



Cessation: stripping refugees of their status in Canada

May 2014

A. Introduction

The CCR is concerned about the recent significant increase in applications to strip refugees of their status in Canada through a process called cessation. Cessation of refugee status means that a person is found to no longer need protection as a refugee.¹

Although the possibility of a cessation application is not new, recent changes in Canadian law have made the consequences much more dramatic for persons who were granted refugee status and are now permanent residents of Canada. They may now lose their permanent resident status and be deported.

The people affected have done nothing wrong, and have often been living for years in Canada as permanent residents. Yet, they face loss of status and the risk of deportation from Canada.

Gabriela² is facing a cessation application and possible deportation, despite being well established in Canada, where she has lived for over ten years. Her common-law partner is a Canadian citizen, as is their 4 year old child. She also has a 15 year old son who has done all his schooling in Canada.

Gabriela's cessation problems started after she applied for citizenship. On her application she reported four visits she had made to her country of origin, to attend to sick or elderly family members or for a funeral. This information was transmitted by citizenship officials to the Canada Border Services Agency, which launched a cessation application against her.

Like countless other newcomers, Gabriela worked hard to build her life in Canada. When she first arrived, she took night classes in English while working at a fast-food restaurant. She has since worked her way through several promotions into a supervisory position in a freight company.

Gabriela is currently the family breadwinner as her partner is attending school for retraining. She is a volunteer soccer coach. She and her partner own a home together.

A few months ago, Gabriela was looking forward to becoming a Canadian citizen. Now she is awaiting a hearing at the Immigration and Refugee Board. If the cessation application is granted, she will be without status in Canada and subject to deportation.

¹ The cessation clauses are part of the refugee definition in the [UN Convention relating to the Status of Refugees](#), which is incorporated into Canadian law. The cessation clauses are at article 1(C) of the Convention. They identify situations in which the Convention should cease to apply to a person who previously met the definition of a refugee.

² Names of individuals in this report are fictitious, to protect the individuals' privacy.

B. Who is affected

The Canadian government can make a cessation application against anyone who was granted refugee (or protected person) status in Canada and who is not yet a Canadian citizen. The person may have been resettled to Canada as a refugee from abroad, or have made a refugee claim in Canada. The person may have permanent resident status.

Among the law-abiding and contributing members of Canadian society now facing cessation applications are individuals who:

- have been living in Canada for over a decade
- have Canadian citizen children
- have a spouse with permanent status in Canada
- run a successful business in Canada.

Many of those affected continue to fear persecution in their country of origin.

The government is making cessation applications based on the fact that a person:

- Travelled to their country of origin (even for a short visit, possibly many years ago).
- Applied for a new passport from the country of origin (in some cases simply in order to comply with Canadian government instructions to applicants for permanent residence).
- Used their passport from the country of origin to travel to a third country.

C. What has changed

Changes to the *Immigration and Refugee Protection Act* adopted in 2012 mean that a person automatically loses their permanent residence if the Immigration and Refugee Board (IRB) decides that they are no longer a refugee.³

The IRB makes a decision on whether or not a person is still a refugee when the government makes a cessation application. Before the 2012 amendments, cessation applications were possible but rare. Because a cessation decision could not lead to loss of permanent residence, there was little reason for the government to make a cessation application against a permanent resident.

However, since the change in the law, the Canada Border Services Agency (CBSA) has made cessation applications a significantly higher priority. According to an internal document, CBSA has set itself an annual target of 875 applications to strip refugee status (either through cessation, or through vacation, which involves misrepresentation).⁴ This represents an enormous increase in such applications over previous years. The document also notes that cessation and vacation represent one of CBSA's five "Enforcement and Intelligence" priorities for the fiscal year 2013-2014.

³ *Immigration and Refugee Protection Act*, s. 46(1)(c.1). As explained below, there is however no loss of permanent residence if the cessation is based on a change of circumstances in the country of origin.

⁴ CBSA Operational Bulletin PRG-2013-59, 19 September 2013. "Vacation" is loss of refugee status on the basis that it was obtained through misrepresentation. *Immigration and Refugee Protection Act*, s. 109.

According to Immigration and Refugee Board statistics, there were 178 applications for cessation made in 2013, compared to under 40 such applications in each of the four preceding years. There were 148 applications pending at the end of March 2014.

The existence of a target for cessation applications raises grave concerns that CBSA officials are under pressure to identify and pursue cases without regard to the merits of the case, the consequences to the individual or the costs to society.

