Submission to House of Commons Standing Committee on Citizenship and Immigration (CIMM) Study on the Impact of COVID-19 on the Immigration System – 30th November 2020

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Thank you Madam Chair and Honorable members of this Committee for this invitation. I am a law professor at the University of Calgary Faculty of Law. I am also the president of African Scholars Initiative – ASI-Canada, a registered not-for-profit organisation that seeks to attract bright future scholars of African descent to pursue graduate education in Canada.

As a law professor, intellectual debate in my classroom is exceedingly informed when there is diversity of opinions among my students. Achieving such diversity become problematic when you have an immigration system that almost always approves study permit applications for students from countries located predominantly in Europe, and at the same time almost always refuses study permit applications from students from countries located predominantly in Africa.

As president of ASI-Canada, the greatest challenge we have faced in attracting bright future scholars of African descent to pursue higher education in Canada has always been dealing with the Canadian immigration officers especially at the visa office in Nairobi, Kenya. Study permit applications are routinely denied by visa officers relying on subsection 216(1) of the IRPR (a provision similar to section 179(b) of the IRPR). The study permit applications are routinely refused because the visa officers are 'not satisfied that the applicants will leave Canada at the end of their study'.

This has resulted in denial of over 80% of the study permit applications in the visa offices in Africa. The Nairobi visa office is especially infamous for this. In fact, among my immigration lawyer colleagues in Canada, there is common saying that when you are preparing a study permit application for the Nairobi visa office, you should prepare the application in anticipation of litigation. This is because the application is likely going to be refused, resulting in judicial review before the Federal Court, with the Minister's counsel making an offer to settle and have the application sent back to the visa office, then the application is refused again, and then you come back to the Federal Court to relitigate. Thus, the prospective international students often spend greater percentage of the money meant to fund their education to rather pay litigation fees arising from refusal decisions by the visa officers.

Madam Chair and Honorable Members, I wish to also make submissions relating to family reunification in the context of Canadian children in Canada who are children of foreign nationals outside Canada. For Canadian children whose parent are in countries that require visa to enter Canada, family reunification could be nightmarish.

I would like to narrate the sad experience of a 5 year-old Canadian child, who for privacy reasons I would refer to as Baby G. Baby G. is a Canadian citizen who returned to Canada in 2018 with her mom – an international student. Baby G was very close to her father and this separation resulted in adverse psychological impact on Baby G. The mom invited the biological father to visit Baby

G in Canada with the hope his temporary presence in Canada would help address the psychological problem.

The visa application filed at the Nairobi visa office in September 2019 was refused after 130days. The visa officer was not satisfied that the dad will leave Canada because of his "personal assets and financial status" even though the dad submitted bank statements with a total balance of the equivalent of about $66,000 CAN. In reaching this decision, the visa officer gave zero consideration to the best interest of the Canadian child adversely affected by their decision.

Immediately litigation was commenced at the Federal Court challenging the decision, the Minister made an offer to settle on the condition that the litigation is discontinued, the visa officer's decision would be sent back to Nairobi visa office for redetermination. The applicant trusted the Minister and the Crown, discontinued the application on 24 April, 2020. Till date, the Minister has failed to fulfill his undertaking to have this application redetermined. All correspondence to the visa office in respect of this undertaking in the past 7 months has never received any response from the Minister. Sadly, Baby G has now been clinically diagnosed with behavioural disorders which her specialist pediatrician attributed to arising when a child is separated from a caregiver the child is emotionally attached to. These issues have since deteriorated as a result of the Covid-19 pandemic and its consequential social distancing requirement which has dramatically reduced Baby G's ability to interact with other children in school and in her neighbourhood.

On 1st November 2020, Baby G's grandmother who is a Canadian permanent resident, apparently concerned about the deteriorating psychological health of her grandchild, sent a bond undertaking to IRCC undertaking to provide cash bond up to $5000 to guarantee that Baby G's father would depart Canada if granted a visa to visit his 5year-old child in Canada. Over fourteen months after this visa application was filed, Baby G's father has not been able to secure a visa to visit his Canadian child.

Baby G's experience is not an isolated case. This is the lived life experience of Canadian children of foreign national from visa countries.

Recommendations:

1. That the Minister of Citizenship and Immigration undertake a comprehensive study of the study permit application process at the Canadian visa offices in African especially in Nairobi to determine the reasons responsible for the extremely high rate of study permit refusals in the region, and addressing the same accordingly;

2. When visa applications are returned to visa offices for redetermination as a result of successful legal challenge at the Federal Court or as a result of an offer to settle made by the Minister, the redetermination application should take priority over new applications filed at the visa office. The redetermination applications should not be treated as a new application for the purpose of processing.

3. The establishment of an independent Ombudsman that can among others hear complaints relating to:

a. applications at foreign visa offices that have unreasonably exceeded their normal processing times;
b. negative decisions arising from redetermination of visa applications following an initial legal challenge at the Federal Court. This will save the Crown and the applicants the cost of a second litigation at the Federal Court;

4. Visa officers who are considering visa applications relating to reunification of a Canadian child with a foreign national parent resident outside Canada should take into consideration the best interest of the Canadian child who will be affected by the outcome of the officer's decision. This will be in line Articles 3 and 9 of *Convention on the Rights of the Child*, Can. T.S. 1992 No. 3

Appendix:

Articles 3 and 9 of *Convention on the Rights of the Child*, Can. T.S. 1992 No. 3

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.