ENDING THE NIGHTMARE

Speeding up Refugee Family Reunification

ABSTRACT

Prolonged family separation is a nightmare experienced by many refugees in Canada, engendering significant psychological, social and economic costs that are borne not only by the individuals affected but also by Canadian society as a whole. The problem of slow refugee family reunification is a longstanding one, which has prompted criticism of Canada by the UN Committee on the Rights of the Child. Despite this, the Canadian government has not given a high priority to overcoming the barriers and processing delays in refugee family reunification. It is argued that this is because family reunification is perceived as a private, rather than a public, good, and thus its promotion is not seen as necessary for the benefit of society as a whole.

Refugee family reunification is among the Canadian immigration program's most widely supported goals. Whether you consider the matter from an economic, social, psychological or human rights perspective, it only makes sense to bring to Canada as soon as possible the immediate family members of refugees who have been granted protection in Canada. Yet, despite all the reasons that should favour speedy refugee family reunification, Canada has a long tradition of keeping many refugees separated from their families for years.

Take the experience of Mahmoud and Samira[1] who fled persecution in Algeria in July 2000. Less than a year later, in June 2001, they were recognized as refugees in Canada. They hoped that, having been granted refugee status, they would be able to reunite quickly with their two eldest daughters, whom they had been forced to leave behind in Algeria. It was to take four painful years. Mahmoud described his and his wife's experience of the separation as "more than a nightmare." The daughters finally arrived in 2005, five years after their parents and younger siblings had left them, having been kept separated from their family for most of their adolescence by Canada's immigration processing.

"More Than a Nightmare" is the title the Canadian Council for Refugees gave to a report on refugee family separation, published in November 2004.[2] The phrase aptly captures the mostly private trauma suffered by the refugees and their family members experiencing prolonged separation.[3] Their difficulties are compounded by the lack of public recognition of the problem, which means that those caught up in the delays are left to their lonely suffering, with perhaps even a sense that they should shoulder the responsibility for the problem they are experiencing. Certainly, refugees in Canada frequently report that their family members blame them: their reasoning is that they must not be trying hard enough to bring them, since they find it difficult to believe that an efficient and reputedly refugee-friendly country such as Canada could be responsible for such long delays.

The personal dramas of separated families provide the single most compelling argument in favour of speeding up family reunification. But there are also significant public policy considerations. The longer the separation, the slower the integration of the refugees in Canada, who cannot really settle down here as long as they are worrying about their family members overseas. Mahmoud and Samira, for example, were so preoccupied about their daughters left behind that they were unable to put their minds to advancing themselves professionally. Refugee women in Canada with their children struggle as single parents while waiting for their husbands to be able to join them. When the family members finally arrive, Canadian social institutions may pay the price of their prolonged stay in unfavourable conditions, such as in refugee camps or living in a country without secure status: children who are several years behind in their education, spouses and children whose health has been undermined and who will need more care. Reuniting the family after a long separation also has challenges of its own: spouses who have grown apart and children who have felt betrayed by their parents may face a rocky road as they start to live together again.

Such considerations as these have led members of the Canadian Council for Refugees to conclude that the costs of prolonged family separation are heavy not only for the refugees and their families themselves, but for Canadian society. It is an area, however, which seems to have been little studied by researchers, leaving the scale of the cost, and who pays it, largely unknown.

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Yet the problem of refugee family separation is not a new one. Already in the early 1990s, the members of the Canadian Council for Refugees were deeply concerned about long delays in family reunification. This was the period when, for the first time, large numbers of refugees began to be accepted in Canada, since towards the end of the 1980s, when numbers of refugee claims increased, the refugee determination system was in transition and few refugee decisions were being made. In 1989, the new refugee determination system came into effect, and the backlog program began (painfully slowly) to process the applications of those who arrived before 1989. As a result, in the early 1990s, Canada began for the first time to see significant numbers of applications from refugees seeking to reunite with their families. In 1992, the Canadian Council for Refugees struck a Task Force on Family Reunification, chaired by John Frecker, to inquire into problems of family separation being experienced by refugees. The Task Force published its report, including recommendations, in 1995.[4]

Refugee advocates were not the only ones to be concerned about slow family reunification for refugees. In 1995, the UN Committee on the Rights of the Child, reviewing Canada's first report on its compliance with the Convention on the Rights of the Child, expressed its concern over "the delays in dealing with reunification of the family in cases where one or more members of the family have been considered eligible for refugee status in Canada." They 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."[5] The Committee was evaluating Canadian realities against the obligation under Article 10 of the Convention on the Rights of the Child, according to which "applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner."

The Canadian government had not been indifferent to the delays in family reunification. In 1993, regulatory changes were implemented that allowed refugees to include family members in their own application for permanent residence, rather than having, as previously, to first become permanent residents and then sponsor family members. This change promised to speed up reunification, since processing of family members could take place, at least in theory, concurrently with the processing of the refugee's application for permanent residence. It also removed some significant barriers to family reunification by eliminating the requirement to sponsor family members (sponsors must submit to an additional series of criteria and responsibilities).

