Legacy cases: Recommendation for regularization

Context

Thousand of people have been waiting for over three years in the refugee claim process, through no fault of their own. After the introduction of changes to the refugee determination system in December 2012, scheduling priority has been given to newly arrived claimants. They receive a hearing very quickly after arrival, while the claimants who made a claim before December 15, 2012 (the so-called "legacy" cases) are neglected.

The government itself recognizes that the resources are not in place to hear the "legacy" claims. According to the Immigration and Refugee Board's 2016–17 Report on Plans and Priorities:

> It is projected, however, that as intake at the RPD increases, the Division will not be adequately resourced to resolve legacy cases and other types of claims that are not subject to regulatory time limits. Making further inroads into the legacy claim inventory, already reduced from 32,000 to 6,500 claims in three years, will be dependent on the availability of additional resources.[1]

As well as being forgotten, these claimants are subject to the restrictive measures in the new system: they are barred from applying for humanitarian and compassionate consideration (H&C) and they have no access to Pre-Removal Risk Assessment. Yet they are denied the main benefit of the new system: access to the refugee appeal.

During the long wait for a hearing the basis of the claim made by these individuals may have weakened (e.g. through change of circumstances in the country of origin), so that people who were refugees when they made the claim may have a harder time being accepted when they finally are granted a hearing.

In the meantime they have established themselves in Canada and are in most cases contributing to the Canadian economy and to the local community. Children have become integrated into their schools. These factors would normally be considered through an H&C application, but these claimants cannot apply for H&C: under the revised rules, claimants are barred from applying for H&C while they have a claim pending or for a year after a claim is rejected. This means that in many cases they would not have a chance to have their situation considered on humanitarian grounds before being removed. (For refused claimants, there is an exception to the bar where a child is affected or there are serious health issues, but even in those cases the claimants face removal from Canada before a decision is made on the H&C application).

There are precedents for a special program: the 1989 refugee claimant backlog program as well as the Deferred Removal Order Class (DROC), introduced November 1994. Note that DROC was for people refused as refugees: even more should we do something for those not yet heard.

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[1] http://www.irb-cisr.gc.ca/Eng/BoaCom/pubs/Pages/rpp1617PartIII.aspx#s2-2

Recommendation for legacy claimants:

1. That a regulatory class be created for legacy claimants.
2. That legacy claimants be landed if they apply and meet minimum requirements (e.g. they have worked for at least 6 months or have been in some form of education for at least 6 months in Canada).
3. That applicants for this class not be required to withdraw their claims.

The advantages would be:

- It would be very simple for the person to see if they qualify and submit the necessary documentation.
- It would be very efficient for IRCC to review quickly the applications (quicker than extensive H&C reviews).
- It would save resources at IRB for refugee determination.
- It would recognize that people have put down roots in Canada while waiting for determination of their claim, and honour the contributions they have already made to Canadian society.

There is a precedent in the DROC program which used the 6 month rule.

Note: DROC was introduced, in the government's words:

"to regularize the status of certain failed refugee claimants who have been in 'limbo' for several years awaiting removal due to the Department's unwillingness or inability to remove them and whose situation shows no immediate prospect of resolution. In many cases, these individuals have formed an attachment to Canada; consequently removal, at this point, would be both unfair to the individual and would have no deterrent value." Regulatory Impact Analysis Statement, Canada Gazette Part 2, vol. 128, No. 23, p. 3,637