D. What is happening

Re-availment

One of the grounds for a cessation finding is that the person sought and received protection from the government of the country of origin (known as “re-availment”)⁵. This is the ground that is being argued in most cessation applications.

In their enthusiasm to identify cessation cases, CBSA is casting an inappropriately wide net and interpreting almost any contact with the country of origin as re-availment, without regard to the circumstances of the contact. A proper interpretation of re-availment requires that the person have voluntarily and intentionally sought the protection of the country of origin, and have actually received that protection.⁶ Examples would be living in the country of origin for an extended period or starting a business. CBSA, however, has been arguing that cessation should apply in cases where individuals have done no more than apply for a passport, or have made short visits to the country of origin, for compelling reasons.

George was recognized as a refugee in Canada and applied for permanent residence. Citizenship and Immigration Canada (CIC) sent him a letter that said:

All persons seeking permanent resident status in Canada must provide a valid passport or travel document issued by the Country of Citizenship in order to become a permanent resident. Please send a photocopy of your passport or travel document to this office as soon as possible. If you are unable to provide a passport or travel document, you may provide other documents.

Given that George’s passport was no longer valid, he applied for another passport from his country of origin, to comply with this instruction. On this basis, CBSA launched a cessation application against him – it was heard by the Immigration and Refugee Board in March 2014.

⁵ [Convention relating to the status of refugees](#), Article 1(C)(1). *Immigration and Refugee Protection Act*, s. 108 (1)(a).

⁶ In its guidelines for interpreting the definition, the UN High Commissioner for Refugees (UNHCR) identifies three requirements that must be met for there to be re-availment: voluntariness, intention and actual re-availment (i.e. the protection is actually obtained). UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, <http://www.refworld.org/docid/4f33c8d92.html>, para. 119.

Change of circumstances

Cessation may also occur in cases where there is a fundamental change of circumstances in the country of origin, such that the risk of persecution no longer exists (for example, there has been a change in government).⁷ However, contrary to cases of re-availment, cessation based on change of circumstances does not lead to loss of permanent residence.⁸ This exception was introduced during the study of Bill C-31, in response to criticisms that the original version of the bill could lead to refugees losing their status in Canada simply because there had been a change in government or other change of circumstances in their country of origin.

In introducing the amendment, Parliament Secretary Rick Dykstra explained:

It was never the government's intent, from the beginnings of the bill in itself, to suggest or in any way have it be interpreted that refugees who came to this country who were successful in their applications would actually potentially have those applications or the identified refugee status removed because of what may transpire in their country three, four, or five years down the road.⁹

Despite the government's recognition that it is inappropriate to invoke cessation following a change of circumstances in the country of origin, refugees are in fact facing the loss of status in precisely these circumstances. CBSA is pursuing such cases but is making the cessation application on the basis of re-availment, if the refugee returned to the country of origin, even after a fundamental change of circumstances.

An Afghan man came to Canada in 1995 and was recognized as a refugee status in 1996, based on risks to him from the Taliban. Several years later, the Taliban were ousted from power in Afghanistan. Following this change in circumstances in his country of origin, he made a lengthy visit to Afghanistan in 2005-2006, and has since made other shorter visits. In April 2013, CBSA filed an application for the cessation of his refugee status, on the basis of re-availment.¹⁰

Absurdly harsh provisions

By automatic operation of the law, a decision by the Immigration and Refugee Board to cessate refugee status results in the person losing permanent residence¹¹ and becoming inadmissible to Canada.¹² There is no opportunity to have humanitarian factors or the best interests of affected

⁷ [Convention relating to the status of refugees](#), Article 1(C)(5). *Immigration and Refugee Protection Act*, s. 108 (1)(e).

⁸ *Immigration and Refugee Protection Act*, s. 46(1)(c.1)

⁹ Standing Committee on Citizenship and Immigration, 9 May 2012, <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5568617>

¹⁰ Stanizai v. Canada (Citizenship and Immigration), 2014 FC 74 (CanLII), <http://canlii.ca/t/g2wb9>

¹¹ *Immigration and Refugee Protection Act*, s. 46(1)(c.1). As noted above, cessation based on change of circumstances does not lead to loss of permanent residence.

¹² *Immigration and Refugee Protection Act*, s. 40.1.

children considered.¹³ This is harsher than the treatment for other grounds of loss of permanent residence.