However, as the 1995 observations of the UN Committee on the Rights of the Child indicate, this regulatory change did not resolve the problem of long delays in family reunification. Part of the reason is that family members cannot travel to Canada until the refugee has been granted permanent residence, and that process itself can take years.

> The personal dramas of separated families provide the single most compelling argument in favour of speeding up family reunification. But there are also significant public policy considerations. The longer the separation, the slower the integration of the refugees in Canada, who cannot really settle down here as long as they are worrying about their family members overseas.

This was the case for Samira and Mahmoud. Their application for permanent residence was approved in principle in September 2001. Then began a series of problems. In early 2002, the applications of Samira, Mahmoud and their children in Canada were ready, but at that time the law did not allow those in Canada to become permanent residents while their family members overseas were still undergoing processing.[6]

In June 2002, the *Immigration and Refugee Protection Act* came into effect, including a new requirement that refugees in Canada have an up-to-date medical clearance. In February 2003, instructions were sent to the family in Canada to re-do their medical exams. Unfortunately, there were delays in the transmission of the medical results. By the time the medical results were received, their security clearances were out-of-date. In September 2003, the family received a request for updated information in order to do new security clearances. Then came months of waiting with no news. In September 2004, after persistent inquiries by the family, they learned that Samira's security clearance had been received by Citizenship and Immigration Canada (the reason for the delay was not explained but indications suggest that her file had been misplaced).[7] By then the medical was again out-of-date. Samira finally got her permanent residence in early 2005, nearly three years after she applied.[8]

The second major cause of delays relates to the processing by the visa post overseas of the family members. Citizenship and Immigration Canada (CIC) publishes on its website average processing times, by visa post, for different categories, including family members of refugees. These times cover only the period from the time the visa post receives the completed application from the

family member – the actual waiting time is longer, since before that clock starts, the file must be sent from the Vegreville Case Processing Centre to the visa post and the application sent by the visa post to the family members and received back completed. The average processing time is 12 months: half of the applicants wait longer. Processing times vary significantly by region: the fastest is Europe where the average is 7 months, the slowest is Africa and the Middle East, where the average is 15 months. There is even greater variation by visa post, with the slowest by far being Abidjan, where half of the cases take more than 29 months to process.[9]

The causes of the long processing times at some visa posts in particular are multiple and include inadequate human resources, communications difficulties and political instability. A major problem affecting many refugees, especially Africans, relates to the establishment of family relationship. Visa officers are understandably concerned that those presenting themselves as family members of a refugee in Canada are in fact who they claim to be. But in certain parts of the world, particularly the poorer regions and those affected by war, identity documents of the same high quality as we expect in the West are simply not available. In some cases, the documents submitted are deemed inadequate and refugees are told that they should have DNA testing done. These tests involve further delays, sometimes in part because the family needs time to collect the money to cover the significant costs of the tests. The tests also invade families' privacy, and sometimes come up with tragic results when children are shown not to be biologically related to the presumed father.[10]

In addition to the processing delays and barriers addressed above, some refugees are denied family reunification because the law does not provide for it. This is the case for refugee children in Canada, who are not able to apply for family reunification. While adult refugees can include on their application for permanent residence their spouse and children, child refugees cannot include their parents or siblings, nor is there any other mechanism in the law to provide for family reunification for separated child refugees.[11]

In 2003, the UN Committee on the Rights of the Child heard the second periodic report by Canada. It expressed concern that some of its earlier recommendations, including those relating to family reunification, "have not been adequately addressed" and recommended that Canada "ensure that family reunification is dealt with in an expeditious manner."[12]

The Canadian government has not, as a general rule, been very conscientious about responding to criticisms from UN human rights bodies. Has the renewed call for accelerating family reunification made an impression on government leaders? While there are signs that Citizenship and Immigration Canada has heard the message, it is not clear that it is felt with any particular urgency. For example, six months after the Committee's observations, then Minister of Citizenship and Immigration Judy Sgro gave a speech on "Canada's Refugee Program: Upholding our Humanitarian Tradition into the 21st Century."[13] She spoke of the challenges facing Canada's refugee system and her vision for reforms, including "reaching finality on cases more quickly" so that refugees can be granted permanent residence and those who don't need protection removed. But nowhere does she mention the issue of the long delays in family reunification. For her, "finality" apparently comes when refugees achieve permanent residence, even though they are still separated from family members.

