



Families never to be united: Excluded family members

Background paper

ACTION REQUESTED: Repeal the excluded family member rule (*Immigration and Refugee Protection Regulations* 117(9)(d)).

THE PROBLEM

IRPA Regulation 117(9)(d) imposes a lifetime ban on sponsorship of a family member, if the family member was not examined by an immigration officer when the sponsor immigrated to Canada. This permanent prohibition on family class sponsorships, no matter how compelling the case is inconsistent with the Act's objective of seeing "that families are reunited in Canada" and has an extremely detrimental impact on children.

- **When family members are not family members.** The immigration regulations¹ in force since June 2002 state that a person is not a family member if they were not examined by a visa officer when the person trying to sponsor them immigrated to Canada.² This applies to any family member, including the sponsor's spouse, common law partner or child. Since the person is deemed not to be a family member, they can never be sponsored, leaving some families forever unable to reunite.
- **No access to Immigration Appeal Division.** Because the person being sponsored is "not a family member", the refusal of Family Class sponsorship cannot be appealed to the Immigration Appeal Division where humanitarian and compassionate grounds could be considered.
- **No hope ever.** The ban on sponsorship of an excluded family member is for life. The failure to have a family member examined is a mistake that can NEVER be corrected or forgiven.

Leila [not her real name] came to Canada fleeing persecution based on her gender. Her refugee claim was accepted. She had left her two children with her mother (one was 12 years old, the other 6). However, in the applications she submitted to the Canadian government she did not mention the older child, because he was born out of wedlock and she was ashamed. Leila's lawyer knew about the first child but did not tell her to include him in her forms.

Leila's mother is now sick and doesn't know how much longer she can take care of the child. In addition, Leila's child is stateless because his father was not a citizen of Leila's country. The father's name was put on the birth certificate when the child was registered at birth to cover up the fact that they were not married.

Despite these compelling factors in favour of reuniting Leila with her child, ***Leila cannot sponsor her child due to regulations that exclude him from being considered a family member.***

FAMILIES BELONG TOGETHER

The excluded family member rule is inconsistent with, and, indeed, flouts our legal commitments:

- It contradicts the purpose of our law: a stated objective of the *Immigration and Refugee Protection Act* is "to see that families are reunited in Canada."³
- It violates our international human rights obligations: to deal "in a positive, humane and expeditious manner" with applications by children or their parents to enter Canada for the purpose of family reunification⁴ and to protect the family as "the natural and fundamental group unit of society."⁵

¹ *Immigration and Refugee Protection Regulations* 117(9)(d).

² There is an exception (at 117(10)) if the visa officer had agreed that the family member did not need to be examined (this exception was added in July 2004 and could apply in particular to refugees who reported a family member but they couldn't be examined, for example, because their while whereabouts was unknown).

³ *Immigration and Refugee Protection Act*, paragraph 3 (1)(d).

Jean-Edouard Jean-Jacques immigrated to Canada from Haiti in 1998. In 2000, he learned that he had a daughter, Wedgine, born in 1989 to a woman with whom he had a short relationship and who had not told him that she was giving birth to his child. Mr. Jean-Jacques, whose paternity was confirmed by a DNA test, acknowledged the child by way of an “acte de reconnaissance” in July 2000.

After her mother died, Mr. Jean-Jacques applied to sponsor Wedgine in 2002. In December 2003, the sponsorship was refused because Wedgine is not a member of the family class according to the regulations.

The law punishes Wedgine for her father’s failure to report her existence before he even knew she existed.

AN ERROR THAT CAN NEVER BE CORRECTED OR FORGIVEN

In some cases, a person will be punished even though they had legitimate reason not to disclose the existence of a non-accompanying family member. For example, women subject to violence for having children out of wedlock may not declare a child. In other cases, there may have been deliberate misrepresentation. But while the government has a clear interest in discouraging people from concealing the existence of family members, this rule is:

Blind – it punishes not only those who failed to declare a family member, but also innocent family members, including children.

Deaf – it punishes alike those who deliberately tried to mislead and those who made an innocent mistake or who had compelling reasons for acting as they did.

Implacable – it imposes a life-long punishment, since an excluded family member remains eternally an excluded family member. In contrast, if a person is guilty of misrepresentation, the Act makes them inadmissible for two years only⁶ and even people convicted of a crime can eventually be rehabilitated.⁷ According to Canadian immigration law, therefore, the guilty can be pardoned but innocent family members are condemned without appeal to a life sentence.

An unmarried man, “Ricardo” [not his real name] applied to Canada as a skilled worker and was issued a visa. One week before leaving for Canada, he married his girlfriend of six years, with the intention of sponsoring her once he got to Canada and had established himself. He did not declare his marriage to the visa office before departing, because he was very busy with final arrangements and because he did not realize that it was required and that there would be serious consequences for not declaring it. On arrival at the airport in Canada, he was asked no questions about his marital status, and, again, he did not declare that he was married.

Once settled in Canada, Ricardo applied to sponsor his wife. Citizenship and Immigration Canada then learned that he had married before coming to Canada but after investigation they decided not to pursue him for misrepresentation (presumably because it was clear that he had had no intention to mislead).

However, Ricardo will never be able to sponsor his wife.

Even persons inadmissible to Canada on grounds of criminality are eventually forgiven, either by obtaining a pardon or, after the passage of time, through the rehabilitation provisions of the Regulations.⁸ So, while a criminal, over time, can be sponsored as a member of the family class, a totally innocent person – like Mr. Jean-Jacques’s daughter – cannot. Thanks to paragraph 117(9)(d) of the Regulations, her father may never be able to sponsor her.

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⁴ Convention on the Rights of the Child, article 10(1).

⁵ *International Covenant on Civil and Political Rights*, article 23(1) and *International Covenant on Economic, Social and Cultural Rights*, article 10(1).

⁶ *Immigration and Refugee Protection Act*, paragraph 40(2).

⁷ *Immigration and Refugee Protection Act*, sub-paragraph 36 (3)(c)

⁸ *Immigration and Refugee Protection Regulations*, paragraph 18.