

**Submissions of
the Centre for Spanish-Speaking Peoples,
Toronto, Ontario
on
Bill C-31, An Act respecting immigration to Canada**

The Centre for Spanish-Speaking Peoples, is a multi-service agency providing services to low-income Spanish speakers in the Toronto area. The vast majority of our clients are immigrants, refugee claimants and Convention refugees. Among the array of services we provide are legal and settlement services. Because of our contact with thousands of immigrants, refugee claimants and refugees, we have strong positions on many immigrant and refugee issues.

On the whole, we are in agreement with the submissions made by the Canadian Council for Refugees of which we are a member. We wish to add the following submissions which either differ from those in the Canadian Council for Refugees' submission or emphasize issues that are of particular importance to the community which we serve.

GENERAL COMMENT ON BILL - FRAMEWORK LEGISLATION

We are very uneasy with the idea of a bill that constitutes framework legislation, that would set out "core principles" while leaving the rest of the legislation to be provided for in Regulations. In many cases, "core principles" are virtually meaningless without clear statements as to how they will be implemented and what the exemptions to them will be.

When the Bill was introduced, Citizenship and Immigration stated that the Regulations would set out "procedures, exceptions and details". In fact, a great deal more than this is being left to the Regulations. This includes virtually everything related to family reunification.

One of the purposes of the Bill is "to see that families are reunited": s. 3(1)(d). The implementation of this principle is far too important to be left to Regulations which can be announced by the Cabinet without any prior public discussion or input. We urge the Standing

Committee to amend the Bill by adding to it the proposed extensions of family reunification announced by Citizenship and Immigration Canada when the Bill received first reading.

FOREIGN NATIONALS

We find the use of the term "foreign national" to refer to permanent residents objectionable. This term indicates that permanent residents are foreign, rather than *permanent* residents of Canada. Canada should be welcoming permanent residents, not telling them that they are foreign and, thereby implying that they do not belong here. We request that the wording of the Bill be changed to establish a distinct category of "permanent residents".

Furthermore, the application of the term "foreign nationals" to permanent residents is untenable, as the Bill itself shows. In various provisions, the Bill contains provisions that refer only to permanent residents, e.g., ss. 24(1) and (2), 27(1), 41 and 42. In other places a provision specifies that it refers to both a permanent resident and a foreign national, e.g., s. 56(3). Section s. 37(1) sets out a general provision concerning the inadmissibility of foreign nationals but then continues with a more limited list of inadmissibility criteria for permanent residents. Thus, the Bill itself recognizes that, although the two share the characteristics of not being Canadian citizens, permanent residents are a distinct category from foreign nationals.

PERMANENT RESIDENT

We understand the desire for a clear cut test for retention of permanent residence. Furthermore, it is clear that the test set -- at least 2 years physical presence in Canada in a 5 year period (s. 24) -- is not a very demanding one. The exceptions allowed in s. 24(3) are, however, far too limited. The Bill does not expressly recognize that there are other legitimate reasons why permanent residents may need to spend longer periods of time outside of Canada, e.g., caring for sick parents. Such additional provisions should be expressly added to the list in s. 24(3) and not left

up to the discretion of a designated officer considering humanitarian and compassionate considerations (s. 42(1)). Or, alternatively, the Bill should add a statement explaining that the humanitarian and compassionate grounds to be considered are not solely those related to the links of the appellant and his or her family to Canada, but also the situation which led to the permanent resident having been out of Canada for more than 3 years during the 5 year period.

For our comments on the express mention of the best interests of a child directly affected by the decision that permanent residence has been lost in s.42, see the section on the best interests of children on p. 11 below.

We find it positive that persons found not to be permanent residents will continue to have a right of appeal: s. 56(4). However, we believe that the appeal should include testimony of the appellant, and not be merely a paper appeal, as provided for in s. 56(2). The grounds for the appeal include questions of fact, and the member(s) of the Immigration Appeal Division should have the opportunity to hear facts from the mouth of the appellant.

We are dismayed by the elimination from Bill C-31 of the principle now enunciated in s. 4 of the *Immigration Act* that permanent residents, as well as Canadian citizens, have a right to enter Canada. Section 19(2) of the Bill refers to the right of a permanent resident to enter Canada only in the marginal note, which has no legal force. Furthermore, the provision implies that, if the designated officer is not satisfied that the person has permanent resident status, the person will not be allowed to enter Canada. This will mean that refused permanent residents will have to argue their status from outside Canada. In a matter of such seriousness, a person should have the clear right to present the case in person.

