



PROPOSED ELIMINATION OF SOURCE COUNTRY CLASS

Comments on proposed Regulations Amending the Immigration and Refugee Protection Regulations [Source Country Class], published in the Canada Gazette, Part I, Vol. 145, No. 12, March 19, 2011

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On March 19, 2011, Citizenship and Immigration Canada published in the Canada Gazette a proposal to eliminate the Source Country Class.¹

The Source Country Class is one of three refugee classes through which people facing persecution can be selected overseas for resettlement in Canada. It is the only class that applies to people who are still in their country of origin. Applicants for the other two classes must have already left their country of origin.

The Source Country Class should be continued

The Canadian Council for Refugees (CCR) is firmly opposed to the elimination of the Source Country Class.

The Class provides Canada with the capacity to respond to people facing persecution who are still in their own country. This includes human rights activists targeted because they speak out against a repressive regime, women, gays or lesbians at grave risk because of sexist or homophobic laws or practices, union leaders threatened for their defence of workers' rights, and individuals persecuted on their basis of their religion or ethnicity.

Canada is currently one of the few countries in the world with a legal mechanism for resettling individuals in need of protection while they are still in their home country.

Offering protection to persecuted individuals through the Source Country Class allows them to get to safety without having to undertake risky and possibly illegal border crossings. It saves them from having to turn to smugglers to help them reach a country of asylum – as many refugees are forced to do. The Source Country Class provides one of the few alternatives to smugglers for people who need to flee for their lives.

Once they have crossed a border, refugees often find themselves in an extremely precarious situation in third country, facing threats of detention and deportation, or without any means to support themselves.

¹ Canada Gazette, Part I, Vol. 145, No. 12, March 19, 2011, Regulations Amending the Immigration and Refugee Protection Regulations [Source Country Class], <http://www.gazette.gc.ca/rp-pr/p1/2011/2011-03-19/html/reg3-eng.html>

A recent report by the Canadian Council for Refugees highlighted the dangers facing persecuted Colombians forced to flee to neighbouring countries.² Colombian armed groups, both guerrillas and paramilitaries, operate in those countries, especially in the border areas, and have sophisticated intelligence networks allowing them to find people there. This means that refugees may still be at almost as much risk of persecution after having crossed the border. Furthermore, refugees in the neighbouring countries have very limited legal rights, receive little support from the national or international communities, and face severe discrimination. Sexual violence is widespread. Many Colombian women who have taken refuge in the neighbouring countries have found that they must prostitute themselves to survive.³

In short, Colombian refugees in the region face enormous challenges, especially in the case of vulnerable individuals, such as the elderly and single women.

Some Canadian private sponsors have seen the impact on the lives of Colombian families that have fled to neighbouring countries before being resettled to Canada, compared to those who came through the Source Country Class. Those that had been forced to flee Colombia faced a long period of serious poverty, as well as physical insecurity that was only marginally better than what they had endured within Colombia. Those that were resettled directly from Colombia to Canada suffered far less disruption to their lives.

The CCR recognizes that there are a number of problems with the functioning of the Source Country Class. The solution, however, is to reform it, not to cancel it.

Private sponsors should have access to the Source Country Class

The CCR notes that the government has provided no rationale for eliminating access to the Source Country Class for privately sponsored refugees, as distinct from Government Assisted Refugees.

The government argues in the *Regulatory Impact Analysis Statement* that the challenge of giving applicants direct access in Source Countries undermines the effectiveness of the resettlement program. However, this argument does not apply to applicants who are privately sponsored, since they do not require direct access – they gain access to processing by virtue of the sponsor’s undertaking in their favour.

According to the *Regulatory Impact Analysis Statement (RIAS)*, CIC has two objectives in repealing the source country class:

- a) **Responsible management** – under this heading, it is pointed out that eliminating direct access would be beneficial for resource management;
- b) **Working with partners** – here there is reference to the desirability of working with partners, including private sponsors.

