

The New Refugee Determination System



CAME INTO FORCE ON DECEMBER 15, 2012



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ELIGIBILITY CRITERIA



- ❑ Set out in section 101 of IRPA
- ❑ Claim is Made to Immigration Officer who decides eligibility
- ❑ It is an administrative process

ELIGIBILITY CRITERIA



Sec 101

- (A) refugee protection has been conferred on the claimant under this Act;
- (b) a claim for refugee protection by the claimant has been rejected by the Board;*
- (c) a prior claim by the claimant was determined to be ineligible to be referred to the Refugee Protection Division, or to have been withdrawn or abandoned;*
- (d) the claimant has been recognized as a Convention refugee by a country other than Canada and can be sent or returned to that country*
- ;(e) the claimant came directly or indirectly to Canada from a country designated by the regulations, other than a country of their nationality or their former habitual residence; or*
- (f) the claimant has been determined to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality, except for persons who are inadmissible solely on the grounds of paragraph 35(1)(c).*

ELIGIBILITY CRITERIA



- Note in the case of a person found inadmissible pursuant to serious criminality he or she will only be ineligible to make a claim if the conviction is punishable by ten years;
- Applies to convictions inside and outside of Canada;

DESIGNATED COUNTRY OF ORIGIN



- Criteria
- Who designates
- Consequences of designation

OVERVIEW



- Designation is at the discretion of the Minister based on general criteria related to acceptance rate or Minister's opinion that the country is democratic
- There is no need for consultation
- Once designated nationals of the country are subject to expedited hearings; denial of work permits; health care; denial of appeal to RAD; 3 year bar for applying for PRRA;

THE CRITERIA FOR DESIGNATION



- (a) in the case where the number of claims for refugee protection made in Canada by nationals of the country in question in respect of which the Refugee Protection Division has made a final determination is equal to or greater than the number provided for by order of the Minister
 - (i) if the rate, expressed as a percentage, that is obtained by dividing the total number of claims made by nationals of the country in question that, in a final determination by the Division during the period provided for in the order, are rejected or determined to be withdrawn or abandoned by the total number of claims made by nationals of the country in question in respect of which the Division has, during the same period, made a final determination is equal to or greater than the percentage provided for in the order, or

THE CRITERIA FOR DESIGNATION



- (ii) if the rate, expressed as a percentage, that is obtained by dividing the total number of claims made by nationals of the country in question that, in a final determination by the Division, during the period provided for in the order, are determined to be withdrawn or abandoned by the total number of claims made by nationals of the country in question in respect of which the Division has, during the same period, made a final determination is equal to or greater than the percentage provided for in the order

THE CRITERIA FOR DESIGNATION



OR

(b) in the case where the number of claims for refugee protection made in Canada by nationals of the country in question in respect of which the Refugee Protection Division has made a final determination is less than the number provided for by order of the Minister, if the Minister is of the opinion that in the country in question

(i) there is an independent judicial system,

(ii) basic democratic rights and freedoms are recognized and mechanisms for redress are available if those rights or freedoms are infringed, and

(iii) civil society organizations exist.

THE CRITERIA FOR DESIGNATION



- To be determined by Order not by regulation
- The claims must reach a certain threshold number determined by order
- The number of claims rejected abandoned or withdrawn as a percentage of the total claims is at or below the number in the order
- The number of claims abandoned or withdrawn as a percentage of the total claims is at or below the number in the order

A FURTHER DISCRETION



Even if the number of claims or the rejection rate does not meet the threshold a country can be designated if the Minister decides that:

- (i) there is an independent judicial system,
- (i) basic democratic rights and freedoms are recognized and mechanisms for redress are available if those rights or freedoms are infringed, and
- (i) civil society organizations exist.

CRITERIA



- The Numbers are set by the Minister by Order
- According to the backgrounder:

First, a country would have to meet one of two quantitative thresholds or limits set out in a ministerial order. The proposed triggers for a review are based on rejection rates, withdrawal and abandonment rates. A rejection rate (which includes abandoned and withdrawn claims) of 75% or higher would trigger a review. Similarly, an abandonment and withdrawal rate of 60% or higher would trigger a review.

CRITERIA



- In terms of the second criteria the backgrounder notes:
For claimants from countries with a low number of claims, a qualitative checklist would be established in legislation. The qualitative criteria checklist would include:
 - the existence of an independent judicial system;
 - recognition of basic democratic rights and freedoms, including mechanisms for redress if those rights or freedoms are infringed; and
 - the existence of civil society organizations.
- Although there may be few refugee claimants from these countries, it may still be appropriate to designate these countries under the principle that they are generally not considered to be refugee-producing countries.

NO REQUIREMENT FOR CONSULTATION



- The Legislation no longer provides for a requirement for consultation prior to designation
- Countries for designation include the EU and Hungary and Mexico

NO PARTIAL DESIGNATIONS



- The original proposal in 2010 allowed for partial designations for a DCO
- C-31 eliminates this possibility

CONSEQUENCES OF DESIGNATION



EXPEDITED REFUGEE HEARING

- Refugee claimants from a designated country, these claims would be heard on an expedited basis by the IRB. DCO claims would be heard by RPD within 30 days for claims made at inland immigration offices and within 45 days for claims made at ports of entry. Hearings for claimants from all other countries would occur within 60 days.