REFUGEES AND PERSONS IN NEED OF PROTECTION

We are particularly concerned with some of the changes to the refugee determination process which will make it much more difficult for legitimate refugees to be accepted by Canada.

The objectives of the Act with respect to refugees listed in s. 3(2) of the Bill include the following:

- (a) to recognize that the refugee program is in the first instance about saving lives and offering protection to the displaced and the persecuted

We are of the opinion that this principle is not given effect sufficiently in the Bill. At times, the Bill appears much more dedicated to preventing people from having the opportunity to ask Canada to save their lives or to offer them protection. While we recognize that there are other legitimate principles included in this section which have their role in the process, we urge the Standing Committee and Parliament to bear in mind that, in the words of s. 3(2)(a), in the first instance, the process should be about saving lives and offering protection to the displaced and the persecuted.

Setting out provisions that seek to make this the primary goal of the process may open the door to a certain amount of abuse of the system. However, we submit that, in an important sense, the refugee process must be viewed like the criminal justice system. Our criminal justice system incorporates certain safeguards against wrongful prosecution and conviction which, on occasion, aid criminals. But, as a society, we have always felt that it is more important to protect those who are innocent and guarantee everyone the right to a fair trial.

If the new Immigration Act makes it almost impossible for refugee claimants and persons in need of protection from getting to Canada, or if it denies them eligibility to have their claim heard without giving them a chance to explain their situation, or if it does not permit them to seek protection a second time, then it will not be fulfilling its primary goal of protection.

Ineligibility

Section 94(1) provides that there will be a prescribed period, set by Regulation, as is so much in this Bill, within which a determination will be made as to whether the claim is to be referred to the IRB. If there is to be a separate eligibility decision, then we are in favour of fixing a

reasonable period by the end of which a determination as to whether to refer the claim must be made. A determination on referral of inland claims made in Toronto has been taking from 3 to 9 months, leaving the refugee claimants without any status or the right to work during a rather long period.

It is our opinion that there should not be a separate determination of eligibility. Rather, all claims should be immediately referred to the Refugee Protection Division. The Division would consider eligibility as part of the process of refugee determination.

This would allow for individualized determination and not one based merely on membership in a group. This individualized determination would allow a person to present evidence that, although he or she might have been a member of a group that was involved in human rights violations, he or she personally was not. For example, an army officer assigned to an anti-guerrilla unit as punishment for exposing corruption of superior officers in another branch of the army, who resigned from the Army immediately upon transfer, would be eligible to make a claim, even though the anti-guerrilla unit may have been involved in unacceptable activities. Another example would be a person engaged in relief work under the auspices of a group that may otherwise be considered a violator of human rights. Such a person could be found to be eligible, despite his membership in what might only have been an umbrella group of organizations.

The need for individualized determination is clearest with respect to persons convicted of crimes in the countries by which they claim persecution. Amnesty International, and other human rights groups, have noted that governments use criminal laws to punish political opponents or to persecute minorities. Such a conviction cannot be allowed to be a bar to claiming refugee status, without allowing the individual the opportunity to present his or her case to an adjudicator.

Persons in need of protection

We applaud the addition of "persons in need of protection" to Convention refugees as persons who will qualify for protection in Canada. The definition of "refugee" in the Refugee Convention

emerged from the Second World War, and it has long been recognized by many that the definition was inadequate to fit our changed perception of persons in need of protection. Our understanding of human rights has evolved, and Canada needs to acknowledge that a definition formulated 50 years ago must be expanded to fit our current understanding.

The addition of persons in need of protection is also positive because it incorporates Canada's obligations under the Convention against Torture.

However, the provisions regarding who would qualify as a person in need of protection should be broadened. The definition of a "person in need of protection" in s. 90(2)(b) states that the risk to life faced by the person may not be a risk that is faced generally by other individuals in or from that country. This means that if human rights abuses or danger are widespread in a country, then persons who fled that country but did not fit this definition would be sent back. For example Cambodians facing Pol Pot's genocide, East Timorese during the period in which the Indonesian Army was on the rampage against them, or Kosovars expelled by the Serbs would all have been found to be persons not in need of protection because the risk was faced generally by other individuals in the country. This surely makes a farce out of such a definition of a "person in need of protection".

