



## **FAMILY SEPARATION: Who pays the cost?**

### **January 2007**

#### **ISSUE #1: AMEND THE 60/40 SPLIT**

The Canadian Government currently gives priority to immigrants in the economic category, at the expense of those in the family and refugee categories, by allotting 60% of immigration spaces to the former, and 40% to the latter. This 60/40 split leaves many families separated, and refugees stranded, waiting for a space to come free. A larger percentage should go to families and refugees in recognition of the important role played by family members and refugees in building a strong and just society.

**THE SOLUTION:** That the 60/40 split be changed to give a larger place to families and refugees.

#### **ISSUE #2: REFUGEE FAMILIES WAIT YEARS TO BE REUNITED**

Refugees continue to wait years to be reunited in Canada with their spouse and children overseas. A year ago, in its report *More than a Nightmare*, the CCR identified the problem of slow refugee family reunification, causing enormous hardship to refugees in Canada and their families overseas. The problem continues and is particularly acute in Africa. The solution is straightforward and simple.

**THE SOLUTION:** That the spouses and children of people recognized as refugees in Canada be brought immediately to Canada, to be processed here.

#### **ISSUE #3: FAMILIES NEVER TO BE UNITED: EXCLUDED FAMILY MEMBERS**

Since June 2002, Canadian immigration regulations 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. The result of this rule is that a number of families are forever unable to reunite. Children are being kept from their parents, and spouses are told they can never be reunited in Canada. The punishment for not having a family member examined is lifelong, since an excluded family member remains eternally an excluded family member.

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

# CANADIAN COUNCIL FOR REFUGEES

## THE 60/40 SPLIT: GIVING A LARGER PLACE TO FAMILIES

*Background paper*

### **ACTION REQUESTED**

That the 60/40 split in immigration levels be changed to give a larger place to families and refugees.

### **THE PROBLEM**

Recently the Canadian government decided that 60% of immigrants to Canada should be in the economic category, with only 40% for the family and refugee categories. The result is that refugees and family members are forced to wait in ever longer queues for the limited number of spaces available to these categories. This 60/40 division split appears to be arbitrary and to have been set without public consultation.

By limiting to only 40% the numbers of families and refugees who can come to Canada, the rule undermines Canada's commitments under both domestic and international law:

Two of the objectives of the *Immigration and Refugee Protection Act*: "to see that families are reunited in Canada" and "to support the self-sufficiency and the social and economic well-being of refugees by facilitating reunification with their family members in Canada".

The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. *Universal Declaration of Human Rights, 16.3*

The 60/40 split represents a significant reorientation of immigration priorities from a decade ago. Since then, both the absolute number and the percentage of immigrants in the Family Class has gone down significantly. There are now on average 28,500 fewer places annually for Family Class members than there were in the early 1990s. In fact, the orientation away from family is even more striking when we realize that in the early 1990s the economic category included some immigrants in the "Assisted Relative" class, who were selected partly on the basis of their family in Canada. The "Assisted Relative" class no longer exists, further reducing the opportunities for family reunification.

	Family Class	Percentage family	Percentage non-economic (family + refugees)
Average 1990-1994	91,943	38%	53%
Average 1995-1999	61,909	30%	43%
Average 2000-2004	63,415	27%	39%
2005	63,354	24%	38%

"Immigration is not just about numbers.  
It's about people."  
Citizenship and Immigration Canada,  
*Immigration Plan for 2002*

## PARENTS AND GRANDPARENTS

Because the government has so severely limited the spaces available to Family Class immigrants, they have had to choose which family members would have to wait longest. They decided that spouses and children should not be penalized, but parents and grandparents have been squeezed out.

	Announced levels for Parents and Grandparents in the Immigration Plan
2001	15,000-16,000
2002	15,700-16,700
2003	18,000-20,000
2004	10,500-13,500
2005	5,500 – 6,800*

\*In April 2005, the Minister of Citizenship and Immigration announced an increase in the immigration level for parents and grandparents to 18,000, but by the end of 2005 less than 12,500 of these spaces were filled.

### *An ever accumulating backlog*

Unfortunately, even 18,000 places a year for parents and grandparents will do little for those waiting in the ever lengthening queue. At the end of September 2005, there were nearly 115,000 applications to sponsor parents and grandparents. At the rate of 18,000 a year, it will take **over 5 years** to work through this backlog. And the backlog is actually growing, with 30,000 or more applications being submitted each year, as new immigrants arrive and hope to bring their parents or grandparents. Many of the 60% of immigrants who arrive in the economic class hope eventually to be reunited with family: the more they are, the more places will be needed for their family members. If they find that their expectations are not met, some will no doubt return to their countries of origin in order to be close to their parents and grandparents.

*“It’s an issue that touches a family so closely, the issue of their parents being allowed to come, and many come to Canada on the understanding that their parents will be quickly allowed into our country.”*

Leon Benoit, Conservative Party MP  
Standing Committee on Citizenship and Immigration  
6 October 2005

### *WHAT KIND OF IMMIGRATION DO WE WANT?*

The 60/40 split clearly affects families whose reunification is delayed and refugees who are waiting for a durable solution. It also affects the kind of country, economically and socially, we are building through immigration. The question of the categories of immigrants we favour should reflect our values – and should be the subject of broad consultation that considers the different and complementary ways that skilled workers, family class immigrants and refugees all contribute to society.

# CANADIAN COUNCIL FOR REFUGEES

## Refugee families wait years to be united

*Background paper*

### **ACTION REQUESTED:**

**That family members of refugees be allowed to travel to Canada for processing here.**

### *THE PROBLEM: DELAYS IN REFUGEE FAMILY REUNIFICATION*

People who flee repressive conditions to seek asylum in Canada often arrive, by force, without their spouse or children. Once recognized as refugees in Canada, they can apply to bring their spouses and children, but it is taking unacceptably long for such applications to be processed by Canadian visa posts.

