



## **Comments on notice of intent – changes to the Private Sponsorship of Refugees Program 9 January 2012**

The following comments are made in response to the notice published by Citizenship and Immigration Canada in the Canada Gazette, Part I, Vol. 145, No. 50, on December 10, 2011. The notice invited comments on a proposed regulatory amendment that will affect the Private Sponsorship of Refugees Program.

### **Introduction**

The Private Sponsorship of Refugees Program is one of the key ways in which Canada contributes towards finding protection and a durable solution for the world's refugees. As underlined in the Canada Gazette notice, the overwhelming response of Canadians through this Program to South-East Asian refugees led to the Canadian people being awarded the Nansen Medal just over 25 years ago, in 1986. Canada's reputation as a welcoming country resettling many refugees continues to depend in significant part on this Program.

The situation today has changed in many years since the Program was launched in the 1970s, but one thing that remains constant is its unique capacity to engage Canadians directly in resettling more refugees than would otherwise be able to find a home in Canada. This capacity will gain in importance in the coming years, given the Government of Canada's welcome commitment to increasing the numbers of refugees resettled.

Because the Program is a volunteer one, inviting Canadians to contribute their time and resources, it is important that it be designed and managed with a view to facilitating sponsorship. Canadians have many options for volunteering, and there are many projects that community organizations can take on: it is therefore important to encourage and promote Canadians getting involved – and staying involved – in resettlement through the Private Sponsorship of Refugees Program. Motivation should not be taken for granted. For these reasons, the Program should not be made too complicated, legalistic or inaccessible.

The Canadian Council for Refugees (CCR) has some concerns that the proposed changes may discourage civic participation in various ways, by creating new barriers and difficulties for potential sponsors.

The overall objective of the Program is to offer resettlement to refugees in need of protection and a durable solution. Our comments below attempt to assess whether the proposed new criteria will affect the Program's ability to respond to such refugees.

Note: the proposed requirement of proof of "recognized refugee status" applies to both Groups of 5 (G5s) and Community Sponsors (CS). In the comments below we refer to G5s only, for simplicity, since Community Sponsors are currently few in number. However, the same concerns apply to both groups.

## **1. Requirement that proof of “recognized refugee status” will exclude some refugees in need of protection and /or a durable solution**

The CCR is concerned that requiring proof of “recognized refugee status” will exclude from sponsorship some refugees in need of protection and /or a durable solution. Often the refugees who are not able to obtain proof of “recognized refugee status” are among the most vulnerable refugees, who should be among the priority for resettlement. Having proof of refugee status will in many cases offer a refugee a minimal level of protection and access to benefits in the country of asylum – refugees who can’t obtain such documentation are therefore often in a more precarious situation than those who can. Also the factors leading to some refugees being denied access to status documents, such as political or discriminatory factors, may contribute to the insecurity of these refugees in the country of asylum.

### *Refugees in certain countries*

In some regions/countries, refugees cannot ordinarily receive recognition as refugees, for a range of political, logistical and security reasons. This does not mean that the refugees are not in need of protection and a durable solution.

For example, Afghan refugees in Pakistan are, with a few exceptions, unable to get “recognized refugee status”. In its Projected Global Resettlement Needs 2012, UNHCR recognizes that a number of Afghan refugees in Pakistan need resettlement – a number exceeding UNHCR’s capacity to refer for resettlement. Given that there is a large refugee population for whom refugee status is not determined, UNHCR has a serious challenge identifying the most vulnerable refugees in need of resettlement. Under the proposal, these refugees will be denied the opportunity to be resettled by Groups of Five.

Another example is the Burmese in Thailand. Currently only the Karen are recognized by the State as refugees. Many refugees in need of protection fall through the cracks. It would be regrettable if such refugees were denied the opportunity for resettlement to Canada.

### *LGBT refugees*

Lesbian, gay, bisexual, transgender and transsexual (LGBT) refugees may also be discriminated against by this requirement. Many States do not recognize persecution based on sexual orientation. LGBT refugees may be in a country of asylum where declaring their sexual orientation could put them at risk. Minister of Citizenship, Immigration and Multiculturalism Jason Kenney has repeatedly underscored the importance of Canada resettling LGBT refugees, including most recently in Geneva at the ministerial event commemorating the 60th anniversary of the 1951 Convention relating to the Status of Refugees, where he announced that Canada pledged to continue to resettle “victims of persecution on the grounds of sexual orientation.” This pledge would seem to be undermined by a measure that would disqualify many such refugees from sponsorship by Groups of Five. This disqualification is particularly problematic given that many Canadians answering the Minister’s call to sponsor LGBT refugees, including in response to the pilot project announced in March 2011, may be expected to be attempting to sponsor these refugees through Groups of Five.