² See CCR, *The Future of Colombian Refugees in Canada: Are We Being Equitable?*, 16 Mar 2011, http://ccrweb.ca/files/ccr_colombia_report_2011.pdf

³ See, for example, Jesuit Refugee Service USA, *Colombian Refugees in Ecuador*, <http://bit.ly/egjpk5>: “Colombian women report being forced into survival sex and prostitution; indeed about half of the women working in the brothels are Colombian. In recent months, several of the NGOs in the area have helped refugee women escape the trafficking rings that prey on refugee women and girls.”

Retaining the Source Country Class while limiting it to privately sponsored applicants would seem to meet both these objectives. The failure to even consider this alternative undermines confidence that this policy change has been properly examined.⁴

The CCR does not support the elimination of Source Country Class for Government Assisted Refugees – it is important that the government have a mechanism for responding to people in need of protection. But at a minimum the Source Country Class needs to be kept available for privately sponsored applicants, and in fact no reason has been giving for closing it off.

Discretionary measures are not the solution

The *Regulatory Impact Analysis Statement* suggests that the discretionary powers under section 25 of the *Immigration and Refugee Protection Act* could be used to respond where necessary to individuals, after the elimination of the Source Country Class. This is not an adequate alternative.

The section 25 provisions relate to humanitarian and compassionate and public policy considerations, and are discretionary in nature. This means that potential applicants, those wishing to assist them and Canadians in general can have no clear sense about which cases are likely to be accepted, or what criteria will be used to evaluate applications. There will be no uniform policy. Decisions may appear to be made on a whim, rather than according to transparent guidelines. People will not know whether they should apply or not.

Furthermore, individuals who are accepted under section 25 do not benefit from the legal and program benefits available to those resettled as refugees, including as members of the Source Country Class. These include access to transportation loans to cover travel to Canada and specialized resettlement services and revenue support. Those affected may also be required to pay regular immigration processing fees, which could be unaffordable, especially for large families.

Consultation

The proposal to eliminate the Source Country Class comes without any consultation prior to pre-publication.

We note that the reference in the Canada Gazette to the CCR being consulted is highly misleading. Citizenship and Immigration Canada consulted the CCR in 2009 and 2010 about possible changes to the Class, never about possible elimination. At the meeting in March 2010 that is mentioned in the RIAS, CIC told CCR that the goal of the review of Source Country was to make it flexible and responsive. It was in that context that the CCR made comments about the current shortcomings in the program.

CIC never communicated to CCR its change of plans regarding Source Country subsequent to the March 2010 meeting and therefore never gave CCR an opportunity to comment on the plan to eliminate the Class.

⁴ Further undermining confidence is the fact that RIAS announces that there are “four key issues” but then goes on to identify only three.

The CCR objects to the misrepresentation in the *Regulatory Impact Analysis Statement (RIAS)* of the consultation with CCR and of the CCR's views.

Recommendations for the Source Country Class

1. Maintaining the Class

The Source Country Class should be maintained. The Class should be reformed to address shortcomings, not eliminated.

2. Making the Class universal

The Source Country Class should be universal, that is available in any country and not limited to named countries, as is currently the case.

This is important primarily on principle, so that it can be responsive to individuals in need in whatever country they find themselves.

It would also help to make the Class more effective, as it would avoid the political, diplomatic and security issues created by naming countries.

3. Making the Class work in Africa

Historically, Canada has never succeeded in making the Class work for people in need in Africa. This must change: there are significant numbers of people in Africa facing persecution and Canada should do more to respond to them.

4. Focusing the Class on individuals

The program should be responsive to individuals, rather than being a program for whole groups (as is sometimes the case with the resettlement of refugees).

5. Making the Class work on an urgent basis

Often the people who most need protect need it fast. The threats to their lives do not allow for long processing times. The Class needs to be able to resettle people in a matter of days or weeks, not months.

6. Making use of civil society organizations to identify members of the Class

Civil society organizations such as human rights organizations are often best placed to identify the individuals whose lives are at risk and who could most benefit from the Source Country Class.⁵ The Canadian government has in the past successfully used relationships with civil society organizations for this purpose, and should do so again.

⁵ See CCR, *The Future of Colombian Refugees in Canada: Are We Being Equitable?*, 16 Mar 2011, pp. 25-28, http://ccrweb.ca/files/ccr_colombia_report_2011.pdf