CONSEQUENCES OF DESIGNATION



NO RIGHT OF APPEAL TO RAD

- C-31 eliminates the right of Appeal of persons from Designated Countries of Origin

CLAIMS



There are two ways to make claims:

- a. Port of entry claims
- b. Inland claims

PORT OF ENTRY CLAIMS



- Make claim to officer at time of arrival in Canada
- Officer will determine eligibility
- If eligible officer will provide Basis of Claim Form and set date for hearing;
- Claimant has 15 days to file Basis of Claim Form
- Failure to do so will result in Abandonment of Claim
- Hearing is set within 45 days; 30 days if the claimant is from a designated country of origin.

INLAND CLAIMS



- If claimant does not make claim at port of entry he or she can make inland claim.
- In order to make inland claim claimant must come with the Basis of Claim form already prepared
- Officer will determine eligibility and if claimant is eligible sets date for hearing—30 days if claimant is from designated country of origin; 45 days if not

TIME LIMITS



- Basis of Claim filing—if claim made at port of entry 15 days after claim
- If made inland Basis of Claim form must be presented when claim is made

DIFFICULTIES



- Counsel will have difficulty complying with time limits to prepare form and to be available for hearing given that there is no flexibility in setting dates
- Claimants will have difficulty obtaining counsel to prepare Basis of Claim form; to obtain counsel for hearing; to obtain psychological reports and other corroborating documents

DESIGNATED FOREIGN NATIONALS



- The Minister of Public Safety has the power to designate a group as an irregular movement.
- Criteria are very broad—two or more people coming without documents or in circumstances where cannot be examined;
- **20.1 (1) The Minister may, by order, having regard to the public interest, designate as an irregular arrival the arrival in Canada of a group of persons if he or she (a) is of the opinion that examinations of the persons in the group, particularly for the purpose of establishing identity or determining inadmissibility — and any investigations concerning persons in the group — cannot be conducted in a timely manner; or (b) has reasonable grounds to suspect that, in relation to the arrival in Canada of the group, there has been, or will be, a contravention of subsection 117(1) for profit, or for the benefit of, at the direction of or in association with a criminal organization or terrorist group.**

Effects of Designation



- The Minister designated the first group of irregular migrants. As a result the members of the groups become designated foreign nationals.
- As designated foreign nationals they are subject to a different detention regime. They receive one detention review after 14 days and then reviews every 6 months. The onus shift to the designated foreign national to prove he/she should be released from detention.
- The designated foreign national cannot apply for permanent residence for five years after their claim has been determined. They are not eligible to apply for a refugee travel document even if accepted as a refugee.
- Designated foreign nationals do not benefit from an automatic stay of removal while their case is being considered at the Federal Court and are not eligible to appeal to the Refugee Appeal Division.

Basis of Claim - BOC



- PIF and BOC are very similar
- BOC asks questions in more direct manner
- Same information is required as before—background info and basis for claim
- Timeline is much shorter—15 days.

Right to Counsel



- These procedures will have dramatic effect on access to counsel.
- Timelines are such that most claimants will not be able to retain counsel to do Basis of Claim form;
- Tribunal will still be able to draw adverse inferences from omissions etc.
- Claimants will find it difficult to locate counsel who can be available for hearing set within 30-45 days of claim
- Claimants and counsel will find it difficult to obtain corroborating evidence.

Refugee Appeal Division - RAD



- Appeal will be paper-based, with oral hearings in exceptional cases.
- Appeals will be decided by Governor in Council appointees at the RAD.
- Decisions on appeals are expected within 90 days.
- Who can appeal
- Scope of the appeal
- Timelines

Judicial Review - JR



- Effect of the new rules on JR

Stay of Removal



- Who
- When
- How

Pre-removal Risk Assessment



- Application
- Decisions
- Who will get PRRA
 - For most claimants, allowing only one PRRA in a 12 month period –
 - For claimants from DCOs, the bar on accessing a PRRA will be extended to 36 months.

No PRRA



- Claimants will have no right to a PRRA until one year after claim is decided; 3 years in the case of claimants from designated countries of origin

Detention



- Pending determination of claims for persons who are designated migrants

H&C Applications



- Effect of the new rules on H&C applications
 - An H&C application cannot be submitted while a refugee claim is pending.
 - Failed refugee claimants will be barred from requesting H&C for one year following a final negative IRB decision.
- Exceptions
 - risk to life caused by the inability of country of nationality to provide adequate health or medical care,
 - adverse effect on the best interests of a child directly affected.

Appeals to Refugee Appeal Division



- Some claimants will have a right to appeal to the Refugee Appeal Division;
- Claimants who are from designated countries of origin; claimants who are designated as designated foreign migrants; claimants who came to Canada through the US and those found to have manifestly unfounded claims or claims without credible basis will not get Appeal
- Appeals are in writing and must be filed within 15 days and perfected within 30 days

Questions/Comments



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