In addition, in our opinion, the protection does not go far enough in implementing the *Convention against Torture*. Article 3 of the Convention states that no one who would be returned to another State where there are substantial grounds for believing that person would be in danger of being subjected to torture. There should be no exceptions to this, even if the person has committed serious crimes or is a security concern.

Need for more acceptance of refugees abroad

Most importantly, the extending of protection to persons in need of protection, as well as to refugee claimants, will be meaningless if refugees and persons in need of protection are prevented from getting to Canada by greater controls. There needs to be an expanded possibility

of successful application in other countries (country of asylum class), as well as an expanded list of countries from within which persons can be accepted (source country class). There also needs to be less stringent criteria for selection -- now, in order to be accepted as a refugee abroad, a person needs to show sponsorship with Canada or availability of financial or other assistance. In addition, the person must be determined to have the ability to become successfully established in Canada. These requirements make qualification very difficult.

The difficulty, or impossibility, of acceptance abroad creates incentive to get to Canada in order to make a refugee claim, and this creates a vicious circle. The fact that refugees have little possibility of being accepted abroad makes them come to Canada. The arrival in Canada of refugee claimants has created a backlash in a certain segment of the population which, it would appear, is one of the reasons that has given rise to proposals of more stringent interdiction. However, as long as little other possibility of acceptance exists, persons in fear of persecution, torture or death will continue to try to come to Canada where they can make a refugee claim.

Bill C-31 says very little about overseas refugee selection. Section 13(2) sets out a group right to sponsor a foreign national who is a member of the Convention refugees overseas class or the humanitarian class. All the rest is left to be addressed in the Regulations. The Bill should mandate that there be expanded opportunities for persons to make refugee claims outside of Canada, and that the primary criterion for acceptance of these claims should be that the applicant meets the definition of "refugee" in the *Immigration Act*.

Consolidation of decision making

The consolidation of decision making is a positive move. It will allow for fuller presentation of cases, as well as for greater procedural protections than is now available under the PDRCC determination. However, if this system is to work in a just manner, funds must be committed for legal aid for refugee claimants, so that they can have adequate representation in presenting their claims. At the moment, many claimants either appear before the Board unrepresented, or

represented by unqualified paralegals who speak the same language as the claimants, but do not properly represent them. This need for access to decent representation will be even more acute than it is now if there is no possibility of making a second refugee claim.

While we recognize that legal aid has been a provincial responsibility, we urge the federal government to provide funds for representing refugee claimants to ensure that claimants have the opportunity to present their cases properly. Without this possibility, the system cannot fulfill its primary goal of providing protection to those in need.

Multiple Refugee Claims

We call for the removal from the Bill of the broad prohibition on the making of a second refugee claim in s. 95(1). Anyone who works with refugees knows claimants who were either unrepresented or inadequately represented on their first claim, but were accepted on their second claim when they had assistance in understanding the process and submitting evidence in support of their claim.¹ Also, persons suffering from post-traumatic stress often find it very difficult to tell others about what has really happened to them. Sometimes, it is only under the shock of being denied refugee status that they reveal the truth, and are determined to be Convention refugees on their second claim. The prohibition would thus exclude legitimate refugee claimants from a reasonable opportunity to have their claim considered.

¹ The situation of refugee claimants must also be viewed realistically in light of the actual situation in which many find themselves in Canada. They arrive after having undergone difficult or traumatic situations, they have had to flee from country and family and abandon their possessions and the lives they have built. They arrive in Canada afraid and distrustful of the authorities, since their experience of state authority has been so negative. Many do not speak English or French and have no understanding of the legal system in Canada.

They find an apparently sympathetic refugee paralegal who can speak to them in their language. The paralegal takes their money, but does a poor or negligent job of preparing their case and of representing them at their refugee determination hearing. As a result, they receive a negative decision.

