a solution** for all moratorium country nationals. There are two main reasons:

- ◆ Decision-making is discretionary, and people with compelling cases are often refused, because individual officers can choose when to grant H&C and when to refuse it.
- ◆ The waiting times for an H&C decision can be extremely long. In one case profiled here, an applicant was told by the government that it might take up to **55 months** from application to permanent residence.

As a result, thousands of people spend years in limbo, not knowing when they will be able to get on with their lives. This means:

- ◆ Children are separated from their parents. In two of the profiles attached, mothers have been separated from their fatherless children for over five years.
- ◆ The professional potential of people in limbo is wasted. Instead of working in jobs reflecting their past education and furthering their careers through education, they are confined to mostly unskilled jobs.
- ◆ They don't have provincial health care coverage or child tax benefits, even though they pay the same taxes as anyone else.
- ◆ They struggle everyday with the psychological impacts of the lack of permanent status and with the knowledge that any day they could be asked to leave Canada.



For more information about the Lives on Hold Campaign, visit [www.ccrweb.ca/livesonhold.htm](http://www.ccrweb.ca/livesonhold.htm).

# LIVES ON HOLD

## 11 Years in Canada: Still No Status

Rakeb Al Rekabi and Asia Taher, of Iraqi origin, have lived in Canada for more than eleven years. They have two children, Oban and Bayan, who were born in Canada and are therefore Canadian citizens.

In July 2006, after **five years of waiting**, their application for permanent residence on humanitarian and compassionate grounds was refused. The family is therefore still living in legal limbo.

For Oban and Bayan, Canada is the only country that they know. Sometimes their parents tell them stories about Iraq, and they would like to visit the country, but only once the war is over. According to Oban, age 11, “Canada is a nice country. It’s great being Canadian. There are people from all over. There’s not just one language.”

Oban plays on his school’s winning soccer team. He’s just won a medal. Bayan, age 7, likes skiing a lot. His favourite subject is Math.

Their mother, Ms. Taher, is mostly focused on her children’s future. She says that she wants to raise them so that they are assets to society.

However, without permanent residence, the family lives with insecurity and exclusion. They are not eligible for the Canada Child Tax Benefit, even if the children are Canadian citizens. Ms. Taher would like to take language classes, but without status she is not eligible for most courses that are offered free of charge. Mr. Rekabi would like to start a small business, but he cannot see it happening without permanent status.

Their time in Canada has been marked by a series of problems. Their application for refugee status was refused, in large part because of an apparent confusion over their identity documents – those deciding their case did not understand how difficult it was for an Iraqi refugee to obtain documents during Saddam Hussein’s regime. In 1999, Mr. Rekabi was involved in a serious car accident from which he still suffers the consequences, meaning that he is not fit to work. And finally their application for permanent residence was denied. For Mr. Rekabi and his family, the situation seems hopeless.



Bayan, Rakeb and Oban al-Rekabi and Asia Taher. The family continues to live in legal limbo.

## The decision

According to the negative decision on their application for permanent residence on humanitarian and compassionate grounds, it is acceptable to **send two Canadian children to Iraq**. “It is true that a departure from Canada would not be smooth, and would definitely upset their routines.” Despite this, the decision-maker believes that the children would have access to medical care and could attend school in Iraq, even if she is not “insensitive to the fact that the situation in Iraq is difficult.”

## The facts

- ! A “normal” day in Iraq: 100 deaths due to violent attacks, hundreds more wounded and thousands of people displaced.
- ! According to the Convention on the Rights of the Child, to which Canada is a signatory, the best interests of the child must be given primary consideration in any decision concerning children.

## The decision also blames the couple:

- ◆ For not having provided credible identity documents (although Mr. Rekabi submitted a valid document that was not even taken into account)
- ◆ For not working, nor speaking English nor French well enough and for “having made little effort to adapt to life in Canada” (without taking into account the barriers faced by a family without permanent residence)

## It also claims:

- ◆ That the family could live in Syria—even though they have no status in Syria: they only passed through Syria during their escape to Canada.

## The result

The opportunities for Ms. Taher and Mr. Rekabi to integrate more fully into society are limited as a result of multiple barriers that people without status must face. Conversely, they remain in Canada as the Canadian government recognizes the general insecurity that plagues Iraq. And the two children, Canadian citizens, share their parents’ insecurity.

# LIVES ON HOLD

## “Tomorrow they could say to me: You must leave Canada.”



Tshinyama, a Congolese national, has been in Canada for five years.

Tshinyama\*, a Congolese national, has been in Canada for five years. Still without permanent residence after his application for humanitarian consideration was refused in July 2006, he feels that his life is on hold. In the Congo, he had completed four years of medical studies before he fled the country. In Canada, he is working in a warehouse. Pursuing his studies is beyond his means as long as he is without permanent status: he has been told that he would have to pay \$15,000 per semester as a foreign student.

