



Balanced Refugee Reform

Bill C-11, An Act to Amend the Immigration and Refugee Protection Act, and the Federal Courts Act

A submission to the House of Commons Standing Committee on Citizenship and Immigration

May 20, 2010

Introduction

The Canadian Society of Immigration Consultants (CSIC) is pleased to make the following submission to the House of Commons Standing Committee on Citizenship and Immigration. Many CSIC members are involved in assisting refugee claimants present their case before the government, and it is based upon this experience that CSIC make this submission. CSIC hopes that the material submitted along with the issues raised will aid the Committee in its deliberations on Bill C-11, An Act to amend the Immigration and Refugee Protection Act (IRPA) and the Federal Courts Act.

Canadian Society of Immigration Consultants

The Government of Canada amended the Immigration and Refugee Protection Act Regulations on April 13, 2004 so that those who, for a fee, advise and represent potential immigrants before Citizenship and Immigration Canada (CIC), the Immigration and Refugee Board (IRB), and the Canadian Border Services Agency (CBSA) need to be members in good standing with either the Canadian Society of Immigration Consultants, a provincial or territorial bar, or the Chambre des notaires du Québec. CSIC has fully complied with all requirements of its original deliverables agreement with CIC during the past six years.

Unscrupulous Consultants

It has been noted that throughout the Committee's meetings on Bill C-11, both members and witnesses have often mentioned that immigration consultants "lie to and swindle clients" and that "the scourge of consultants is terrible and contributes to the abuse of the system". CSIC is concerned that statements such as these contribute to the misperception that all immigration consultants are unscrupulous.

Since its inception, CSIC's membership has grown to more than 1,700 consultants who are located across Canada and overseas. CSIC's member complaints and discipline processes are active and effective, incorporating investigations and a range of remedial and punitive measures to ensure member compliance with CSIC's Rules of Professional Conduct and By-Laws. **CSIC has disciplined over 225** of its members for professional misconduct as well as

revoked the membership of over 800 members for failing to meet the its exacting standards.

In addition to fulfilling its requirement to govern its own members, CSIC has worked to raise public awareness by advertising in ethnic and mainstream publications and via electronic means to inform consumers about the importance of using only authorized representatives in immigration applications. CSIC has also been active through its complaints process in identifying individuals who are acting as “ghost agents” and referring these individuals to proper authorities. These ghosts are not only creating a bad reputation for honest, hard-working consultants who are CSIC members, they are creating a poor reputation for Canada.

However, **as the government has not established any criminal or financial penalties for ghost consulting, ghost agents continue to operate with impunity** both in Canada and abroad. CSIC is committed to working with the government to craft legislative and regulatory frameworks to eliminate the scourge of ghost agents.

Bill C-11

After a thorough examination of the proposed legislation, CSIC finds that the government is seeking to make the refugee determination system more efficient. By splitting claimants into categories – those from safe countries of origin and those from other countries – the government is seeking to balance the needs of those most likely in need of protection with the need to reduce the abuse of the refugee determination by those who would take advantage of Canada’s generosity. While all claimants would retain the ability to demonstrate their need for Canada’s protection from persecution, those from safe countries will not be able to avail themselves of multiple levels of appeal. Those claimants from regions where persecution is rampant would have access to the Refugee Appeal Division, a welcomed development.

Broadly speaking, CSIC is supportive of the government’s efforts to reform the refugee process in Canada, especially as it will balance restrictions on appeal rights and access to the humanitarian and compassionate stream with the resettlement of more refugees from abroad. The proposed amendments to IRPA in C-11 are, in CSIC’s view, consistent with the protection of the public interest. The public interest is best served when claimants are provided with well-reasoned, informed and fast decision-making. CSIC believes that the legislative changes proposed meet this test.

Timelines

CSIC has noted that the department of Citizenship and Immigration seeks to have claimants interviewed within 8 days of their claim being submitted, and a hearing scheduled within 60 days of their claim. The department also seeks to have an appeal at the IRB within 4 months of an appeal being filed.

Some witnesses before the Committee have mentioned that long delays create uncertainty for claimants. Others have stated that newly arrived claimants are in no emotional or physical position to adequately make their case before a government official.

CSIC agrees that decisions, both positive and negative, should be timely. It is the delay in decision-making, both at the first hearing and in subsequent appeal levels, that creates a “pull-factor” for those people who seek to abuse the refugee determination system. Quick decision-making may be a deterrent to those who are not fleeing persecution, but seek to take advantage of Canada’s generous social services; by limiting the time they would be physically in the country, the economic benefit of being in Canada may be outweighed by the cost of travelling to Canada.

CSIC supports these timelines provided that the IRB, CIC and CBSA receive sufficient resources to meet their commitments.

In our opinion, both the 8-day period for an interview and the 60-day hearing are operationally feasible, should there be sufficient staff to conduct interviews and hearings. Irrespective of whatever timelines are selected by the government, CSIC is willing to work with the government to ensure that **our duty list of close to 200 certified immigrant consultants are available on a 24-hour, 7 days a week basis** to assist claimants with their interviews and hearings. Many of CSIC’s members are well positioned to assist refugee claimants due to their experience and background; often our members are able to speak to claimants in their mother tongue, thus providing an additional level of comfort to them.

Designated Countries of Origin

The concept of nationals of certain designated countries as being excluded from certain avenues of appeal and from accessing the humanitarian and compassionate considerations stream of processing is the appropriate balance to

the establishment of the Refugee Appeal Division (RAD) of the IRB. Without the ability to limit which claimants may access the RAD, the government would be simply inserting another possible avenue of appeal into the current appeal-heavy process. This would result in more people seeking to abuse the system in the hope of remaining in Canada longer.

The determining factors in the success of such a list of Designated Countries of Origin will be the number of countries placed on the list and the selection of countries to be on the list. Too many countries and the possibility of denying protection to those truly in need increases substantially. Too few countries on the list may result in too many people without true protection needs clogging the system and creating yet another backlog in processing.

Similarly, should certain countries that have produced movements of unfounded refugee claims (such as Trinidad and Tobago in the late 1980's, Chile in the 1990's and more recently the Czech Republic) not be included as Designated Countries, then the likelihood of large numbers of refugee claimants would threaten to overwhelm the system. This would be particularly true if the Temporary Resident Visa requirements for these countries were removed. At the same time, if certain refugee-producing countries (such as Somalia, the Democratic Republic of Congo, Burma, etc.) were included in the list, the possibility of those in true need of our protection may be denied it and returned to possible physical harm.

CSIC looks forward to working with the government to develop objective, regulatory criteria to determine which countries or groups should be designated.

Refugee Appeal Division

CSIC fully supports the implementation of the enhanced RAD. CSIC believes that this body will serve as an important level of appeal to assess questions of fact and CSIC further supports the ability of claimants to introduce new evidence to this level of appeal. This will serve to reduce the number of challenges made to the Federal Court as well as provide for a tribunal where claimants may use representation other than members of the various law societies. By allowing claimants the option of using Certified Canadian Immigration Consultants, the financial burden on those found to be bona fide refugees might be reduced.

Conclusion

Bill C-11 represents, in our view, a step forward in addressing many of the current inadequacies in the refugee determination process. CSIC believes that shorter timelines for the hearing and determining refugee claims will benefit both the claimants and the Canadian public. CSIC looks forward to collaborating with the government in the coming months on the issues surrounding the implementation of the legislation and the development of the necessary regulations.