- A permanent resident who does not respect the residency requirement has the right to an appeal before the Immigration Appeal Division, where humanitarian factors and best interests of the child can be considered. However, no such appeal is available to a permanent resident who faces the loss of their permanent resident status due to cessation.
- Even a person who has committed a crime may have access to the Immigration Appeal Division before losing permanent residence. On appeal, the best interests of the child and humanitarian factors can be considered.¹⁴
- Permanent residents who commit a crime have a recognized right to make submissions to CBSA before an officer decides whether to initiate the process of removing their permanent resident status. In the case of cessation applications, however, CBSA maintains that there is no such right. This means, for example, that those affected are given no opportunity to point out that they have a permanent resident spouse or Canadian citizen children and to have these important humanitarian factors taken into account.

The impact of a cessation decision is that a person goes immediately from being a permanent resident to being inadmissible, without any rights in Canada. They are immediately removable.

An affected person with a Canadian citizen spouse might eventually be able to regain permanent residence through a spousal sponsorship, but in the meantime they would have to give up their job (as they have no work permit), they would have no legal status in Canada and they might well be deported.

The government argues that affected persons can have humanitarian and compassionate factors considered through a section 25 application (widely known as “H&C”), after they have lost permanent residence. However, people who have lost refugee status through cessation are not eligible to make an H&C application for a year following the cessation decision.¹⁵ There is an exception to the one year bar for cases involving best interests of the child, but even in those cases there is no immediate relief as applications routinely take months, if not years, to process. In the meantime the person has no status in Canada and may be deported.

¹³ The failure to consider the best interests of any affected children is a violation of Canada’s international legal obligations. As a signatory to the Convention on the Rights of the Child, Canada must make the best interests of the child a primary consideration “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies.” [Convention on the Rights of the Child](#), art. 3(1).

¹⁴ Persons who face loss of permanent residence on the basis of serious criminality have access to an appeal, except in certain situations, notably if they have been sentenced to imprisonment for six months or more. [Immigration and Refugee Protection Act](#), s. 64(2).

¹⁵ [Immigration and Refugee Protection Act](#), s. 25(1.2)(c). [Immigration and Refugee Protection Act](#), s. 108(3) states that if a cessation application is allowed, the person’s claim is deemed to be rejected.

A policy without purpose

Despite the significant investment of energy and government resources in pursuing cessation, no one seems to be able to articulate what purpose is being served by removing status from individuals who were found, in good faith, to meet the definition of refugee, even if they no longer do so. The only rationale that is offered are vague statements such as: “Cessation is a means for the Minister to maintain the integrity of the refugee process.”¹⁶

It is clear that the original motivation for the amendments to the law regarding cessation was that of catching people who returned to their country immediately upon getting refugee status and thus perhaps never needed protection. This is clear in the statement made in the House in March 2012 by then Minister of Citizenship and Immigration Jason Kenney:

“Too often we see situations where people who claim persecution from a country receive Canada’s protection and immediately go back to that country that was supposedly the source of persecution.

We have clarified in the bill that, under the current law, the minister may apply to the IRB for an order to cessate the protected person status of someone who does go back right away. The bill simplifies it so that an application to cease protected person status can also be joined with an application to revoke the person’s permanent residency. If someone were to fraudulently obtain a protected person status, we would now have a streamlined process to revoke both the protected status and the fraudulently obtained permanent residency.”¹⁷

Similarly, in May 2012, following some amendments to the cessation provisions, Minister Kenney assured the House that cessation proceedings would only be initiated if individuals “have done something to demonstrate essentially that they defrauded our asylum system.”¹⁸

The provision, however, is in fact being used against people who only go back to their country *many years later*, and where there is no evidence that refugee status was obtained fraudulently.

Cessation applications are being made against people who were refugees in the past, and in some cases still have a well-founded fear of persecution. They are also being made against people who are productive members of Canadian society, often with strong family and community ties here.

There is no discernible reason to attempt to strip them of status.

¹⁶ *Regulations Amending the Immigration and Refugee Protection Regulations: Regulatory Impact Analysis Statement*, [Canada Gazette Part 1, Vol. 148, No. 7](#), 15 February 2014.

¹⁷ House of Commons, 6 March 2012, <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5430473>.

¹⁸ House of Commons, 17 May 2012, <http://www.parl.gc.ca/HousePublications/Publication.aspx?&DocId=5599976>
See also Citizenship and Immigration Canada, *Backgrounder — Deterring Abuse of the Refugee System*, 16 February 2012, <http://www.cic.gc.ca/english/department/media/backgrounders/2012/2012-02-16k.asp>

Farshideh is a Baha'i woman who fled Iran because she was persecuted on the basis of her religion. She was resettled to Canada from Turkey six years ago. Her husband and teenage son accompanied her to Canada and are permanent residents. Her siblings and other family members are also in Canada. She and her husband are both employed and her son is in school.

