

OUT/LAW IMMIGRATION NEWSLETTER ISSUE 1

Welcome to the first issue of the Out/Law Immigration Newsletter. We plan to issue newsletters periodically when we have information of interest to persons considering immigrating to Canada. If you do not want to continue receiving newsletters or email from us, please contact Rob Hughes at rhughes@smith-hughes.com and request to be removed from the list.

The Globe and Mail

<http://www.theglobeandmail.com/servlet/story/RTGAM.20051101.wxvolpe01/EmailBNStory/National/>

Volpe to reject refugee appeal system Merit-based process could have eased immigration backlog, advocates say

BY MARINA JIMENEZ

TUESDAY, NOVEMBER 1, 2005 POSTED AT 4:28 AM EST FROM MONDAY'S GLOBE AND MAIL

Ottawa will announce today that it has no plans to introduce a refugee appeal division, a move certain to anger refugee advocates and placate critics of the system who feel there are already too many reviews for asylum seekers.

Immigration Minister Joe Volpe is expected to tell the standing committee on immigration that his department has decided not to introduce an appeal division, although Parliament recommended its creation in 2002. .

The Globe and Mail reported yesterday that Mr. Volpe also plans to increase the number of immigrants accepted, take in more temporary workers and tackle the backlog of 700,000 prospective immigrants.

Advocates for refugees were disappointed the government is not including among the changes a merit-based appeal system.

"For refugee claimants who do not abandon their claims, 70 per cent get in by the very end of the process," an immigration official said. "We have been improving the system so that legitimate asylum seekers are getting an answer much faster."

The Immigration and Refugee Board accepted 40 per cent of cases in 2004. Failed asylum seekers may appeal to the Federal Court, which considers only mistakes in law. They may also appeal to stay in Canada on humanitarian and compassionate grounds or request a pre-removal risk assessment to determine whether their lives will be in danger if they are sent home.

Earlier this year, the sensational case of Harjit Singh, a failed refugee claimant who managed to prolong his stay in Canada for 13 years by applying for six humanitarian reviews, showed that the system was open to

manipulation. His false accusations of influence peddling against Judy Sgro forced her to resign as immigration minister last January and prompted immigration officials to pledge to reform the beleaguered system.

The Immigration Department has tackled the refugee backlog, which stood at 28,000 at the end of 2004, down from a high of 56,000. The department says it has also overhauled the appointments process for IRB members and made the refugee determination system more "fast, fair and final."

However, the Canadian Council for Refugees believes the current immigration system can be reformed without sacrificing a merit-based appeal for failed claimants.

"Canada is one of the only Western countries that doesn't have an appeal on the merits. Even the best board member can make a mistake," said Nick Summers, president of the CCR.

With a merit-based appeal for asylum seekers, fewer people would use the Federal Court, the humanitarian review and pre-removal risk process as de facto reviews, he suggests.

"We could reform these other reviews and at the same time make the whole system more fair by introducing a refugee appeal division. You could put in more restrictions on who goes to Federal Court," said Mr. Summers, who adds that Mr. Volpe did not consult with his organization before his decision not to introduce a refugee appeal division.

Mr. Summers also believes the Harjit Singh case illustrated problems not with the refugee system, but with the immigration system, which failed to remove him. "He was found to not be a refugee quickly," he said. "The refugee system can sometimes be abused by those willing to lie and cheat, but they are a minority. If you have an unclear system where nobody has a clear route for appeal, they're going to try everything."

In the past decade, the number of immigration and refugee cases before the Federal Court has increased 300 per cent; they now account for 84 per cent of cases the court hears.

About 12,400 humanitarian reviews are in the backlog. They take an average of 30 months to process.

Mr. Volpe released the Immigration Department's annual report to Parliament yesterday, which noted 32,685 refugees and dependants were admitted in 2004, and another 6,945 people were taken on humanitarian grounds. These people comprise nearly 17 per cent of the total 235,824 newcomers accepted.

