CANADIAN FAMILY REUNIFICATION POLICY IN THE CONTEXT OF RESETTLEMENT

ABSTRACT

This article looks at family reunification policy as it applies to refugees selected from abroad through Canada's Refugee and Humanitarian Resettlement Program. Family reunification is an important priority for the Refugee and Humanitarian Resettlement Program, and the author sketches the various aspects of the policy. This article was originally published in the Fall 2005 issue of *INSCAN: International Settlement Canada*. Permission to reprint the article here is greatly appreciated.

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Overview

Canada's refugee program has two components: the in-Canada refugee determination system and the refugee resettlement from abroad program. Under the former, Canada assesses and grants protection to individuals who apply from within Canada and are found to be in need of protection. The overseas Refugee and Humanitarian Resettlement Program provides protection to refugees selected by Canada from abroad. Refugees selected from abroad are assisted in the integration process by the federal government, immigrant-serving agencies, as well as other service providers, and by private sponsors in the case of privately sponsored refugees.[2]

CIC recognizes the importance of family unity and its role in ensuring the successful integration of all immigrants. The *Immigration and Refugee Protection Act* (IRPA) sets out family reunification as one of its primary objectives in respect to both immigration more broadly and refugees more specifically. Further, Canada's citizenship and immigration programs have long been linked to families and strive not only to maintain family unity in the immigration process but also to ensure that separated families are reunited in Canada. Currently, immigrants to Canada may sponsor family members and close relatives (such as spouses and dependent children) who want to become permanent residents of Canada. In addition, the Minister has the authority to admit persons who have been separated from family members in exceptional circumstances on humanitarian and compassionate grounds. Finally, persons who are granted protection through the in-Canada refugee determination system are immediately allowed to apply for their family members who are still abroad to join them once they themselves apply for permanent resident status. It is therefore evident that family reunification is integrated into the entire immigration system; however, the intention of this paper is to highlight CIC's programs and policies related to family reunification for refugees selected from abroad through our Refugee and Humanitarian Resettlement Program.

CIC acknowledges that family reunification plays an essential role in restoring basic dignity to resettled refugees' lives, promoting the well-being of refugees, and facilitating their long-term success in Canada. IRPA states that one of its objectives is "to support self-sufficiency and the social and economic well-being of refugees by facilitating reunification with their family members in Canada." In addition, one of the four key program objectives of the Refugee and Humanitarian Resettlement Program is the facilitation of refugee family reunification. Given this reality, CIC actively pursues policies that reflect the unique situation and needs specific to refugee families.

One-Year Window of Opportunity (OYW)

It is well established that refugees settle more quickly if they do not have to worry about family members they have left behind. Previously in Canada, the only formal way in which resettled refugees could be reunited with their family once they arrived was through Family Class sponsorship. For many resettled refugees, it was very difficult to secure the financial arrangements to sponsor family members in a refugee-like situation and it often became a lengthy and problematic process. In recognizing the need to respond to the unique realities of refugee families, CIC incorporated specific provisions to ensure the rapid reunification of refugee family members stranded abroad with their family members in Canada through the most recent legislation.[3]

Refugees frequently find themselves separated at the time of their resettlement application through no fault of their own and require specific provisions to enable them to reunite more easily with family

members. Given the particular vulnerability of resettled refugees, CIC noted the need for this to happen as quickly as possible and without the need for a family sponsorship. Therefore, in order to facilitate the rapid reunification of families, the Refugee and Humanitarian Resettlement Program allows for the concurrent processing of refugee family members who are residing in different locations. Further, where this is not possible because the family members' whereabouts are unknown, the legislation established the "one-year window of opportunity" which facilitates the rapid reunification of family members once their whereabouts do become known. Through this provision, persons in refugee-like situations abroad can be reunited with their resettled family in Canada.

