



December 13, 2021

Via email: sean.fraser@parl.gc.ca

The Honourable Sean Fraser, P.C. M.P.
Minister of Immigration, Refugees and Citizenship
2A - 115 MacLean Street
New Glasgow, NS B2H 4M5

Dear Minister Fraser:

Re: Facilitative measures for Afghan nationals

I write on behalf of the Immigration Law Section of the Canadian Bar Association (the CBA Section) to propose changes to enhance Canada's response to the humanitarian crisis in Afghanistan.

The CBA is a national association of 36,000 lawyers, law students, notaries and academics, from every jurisdiction of Canada, with a mandate that includes seeking improvements in the law and administration of justice, and access to justice. The CBA Section is comprised of over 1,200 lawyers, practising in all aspects of immigration law and rendering professional advice and representation in the Canadian immigration system to clients in Canada and abroad.

The CBA Section commends IRCC's efforts to evacuate vulnerable individuals, resettle refugees, and expedite application processing, including for Afghans who assisted the Canadian government. We endorse the sentiment and commitment expressed by Minister Mendicino in August 2021:

Offering refuge to the world's most vulnerable speaks to who we are as Canadians, particularly in times of crisis. As more Afghan refugees continue to seek shelter in Canada, we're redoubling our efforts to help 20,000 Afghans refugees—who remain vulnerable wherever they go—find safety here. The situation in Afghanistan is heartbreaking, and Canada will not stand idly by.¹

In response to the current turmoil, the CBA Section launched the [**CBA Afghanistan pro bono initiative**](#) in September 2021. Participating lawyers provide certain pro bono services, including legal advice, to those seeking to take advantage of IRCC's programs and measures to safely bring eligible Afghan nationals to Canada.

The experience of CBA pro bono lawyers reveals that the existing relief measures for Afghans are insufficient, too restrictive, encumbered by extensive delays, and fraught by lack of clarity and relevant information needed by applicants. The lawyers receive many queries and desperate pleas

¹ [Canada expands resettlement program to bring more Afghans to safety](#) Since this announcement, the federal government doubled its resettlement commitment to bring 40,000 refugees and other vulnerable Afghans to safety to Canada.

for help from Afghans, as well as compassion-driven Canadians eager to assist. In most cases, these concern Afghans who are ineligible under the current programs or have followed the application instructions on the IRCC website and have been waiting for months for meaningful response. Our advice often amounts to explaining why the Afghans who reach out to us are not eligible under these programs, sympathizing with their predicament, and expressing humble hope that the Canadian government may relax some of the restrictions, introduce additional resettlement pathways, and pick up the pace with processing.

In this context, we recommend additional relief measures and concrete, attainable actions to better serve the Afghan population:

1. waive the regulatory requirement of a formal refugee status for those Afghans seeking resettlement through private refugee sponsorship;
2. recognize Afghans who are extended family members of Canadian citizens and permanent residents as de facto family members eligible for sponsorship under Family Class;
3. exercise flexibility and compassion in adjudicating applications for TRVs (or TRPs in the alternative) from those Afghans who do not qualify for refugee resettlement, and elevate priority for the processing of those applications; and
4. institute procedures and means to communicate with Afghan applicants expeditiously and to provide meaningful, individualized responses in each case.

We elaborate on these recommendations below.

1. Waive requirement for formal refugee recognition

The federal government has a long and commendable history of bringing large numbers of refugees from turbulent parts of the world to safety and stable life in Canada through private sponsorships by individuals and organizations. Private sponsorship of refugees can be undertaken through three categories: Sponsorship Agreement Holders (SAH); Community Sponsors; and Groups of Five. Community Sponsors and Groups of Five are subject to the regulatory requirement that the individual or principal applicant to be sponsored has formal refugee status and a corresponding documentary proof, conferred by the United Nations High Commissioner for Refugees (UNHCR) or a foreign state.² SAHs are exempt from this requirement.

The experience of our members involved with the CBA Afghanistan pro bono initiative reveals that Afghans who have managed to flee to relative safety in neighboring countries are enduring significant obstacles registering as refugees with UNHCR or relevant authorities of the host state. Pakistan and Iran, the countries that together house about 90% of displaced Afghans, starkly exemplify such barriers. In **Pakistan**, the process to register with UNHCR is plagued by multi-year wait times to have a case processed.³ Afghans who contact our pro bono lawyers lament the destitution and precarious, dangerous conditions they endure as asylum-seekers in Pakistan: exorbitant and unaffordable housing prices; no access to elemental healthcare if they are ill; raids and evictions meted out by the Pakistani police.

