



• April 2022

Regularization

Submission on creating open and flexible pathways

Many people in Canada have no status or only precarious status. The reasons for this are many and often related to barriers and delays in immigration and refugee laws and practices.

The pandemic has shined a spotlight on the ways we rely on people with precarious status to do essential work to keep us fed, cared for, healthy and safe. Yet, without permanent status, they are denied the basic rights, services, and supports necessary to keep themselves and their families safe, and to contribute to their full potential, not only economically but also socially and culturally.

The design of some of Canada's immigration programs has the unintended result of imposing precarious status on many workers. Temporary Foreign Workers, Seasonal Agricultural Workers, and caregivers are all admitted to Canada because their labour is desperately needed, but they are given only a temporary status that is dependent on their employer. As a result, they are inherently vulnerable to exploitation and abuse, with little or no recourse.

Some people who meet the refugee definition are denied the right to a refugee hearing or face long delays before they are heard. Others, such as stateless persons, have nowhere else where they can safely go but their protection needs are not recognized by Canada's legal system.

Most of those with precarious or no status are racialized and many are women. The immigration system is a reflection of our societies' major flaws: racism, sexism, inequity, and other isms making people yet more vulnerable to oppression based on their race, economic status, sexuality, gender identity/expression, and other prohibited grounds. In maintaining and enforcing oppressive immigration rules, Canada is complicit with those in our society who exploit people's labour or engage in intimate partner violence.

To live with precarious or no status is to live in fear, and to be unable to assert one's rights. Even to come forward to ask for regularization of status means, for some, to risk being detained and

deported. People living without status in Canada are denied many of their basic rights, notably in access to health, education, and full employment opportunities and in protection from discrimination. They are vulnerable to many forms of abuse because the law often does not protect them, in principle or in practice.

Despite the barriers to participation, many have built their lives in communities across Canada. Many have been in Canada for several years and are well settled, with family and friends here, and many ties to the community. Young people have spent years studying in Canadian schools. In some cases, for example if they come from a moratorium country, individuals will likely eventually be granted permanent residence. The lack of status affects people's mental health and their ability to settle well, hindering their full participation in their communities and in society. It is in everyone's interests to provide early access to permanent residence so that people can get on with their lives and contribute their full potential to Canadian society.

We call on the Canadian government to reform the immigration system to bring an end to our two-tiered society and to provide permanent status to all those living and working here, recognizing their dignity and rights as human beings.

To do this, Canada should:

- Recognize that people living in Canada have social capital and contribute to the fibre of Canadian society in various ways, and create ongoing open and flexible pathways to regularization for those in Canada with precarious or no status.
- Recognize the value of the labour contributed by newcomers at all levels, and admit those workers required by the labour market on a permanent – not temporary – basis.

Recommendations for regularization

Overall principles

A. Develop pathways with simple, broad and clear criteria

The criteria should be clear and simple so that potential applicants can readily evaluate whether they qualify.

The criteria should be broad in order to exclude as few people as possible.

- We should learn from the [pathway for out-of-status construction workers in the Greater Toronto Area](#) – the program was promising but there were so many restrictions that few people qualified and many were frustrated.
- Pathways should include avenues that are not tied to employment. We should not exclude people based on the lack of an employment record. Some people have little or no employment experience in Canada due to age, health status or disability, family care responsibilities or lack of work authorization.
- The clearer the criteria, the easier it will be for affected people to understand whether they qualify and the less likely they will be to fall victim to unscrupulous individuals using predatory practices to charge large sums of money to help people navigate the process.
- Simple and clear criteria will mean that the assessment of applications by IRCC officers will take much less time. This will be more cost-efficient for IRCC. The regularization program will therefore be less likely to have an impact on other application streams.

B. Ongoing versus time-specific

Some of the pathways should be permanent and available on an ongoing basis, because the need will continue to be felt for the foreseeable future. For example, there is a longstanding and ongoing need for a regularization mechanism for nationals of moratoria countries (see CCR report, [Lives on Hold: Continuing limits of H&C](#)).