### *Refugees fleeing gender-based persecution*

Similar concerns exist for refugees fleeing gender-based violence. Canada has been a leader internationally in recognizing gender-based forms of persecution. While some other countries have followed Canada's lead, it remains the case that in many parts of the world women will face discrimination in the refugee determination system because gender-specific realities are not adequately recognized. It would be regrettable if such women were also as a result barred from resettlement to Canada under sponsorship by Groups of Five.

### *Urban refugees*

Many urban refugees may also be excluded by this requirement. For example, the Sudanese authorities will only register refugees in Sudan if they are in refugee camps located close to the port of entry. Since it is not safe to stay there, many refugees move to Khartoum, for their own safety. Similarly, in Kenya, refugees are expected to stay in camps where they can be registered by the UNHCR. However the camps are very violent places. Women in particular face sexual assault.

The situation for refugees in Damascus who have access to status documents is an exception to the worldwide norm. In light of this, we are concerned that the proposed new criteria will exclude significant numbers of urban refugees, who often do not have UNHCR status, nor recognition by a State.

## **2. Incoherence of requirement with Country of Asylum Class**

Under Canadian regulations, private sponsorship (including by Groups of Five) is available for persons who meet either the Convention Refugee or the Country of Asylum definition. This latter definition is specific to Canada and is therefore not considered by UNHCR or States when they recognize refugees. The Country of Asylum definition exists to allow for the resettlement of some individuals who need protection but do not meet the Convention Refugee definition. It would therefore be contradictory to require proof of Convention Refugee status in order for a refugee to be considered for membership in the Country of Asylum Class.

## **3. Ambiguity of the concept of “recognized refugee status”**

It is not clear from the notice what is meant by “recognized refugee status”. Many refugees living in precarious situations do not have documentation to show that they have been recognized as a refugee. In some cases it takes years to have status determined by the UNHCR or the State; in other cases, for example, in camps hosting large populations, resources are not available for individual determination; in other cases again, determination is not attempted for political or other reasons. Many refugees who do not have proof of individual determination may have been registered by the UNHCR and/or be identified in some way as in need of protection pending determination, or granted prima facie refugee status.

If the intention is to require proof of individual refugee determination, the proposal would exclude vast numbers of refugees from sponsorship by Groups of Five, including many of the most vulnerable refugees in situations where the need for resettlement is the greatest. It would also force some refugees to wait years for individual determination before they can be sponsored, delaying the moment at which they can be given a durable solution. This would undermine

Canada's longstanding and honourable efforts to resolve protracted refugee situations, and to prevent them from arising. It would also be inefficient and wasteful of resources to require the individual determination from the State or UNHCR, if a durable solution might otherwise be available much sooner in Canada.

It is to be hoped that the proposed wording is intended to cover the much more commonly available types of status documents. However, the challenge in that case would be to know what document is acceptable, given that the documents issued by both UNHCR and States vary greatly by country and over time. If this proposal is pursued, Citizenship and Immigration Canada will need to factor in the resource demands of developing and maintaining a comprehensive register defining what constitutes acceptable proof.

There may also be a risk that the question of what constitutes acceptable proof becomes the subject of legal dispute.

#### **4. Lack of clarity for Groups of Five on what documents are acceptable**

The question of what documents are acceptable will also be challenging for Groups of Five, especially given that Groups of Five cannot be expected to be familiar with the intricacies of refugee documentation around the world. It would be unfair to expect Groups of Five to submit an application and only find out when it is rejected that the documents are not adequate. Will CIC provide clear and up-to-date information for G5s to clarify the documents needed? Will there be an accessible service to respond to questions from Groups of Five about what constitutes proof?

If sufficient support and guidance is not offered to Groups of Five, the risk is that some may lose motivation because of the ambiguous instructions, while others may be frustrated by having an application summarily refused, after they had invested considerable effort in preparing it.

#### **5. Situation regarding availability of documentation may change in unanticipated ways**

Just as the availability of documentation to refugees varies worldwide, it changes over time. Many factors, including the political, affect which refugee populations have access to documentation. The Government of Canada may in the future wish to engage Canadians, including Groups of Five, in sponsoring a refugee population that does not have access to documentation. It would be unfortunate if the regulations prevented this.

#### **6. "Recognition by a State" may lead to confusion for Groups of Five**

Groups of Five are often made up of generous Canadians who want to respond to refugees, without having much familiarity with the regulations. Requiring recognition by a State as a pre-condition to sponsorship may cause confusion for some G5s, who might interpret it to mean sponsorships are welcomed for refugees in countries where they are generally considered to have a durable solution. CIC would need to address this possibility by improving access to support to potential Groups of Five, to ensure that they understand the regulatory requirement for a durable solution (a concept which, it should be noted, is not extremely clear-cut).

## **7. Problem of different criteria for sponsorship by SAHs and G5s**

SAHs and G5s are all sponsoring refugees under the same program. One may ask whether it is appropriate to have different criteria affecting the two types of sponsors, and what unintended consequences there might be.