Moreover, Afghan asylum-seekers report being bounced between the Canadian Embassy and UNHCR:

According to the IRCC, we have to apply for Canadian asylum through the UNHCR, while the UNHCR in Pakistan does not register us as asylum seekers. All we are told is that we should talk directly to the Canadian Embassy in Pakistan.⁴

² See *Immigration and Refugee Protection Regulations (IRPR)*, s. 153.

³ [Afghan Asylum Seekers Frustrated by Inconsistencies Between Agencies](#)

⁴ [Afghan Asylum Seekers Frustrated by Inconsistencies Between Agencies](#)

The UNHCR chapter in Pakistan formally and prominently states on their website that:

UNHCR does NOT make referrals to the programmes recently announced by governments to relocate or evacuate Afghan nationals. If you have been provided this information, it is incorrect. All information for and applications to them must be done through their relevant contact details and procedures.⁵

Afghans who have fled to Pakistan and are seeking resettlement to Canada find themselves in a vicious catch-22 predicament where obtaining the refugee recognition by UNHCR is not possible.

Getting into Pakistan in the first place is a prohibitive and dangerous pursuit. The Afghanistan/Pakistan border is formally closed to everyone except those with valid travel documents or work authorizations.⁶ Desperate Afghans who attempt to enter the country and line up at the border are subjected to bribe extortions and violence by smugglers and Pakistani border guards, and face risk of death or serious illness due to dehydration and heatstroke.⁷

In Iran, refugee registration and determination are carried out not by the UNHCR but by the government of Iran. According to IRCC's Canadian Refugee Support Training Program, few Afghans are recognized as refugees by the Iranian authorities.⁸ It has been reported that Iran is deporting many Afghan refugees while also confining them to crowded, filthy detention camps and subjecting them to physical brutality and other mistreatment.⁹ Receiving formal refugee recognition in Iran is unattainable for most Afghan asylum-seekers.

While SAHs are not subject to the sponsorship requirement of formal refugee recognition for displaced individuals, they are limited in their capacity to support refugees in Canada for at least 12 months. IRCC also imposes caps on the number of new sponsorship applications SAHs can submit each year.¹⁰

The obstacles now faced by displaced Afghans in obtaining a formal refugee status preclude resettlement through private sponsorships by Community Sponsors and Groups of Five. While there are just over 130 SAHs in Canada (outside of Quebec), more Groups of Five and Community Sponsors can be formed quickly and easily to act as sponsors. The requirement for official refugee recognition poses serious impediments that are inconsistent with Canadians' eagerness to help.

RECOMMENDATION

We recommend that IRCC recognize displaced Afghans as *prima facie* refugees and waive the requirement of formal refugee status in the context of private sponsorship by Community Sponsors and Groups of Five.

The legal mechanism to temporarily suspend this regulatory requirement is in s. 25.2 of the *Immigration and Refugee Protection Act* (IRPA), which authorizes the Minister to grant exemptions from any criteria or obligations under IRPA if public policy considerations justify doing so.¹¹

⁵ [Information for new arrivals](#)

⁶ [Policy Responses to Support Afghans Fleeing Taliban-Controlled Afghanistan](#)

⁷ [Afghans dying at border as tensions intensify between Taliban, Pakistan](#)

⁸ [Summary of refugee registration and refugee status determination by Country of Asylum](#)

⁹ [Iran deporting thousands of Afghan refugees](#)

¹⁰ [Help Centre](#)

¹¹ 25.2 (1) The Minister may, in examining the circumstances concerning a foreign national who is inadmissible or who does not meet the requirements of this Act, grant that person permanent resident status or an exemption from any applicable criteria or obligations of this Act if the foreign national complies with any conditions imposed by the Minister and the Minister is of the opinion that it is justified by public policy considerations.