A year later, her successor, Joe Volpe, included in a speech on Canada's refugee program a reference to working on how refugees could be "reunified sooner with their family."[14] In January 2005, in response to a CCR recommendation, CIC issued new instructions calling for visa officers to expedite family reunification for separated children at risk, where the parents are refugees in Canada.[15] It is a positive step, responding to a particularly vulnerable group of children, although its scope is quite narrow, excluding many children separated from both their parents, and even in cases where it applies, it is not clear how effectively the instructions are working. CIC has also increased the numbers of refugee family members processed abroad, exceeding their planned levels for 2004.[16] However, the government has so far declined to accept the CCR's proposal for a simple way to bring refugee families together quickly (and comply with our obligations under the Convention on the Rights of the Child: allow family members of refugees to travel immediately to Canada to complete processing of their permanent residence from within the country.

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The challenge faced by Canada with regard to delays in refugee family reunification has remained a low government priority in a political context where the predominant concern has been the perceived incapacity of the refugee determination system to deliver a quick decision on whether a person is a refugee or not, or of enforcement to deport in a timely way those not found to be refugees. While considerable political pressure has been placed on the Immigration and Refugee Board to speed up refugee decision-making, resulting in a comprehensive action plan and a target of a 6-month timeline for a claim to be determined, no such pressure or expectations have been placed on the refugee family reunification processes. While speedy refugee determination is identified as a public good, speedy refugee family reunification appears to be considered rather as a private good, not meriting general attention.

This perspective reflects a broader attitude towards family reunification of immigrants. While Canadians

understand that individuals want to be able to bring family members, many think that the benefits of immigration to society as a whole come largely or solely from economic immigration. From this narrow and highly debatable position comes the notion that the interests of the general population (supposedly in maximizing economic immigration) are in conflict with the interests of a particular section of the population who want to be reunited with their families. Once we have a clearer understanding of how all categories of immigrants contribute to Canadian society, economically, culturally and socially, and of the costs of keeping families apart, we will have a healthier approach to questions about how to manage the immigration program, including what priority to give to expediting refugee family reunification.[17]

Notes

[1] Not their real names.

[2] Canadian Council for Refugees, More than a Nightmare: Delays in Refugee Family Reunification, November 2004, www.web.ca/ccr/nightmare.pdf

[3] Of course, the experience of Mahmoud, Samira and their daughters is not typical, and some refugee families are reunited relatively quickly. However, long delays are common.

[4] Canadian Council for Refugees, *Refugee Family Reunification. Report of the Canadian Council for Refugees Task Force on Family Reunification*, July 1995, www.web.ca/ccr/TFFR.pdf

[5] United Nations, *Concluding observations of the Committee on the Rights of the Child: Canada*. 20/06/95. CRC/C/15/Add.37, §§13 and 24.

[6] This rule was dropped when the *Immigration and Refugee Protection Act* came into force in June 2002.

[7] Mahmoud's security clearance took longer to come. He was eventually given an interview by the Canadian Security Intelligence Service, who wanted to speak to him because he had the same name as someone of interest to them.

[8] Citizenship and Immigration Canada (CIC) does not provide on its website statistics on the overall processing time for applications for permanent residence by refugees in Canada. They do provide an estimated time for "first stage of approval" which was 8 months as of 23 January 2006. This time does not cover the full processing period: the file must then be sent from the Vegreville Case Processing Centre to the local CIC office, who will complete processing and grant permanent residence. CIC also notes that some cases do not receive first stage approval at Vegreville and may experience further delays. http://www.cic.gc.ca/english/department/times/process-in.html.

[9] The Abidjan post covers a number of countries in West and Central Africa, including the Democratic Republic of Congo, the source country of a large number of refugees in Canada.

[10] The CCR reported on one such case in its report, *Impacts on children of the Immigration and Refugee Protection Act*, November 2004, www.web.ca/ccr/children.pdf. Having been shown not to be biologically related to his father, a young child was left behind in Nairobi after his siblings went to Canada to join their father. His mother had died and there was no way of even knowing who the biological father was. The effect of the DNA testing was to separate a boy from the only family he knew.

[11] See CCR, *Impacts on children of the Immigration and Refugee Protection Act*, November 2004, www.web.ca/ccr/children.pdf, pp. 6 ff.

[12] United Nations, Committee on the Rights of the Child, Concluding Observations: Canada, CRC/C/15/Add.215, 27 October 2003

[13] Speech to the Immigration and Refugee Board Consultative Committee on Practices and Procedures, 11 May 2004.

[14] Notes for an address by the Honourable Joe Volpe Minister of Citizenship and Immigration at the Consultative Committee on Practices and Procedures of the Immigration and Refugee Board, May 17, 2005, http://www.cic.gc.ca/english/press/speech-volpe/irb.html

[15] CCR, *Annual Status Report 2005*, November 2005, www.web.ca/ccr/status05.pdf.

[16] The immigration plan for 2004 called for between 4,000 and 4,800 dependants of refugees to be admitted, but 6,258 were actually admitted. Annual Report to Parliament on Immigration, 2005, http://www.cic.gc.ca/ english/pub/annualreport2005/section3.html#3_1_1

[17] The CCR has an ongoing campaign to promote family reunification and overcome the barriers that keep families separated. See the web page www.reunification.ca.