THE CANADIAN BAR ASSOCIATION
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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: Private Sponsorship of Refugees Program (Canada Gazette, Part I, June 9, 2012)

I am writing on behalf of the National Immigration Law Section of the Canadian Bar Association (the CBA Section) to comment on on the proposed regulations on refugee resettlement. The draft regulations were pre-published in Canada Gazette Part I on Saturday, June 9, 2012. Our comments focus on s. 9 of the proposed regulations, amending s. 153 of the *Immigration and Refugee Protection Regulations*.

The CBA is a national association of over 37,000 lawyers, notaries, students and law teachers, with a mandate to promote improvements in the law and the administration of justice. The CBA Section comprises lawyers whose practices embrace all aspects of immigration and refugee law.

Current System

Resettled refugees are either government assisted or privately sponsored. Private sponsors are either sponsorship agreement holders (SAHs) and their constituent groups, groups of five or community sponsors.

The current regulations manage demand for government assisted refugees by requiring a referral from a referral organization, typically the Office of the United Nations High Commissioner for Refugees (UNHCR). Demand from SAHs has recently been managed by imposing a cap on numbers. The cap on SAHs has driven refugee families in Canada to groups of five and community sponsors. The proposed regulation would manage demand from groups of five and community sponsors by insisting, through s. 9(1), on refugee recognition by either the UNHCR or a foreign state.

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Processing Times and Inventories are not the Lens through which to View the Problem

The proposed regulations approach change from the perspective of processing. The Regulatory Impact Assessment Statement cites the overwhelming demand for family reunification, with sponsors naming the applicants they wish to sponsor. The proposed regulation attempts to address the processing demands this phenomenon has generated.

The proposed regulation assumes that long processing times are negative and should be reduced. While the CBA Section agrees with this position in general, reducing processing time by removing large numbers of people from the application process who might, in time, qualify is inadvisable.

Discourage Smuggling with Incentives to use Legal Recources

The proposed regulation makes no reference to the part of Bill C-31, now S.C. 2012, c. 17, the *Protecting Canada's Immigration System Act* , designed to discourage smuggling through what the Minister called "disincentivization". Discouraging smuggling, in our view, requires incentives, "incentivization". Refugees must have legal recourses open to them if they are not to be driven into illegal recourses. By considering only processing flows and not the need for incentives, the proposed regulation would set up an unduly restrictive system.

Genuine refugees, including those with family members in Canada, will be effectively foreclosed by the proposed regulation. In our view, all three flow management devices − referral for government assisted refugees, a cap for SAHs and the now proposed threshold requirement for groups of five and community sponsors of refugee recognition by the UNHCR or a foreign state − are problematic.

Why Requiring UNHCR or Foreign State Recognition as a Refugee is Problematic

UNHCR processing goes through three stages: registration; determination and referral. Referral numbers are artificially small because the UNHCR has difficulties in placing refugees. The number and types of referrals are influenced by willingness of resettlement states to accept referrals. Many refugees needing resettlement are not referred by the UNHCR.

Malaysia is an example of the problems which arise by requiring referral for government assisted refugees. There, the UNHCR determines many Sri Lankan Tamils to be Convention refugees, but refers almost none of them. This group is direly in need of resettlement, because Malaysia treats them as illegals, harasses them, detains them, does not allow the children to go to school, does not allow them to work, denies them medical care and so on. The UNHCR, realizing the limited global willingness to accept referrals, does not, with few exceptions, refer this population for resettlement.

This practice of non-referral plus the cap creates a dire situation for Sri Lankan Tamils, driving them into the hands of smugglers. The proposed regulation would make matters worse. The proposed regulation works at cross purposes with Bill C-31: it cuts off a legal means available to those without UNHCR or foreign state recognition, named group of five or community private sponsorship. It will accordingly increase the likelihood of smuggling.

We accept the value of UNHCR and foreign state determination, although even those are not problem free. In many countries, UNHCR compounds are guarded by local police who exact heavy bribes from foreign nationals to allow access. Many do not go through the UNHCR registration and determination process because they cannot afford to pay the bribes. This problem is even more acute with foreign state determinations in corrupt states.

The Government of Canada is concerned with its own processing delays. However, in many countries with massive refugee influxes, UNHCR or foreign state processing delays are far worse.

No artificial devices are available to avoid these delays. Families of refugees in Canada would be better off awaiting Canadian processing delays than UNHCR or foreign state processing delays.

Neither UNHCR nor Canadian refugee determinations are flawless. The Canadian system recognizes the fallibility of UNHCR and foreign state determinations by doing its own determination, even with a positive UNHCR or foreign state determination. The Government of Canada acts inconsistently by rejecting positive determinations as invariably correct and then refusing to process group of five or community sponsor cases with negative UNHCR or foreign state determinations. If the positive UNHCR or foreign state determinations can be wrong, so, surely, can negative determinations.

The proposed regulation assumes that either UNHCR or foreign state refugee determinations are available. However, in some states, neither is possible. For instance, Sri Lankan Tamil or Tibetan asylum seekers in India can not be determined to be refugees either by the UNHCR or by the Government of India.

Relaxing requirements increases the potential number of applicants, possibly beyond processing capacity. However, for refugees, better to wait than to lose hope. It may be that with increased numbers there will be delays. Refugees may well be prepared to wait out the delays. But if even waiting is not a possibility resort to smugglers becomes much more likely.

We accordingly oppose the change proposed in s. 9 of the draft regulations and recommend that it not be enacted.

Yours very truly,

(signed by Tamra L. Thomson for Joshua Sohn)

Joshua Sohn
Chair, National Immigration Law Section