The department aims to accept between 225,000 and 255,000 permanent residents next year, an increase from this year's target. The report also noted that 69 per cent of all newcomers to Canada in 2004 came from Africa, the Middle East and Asia, while the rest came from Europe, South and North America. More than three-quarters chose to settle in Toronto, Montreal and Vancouver.

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COMMENT BY ROB HUGHES - By way of background, the *Immigration and Refugee Protection Act* has all of the provisions for the Refugee Appeal Division. The *IRPA* eliminated two-member panels sitting on Refugee Protection Division hearings to single-member panels for hearings. Previously, if a refugee claimant had one member on a two-member panel determine that the claimant was a Convention refugee and the other member determine that the claimant was not, the claimant would be accepted. The trade-off to eliminating two-member panels was supposed to be the introduction of the right to appeal a refusal to another independent tribunal that could review the case on its merits. When the *IRPA* came into effect on June 28, 2002, the Minister of the day said the government did not have enough money to implement the RAD and would delay implementation for one year. Now that over three years have

passed, it should come as no shock that the government has no intention of bringing in the RAD ever. Although there is still the option of applying to Federal Court for a judicial review of a refusal, it is grossly inadequate for ensuring that justice is provide for failed refugee claimants. The Court only allows about one in ten applications to go to a hearing. The court does not examine the merits of the case, but narrowly restricts itself to deciding if there was an error of law or natural justice. People disputing a traffic ticket have more appeal rights than refugees.

The following is a news item posted on CBC NEWS ONLINE at <http://www.cbc.ca/news> ___

VOLPE AIMING FOR 300,000 IMMIGRANTS A YEAR WebPosted Mon Oct 31 05:53:28 2005

---Canada could be accepting as many as 300,000 immigrants each year by 2010, if Immigration Minister Joe Volpe convinces his cabinet colleagues to go along with new targets.

Last year, the country took in 236,000 immigrants to feed a growing demand for workers, according to a report Volpe is expected to table in the House of Commons Monday. This year's number should be around 245,000 by the end of December.

Volpe told the Globe and Mail in an interview published Monday that he hopes 255,000 people will be admitted to Canada as immigrants in 2006.

A spokesman for his department said cabinet must still approve the plan.

At the moment, about 700,000 prospective immigrants are waiting to have their applications processed, Volpe told the Globe and Mail. The process can take up to four years.

The Liberal government has long been promising to deal with the backlog. In April, it announced a series of measures aimed at speeding up applications from people with close relatives already in Canada.

FROM APRIL 18, 2005: New immigration plan to clear backlog

Now Volpe is proposing to accept more people on temporary visas to fill jobs that are going unfilled, mostly in the construction industry.

"We have to start thinking about the Immigration Department as a recruiting vehicle for Canada's demographic and labour market needs," he told the Globe and Mail. "We are the lungs of the country."

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COMMENT BY ROB HUGHES - The government should be spending some of the \$975 per adult immigrant for the Right of Permanent Residence fee on improving the system. Right now all of that money is deposited in the General Revenue and does not benefit immigration. The only way the Minister can realistically clear up the backlog is to hire more visa officers. It is also crucial to allocate new staff in equalize the workload in all of the visa offices. There should be global targets for processing times and when a visa office is unable to meet those targets it should get more staff. It is ridiculous that the average global processing times for a skilled worker permanent residence application is 40 months. What is scandalous is that while the average processing time is only 7 months in some visa offices such as Lima, it is 4 years

Click here to read this story online:

<http://www.csmonitor.com/2005/1028/p01s04-woam.html>

Headline: Mexicans head north for a better life. Way north.

Byline: Danna Harman Staff writer of The Christian Science Monitor

Date: 10/28/2005

(MEXICO CITY) Born, educated, and married in Mexico City, this young, upper-middle class couple turned to one another one day and said, "Let's leave."

"I could not picture the future or having kids in Mexico," says Maria Carral, a graphic designer. "We were both really tired of the insecurity, the traffic, the economic ups and downs.... We were ready to move on to a better life."

Like so many Mexicans, Maria and her husband chose to move north - but in their case, that meant Canada, not the United States.