For some pathways, it may make sense for them to be time-specific. The pandemic has created a particular situation that makes a regularization program appropriate for those who have gone

through the pandemic in Canada, and in many cases contributed in essential ways to our society through their work or community participation.

C. Minimize documentary requirements

The pathways need to be flexible with respect to the kinds of evidence expected from applicants. People with precarious or no status will not always be able to provide documentary evidence of, for example, their work history. People who have been trafficked or otherwise exploited generally do not have ready documentation of their experiences. Flexibility and understanding are required to allow applicants to establish that they meet the criteria for a pathway based on the evidence available to them.

Similarly, persons who are refugees or have fled refugee-like circumstances, as well as stateless persons, face serious or insuperable challenges in providing identity documents required in non-refugee categories. Officials should be directed to accept satisfactory alternatives as is done for protected persons.

D. Do not exclude based on non-compliance with law

Applicants should not be excluded based on past failures to comply with immigration law. Similarly, minor criminal offenses should not be an absolute bar. Systemic oppression contributes to some communities being over represented in the criminal justice system. Many people with precarious or no status are exploited and abused, and directly or indirectly forced to violate Canada's laws as part of the abuse or in order to survive.

E. Ensure collaboration from CBSA

Some applicants will hesitate to come forward because of fear that it will lead to removal proceedings against them.

We urge that IRCC work with the CBSA to agree on clear and transparent assurances that an application for regularization will not result in targeting for removal proceedings.

Furthermore, there should be a suspension of removal for an applicant where an application for regularization has been submitted, including in situations where a warrant has been issued. Removal should also be suspended if an application has been accepted on principle.

F. Allow third party applications

The government should allow third party applications – in other words, allow organizations to assist people who want to understand whether they qualify, and to act as intermediaries with IRCC. This is a role many member organizations of the CCR would be willing to play.

The Canadian Labour Congress has been acting as an intermediary for the construction workers pilot – this has proven valuable.

Third party applications are valuable because:

- Potential applicants can consult with a trusted intermediary who can assist them in evaluating whether they meet the criteria and avoid applications that will not succeed
- Applicants who are concerned about repercussions because they are without status can come forward without disclosing their whereabouts
- IRCC will benefit from fewer applications that are incomplete or do not meet the criteria.

Applicants should not be required to apply through an organization – the use of third parties should be facilitative, not to exclude anyone.

G. Consult within the communities before finalizing policies

We urge the government to consult within affected communities before finalizing policies, in order to get feedback on the needs and barriers.

The CCR and its members can assist in the outreach to affected communities.

Some groups of people for whom pathways are needed

The following are some groups of people who are in need of regularization.

1. Nationals of moratorium countries

Nationals of countries to which there is a moratorium on removals (Temporary Suspension of Removals or Administrative Deferral of Removals) who regularly spend years in Canada without permanent status, even though it is likely that they will remain permanently in Canada (see CCR report, [Lives on Hold: Continuing limits of H&C](#)).

2. Other persons who cannot be removed

Similarly, individuals who cannot be removed, because they are de jure or de facto stateless, or due to other barriers that have prevented their removal on a long-term basis.

3. People who have provided essential services during the pandemic

People who have worked during the pandemic in essential services, as broadly defined (including those washing dishes, cleaning buildings, providing security and housekeeping in hospitals or nursing homes, working in grocery stores or in delivery services, etc).

4. Students

Young people who are studying, or have been studying in Canadian schools, colleges and universities.

5. People who are integrated into Canada

People who have well-established ties to Canada as demonstrated through family members in Canada (including Canadian-born children), or length of time spent in Canada or other ties to Canada such as having built relationships, volunteered or participated in the community and in civic opportunities.

6. Survivors of abuse or exploitation

People who have suffered abuse or exploitation in Canada. This should include, but not be limited to, persons on a Temporary Resident Permit for Victims of Trafficking or for victims of family violence, or an Open work permit for vulnerable workers.