The Canadian government has stated on many occasions that reuniting families is a priority. Indeed, two of the stated objectives in the *Immigration and Refugee Protection Act* are “to see that families are reunited in Canada” and “to support the self-sufficiency and the social and economic well-being of refugees by facilitating reunification with their family members in Canada”.

However, the sad reality is that some refugee families wait years to be reunited in Canada. Nearly a year has passed since the CCR produced its report *More than a nightmare: Delays in refugee family reunification*, which outlined the numerous barriers that refugee families face to reunite, and the suffering that results. The situation for refugee families has not changed since then. Processing of refugee families overseas still takes more than 10 months in half the cases.

In fact, waiting times in the slowest visa post, Colombo, are so long that 50% of cases are processed within 19 months at this visa post.

More than one in five refugees with family in Sri Lanka have to wait more than 32 MONTHS for processing of their family's application at the visa post.

The situation of refugee children at risk overseas is especially worrying. The CCR has received reports of children in Colombia being kidnapped before their parents have been able to bring them to Canada. Although Citizenship and Immigration Canada has introduced new measures to expedite the cases of separated children who are clearly at risk, no mechanism is offered to parents to alert the government to the danger faced by their children.

### **RECENT STATISTICS (October 2005 – September 2006)**

Below is a table that shows the number of months it takes for certain visa posts to process 80% of its applications for Permanent Residence of family of refugees. More than one in five refugees waiting to be reunited with their family must wait LONGER than the times indicated to have their files processed.

<i>Canadian visa post</i>	<i>Months</i>
Abidjan (covering West and Central Africa)	22
Nairobi (covering East Africa)	28
Cairo (covering North Africa)	30
Islamabad (covering Pakistan and Afghanistan)	32
Colombo	32

## CONVENTION ON THE RIGHTS OF THE CHILD

According to the UN Convention on the Rights of the Child, States must deal with applications for family reunification by children or their parents “in a positive, humane and expeditious manner.” (Article 10). On the last two occasions that the UN Committee on the Rights of the Child examined Canada on its compliance with this Convention, the Committee expressed its concerns about the slowness of refugee family reunification. In 1995, the Committee recommended that “every feasible measure be taken to facilitate and speed up the reunification of the family in cases where one or more members of the family have been considered eligible for refugee status in Canada.” In October 2003, the Committee noted that this concern had been “insufficiently addressed”. Little has changed since then.

Hafifa was recognized as a refugee from Afghanistan in April 1998. She applied for permanent residence and included her husband and five children on her application. At the time her oldest child was 10 and the youngest 2 years old. Over the next five years she received very little communication from CIC.

Finally in May 2003, Hafifa was informed that her file was delayed because her husband was inadmissible. CIC suggested that if she removed her husband from the application, she would soon be reunited with her children. In July 2003, she removed her husband from the application realizing that she would likely never see him again.

In September 2003, CIC called into question whether Hafifa was in fact the mother of the five children and asked for DNA testing. She complied and testing was completed in February 2004 (at a cost of \$1800).

Another year and half went by before finally, in August 2005, Hafifa’s children arrived in Canada after eight years’ separation from their mother, more than seven years since she had been accepted as a refugee.

### **Even when the process works well, refugees face a long separation from their families:**

- From flight to arrival in Canada: days, weeks, months or years depending on obstacles faced.
- From arrival in Canada to recognition as a refugee: 3 months being fast, about a year average.
- From recognition to application for permanent residence: a month or more (depending on how long it takes to get money for the fees).
- From application to family reunification: the mean time is 13 months (i.e. 50% of cases take longer).

### **Among the reasons for delays in family reunification:**

- Delays in the processing of the refugee in Canada (the family members overseas cannot come to Canada until the refugee in Canada has received permanent residence).
- Overburdened visa offices are extremely slow to process the applications.
- Some families are asked for additional documentation to establish family ties.
- Sometimes families are told they must undergo DNA testing (which is expensive and time-consuming, as well as intrusive).
- Security checks can be extremely slow.
- Results of medical exams have to be communicated and sometimes get delayed. Medicals are only valid for a year and sometimes have to be re-done because of other delays in processing.

*“Mr. Speaker, we hope that in the coming months, the government will turn its attention to the serious mental suffering experienced by people who, for years, must put up with the slow processing of family reunification cases, including refugees who have been given protection.*

*We only realize the true meaning of family life when all members of the family are reunited.”*

Meili Faille, Bloc Québécois MP  
House of Commons  
3 November 2006

# CANADIAN COUNCIL FOR REFUGEES

## 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 regulations<sup>1</sup> 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.<sup>2</sup> 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."<sup>3</sup>
- 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 reunification<sup>4</sup> and to protect the family as "the natural and fundamental group unit of society."<sup>5</sup>

<sup>1</sup> *Immigration and Refugee Protection Regulations* 117(9)(d).

<sup>2</sup> 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 whereabouts was unknown).

<sup>3</sup> *Immigration and Refugee Protection Act*, paragraph 3 (1)(d).

<sup>4</sup> Convention on the Rights of the Child, article 10(1).

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

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 only<sup>6</sup> and even people convicted of a crime can eventually be rehabilitated.<sup>7</sup> 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.<sup>8</sup> 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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<sup>6</sup> Immigration and Refugee Protection Act, paragraph 40(2).

<sup>7</sup> Immigration and Refugee Protection Act, sub-paragraph 36 (3)(c)

<sup>8</sup> Immigration and Refugee Protection Regulations, paragraph 18.