Another question is whether it is legally or morally acceptable to have two sets of criteria for the same refugee populations because they happen to be sponsored by different groups. Take, for example, the case of two Somali refugees, both of whom are living in Nairobi: if one is sponsored by a SAH and another by a Group of 5, we will be applying different criteria to each and there will potentially be two separate outcomes. Both refugees may be equally deserving of refugee protection. Is this morally and legally right?

The different criteria may also lead to pressures on SAHs, to whom G5s may turn to ask them to sponsor the refugees who don't have the required documentation, despite being in need of protection and a durable solution. Historically, SAHs have, on the contrary, encouraged people to form G5s to address identified sponsorship needs. The pressures will be heightened: in some cases SAHs will no longer be able to suggest doing a G5, and, given the limitations on their numbers SAHs will for the most part be in no position to respond to requests from potential G5s to sponsor the refugees who they are excluded from sponsoring.

It should also be noted that there may be unanticipated consequences in terms of where sponsors put their energies. Currently sponsors choose to sponsor through the SAH or G5 route based on which type of sponsorship best suited their situation. However, if the types (and numbers) of refugees that can be sponsored differ based on the type of sponsorship, this may become more of a factor in determining which route sponsors take.

## **8. Maintaining the sponsorship capacity in Canada**

One of the consequences of the different criteria for G5s and SAHs is by implication that the overall PSR numbers will be controlled by increasing and decreasing the SAH numbers according to the overall target minus the G5 numbers, which might fluctuate dramatically over time.

This may not be an effective way of developing and maintaining sponsorship capacity. We are concerned that there will be long-term impacts on the motivation of private sponsorship groups. Some groups may find that it is not viable to maintain the infrastructure to support constituent groups in doing private sponsorship if caps vary year by year. Outreach energies may go in different directions. These sponsors may not be available to undertake refugee sponsorships when higher numbers are allocated to the SAHs.

The CCR appreciates the challenges of managing numbers, but urges that priority attention be given to solving the problem in ways that supports the Program's capacity over the long term to respond to as many refugees as possible.

## **9. Will the proposal meet the intended objective?**

The notice mentions two possible objectives for the proposal. One relates to managing numbers, the other relates to improving the quality of applications.

If the purpose is to manage the numbers of new intakes, it is unclear whether the proposal will be successful. There are many refugees around the world with “recognized refugee status” (especially if this includes UNHCR registration / prima facie recognition). The brake on numbers of applications will only be the willingness of citizens to come forward as Groups of Five. Forecasts based on past submissions of Groups of Five are not a reliable guide to future realities.

For example, a significant proportion of recent G5 sponsorships have been for Afghan refugees, many of whom will likely be excluded if this proposal is implemented. There may therefore be a short-term reduction in numbers of G5 applications if this proposal is introduced. But regulatory change should not be based on short-term impacts, based on current fact situations. Perhaps in the next few years Groups of Five will come forward in large numbers to sponsor other refugees who have the required proof of status. Or perhaps the situation for Afghans in Pakistan will change and they will be given status documents.

Assuming therefore that the purpose is not to control numbers, but to enhance the “quality” of applications, it is not clear either that this will be achieved. Visa officers often reject applicants who have UNHCR status documents, even refugee status determination. A welcome consequence would be that visa officers are encouraged to give more weight to UNHCR documentation. However, this could also be achieved by training of visa officers, without requiring a regulatory change.

It should also be noted that the eligibility determination is only one part of the assessment of refugee applicants. Even if the proposal resulted in fewer G5 applicants being rejected on the eligibility criterion, there might be large numbers of applications rejected on another ground, such as lack of a durable solution.

## **10. Risk of exposing refugees to fraud schemes**

The new criteria requiring additional documentation may expose more refugees to criminals who participate in creating and selling fraudulent documents. Desperate refugees will end up buying these documents at any cost. CIC and UNHCR have already reported that there has been circulation of various fraudulent documents in Pakistan, and this may increase with the new criteria. This may not be limited to Pakistan only.

## **11. Legal definition of completed applications**

The CCR is conscious of the need to make the program accessible and encourage participation of all Canadians, including new Canadians and those embarking on sponsorship for the first time. We are concerned that people will not be likely to engage in private sponsorship if they feel that they are dealing with a faceless, inaccessible centralized office, with difficult to understand guidelines about what is necessary. Nor will they feel motivated by receiving their submissions back with a cold note saying that the application is incomplete. We would like to underline the

importance of CIC ensuring that there is good support available for potential sponsors and that the generosity of Canadians willing to undertake refugee sponsorship is appropriately recognized in the handling of their application.

We also underline the need to take into account the difficulties inherent in CIC forms, which don't always apply to all circumstances, especially for refugees. There are some glitches with current attempts by CIC to use streamlined forms for all categories. There are often problematic issues for refugees, because of their particular circumstances.

We also note that technically forms designed for computer entry sometimes don't work well in printed form (e.g. drop-down options are lost), but many refugees don't have access to computers. Applications should not be rejected on such grounds.