

**Background Note for the Agenda Item:
FAMILY REUNIFICATION**

**Canadian Council for Refugees
Proposed new developments for Family Reunification for
Refugees Resettled to Canada**

Follow-up Note to the Paper entitled, “Family Reunification in the Context of Resettlement and Integration” (ATC 2001)

Background

1. UNHCR and many countries consider family reunification a cornerstone of effective refugee protection and successful resettlement programs. Regrettably, the circumstances of war and persecution that fragment refugee families are often followed by administrative and policy restrictions in resettlement countries that prolong the separation of families, thus impeding the successful establishment of those in resettlement countries and often diminishing protection for those who are left behind in countries of origin or of first asylum.

2. The UNHCR paper entitled, “*Family Reunification in the Context of Resettlement and Integration*,”¹ provided the basis for discussion at the Annual Tripartite Consultation on Resettlement (ATC) 2001 by outlining five guiding principles to protect family unity and identifying some of the key areas for policy consideration in improving family reunification opportunities for refugees. The paper outlines the basis in international law and in UNHCR’s protection mandate for family reunification, it presents a solution to the difficulty of defining family in an international, multicultural context by proposing the use of the dependency principle, it discusses the implications of narrow and broader definitions of family and identifies some of the procedural challenges in improving family reunification. Moreover, the paper reinforces the principles expressed at the International Conference on the Reception and Integration of Resettled Refugees (ICRIRR) in describing the benefits of family reunification, not only for the refugees themselves but also for the resettlement countries who draw on their successful establishment.

3. As part of the discussion at the ATC 2001, countries identified their own specific concerns within the context of their national programs and also identified some key areas such as identification, security and fraud and in particular the challenges in defining family and prioritizing family relationships.

4. The discussion at the ATC 2001 coincided with the revision process of the Canadian Immigration Act. Canada offered initial information on how the new legislation proposes to enhance family reunification. This paper provides a more complete picture of the changes to be implemented on 28 June 2002 as part of the Canadian Immigration and

¹ “*Family Reunification in the Context of Resettlement and Integration*”, UNHCR – Annual Tripartite Consultation, Geneva, June 2001
New Developments for Family Reunification
in Refugee Resettlement to Canada
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Refugee Protection Act and Regulations and in accompanying administrative provisions, as they pertain to family reunification and refugee resettlement. It should be noted that at the time of writing, the regulations are still under development and the final version, to be published in June 2002, may be different. The intent of this paper is to provide a report to the ATC proceedings on the new Canadian initiatives and to identify some of the challenges anticipated in implementation. It is hoped that this report on developments in one country will offer encouragement to, and promote dialogue among, other states considering new models to enhance family reunification.

Canada's Family Reunification Efforts

5. Several factors contributed to Canada's increased commitment to unite separated families. In addition to the emphasis laid on family reunification by UNHCR, Canadian non-governmental organizations have consistently advocated for greater responsiveness to family reunification needs. In part as a result of this advocacy, there is acknowledgement that family separation impedes successful integration for those in the resettlement country, largely due to emotional, psychological and economic factors. Conversely, those families who arrive intact, or are reunited quickly, tend to settle better and establish well. Within the existing legislation, family groups had to apply and be processed separately leading to multiple file management, often to prolonged separation and to some family members being denied resettlement and left behind, raising new protection concerns. Moreover, resettled refugees, especially in the early days of their own establishment, had difficulty meeting the criteria to be sponsors of family members under the immigration program. In addition to the refugee-specific concerns, there has been a strong voice from the broad immigration and refugee sectors in favour of broadening the definition of family to more closely reflect the international, cultural diversity in what constitutes a family unit.

6. Canada approaches family reunification for refugees through two distinct programs, the Family Class of the Immigration Program and the Refugee Resettlement Program. Individuals may sponsor only their close family through the Immigration Program, and must demonstrate sufficient levels of income and meet certain other criteria. The Refugee Resettlement Program has two streams. An annual target is set for the Government-Assisted Program and Canada relies on UNHCR for identification and referral for many of those refugees, including those with family members in Canada. Through the Private Sponsorship of Refugees Program, Canadians and residents identify and request resettlement for refugees who are supported through the voluntary sector. Refugees with family members in Canada may be sponsored under this program.

New initiatives to strengthen family reunification

7. Under the new Immigration and Refugee Protection Act, the concept of the nuclear family has been expanded in two ways. Adult children under twenty-two years of age, who are not in a marriage, are considered as dependants (up from under 19 years). Secondly, same sex and opposite sex common-law relationships are accorded the same status as married spouses.

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8. In the case of refugees, there is a will to respect the principle of dependency by recognizing de facto family members. These are family members whose dependency may be emotional, economic, cultural, or a combination of these factors. Some of the guidelines in establishing de facto dependency as described in the Overseas Procedures Manual Chapter are included below.

De facto dependants (who may or may not be blood relatives) and certain extended family members may be considered as part of a family unit within the refugee context. To be considered a de facto dependant, the Visa Officer must be satisfied that these persons are dependent on the family unit in which membership is claimed. The dependency may be emotional or economic and will often be a combination of these factors. Such persons would normally, but not exclusively, reside with the principal applicant as members of the same household...