There are many other categories of persons with legitimate claims who would be excluded. The provision would exclude claims by persons who had been refused once but who were now being persecuted in their country of origin under a new regime. It would exclude a new claim by someone who had been refused as a child dependent on the parents' claim but was now suffering persecution as an adult. It would exclude persons who had abandoned claims in order to return surreptitiously to their country of origin to care for sick or dying relatives. It would exclude claims by persons who withdrew their claims and returned to their countries of origin because they thought that the situation there had improved, only to find themselves still suffering persecution.

What Bill C-31 offers such people is a pre-removal assessment, but only after leaving Canada for one year: s. 107(3)(a). For people who are truly in danger, it is not feasible to wait one year to make a new application. If new evidence is available, then the claimant should have the opportunity to present it immediately. To do otherwise is potentially putting persons in need of protection in the very danger that the Bill says it is intended to protect them against.

Furthermore, the review will be a paper review only and will be carried out by an Immigration officer. The claimant should have the right to an oral hearing, since credibility will likely be an issue. The determination should be made by a member of the Refugee Protection Division who has expertise in the area, and not by an Immigration officer, who is much less likely to have the necessary expertise.

Time Limit for Making Refugee Claim

We also want to register our vehement opposition to Recommendation 18 in the Report of the Standing Committee on Citizenship and Immigration of March 2000. This recommendation calls for time limit of 30 days following arrival in Canada for refugee claim to be made.

This recommendation is based on a misconception that legitimate refugees will make a claim for refugee status immediately, while others make a claim later only as a ploy to extend their time in

Canada. While we do not deny that there are persons who have not suffered persecution who make refugee claims, we argue that it is necessary to remember that the process must be directed primarily to fulfilling Canada's international and humanitarian responsibilities. Many persons with legitimate refugee claims do not know initially that they can claim refugee status. Others are too fearful of any state authorities to approach Immigration with a notification of claim for refugee status. Others have come here to escape immediate danger which they hope will pass. It is only after several months when they see that the situation in their home country will not change that they ask for refugee status. It would be completely contrary to the spirit of Canada's responsibilities to impose any artificial time limit for making a refugee claim.

Appeals

We welcome introduction of an appeal process for negative refugee determinations in s. 105(1) of the Bill. However we urge that s. 105(3) should include the right to present new evidence at the appeal. This is necessary because a large number of refugee claimants are initially represented by unscrupulous consultants who take their money but do not provide adequate representation. In his recent report, *A Framework for Regulating Paralegal Practice in Ontario*, the Hon. Peter deC. Cory refers to paralegals who are "obviously incompetent, irresponsible and all too often fraudulent" (at p. 81). Paralegals of this type rarely submit all available evidence. (Sometimes they make little or no effort to obtain evidence.) Similarly, persons representing themselves often do not submit sufficient evidence because of lack of knowledge of what is necessary and lack of resources to search for available evidence. A meaningful appeal process must include the possibility of presenting evidence that was not presented to the Refugee Protection Division.

PENALTY FOR HUMAN SMUGGLING

We recognize the need to prevent human smuggling, because of the danger it may cause to the persons being smuggled. But we are of the opinion that the prohibition in s. 110(1) is too broad. The Bill must distinguish between human smuggling for profit and helping refugees and persons

in need of protection who cannot obtain travel documents to get to Canada where they can find protection. There must be safeguards to ensure that genuine refugees and those who help them come to Canada are not penalized. Again, as we stated above, acceptance of more refugees outside of Canada might reduce the number of persons coming to Canada without documents.

APPLICATION FOR PERMANENT RESIDENCE BY CONVENTION REFUGEES

Canada has an obligation pursuant to Art 31 of the Refugee Convention to facilitate as far as possible the naturalisation of refugees. In particular, this means that Canada must make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings.

The elimination of the right of landing fee for refugees is a positive step. But refugees must still pay the application fee, and this is the primary reason that refugees do not apply for permanent residence. This impedes reunification of refugee families, limits access to post-secondary education and denies refugees the ability to travel outside Canada.

We recommend that a provision be added to the Bill providing that Convention refugees be exempt from all fees with respect to their applications for permanent residence in Canada.

BEST INTERESTS OF CHILDREN

We applaud the inclusion in the Bill of provisions recognizing that the best interests of children should be a significant factor in decisions made by Immigration. However, we feel that these provisions should be made stronger than they are in the Bill.