There is precedent for applying public policy considerations under s. 25.2 to waive the requirement of a formal refugee recognition under IRPR s. 153. In 2015, Minister Alexander issued a one-year exemption to Syrian and Iraqi refugees to facilitate and increase sponsorships by Groups of Five and Community Sponsors. Minister McCallum extended the exemption for another year in 2016.¹² Over 25,000 Syrians and Iraqis were resettled to Canada in just four months (November 2015 to February 2016) as government-supported or privately sponsored refugees.¹³ The temporary suspension of the refugee-status requirement for Community Sponsors and Groups of Five was a major factor in effecting a hefty resettlement effort in a short time. The federal government publicly invoked this in September 2021, announcing its commitment to welcome 40,000 Afghan refugees to Canada by 2023.

As of November 2021, only 400 Afghans with confirmed refugee status from the UNHCR or a foreign state have been brought to Canada through the current humanitarian program.¹⁴ Canada is unlikely to fulfill its commitment to resettle 40,000 at-risk Afghans by 2023 unless it implements dedicated policy under s.25. 2 of the IPRA and caps are waived for individual and group sponsors.

2. Extend eligibility for Family Class sponsorship to non-immediate family members

Many at-risk Afghans are related to Canadian citizens or permanent residents who do not meet the regulatory definition of “immediate family member” (i.e., spouses, common-law partners, and single children under 22 years of age). Parents, adult siblings, aunts and uncles, cousins, nieces and nephews are not readily and expressly recognized in IRPA as sponsorable relatives under the Family Class.¹⁵ IRCC policy extends eligibility under various immigration programs to “de facto” family members, individuals who do not meet the statutory definitions of “family members” and “members of Family Class” but are in a genuine relationship of financial, social, or emotional dependence with their Canadian-citizen or permanent-resident relatives. De facto family members are rendered eligible for immigration on humanitarian and compassionate (H&C) grounds pursuant to IRPA s. 25. IRCC processing guidelines under this policy invite decision-makers to consider the nature and duration of the familial relation, the extent of financial and emotional dependence, the anticipated impact of a separation, and to determine “whether compelling H&C reasons exist to allow such persons to immigrate to Canada.”¹⁶

Officers often do not apply this policy favourably and refuse sponsorship applications of those not meeting the Family Class definitions and seeking sponsorship as de facto family members on H&C grounds. CBA Section members find that sponsorships involving de facto family members are encumbered by extensive, multi-year processing delays (relative to processing sponsorship applications for those in Family Class categories).

RECOMMENDATION

To reverse the adverse outcomes in the application of this policy, we recommend that IRCC decision-makers be instructed to exercise elevated degrees of compassion, empathy and acceptance when assessing the relationships between sponsors and their Afghan relatives who do not meet the Family Class definitions. Sponsors and applicants should not be subject to onerous evidentiary requirements to demonstrate the nature and extent of financial or emotional dependence. Assessing officers should readily recognize the existence of de facto family relationships between Canadian sponsors and their extended relatives in Afghanistan, and facilitate eligibility decisions.

¹² [ARCHIVED – Temporary public policy to facilitate the sponsorship of Syrian and Iraqi refugees by Groups of Five and Community Sponsors](#)

¹³ [Canada's response to the conflict in Syria](#)

¹⁴ [Supporting Afghan nationals: Key figures](#)

¹⁵ The categories of family members eligible for sponsorship are enumerated in IRPR s. 117(1).

¹⁶ [The humanitarian and compassionate assessment: De facto family members](#)

3. Prioritize Temporary Resident Visa and Temporary Resident Permit applications

Some Afghan nationals with immediate or extended family members in Canada have been applying for temporary resident visas (TRVs) or Temporary Resident Permits (TRPs). IRCC should elevate and follow through with priority processing for Afghans applying for TRVs and TRPs. Processing officers should show flexibility and compassion in their assessment of TRV eligibility applications and TRP decisions.

The *Facilitative measures to support those affected by the crisis in Afghanistan* (Facilitative Measures), instituted by IRCC on August 23, 2021, outline the framework for priority processing of certain Afghan applicants.¹⁷ While we applaud IRCC's intent to prioritize applications from Afghans' in practice, there are no indications that the Facilitative Measures have been effective in prioritizing case processing. Afghan applicants for TRVs/TRPs, whether inside or outside of Afghanistan, are experiencing significant processing delays.