Farshideh returned to Iran in 2011 and 2013 to care for her elderly father when he was gravely ill and there was no one else to care for him. Her visits lasted a month and she minimized the risk to herself by keeping a low profile.

On the basis of these visits, the Canadian government applied for cessation, arguing that Farshideh no longer needs Canada's protection, even though the government representative acknowledged that Baha'is are still at risk in Iran.

The Immigration and Refugee Board rejected the cessation application. Not satisfied, the government continued to pursue the case, applying to the Federal Court for judicial review.

Citizenship applications

People who apply for citizenship may face a cessation application if their application shows that they travelled to their country of origin. This is happening frequently in Vancouver. CBSA has been giving direction to Citizenship and Immigration Canada about the types of cases they may wish to pursue and citizenship officials have been passing cases deemed suitable to CBSA.

Citizenship and Immigration Canada has also been cooperating with CBSA's efforts to have refugees lose their status by holding up processing of citizenship while CBSA pursues a cessation application.¹⁹

A Pakistani couple had their application for Canadian citizenship put on hold as a result of cessation issues. In November 2012 CIC wrote to CBSA about the couple's visits to Pakistan, which were declared during the citizenship application process. A CBSA official then wrote in an internal email: "We should look at cessation and if we decide to do so then CIC needs to be notified asap so that citizenship application can be held in abeyance."

The couple had an appointment in July 2013 to take their citizenship oath, but on the day of the ceremony they were told that it was cancelled because their case was under investigation. A cessation application was launched in October 2013.

Finally, following settlement of litigation, the couple became citizens in April 2014.

¹⁹ The Federal Court intervened in one case where CIC suspended citizenship processing while cessation proceedings were ongoing, even though a citizenship judge had approved the person's application. The Court ordered that he be granted citizenship within 30 days. *Stanizai v. Canada (Citizenship and Immigration)*, 2014 FC 74 (CanLII), <http://canlii.ca/t/g2wb9>.

Priority given to cessation applications

When CBSA files a cessation application, the Immigration and Refugee Board schedules a hearing very quickly. Meanwhile there are refugee claimants who have been waiting for years for a hearing on their claim. It is absurd that priority should be given to potentially removing the status of law-abiding former refugees over determining whether people seeking Canada's protection should be recognized as refugees, so that they can be secure, reunite with family members and rebuild their lives.

When it's safer not to have refugee status

The purpose of refugee status in Canadian law is to provide protection to people who are not safe in their country of origin. The current use of cessation, however, means that refugee status is perversely a source of insecurity. A permanent resident who was admitted to Canada as a refugee can lose status if they return to their country of origin. On the other hand, their family members cannot lose status on such a basis, if they came as dependants, or were sponsored in the Family Class. A person who was accepted on humanitarian grounds has an advantage over a person who was found to be a refugee, because the former can't lose permanent resident status if they visit their country of origin. The traditional understanding that refugee status is a protection against removal is turned on its head: having refugee status now actually makes a person more vulnerable to removal!

Retroactivity

Many of the people facing cessation applications visited their country of origin before the change in the law. Previously, permanent residents could not lose their status as a result of a cessation finding, so they had no reason to think that a visit to their country of origin could mean loss of status in Canada. In many cases, people are facing loss of status for travel made years ago, which was not raised as a concern by the government at the time.

Sarojini arrived as a refugee from Sri Lanka in 2001. Her husband is a Canadian citizen and they have three Canadian-born children.

Sarojini, however, is facing possible cessation proceedings, based on the fact that four years ago she returned to Sri Lanka for a visit. The reason for the trip was that her elderly mother had suffered a stroke and was partially paralyzed. As an only child, she felt it was her duty to go to help her mother despite the risk to herself. She only remained in Sri Lanka until she had arranged physiotherapy and felt her mother could manage the rehabilitation process on her own.

No concerns were raised about Sarojini's travel to Sri Lanka until recently, when she was asked about it by an official after she took her citizenship test. Now CBSA has called her in to ask her questions in relation to cessation. In other cases, such an interview has led to formal cessation proceedings.

Sarojini's daughter is 12 years old, and she has sons aged 9 and 7. Her husband has been working full-time as a cook in the same restaurant for over 15 years. The family has always worked hard to contribute to Canadian society. They are active members of the Sri Lankan community in Vancouver.