In s. 22(2), the Bill states that in making a decision on humanitarian and compassionate grounds, the Minister must "take into account" the best interests of a child directly affected by the

decision. In our opinion, simply taking the best interests of a child directly affected is too weak. The appropriate standard should be the one enunciated by the Supreme Court of Canada in *Baker*: the Minister must consider the children's best interests as an important factor, give them substantial weight and be alert, alive and sensitive to them.

The same standard should hold for considering humanitarian and compassionate factors in making a final decision as to whether a person has or has not retained permanent residence status: s. 43(1)(a). Again, we urge that "taking into account" the best interests of a child directly affected by the determination be replaced with the standard enunciated in *Baker*.

The inclusion of s. 26(2), an express statement that a minor child in Canada does not require an authorization to study at the pre-school, primary or secondary level, is long overdue. However, the limitation in sub-section (2), the minor child of a temporary resident requires the authorization if the temporary resident is not authorized to work or study in Canada, should be redrafted to exclude inland refugee claimants whose claims have not yet been referred to the Refugee Protection division. The way the limitation is now worded, minor children of inland refugee claimants who have not yet been found eligible to have their refugee claim transferred to the IRB would still require student authorizations, if their parents came in as visitors. The provision must indicate unequivocally that the *Immigration Act* should not be used as a reason for denying schooling to any child in Canada.

FAMILY REUNIFICATION

The Bill contains, as one of its goals, "to see that families are reunited", but has virtually no specific provisions regarding family reunification. These have been left to the Regulations.

The one provision contained in the Bill regarding family reunification is in s.12(2). The provision specifies that a foreign national may be selected as the spouse, common law partner, child or other prescribed family member of a Canadian citizen or a permanent resident. However, the Bill does not include a definition of "common law partner". Although the government has indicated

its intention to include same sex partners as common law partners, this should be stated explicitly in the Bill itself, not left for the Regulations. Furthermore, the Bill should contain a definition; and this definition should not simply be based on the amount of time the couple co-habited. Such a definition would exclude many same sex partners who were unable to qualify because they could not safely live together in their countries of origin.

PROMPT PROCESSING

Section 3(1)(f) sets out as one of the objectives of the Bill supporting by means of a consistent standards and prompt processing the attainment of immigration goals. We urge the government to include mechanisms whereby processing will be made reasonably prompt. We further urge that prompt processing be made a goal of the Bill not just in relation to attaining the annual immigration goals set, but in relation to everything that the CIC does.

Processing times for applications are scandalous. Families can remain divided for years because of delays in processing by Immigration or by Embassy personnel. People applying for permanent residence on humanitarian and compassionate grounds are now being told that they will have to wait at least 12 months after their file has been transferred to a local CIC office until they receive a date for an interview. Even if they are accepted in principle at the interview, they may have to wait another 6-12 months until they actually receive their Records of Landing.

Inland refugee claimants in Toronto now wait from 6-9 months for the CIC to refer their claim for refugee status to the Immigration and Refugee Board. During that time, the claimants do not have the right to apply for a work permit and legally support themselves.

We understand that processing times require appointment of more immigration officers and, possibly, administrative changes. However, it would be helpful to have an expression of the will of Parliament that there must be prompt processing of every person who makes an application to Immigration. Reform of the bottleneck that many applications encounter when they are sent to CSIS for a security check should also be a priority.

HUMANITARIAN AND COMPASSIONATE APPLICATIONS

Section 22(1) of the Bill allows the Minister to authorize persons to enter or remain in Canada if this is justified by humanitarian and compassionate considerations or by public policy considerations. The Bill should also contain a provision that persons who have made an application on humanitarian and compassionate grounds shall not be removed from Canada until they have received a decision on their application. It is completely contrary to humanitarian and compassionate considerations to remove a spouse or common law partner who has been sponsored in an inland sponsorship or a person who is suffering from post-traumatic stress that will be intensified if she or he is returned to the country in which they underwent the traumatic experiences.

Furthermore, it is a waste of resources to remove from Canada persons who may be notified a few months later that they have been accepted as permanent residents and can return to Canada. Perhaps the lack of power to remove humanitarian and compassionate applicants will spur Citizenship and Immigration into processing the applications more expeditiously.

All of which is respectfully submitted

August 15, 2000

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