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Via email: Debra.Presse@cic.gc.ca

Debra Pressé
Director
Refugee Resettlement
Refugee Affairs Branch
Citizenship and Immigration Canada
365 Laurier Avenue West
Ottawa, ON K1A 1L1

Dear Ms. Pressé,

Re: Immigration and Refugee Protection Regulations amendments , Canada Gazette, Part 1, March 19, 2011

On behalf of the Citizenship and Immigration Law Section of the Canadian Bar Association (CBA Section), I am writing in response to the notice of regulations proposing to eliminate the “source country class” from the Canadian refugee protection system. The source country class allows residents of designated countries to apply directly to Canada for protection without leaving their country of nationality. To be eligible, applicants must live in one of six designated countries,¹ be seriously and personally affected by civil war or armed conflict, been detained without charges or punished for an act that in Canada would be considered a legitimate exercise of civil rights pertaining to political dissent or trade union activity, or fear of persecution for reasons of race, religion, nationality, political opinion, or membership in a particular social group. We believe that the source country class plays an important role in Canada’s efforts to resettle refugees and should be maintained. We suggest a number of improvements that would allow the class to meet the stated objective of being a “flexible tool for humanitarian intervention.”

Historically the source country class and its previous incarnations have empowered Canadian officials to save the lives of thousands of human rights activists. Canadian lawyers have worked with NGOs in places like Guatemala and Haiti, where they witnessed the source country class being used to protect human rights defenders. Canadian consular officials on the ground in designated countries are best placed to develop the intelligence and close links with human rights and other NGO groups. It is more efficient, timely and effective to empower Canadian officials on the ground to conduct these life and death decisions, rather than compelling refugees to flee their country.

¹ Currently, Colombia, Guatemala, El Salvador, Sudan, Sierra Leone and the Democratic Republic of Congo are designated.

The additional benefit of the source country class is that it enables victims of persecution to avoid hiring smugglers and taking dangerous security risks to leave their country. The government's proposal would close one of the few options people who face persecution have to avoid smugglers when fleeing to Canada.

In justifying removal of the source country class, the Regulatory Impact Analysis Statement lists four key issues that prevent the source country class from meeting its objective.

- Many persons of concern are not eligible for resettlement under the source country class because they do not live in a designated source country. Changing the schedule of designated source countries requires a regulatory amendment, which is impractical for timely responses to humanitarian crises. The schedule has changed only four times since 1997, with the same six countries listed for over 10 years. This suggests that the class lacks the flexibility originally intended.
- The provision is used by non-nationals residing in the source countries who would normally be required to have a referral or a private sponsor, since Canada did not restrict the application of direct access based on nationality.
- Without referral organizations to work with applicants, vulnerable persons of concern are unable to access the application or the mission in some source countries.
- While the Canadian embassy in Colombia received over 4,500 source country class applications annually, few applied in other designated countries. Even in Colombia, the acceptance rate is only 13%.

The CBA Section agrees that most of these concerns are legitimate. However, lives are at stake, and the answer is not to "throw the baby out with the bath water". We therefore propose the following improvements to allow the source country class to be effective and administratively efficient:

- We agree that the program should be responsive to individuals, rather than a program for whole groups. The need for Source Country resettlement may occur in many countries, and Canada should be in a position to respond. Therefore, the program should be universal, rather than limited to named countries. There are also practical reasons for preferring universal application, since naming countries creates political and diplomatic issues. Regulatory criteria for the source country class (discussed below) would assist in ensuring that the class fulfils its original objective of assisting human rights advocates and political dissidents in their country of nationality or habitual residence. The Source country class should allow for urgent and timely protection, through temporary resident permits.
- We suggest that criteria be developed for considering source country applications in accordance with the following:
 - There should be a narrower, more targeted definition of eligibility (rather than meeting the refugee definition minus being outside your country). The definition should describe those whom the class is meant to protect (e.g. threatened human rights activists).
 - Applicants should be referred from international organizations or organizations with international partners who are able to appropriately identify those at risk (e.g. Amnesty International, the Red Cross, and the United Nations High Commissioner for Refugees in countries where they work with internally displaced peoples.)

- Applicants for permanent residence must apply to the Canadian embassies responsible for their country of nationality or habitual residence unless they arrived with a lawful status of 12 months or more. The source country class should also establish similar provisions.
- The source country class should not be available to nationals from visa exempt countries.

There are many examples when effective intervention under the source country class saved lives. These successes depended on commitment from the Canadian officials and strong partnerships with local NGOs. Canada has long been a leader in international protection of human rights defenders. Now is not the time to abandon an important element of our humanitarian traditions.

Yours truly,

(original signed by Chantal Arsenault)

Chantal Arsenault
Chair, National Citizenship and Immigration Law Section