



Canada Border
Services Agency

Agence des services
frontaliers du Canada

Protected B

For: Information

MARINE MIGRANTS: PROGRAM STRATEGY FOR THE NEXT ARRIVAL

For the Vice-President

PURPOSE:

To provide information on the program strategy for the next marine arrival.

ISSUE:

It appears that the CBSA's approach for dealing with the last marine arrivals in October 2009 may have been less effective than it could have been. For the next arrivals, the CBSA is proposing a more aggressive approach to create a deterrent for future arrivals.

BACKGROUND:

Marine migrant arrivals are not new to Canada. The last vessel, the *Ocean Lady*, arrived in October 2009 with 76 Sri Lankan migrants on board. Prior to that, four vessels arrived between July and September 1999 from China with 599 persons. The arrivals of large groups of migrants are indicative of an organized smuggling operation and pose not only an operational challenge for those dealing with the arrival, but also program challenges in terms of developing the best strategy to prevent future marine arrivals.

For the Chinese vessels, Citizenship and Immigration (CIC) originally released the persons only to find out that they were using Canada for transit into the US. As a result, future arrivals were detained during proceedings for being a flight risk and were eventually removed to China. For the *Ocean Lady*, detention was maintained for as long as there were grounds to do so and then released on terms and conditions. Their refugee claims and inadmissibility hearings are still outstanding and all the arrivals remain in Canada.

Intelligence reports indicate that another vessel, the *SunSea* is on its way to Canada with up to 500 Sri Lankan persons on board. The group may include women and children and some persons with links to the Liberation Tigers of Tamil Eelam (LTTE). The vessel is expected to arrive in Canada around mid August and all are expected to make refugee claims.

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STATUS:

Should the vessel arrive in Canada as expected, the CBSA plans to follow regular port of entry processing once basic needs have been addressed. Sticking to the regular process was a best practice that was identified with the arrival of the Chinese boats. What this means in terms of working with the Royal Canadian Mounted Police (RCMP) who will also have an interest in the arrivals from a criminal prosecution perspective is that as with any other person arriving at a port of entry, the migrants will be dealt with as an immigration matter, rather than as a criminal incident. This approach, however, requires flexibility and cooperation between the RCMP and the CBSA to ensure that cases are effectively triaged. The two processes in many instances will run parallel as one organization cannot interview for the other nor can interviews be conducted jointly as the information for a criminal investigation must be voluntarily obtained where immigration legislation compels a person to respond to a CBSA officer. In some cases, one process may need to be suspended to let the other go forward. For example, a criminal conviction would make for an easy inadmissibility hearing, so in some cases, giving priority to the criminal process makes good sense.

In terms of port of entry examination, the CBSA will gather as much information and evidence as possible to build cases that demonstrate that the marine people smuggling is serious and poses a significant threat to the health and safety of those in Canada. This would involve verifying identity and obtaining criminal and security clearances from Sri Lanka. Special care would need to be taken not to mention refugee claims to avoid the creation of refugees *sur plac*. Thorough examinations may also involve overseas sources as well as informant information to support the allegations and establish the credibility of witnesses.

Detention is an effective tool against those who circumvent immigration processes. The CBSA will take maximum advantage of this tool, recognizing that there may be limitations if no legal grounds to detain exist. Immigration legislation specifies that persons may be detained if their identity is uncertain, they are a flight risk or they are a danger to the public. Although initially, the CBSA will detain the arrivals for uncertain identity, it is likely that this will not be sustainable as experience shows that most Sri Lankans are able to establish their identity in a timely manner. For those suspected of LTTE involvement, detention may be sustainable for a longer period of time, especially since the CBSA proposes to be more aggressive in providing evidence of these links. There is always the possibility that the Immigration and Refugee Board (IRB) will release these persons, especially since it could be argued that the current LTTE suspects are released and have proven not to be a danger. In cases where the IRB will release the person, the CBSA will argue for strict terms and conditions of release which include regular reporting.

For admissibility hearings, it is expected that all the arrivals would be found to be inadmissible as they are immigrants without visas. Immigration legislation specifies that those who wish to live in Canada must apply for and obtain an immigrant visa from abroad before arriving in

Canada. It is expected that the CBSA will find these persons inadmissible and issue conditional removal orders. The IRB will hold inadmissibility hearings on cases where the examination reveals additional, more serious, inadmissibility grounds. In these cases, the CBSA will be aggressive in building evidence and arguing for inadmissibility. The focus will be on the health and safety impact for Canada and the exploitation of vulnerable persons which results from the efforts of organized people smuggling.

In terms of the approach for refugee determination hearings, they will be dealt with aggressively as well. The CBSA will advise the IRB that it intends to intervene in each case, however, the IRB's current 84% acceptance rate will be a challenge. Nonetheless, the CBSA plans to build standard evidence packages that would be used for each case to show why the person is not a refugee. The evidence packages would also be useful tools for detention reviews.

Those who are found to be inadmissible and have removal orders issued against them, will be removed to Sri Lanka. The CBSA would be proactive in working with the Sri Lankan authorities to obtain timely travel documents.

NEXT STEPS:

The CBSA continues to work with the RCMP and to operate in a flexible and open manner to ensure that the best possible enforcement outcome is supported to ensure that a deterrent for future arrivals is created. Currently, the two organizations hold weekly conference calls which included headquarters and regional personnel from both organizations to ensure activities are coordinated and consistent with our common goal.

Some discussion with Legal Services is still required on whether the CBSA would apply for non-disclosure of information (s. 86) and how volume applications might be managed. Clarity on when and how it might be managed is expected before mid August.

Peter D. Hill
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