Tshinyama worked for three years at the same place before being taken on as permanent employee because his Social Insurance Number begins with a 9, indicating that he doesn't have permanent residence. His prospects within the warehouse are limited: he trains the new recruits, whom he sees moving up the ladder, while he is stuck at the same place, because his employer is reluctant to make him a supervisor or team leader, given his lack of status.

His temporary work permit must be regularly renewed and fees paid. On one occasion, the new permit was delayed and Tshinyama had to spend two weeks at home waiting for it to arrive.

Without permanent residence, his bank refuses to give him a credit card.

Health care is covered by the Interim Federal Health Program (IFH), which is not universally recognized. When he had work-related health problems, he had to go to several clinics before he found one that accepted IFH. On one occasion, his IFH papers had expired and he had to cover the costs of treatment himself while he waited for the new documents to arrive.

Tshinyama's wife lives in Congo. They married by proxy in 2005, but currently they have no opportunity to be reunited. She is now living with Tshinyama's parents.

A return to the DRC is out of the question because of the current conditions. Tshinyama knows of a Congolese man who went back and was arrested at the airport. He anticipates that he also would have problems if he chose to go back.

Tshinyama feels that he has lost five years of his life. He has to live without making any plans, because he doesn't know what will happen. “Tomorrow they could say to me: You must leave Canada.”

### *Lines from a poem by Tshinyama*

So, friends, we are destined to  
an existence in a world where  
our life is temporary, uncertain.

We are in a world where we are  
not living, because we are worn  
down by stress, by fear and with  
a mind disturbed by worry over  
our fate which may change from  
one minute to the next.

## The decision

According to the negative decision rendered in his application for permanent residence, Tshinyama should not benefit from humanitarian consideration “because the applicant's job in Canada is insecure and doesn't require specialized training”.

This fails to take into account that:

- ◆ The insecurity of Tshinyama's job is directly linked to the insecurity of his status.
- ◆ Specialized training is out of reach for people without permanent status.

Tshinyama is also blamed for not getting his medical qualifications recognized in Canada. The decision-maker seems to be completely unaware of the realities facing professionals who have been trained abroad. With permanent residence, it is extremely difficult to have one's credentials recognized; without permanent residence, it is almost unthinkable.

The decision-maker sees no barrier to Tshinyama returning to the Congo. She claims that nothing prevents him from practising medicine there. Yet, the Canadian government has recognized the generalized insecurity in this country by placing a moratorium on removals to the Congo.

## The result

The more time passes, the less the chance that Tshinyama will be able to put to use his medical studies, which are already five years old. While he waits for a solution, Tshinyama works at an unskilled job, separated from his wife.

\* Tshinyama prefers not to use his family name, out of fear of reprisals against family members remaining in the Congo.

# DES VIES EN SUSPENS

## Plus de cinq ans, sans son fils



Marceline Manayala Matungu a fui la République démocratique du Congo en 2001 sans son fils cadet Stevi.

Lorsqu'elle a fui la République démocratique du Congo en 2001, Marceline Manayala Matungu a dû laisser derrière elle son fils cadet, Stevi, qui n'avait à l'époque que huit ans. Stevi a fêté ses quatorze ans le 10 février 2007 : il reste au Congo sous les soins de ses grands-parents. Pendant ce temps, Marceline, sa mère, demeure au Canada, toujours sans la résidence permanente après plus de cinq ans au pays. Elle ne peut donc rien faire pour parrainer ce fils qu'elle n'a pas vu pendant toute cette période.

*Au téléphone, Stevi demande à sa mère : « Quand est-ce que tu vas venir me chercher? »*

Sa demande de résidence permanente pour motifs humanitaires a été refusée en septembre 2006.

Marceline est veuve. Son mari a été arrêté et est mort plus tard des séquelles des mauvais traitements reçus pendant son séjour en prison. Marceline a fui en compagnie d'une de ses filles, qui est toujours à Montréal, maintenant mariée.

Elle dit ne pouvoir envisager un retour au Congo, en raison de l'insécurité et surtout de l'impact psychologique des violences vécues par sa famille là-bas.

Au Canada, sans statut permanent, l'insécurité la suit, puisqu'elle vit avec la crainte qu'un jour on frappe à sa porte pour la renvoyer de force au Congo. Elle a eu un grand choc le jour où elle a reçu la décision négative suite à sa demande pour motifs humanitaires – la lettre disait (par erreur, puisqu'il y a un moratoire) qu'elle devait quitter le Canada. Sa fille a dû tenter de la calmer. Si elle avait la résidence permanente, « j'aurais la paix » dit-elle.

Avec son âge avancé (elle a 58 ans) et une santé fragile, notamment des troubles d'anxiété, elle n'a pas pu trouver un travail à temps plein, mais Marceline travaille à temps partiel comme surveillante du midi depuis plusieurs années. Ses efforts pour trouver du travail se butent souvent à la réponse « Nous cherchons des gens ayant la résidence permanente ». Elle s'est informée également sur les possibilités de formation, mais là encore, on a besoin de résidence permanente.