E. Consequences of cessation applications

- **Creating a climate of fear**

The new reality regarding cessation applications is creating a climate of fear among people who came to Canada as refugees, and even people who received permanent residence on other grounds. The government has in fact recognized that this is the likely consequence of cessation applications. In policy guidance on “Cessation and vacation in the resettlement context”, the government states:

An application to cease or vacate a resettled refugee’s protected person status should only be made when there is very strong prima facie evidence to justify such proceedings.

It would go against the objectives of the resettlement program, which aims to fully integrate resettled refugees into Canadian society and to provide a lasting solution to their displacement, if a climate of fear were created due to the potential loss of protected person status.²⁰ (our emphasis)

In suggesting that it would be wrong to create a climate of fear among resettled refugees, the government implies that it is acceptable to create a climate of fear among refugees who arrived through the refugee claim process.

Since resettled refugees are also being targeted for cessation applications, despite this policy statement, all refugees have reason to live in fear.

- **Costs of the cessation proceedings**

CBSA is investing significant resources in preparing and pursuing cessation applications. In addition to CBSA expenses, taxpayers are footing the bill for the costs of the cessation hearings before the Immigration and Refugee Board, as well as the costs of litigation before the Federal Court in some cases. In one recent Federal Court cessation case lost by the government, significant costs were awarded by the Court against the government.

- **Costs of loss of status**

If CBSA succeeds in cessation applications, there are potentially other costs incurred, such as for the removal of the person and welfare for family members, if the breadwinner has lost status. Where there are Canadian-born children, they could potentially end up in youth protection services, if the parent is removed.

Removing a long-term resident also means that Canadian society would have lost an investment in the person’s integration, including language training, settlement services, and professional and educational upgrading.

²⁰ CIC, *Cessation and vacation in the resettlement context*, 20 January 2014, <http://www.cic.gc.ca/english/resources/tools/refugees/resettlement/processing/vacation/index.asp>

If the person loses status through cessation, and then regains permanent residence through an H&C application, or spousal sponsorship, according to the absurd process recommended by the government, we will have incurred significant costs, only to end up back at square one.

- **Radical change to the notion of permanent residence: it is no longer permanent**

Many refugees used to feel that once they had permanent residence they were safe and no longer refugees. This sense is lost when it is understood that permanent residence is effectively conditional on their continuing to be recognized as refugees. It is unclear what permanent residence status means for refugees if it can be lost simply because they are no longer refugees.

We are accustomed to thinking of permanent residence as a status that, once legitimately acquired, is independent of the grounds on which it was acquired. We don't expect Skilled Worker immigrants to lose their status if they no longer work in their profession, or Family Class immigrants to be told to leave Canada if the family member that sponsored them dies.

Canada is a nation built by immigrants: people need to feel that they belong before they invest, start a business, set down roots in Canada, etc. People won't feel they belong if they know that at any moment they can be asked to leave.

- **Refugees hesitating to apply for citizenship**

Permanent residents are being made to feel insecure because of the risk of loss of status through cessation, and yet applying for citizenship is known to trigger cessation applications in some cases. People are thus caught between wanting to become citizens to secure their status, and fearing that applying for citizenship could lead to them losing all status in Canada.

- **Temporary protection, rather than a durable solution for refugees**

Canada has traditionally been a country that offers refugees a durable solution, or in other words a permanent new home. This gives refugees the security necessary to rebuild their lives, and in doing so, to contribute to the political, economic, social and cultural fabric of the country.

In offering refugees a secure, permanent home, Canada is playing its part in international efforts to provide durable solutions to refugees, and complying with its obligation under the Refugee Convention to facilitate access to citizenship for refugees.²¹

Some countries only offer refugees temporary protection: Canada actually resettles refugees from such countries in order to give them a permanent home.

The new, aggressive use of cessation is making Canada more like a country of only temporary protection.

²¹[Convention relating to the status of refugees](#), Article 34: "The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings."

F. Conclusion

Like many others, the Canadian Council for Refugees was deeply concerned about the cessation provisions in Bill C-31, arguing that they would result in a precarious permanent resident status for refugees.²² Our fears have unfortunately been realized. Refugees now live in fear of loss of status and removal from Canada, in a process that is arbitrary, draconian and absurd.

This situation could be addressed by the government by:

- committing to a clear policy to limit cessation applications to situations where the person returned to the country of origin immediately after being found to be a refugee.
- providing procedural protections so that humanitarian factors and best interests of the child are considered before a cessation application is launched.

²² *Protect Refugees from Bill C-31: Joint Statement*, March 2012, <http://ccrweb.ca/en/protect-refugees-c31-statement>.