For a small but growing number of Mexicans the promised land of "El Norte" means life above the 49th parallel. And while the US is fortifying its borders and tightening entry requirements, Canada is putting out the welcome mat.

"Canada has awakened to Mexico and vice versa," says Mendel Green, an immigration lawyer in Canada. "It's a fit."

To date, the number of Mexicans going to the far north is only a trickle compared with the flood still heading to the US each year. In 1995, just 482 Mexicans became permanent residents of Canada, according to the Ministry of Citizenship and Immigration (CIC). By 2004, that number had more than tripled, to 1,648. (By comparison, the US gave 173,664 immigrant visas to Mexicans in 2004.)

"Canada needs immigrants," explains Canada's ambassador to Mexico, Gaetan Lavertu, flatly. Canada's vast land, small population (32 million), and low birthrate (about 1.61 children per couple), combined with its strong economic growth (the fastest of all the G-8 countries in the past 10 years) explains this attitude. "We have always looked at immigration as a way to bring in new talent and faces. And now the dynamism of our economy requires it," says the ambassador.

It all started with NAFTA

This emerging migratory shift began with the North American Free Trade Agreement (NAFTA) a decade ago, and has gathered steam in the the past five years says Mr. Green, whose firm has been in operation for 45 years.

Carral and her husband, Andreas Anhalt, a chef, are part of this group of Mexicans who are looking at Canada in a new light. "When I was little, we thought Canada was for camping. If you wanted to send your kid to summer camp, Canada was the best," says Carral. "Now we are smarter."

"Word is getting out that Canada is a great place," says David Rosenblatt, another Canadian immigration lawyer whose firm runs weekend information seminars in Mexico that are attracting more than 1,000 people a night.

"We need skilled workers, but also blue collar - carpenters, roofers, welders. You name it," says Mr. Rosenblatt.

Green agrees. "We are bringing in senior IT [Information Technology] people and we're bringing in tool and die makers. Mexico produces everything we need. "

According to the Canadian Embassy in Mexico, there are between 40,000 and 50,000 Mexican-born Canadians living legally and permanently in Canada today, while 10,000 come each year to study, and some 200,000 visit every year as tourists.

The biggest growth, however, has been in the number of Mexican temporary workers going to Canada. In 1995, 5,383 Mexicans received temporary visas, the majority under a special seasonal agricultural workers program. By 2004 the number was 11,340 - making it the second largest group of temporary workers in Canada, after US citizens.

But some critics say Canada is being naive and creating a pipeline for illegal immigrants who will stay. The US border patrol, for example, estimates that more than half a million Mexicans enter the US illegally every year.

But Rosenblatt responds that very few Mexicans overstay their visas or come illegally to Canada. "They go back home to their families with a lot of money in their pockets, secure that they can easily return the next year if they please," he says.

Officials at the Mexican Ministry of Labor, which handles the paperwork for this force, agree, saying that 80 percent of the temporary workers come home, get rehired, and return to Canada the following year.

By the end of 2005, Canada expects to have invited in close to 240,000 new foreign immigrants, temporary workers, and refugees from around the world (as a percentage of its population, that is three times what the US currently allows in

legally). The number of Mexican immigrants is still relatively low compared with the 36,411 Chinese and 25,569 Indians who moved to Canada last year. But, stresses Ambassador Lavertu, a trend is noticeable.

While most immigrants go to Canada's biggest cities - Montreal, Toronto, Vancouver, and Ottawa - some of the provinces are recruiting, too. Thinly populated Manitoba, for example, is bringing in about 4,000 newcomers a year under a program that lets it nominate prospective immigrants even when they don't meet standard federal criteria.

"NAFTA brought us closer. Bilateral trade has tripled, Canadian firms have come to Mexico, education and tourism ties have been tightened and now immigration is rising," says Lavertu. "After 1994 [when NAFTA went into effect] we woke up to the Americas, especially to Mexico," he says. "And I think Mexico started looking over at us then, too."

In an effort to encourage immigration from Mexico and elsewhere, the Canadian government has been relaxing and simplifying its immigration rules over the past few years. Mexican tourists enter Canada just by showing a passport, and the process of applying for either permanent or worker status is far easier and usually cheaper than the often subjective process of getting a US visa.