To qualify for the "one-year window of opportunity," the separated family member can be processed as long as: the principal applicant has identified the separated family member on his or her application prior to departure for Canada; the separated family member submits an application at a visa office within one year of the date that the principal applicant arrived in Canada; and the separated family member meets the definition of a "family member" contained in our Regulations.[4] A family member who is located after the one-year window has passed may be accepted as a refugee in his/her own right under either the government-assisted or privately sponsored refugee resettlement programs. Persons who are not eligible for admission under the aforementioned categories may be eligible under other immigration categories.

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"De facto" Dependants

When pursuing family reunification policies, it is essential to understand that the notion of "family" will vary from culture to culture. Further, this notion of family is often redefined by the refugee experience and can lead to new linkages and dependency relationships. In the context of civil war and flight, many of the traditional structures that ensured the well-being of community members are disrupted. For example, a widowed sister may have become totally dependent on an older brother for her physical well-being after the death of her own spouse and children. As a result, it is essential to interpret "family" in a flexible and humanitarian spirit when developing family reunification policy for refugees, recognizing their unique needs and experiences.

In an effort to address this reality, persons who may or may not be blood relatives may be considered *de facto* dependants of individuals who are determined to be members of one of the three refugee classes.[5] *De facto* dependants must establish that they are dependent on the principal applicant. The dependency must be emotional or financial, or a combination of both factors, and normally means that they live with the principal applicant as members of the same household. *De facto* dependants must also meet the definition of refugee in their own right even when a dependency relationship is established. CIC assesses *de facto* dependants sympathetically in an effort to keep family units together. If the *de facto* relationship cannot be established, then the applicant must be assessed on his/her own, and prove to be a refugee in his/her own right.

Private Sponsorship of Refugees (PSR) and Family Reunification

The PSR program has been an innovative example of successful cooperation between the government and volunteer sectors for over 25 years. Under the PSR program, organizations and individuals may sponsor applicants who are deemed to be Convention Refugees or in refugee-like situations in accordance with our *Immigration and Refugee Protection Act*.

Through the PSR program, although not intended to be primarily a family reunification program, individuals who meet Canada's resettlement criteria can be reunited with extended family members in Canada. As in the case of all refugees resettled through our Resettlement Program, privately sponsored refugees must fall within one of Canada's three refugee classes and must have no reasonable prospect of another durable solution.

Separated Minors

UNHCR notes that refugee children face much greater challenges to their safety and well-being than average children.[6] The circumstances that cause refugees to flee often disrupt family and community structures and increase the vulnerability of refugee children. Therefore, special attention must be paid to the needs of minors, particularly when they find themselves separated from their family unit. The preferred solution for most minor refugees is to reunite them with their family members. CIC recognizes that reunification with relatives in Canada is most desirable when there are no relatives overseas.

If a child cannot be reunited with his or her parents or family members overseas and has a blood relative in Canada, CIC will regard such cases as *consanguineous minors* and consider them for resettlement. CIC also tries to facilitate resettlement of minors who are deemed to be *de facto* dependants of a principal applicant overseas. Canada currently has a moratorium against the resettlement of completely separated minors, recognizing that, in such cases, CIC and its settlement partners cannot provide the necessary support required to meet the special needs of separated minors. When UNHCR identifies a separated minor in need of urgent protection and when UNHCR and Canada consider resettlement to Canada necessary, Canada will work with the Province and try to facilitate resettlement, which includes finding a suitable legal guardian for the child. However, if an appropriate guardian in Canada cannot be identified, Canada will suggest to UNHCR that the separated minor be resettled elsewhere.

CIC therefore works closely with UNHCR to determine whether resettlement is an appropriate solution for each separated minor refugee. CIC has recognized the value of assessing the best interests of separated minors and has incorporated best interest determinations in its assessments of such cases as a matter of policy.