Examples of persons who should be found to be members of a family unit:

An unmarried adult daughter in cultures where it is normal for an unmarried adult daughter to remain dependent until she marries;

A widowed sister or sister-in-law in a traditional culture where it is normal that the applicant would take on responsibility for her care and support and who has no other means of support;

Nieces and nephews whose parents have been killed or are missing (Note: In these cases the Visa Officer must take into consideration the best interests of the child and ensure that there are no disputes with respect to custody or guardianship of the child);

Parents of any age living with the principal applicant and who have no other children with whom they could reside or no means of support other than the principal;

Elderly relatives who have resided with the principal applicant for a substantial period of time and/or who are solely or for the most part dependent on the applicant for care, shelter, etc.²

9. There is a commitment to provide for the concurrent processing of refugee applications for immediate family members who cannot be processed together. Every effort is to be made to ensure that family members do not get left behind indefinitely, even if they are not in the same country as the principal applicant.

10. Under the refugee resettlement program, there is a mechanism to bring fragmented families together, even when their whereabouts may be still be uncertain at the time that a refugee is resettled. This provision, known as the “one year window of opportunity,” allows non-accompanying immediate family members (spouses, common-law partners and dependent children) to reunite with the principal applicant. They may be processed as part of the same application if they can be located and submit their application within one year after the principal applicant's arrival in Canada. The One Year Window applies to nuclear family and does not include de facto dependants.

² Draft of Overseas Procedures Chapter 5, Section 13.6, Citizenship and Immigration Canada, Ottawa, May, 2002

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11. The Act also strengthens the Family Class immigration sponsorship program in some ways. The length of a family class sponsorship is reduced from ten years to three years for spouse and common law partners. Canada will no longer exclude close family members on the basis of medical conditions that would be demanding in terms of health and social services.

12. These new provisions reflect the principles of family reunification upheld by UNHCR. Canada is committed to accepting different ways in which families define themselves and in which families reconfigure after disaster and separation. The 'one year window of opportunity' is a new mechanism to reunite family members even when their whereabouts are unknown at the time the refugees arrive in Canada. At the same time it is hoped that the instructions on concurrent processing will alleviate the emergence of new protection issues by sending all family members at the same time wherever possible. The implementation of these initiatives is undertaken with the firm belief that refugees who arrive together or who reunite quickly are more successful in their efforts towards establishment and integration to the benefit of the refugee family and their resettlement country.

Challenges in implementing the new initiatives

13. This paper is written on the eve of the implementation of the new Act and accompanying provisions. Canada has yet to profit from experience and hindsight and will no doubt face considerable challenges as the complexities of these new initiatives unfold. Some difficulties have already been anticipated and some contingencies identified.

14. There are significant challenges in defining family members beyond the usual nuclear family. Those responsible for selection must find ways that are culturally appropriate and responsive to the individual family situation when deciding who to include as de facto family members. Guidelines, including applying the dependency principle enunciated by UNHCR, will prove useful tools. Nevertheless, reducing opportunities for fraud, establishing relationship, dependency and identity will demand broad discretion on the part of the selection officer and may lead to inconsistency in decision-making. Conversely, excessive demands for proof, be it documentary or physical, will bring hardship to the refugee applicants and undermine the spirit and intent of the initiatives. Accurate and comprehensive early registration and documentation as well as enhanced Officer training will be key to the success of this venture.

15. UNHCR has requested countries to consider accepting separated children for resettlement. While Canada agrees that the plight of separated children is a serious concern, in Canada the social welfare of separated children is a provincial jurisdiction. Dialogue between the relevant federal and provincial authorities will need to continue in order to resolve the provincial concerns before Canada will be able to accept separated children through its resettlement programs.

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16. The changes to family reunification will have an impact on Canada's Private Sponsorship of Refugees Program. Concurrent processing and the inclusion of de facto family will mean that larger family groups will need sponsorship in order to arrive at the same time, requiring a greater financial commitment from sponsors and significantly increased efforts at fundraising. Moreover, planning for sponsorship must include those family members who are non-accompanying at the time of the application (including those presumed dead), thus increasing the costs of support and requirements for assistance. Most sponsors are extremely supportive of the new family reunification provisions but at the same time they wonder how it will impact their ability to commit and provide the support needed.

Limitations

17. The narrow application of the One Year Window, while ensuring that nuclear family has the opportunity to unite as quickly as possible and under the same class, is not consistent with the overall goal to recognize de facto family dependants. It is widely known that refugee families become separated at the time of exile and also during asylum and yet may have been traditionally part of the same household and normally reliant on the family for their support. However, non-accompanying de facto family will not benefit from any special family reunification measures and will have to qualify for the refugee program on their own merit.

18. Except for nuclear family members, Family Class sponsorship requires that the sponsoring family member have sufficient income to be able to support themselves plus their sponsored relatives. For newly arrived refugees, especially women head of households, this has been a significant bar to their ability to sponsor their loved ones. Moreover, anyone living on social assistance allowances cannot sponsor. This is an added barrier, especially to women head of households who would benefit from family reunification and potentially would no longer need social assistance support once their spouses rejoin them and the reunited family can support itself.

Conclusion

19. Canadian NGOs welcome the steps forward taken in the new Immigration and Refugee Protection Act and Regulations and believe that they will significantly improve opportunities to assist resettled refugee families to reunite and proceed towards successful integration. There are very practical operational challenges in the field especially in identification, demonstrating relationships and dependency and reducing incidents of fraud and exploitation. Secure, efficient data management will become increasingly important. File management especially of those applications under the One Year Window will pose challenges to locating, accessing and processing refugees after the principal applicants have already departed to the resettlement country. Notwithstanding these concerns, there are high expectations in the refugee community and the sponsoring networks that the new provisions will help alleviate the continuing crisis of split refugee families.