Marceline s'inquiète au sujet de son fils, Stevi. Ses parents sont âgés (son père a 82 ans, sa mère 79 ans) et ils ne sont pas en très bonne santé. Elle constate un certain laisser-aller de la part des grands-parents en ce qui concerne l'éducation. Sa mère lui demande ce qu'elle fait pour régler la situation et prendre son fils.

## La décision

La décision négative concernant sa demande de résidence permanente pour des motifs humanitaires est contradictoire :

- ◆ **D'une part**, on reconnaît que « la situation générale en République démocratique du Congo est difficile pour toute la population et encore plus pour les femmes. » À cause du moratoire, Marceline peut demeurer au Canada.
- ◆ **D'autre part**, la décideure se dit « pas satisfaite que la requérante rencontrerait des difficultés inhabituelles et injustifiées ou excessives si elle devait retourner en RDC ».

### L'enfant négligé

Étonnamment, la décision ne se préoccupe pas du tout du sort de l'enfant séparé depuis cinq ans de sa mère. La seule référence à cet enfant mineur dans l'analyse se trouve dans le contexte du bilan des liens de Marceline avec le Canada. La présence de cet enfant mineur au Congo est comptabilisé comme une raison de plus de conclure que « les liens de madame avec le Canada sont plutôt limités. » L'intérêt supérieur de l'enfant n'est jamais pris en considération.

## Les faits

! Selon la Convention relative aux droits de l'enfant, dont le Canada est signataire, l'intérêt supérieur de l'enfant doit être une considération primordiale.

### Adaptation insuffisante

La décideure reconnaît que Marceline a fait du bénévolat auprès de plusieurs organismes, qu'elle connaît bien le français, et qu'elle participe aux activités de l'église qu'elle fréquente en plus d'occuper le même emploi depuis trois ans. Tout cela est jugé constituer « une certaine capacité d'adaptation à la société canadienne » mais pas « un degré appréciable d'établissement au Canada ».

## Le résultat

Stevi demeure séparé de sa mère, sans perspective de réunification avec elle après plus de cinq ans de séparation.

# LIVES ON HOLD

## University-educated, confined to manual labour



Since 2002, Jean-Claude Kalawa Lendele has had to keep putting off his plans to pursue his education, because he still doesn't have permanent residence.

Jean-Claude Kalawa Lendele is beginning his sixth year in Canada. Since his arrival from the Democratic Republic of Congo in February 2002, he has had to keep putting off his plans to pursue his education, because he still doesn't have permanent residence. He has a diploma in school and professional career counselling, which has been assessed as equivalent to three years of university education. He would like to return to university with the goal of becoming either a teacher or a career counsellor. However, without permanent residence, Jean-Claude cannot aspire to further studies or to skilled work.

Since April 2004, Jean-Claude has been working as a warehouse clerk. His job prospects are very limited because of his status. He was invited once for an interview for a fairly modest job (salary of \$10 an hour): he was told that if he was on the road to becoming a permanent resident, he might have been selected, but not as long as he is in legal limbo.

Jean-Claude has two sons in Congo, the elder, Pitchou, is 18 years old, the younger, Israel, is 7. Israel is living with their mother, who has agreed that her sons should go to Canada to be with their father. The elder son is with Jean-Claude's parents. Since they live in a village where there are no good schools, Jean-Claude has asked his mother to accompany his son to Kinshasa so that he could pursue his studies. He is renting a home for them in Kinshasa. Pitchou keeps asking him on the phone: "When will I come to join you there?" His mother blames him for letting Pitchou grow up in his absence.

For Jean-Claude, the uncertainty is the most difficult part of his situation. He also feels humiliated. In his situation, on regularly overhears others exchanging comments such as, "That guy over there still doesn't have his status."

## The decision

In July 2006, Mr Lendele's application for permanent residence on humanitarian grounds was rejected.

The decision pays very little attention to the best interests of the children who remain in Congo. It is accepted that he sends money for his children, but he is blamed for not having submitted proof of correspondence between his children and himself. This argument fails to take into account the difficult realities in Congo which mean that it is almost impossible to send mail: Jean-Claude communicates with his children by telephone.

Otherwise, the question of the children is dismissed by noting that:

- ◆ He did not provide proof that their mother agrees to them coming to Canada;
- ◆ He did not provide details of the risks faced by the children in Congo;
- ◆ Nothing in the file shows that the money sent by Mr Lendele is a matter of survival for his children.

The interests of the children, who have not seen their father for over five years and who are living in a country where there is generalized insecurity, are never analysed.

As for his settlement in Canada, the decision-maker says that he "has certainly got involved in Canadian society, by working, by participating actively in the Canadian economy, by making a circle of friends and by being active in his community." However, it is (wrongly) alleged, that he "must also show that he would face a risk if returned to his country."

As for the risk, the conclusion is that "the applicant would not face a degree of violence or hardship higher than the general population of the DRC." Yet, the government has decided that the **generalized** risk is sufficient to place a moratorium on removals to the DRC.

## The result

Jean-Claude pursues his life of uncertainty, unable to give a response to his sons who want to know when he will fetch them, unable also to set himself any objectives for his professional life.