DNA Testing and Family Reunion

Verification of a parental relationship is fundamental to ensuring the protection of children, particularly, in the context of increasing incidents of human trafficking. UNICEF cites that as many as 1.2 million children are being trafficked each year for the purpose of cheap labour and/or sexual exploitation.[7] Consequently, while DNA testing has been both controversial and complicated in family reunification procedures, CIC asserts the importance of proof of biological parentage in order to ensure that the best interests of all children are always protected. Therefore, CIC maintains that, when evidence of a *bona fide* relationship is not satisfactory, applicants may then be advised to undergo a DNA test by a laboratory to substitute for such evidence. Given the cost of DNA testing and the added time required for such tests, DNA testing is used only as a last resort to verify relationships.

CIC is continually working with the medical field to bring down the cost of DNA tests in Canada in order to ensure that such tests are accessible to refugees.

The Family Unit and the "Ability to Establish"

CIC recognizes the importance of the family unit in the settlement process. Therefore, CIC takes family unity into consideration when assessing a refugee's "ability to establish" in Canada. Family members are assessed collectively rather than individually with regard to their "ability to establish." For example, if the principal applicant and his/her spouse do not speak one of Canada's official languages, they could be assessed on the basis that they have school-age children who are able to speak either French or English and who will assist them in accessing integration services. Non-accompanying family members who apply to join their family in Canada through the "one-year window of opportunity" are not assessed on their "ability to establish" in their own right, as CIC officials have already assessed the ability of the entire family unit to establish in Canada.

Excessive Medical Demand

As CIC's Refugee and Humanitarian Resettlement Program emphasizes protection and family unity, medical requirements that previously applied to resettled refugees and their dependants no longer result in refusal, unless the person is deemed to be a threat to public health and safety. Therefore, in accordance with IRPA, Convention Refugees and persons in need of protection, as well as their spouses, common-law partners, conjugal partners, and their dependent children, are no longer refused entry if they have a health condition that places "excessive demand" on health or social services.[8]

Conclusion

Maintaining the integrity of family units is an essential aspect of refugee protection. In order for Canada to fulfill its international humanitarian commitments and to achieve our departmental goals of refugee protection, CIC's Refugee and Humanitarian Resettlement Program must pursue innovative policies and strategies in line with the *Immigration and Refugee Protection Act* to ensure that family reunification is a component of refugee protection. Such resettlement policies and strategies must take into account the unique realities and circumstances faced by refugee families in flight, in their first country of asylum, and once they arrive in Canada. Family unity not only ensures the physical and emotional well-being of refugee family members, it also enhances settlement prospects and facilitates self-sufficiency. Therefore, family reunification of refugee families is an important priority of Canada's Refugee and Humanitarian Resettlement Program and continues to be at the forefront of CIC's international and domestic efforts.

Notes

[1] The views expressed in this article are those of the author and do not necessarily reflect the opinions of Citizenship and Immigration Canada or the Government of Canada.

[2] *Government-Assisted Refugees* are refugees referred to Canada by UNHCR and supported through Canada's Resettlement Assistance Program. *Privately Sponsored Refugees* are supported by voluntary sponsoring groups, who provide them with lodging, care, and settlement assistance.

[3] *Immigration and Refugee Protection Regulations, Section 141.*

[4] *Section 1(3) of the Immigration and Refugee Protection Regulations* defines "family member" as the spouse or common-law partner and the dependent child of the principal applicant; the dependent child of the spouse or common-law partner; and the dependent child of a dependent child of the principal applicant or the principal applicant's spouse or common-law partner.

[5] The three refugee classes are: Convention Refugees Abroad Class, Source Country Class, and Country of Asylum Class.

[6] UNHCR, "Refugee Children: Guidelines and Protection and Care" (Geneva, 1994). Available online at: <http://www.unhcr.ch/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=3b84c6c67>.

[7] UNICEF Web site, Section on "Child protection – Trafficking and sexual exploitation": <http://www.unicef.org/protection/index_exploitation.html>.

[8] *Immigration and Refugee Protection Act, Section 38(2)(b).*