US tourist visa: source of frustration

"Just getting a hearing [for a visa] at the US embassy is a feat," says Javier Gomez, a Mexico City house painter who waited four months to hear whether or not he could get a tourist visa to visit his brother in Chicago last year. He didn't get the visa. "You have to pay [a nonrefundable \$100 fee] before knowing if you will be accepted or not. Its infuriating," he says.

Temporary workers who want to go to Canada fill out one form. There's no charge. The same application to the US, according the US Embassy website requires, among other things:

* "A copy of the I-129 petition and the original approved I-797 petition. "

* "A BANAMEX receipt for the 1,150 pesos (adjusted according to exchange rate) application fee. There can be additional fees for individuals obtaining work visas."

* "Supplementary application form if applicant is male between the ages of 16 and 45."

Any Mexican can apply for an immigrant visa to Canada. But the US rules say that only Mexicans who have family or a sponsoring employer can apply for the same visa.

Three months ago, Carral and Anhalt paid an immigration lawyer about \$860 to handle all the paperwork for both of them. They threw a disco farewell party, kissed their parents goodbye, and packed up for Toronto.

"The climate is terrible," admits Carral, reached by phone in Canada.

"Our furniture has not yet arrived," adds Anhalt, who is working night shifts in an Italian trattoria and planning to open his own Mexican restaurant someday.

"But we are happy," says Carral. This week she starts a new job.

"It's not like a 'wow' job," she allows. "But it is a beginning, and it's a new home where we feel OK."

* Ms. Harman is Latin America bureau chief for the Monitor and USA Today.

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COMMENT BY ROB HUGHES - It is not clear in the article, but Mexican citizens do not require a visitor visa to enter Canada. They do require a work permit before they can engage in employment. Under the NAFTA, however, many Mexicans who are professionals or who are executives or senior managers being transferred by their companies to work in Canada do not have to have their employer establish they cannot find a Canadian citizen or permanent resident for the position.

FAQs

This issue is devoted to the application of Section 11(2) of the *Immigration and Refugee Protection Regulations* concerning where to file a permanent residence application.

Q1: Where must I apply for permanent residence?

A1: You must apply to the office serving the country where you have been lawfully admitted for at least one year. You can always apply as well to the office serving your country of nationality (or your country of habitual residence if you are stateless).

Q2: When can I, having been lawfully admitted to a country for at least one year, apply for permanent residence to the office serving that country?

A2: R11 makes no reference to any timeframe and theoretically, you could apply just after having obtained a lawful temporary status valid for a year.

Q3: If I have been lawfully admitted to a country for less than a year, can I apply for permanent residence to the office serving that country during that stay ?

A3: No. To be considered eligible to submit an "application for permanent residence" to the office serving that country, you must have been lawfully admitted in it for a period of at least one year.

Q4: If I obtain a temporary status extension of sufficient duration (i.e. total continuous temporary status that would amount to a year or more) after an initial less-than-a-year temporary status in that country, will I qualify to apply for permanent residence?

A4: Yes.

Q5: Can I still apply for permanent residence if I have been lawfully admitted to a country for at least a year but have since fallen out of status (the year has expired or my status has been cancelled)?

A5: There is nothing in the Regulations preventing you from submitting an application for permanent residence in that situation but, being out of status, you could be subject to measures of enforcement applicable in that country and likely be asked to leave it voluntarily or by force, in which case the processing of your application could become problematic, for instance if you could not be present for an interview if required.

Q6: What happens if I have been lawfully admitted to a country for a year and have submitted an application for permanent residence but the processing of it is not completed at the end of the year?

A6: The processing of the application will continue at the office where it was submitted. If you have to leave that country, the office could transfer the file to the office serving your new country of residence, if there are compelling reasons for it and if the integrity of the process is improved.

Q7: What if I have a common-law partner who is currently residing in another country?

A7: If you are the principal applicant, they should be included in your application as a dependent.

If you have a question that you would like answered, email Rob at rhughes@smith-hughes.com.