IRCC processing networks are instructed to "prioritize the processing of temporary residence applications of Afghan nationals who are outside Canada and are immediate family members of Canadian citizens," and officers are instructed to use the code "Afghan Special Measures 2021" as a tracking mechanism for applications submitted by Afghan nationals. In practice, when applicants try to follow up and request a status update via the webform or a designated email address¹⁸ on their TRV/TRP applications, they typically receive an automated response thanking them for contacting the IRCC's dedicated Afghanistan team, but this robotic message does not entail any case-specific information. In some cases, Afghan applicants receive a response that their application "is already flagged for priority processing," but the result of flagging remains unknown.

When an Afghan's TRV/TRP application has been in process for several weeks, flagging for priority processing loses its relevance. Many Afghan applicants are in hiding from the Taliban in Afghanistan – or on a precarious status in another country – and can rarely afford long wait times for a decision, even if their application has been marked for priority-processing. Without a specific and knowable processing timeline, applicants have no indication of when to expect a decision, which intensifies anxiety for this vulnerable population already subjected to distress and suffering.

RECOMMENDATIONS

We urge IRCC to:

- **Waive the requirements to complete biometrics and medical exams, given the inherent barriers to Afghans to fulfill them;**
- **Instruct processing networks and visa offices to follow a concrete and measurable processing standard of 30 days for TRV/TRP applications for Afghan applicants;**
- **Ensure reliable priority processing, and that applicants be instructed to state "Afghan Special Measures 2021" as a code in their applications.**
- **Expand the scope of priority processing of TRV/TRP applications to all Afghan applicants, not only those who are immediate family members of Canadian citizens or permanent residents.**
- **Instruct the processing officers to assess TRV/TRP applications with flexibility and compassion, considering the humanitarian crisis they are facing. Officers should not assess the applicants' "temporary intent" too rigidly against the statutory**

¹⁷

[Facilitative measures to support those affected by the crisis in Afghanistan](#)

¹⁸

IRCC.SituationAfghanistan.IRCC@cic.gc.ca

requirement of demonstrating the likelihood of returning to the home country at the end of their authorized stay in Canada.¹⁹

The processing guidelines for financial capacity of TRV applicants from Afghanistan should also consider financial obstacles. Many applicants are unable to access their assets or have modest financial resources. Decision-makers should consider issuing a TRP and readily recognize the applicant's compelling need to enter Canada in the context of the government's humanitarian commitments in cases where compliance under IRPR s. 179 is not satisfactory.²⁰

Overall processing of TRV/TRP applications must be carried out in an urgent, expeditious and facilitative manner that is sensitive to the plight of the Afghan people. This cannot be understated: many of those who have reached out to the CBA pro-bono lawyers express genuine and visceral fear for their lives and their family's safety at the hands of the Taliban.

4. Effect expeditious and individualized communication with all Afghan applicants

Given the current crisis in Afghanistan and the urgency of applications from Afghan nationals, it is imperative that IRCC provide a viable communication channel for access to critical information and for updates on applications. Individualized and non-automated response lack severely. Counsel and unrepresented individuals alike have been unsuccessful at getting information and updates so families in urgent situations can make the necessary decisions and implement them accordingly.

CBA Section members are willing to work with IRCC to improve open and reliable communication channels in the context of the Afghanistan crisis. For example, IRCC could institute a dedicated task force responsible for handling Afghanistan files, and establish communication channels between this task force and the public.

Conclusion

The CBA Section appreciates the opportunity to engage with IRCC about facilitating relief for Afghan nationals affected by persisting turmoil. We propose these measures in support of Canada's humanitarian portfolio and to ensure the official commitment to resettle 40,000 at-risk Afghans by 2023. We would be pleased to discuss our recommendations, offer additional insights, and assist with the development and implementation of relevant policies.

Yours truly,

(Original letter signed by Véronique Morissette for Kyle Hyndman)

Kyle Hyndman
Chair, Immigration Law Section

cc. Lisa Cheskes, Director Case Management (Lisa.Cheskes@cic.gc.ca)

¹⁹ This requirement is in IRPR s. 179.

²⁰ A TRP is designed to overcome circumstances where an applicant does not meet relevant legislative requirements, as outlined in IRPA s. 24. IRCC's program delivery guidelines on [TRP-processing instruct officers](#) to consider the extent to which the applicant's need to enter Canada is compelling, and to balance Canada's social, economic, and humanitarian commitments under IRPA against any risks posed to the health and safety of Canadians.