



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.

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.

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“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.

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Without her son: Five years and counting...



Marceline Manayala Matungu escaped the Democratic Republic of Congo in 2001, leaving behind her son Stevi.

When she fled the Democratic Republic of Congo in 2001, Marceline Manayala Matungu had to leave behind her youngest son, Stevi, who was only eight years old at the time. Stevi celebrated his fourteenth birthday on 10 February 2007: he is still in the Congo in the care of his grandparents. Meanwhile, his mother, Marceline, has been in Canada, without permanent residence after living for more than five years in the country. As a result, she is unable to sponsor the son that she has not seen this entire time.

On the phone, Stevi asks his mother: “When are you coming to get me?”

Her application for permanent residence on humanitarian and compassionate grounds was

refused in September 2006.

Marceline is a widow. Her husband was arrested and later died as a result of mistreatment while he was in prison. Marceline fled, accompanied by one of her daughters who lives in Montreal and is now married.

She says that she cannot consider going back to the Congo because of the insecurity there and because of the psychological impact of the violence that her family above all has experienced there.

Without permanent status in Canada, she continues to be plagued by insecurity as she lives in fear that one day someone will knock on her door and forcibly return her to the Congo. She received a huge blow the day she got her negative H&C decision – the letter states (mistakenly as there is a moratorium on removals) that she had to leave Canada. Her daughter tried to calm her down. If she had permanent residence, “I would be at peace” she says.

As an older woman (she is 58 years old) and with fragile health, particularly anxiety attacks, she hasn’t been able to find full-time work, but Marceline has been working part-time as a lunch-hour monitor for several years. Her attempts to find work often meet with the reply “We are looking for people with permanent residence”. She has also looked into training opportunities, but there again, permanent residence is necessary.

Marceline worries about her son, Stevi. Her parents are elderly (her father is 82 years old, her mother 79) and they are not in good health. She feels that grandparents are a little too indulgent towards children. Stevi’s grandmother asks Marceline what she is doing to solve the situation and take charge of her son.

The decision

The negative decision for permanent residence on humanitarian and compassionate grounds is contradictory:

- ◆ **On the one hand**, it recognizes that “the general situation in the Democratic Republic of Congo is difficult for the entire population and even more so for women.” Because of the moratorium on removals, Marceline can remain in Canada.
- ◆ **On the other hand**, the decision-maker stated that she was “not satisfied that the claimant would experience unusual, undeserved or disproportionate hardship if she returned to the DRC.”

The child left behind

Astonishingly, the decision completely fails to address the interests of the child who has already been separated from his mother for five years. The only reference in the analysis to this minor child is in the context of Marceline's links with Canada. The fact that Marceline's son is in the Congo is counted as one more reason in favour of the conclusion that “her links with Canada are quite limited.” The best interests of the child are never taken into account.

The facts

- ! According to the Convention on the Rights of the Child, of which Canada is a signatory, the best interests of the child must be given primary consideration.

Insufficient Integration

The decision-maker recognizes that Marceline has volunteered with several organizations, that she speaks French well and that she participates in activities at the church she attends, as well as holding down the same job for the past three years. All of this is deemed to indicate “some ability to adapt to Canadian society”, but not “a marked degree of settlement in Canada.”

The Result

Stevi is still separated from his mother and even after five years of separation, there is no prospect of reunification.

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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.

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A Son Separated from his Mother



Since 2001, Tina Mandeya has been separated from her son, then two years old. Tina does not know when she will be able to see her son again.

Tina Mandeya arrived in Canada from Zimbabwe in October 2001. She had been forced to leave behind her two-year old son, Kundai, because she didn't have enough money to pay for a ticket for him when she fled Zimbabwe. More than five years later, Tina is still separated from Kundai, now 7 years old, and she has no way of knowing when she will see her son again because she has no permanent status in Canada.

After her refugee claim was refused, unfairly in her view, Tina, who lives in Richmond Hill, Ontario, applied for humanitarian and compassionate (H&C) consideration in 2005, nearly two years ago. She is still waiting for a decision.

Meanwhile, Kundai is living with Tina's sister (Tina is a single mother). The situation is difficult as Tina's sister is HIV positive and has two children of her own to look after. Neither Kundai nor Tina's sister can understand the delays in Canada. Whenever Tina speaks to Kundai, he asks when

she will come to get him and says he has his bags packed so he can go to join her.

Tina says that she doesn't know how she gets through each day. She feels worse when she speaks to her son, as she does every week. It reminds her that she is missing critical years in her son's development. For example, she was not with him when he started to go to school. There are things she wants to tell her son that can't really be said over the phone, such as answering his questions about his father.

Further Impacts

In addition to separation from her son, Tina faces a number of difficulties because she doesn't have permanent residence:

- ◆ Medical coverage is limited and some doctors won't accept patients who are only covered by the Interim Federal Health Program. It seems unfair to Tina when she is paying the same taxes as others that she doesn't get access to the same healthcare.
- ◆ The work permit has to be renewed at least once a year, at a cost of \$150. Last time it was only valid for 6 months. When she asked why, she was told it was up to the discretion of the officer.
- ◆ Employment prospects are limited. She was lucky to get her job in media planning because her employer didn't realize she didn't have permanent status when they hired her. She knows that there is a lot of discrimination against people with temporary social security numbers, even though this is not supposed to happen. She enjoys her job and would like to advance her career but she can't go back to school.
- ◆ She can't visit her sisters in Michigan, to whom she is very close. When one sister lost a baby and another graduated, she couldn't go.
- ◆ The outcome of Tina's application for permanent residence on humanitarian and compassionate grounds is not guaranteed to be successful. She wonders how she will feel if she is not successful after waiting for so long.

Waiting Times

In November 2006, Tina sent a query to Citizenship and Immigration Canada. She received a response from the Immigration CIC Ministerial Enquiries which provided the following timeline for processing applications:

Vegreville Case Processing Centre forwarded application to Etobicoke March 2006	= 7 months (in Tina's case)
Approval in principle at Etobicoke could take up to 24 months	= 24 months
Final decision could take a further 24 months	= 24 months
Grand total from application to permanent residence	= 55 months (almost 5 years)

If all goes well, and Tina's H&C application is accepted, she will then need to start the process to sponsor her son, which will mean several more months at least before she is finally reunited with her son.

The Result

Tina is in limbo. She feels she is just waiting. She struggles with depression. She can't go back to Zimbabwe because of the acute insecurity there: her house has been destroyed, she would not know how to survive in the current political context and she fears that she would be viewed as a traitor because of making an asylum claim in Canada. She has been separated from her son for over 5 years and sees no imminent prospect of reuniting with him.