

Brief to House of Commons on Impact of On-Going COVID-19 Pandemic on Canada's Immigration System

11 DECEMBER 2020



ARENIOUS FOUNDATION
INFO@ARENIOUS.CA | WWW.ARENIOUS.CA
15-1534 EAST 4 AVE, VANCOUVER, BC V5N 1J8



11 December 2020

Dear Members of the Standing Committee on Citizenship and Immigration

**Re: Brief to House of Commons on Impact of On-Going COVID-19 Pandemic on
Canada's Immigration System**

Executive Summary

The Arenous Foundation is a Canadian-based advocacy, research, and education non-profit civil society organization. We work in the intersections between Canadian immigration law and migrant communities. In this submission, we address the CIMM Committee's three questions and provide our recommendations in relation to:

- a. application backlogs and processing times for the different streams of family reunification and the barriers preventing the timely reunification of loved ones, such as denials of temporary resident visas because of section 179(b) of the Immigration and Refugee Protection Regulations and the ongoing closures of Visa Application Centers;
- b. examine the government's decision to reintroduce a lottery system for the reunification of parents and grandparents; to compare it to previous iterations of application processes for this stream of family reunification, including a review of processing times and the criteria required for successful sponsorship; and
- c. temporary resident visa (TRV) processing, delays faced by international students in securing TRVs particularly in Francophone Africa, authorization to travel to Canada by individuals with an expired Confirmation of Permanent Residency; use of expired security, medical and background checks for permanent immigration.

Our key recommendations call for one short-term and one long-term recommendation for each of the above issues:

Question A:

1. As a short term recommendation, we call for the immediate suspension of s.179(b) of the *Immigration and Refugee Protection Regulations* by way of temporary public policy until COVID-19 travel restrictions are removed to address the issue of sponsorship backlogs and family reunification. We recommend that processing of these applications occur at a designated visa office in Canada that can remove geographical bias.

2. As a long-term recommendation, we propose that a study should also be launched to determine why applicants at certain visa offices or holding certain citizenships appear to be delayed (especially applicants from Global South/African/Middle Eastern countries). We recommend re-thinking the application of dual intention in the spousal context and encourage the system to go back to expedited overseas visa office processing to avoid in-Canada backlogs and promote system integrity.

Question B:

1. As a shorter-term recommendation that can be implemented as soon as next year, we recommend that the parent and grandparent sponsorship program be amended to better reflect the reality of Canadian multi-generational homes. This involves allowing siblings to serve as co-signers for the purposes of calculating minimum necessary income.
2. As a longer-term recommendation, we recommend moving to a multi-stream PGP. This will allow for humanitarian and compassionate grounds considerations to be inputted and also better ensure those who apply under the MNI-meeting stream do in fact meet the requirements for the program.

Question C:

1. As shorter-term recommendations, we recommend that Francophone African Temporary Resident Visa and Study Permit applications are prioritized for expedited processing and approved at higher levels. We recommend that exemptions and extensions, including biometric-exemptions and exemptions from obtaining updated police certificates and medicals, are given to Applicants who were approved in principle and or received COPRs but were unable to land.
2. As longer-term recommendations, we recommend that historically-focused Anti-Black racism training be delivered for IRCC overseas visa offices processing African applications, including the appointment of a Canadian-based taskforce containing paid Black Canadian and Indigenous Canadian academic experts to oversee this training.

Details of our issue analysis and recommendations follow in the submission below.

Question A:

a. Application backlogs and processing times for the different streams of family reunification and the barriers preventing the timely reunification of loved ones, such as denials of temporary resident visas because of section 179(b) of the Immigration and Refugee Protection Regulations and the ongoing closures of Visa Application Centers;

We recognize that the COVID-19 pandemic has brought into plain sight a Canadian immigration system that has shifted away from prioritizing family reunification. As advocates for families, this is an issue of deep concern.

We recognize that the Government has taken some positive efforts during the pandemic, specifically in clarifying instructions on dual intent (A.22(2) of the Immigration and Refugee Protection Act (*IRPA*)). IRCC has also announced efforts to begin processing files electronically. Certainly, the commitment to landing a greater number of spouses will serve to reunite more families.

Yet, we also recognize the inequities that this system holds - particularly for spousal sponsorship applicants from Temporary Resident Visa ("TRV") requiring countries. As highlighted by CIMM Member and Member of Parliament Jenny Kwan in Minister Mendicino's recent appearance in front of the CIMM, the applicants will face difficulty proving the 'push' and 'pull' factors assessed in determining whether an applicant holds a valid dual intention. The brunt of refusals will be borne by applicants from Global South Countries, particularly those in Central Asia, the Middle East, Africa, and the Caribbean, that have traditionally had high TRV refusal rates. These are also the Visa Offices that have faced the biggest difficulties keeping operations open, including the biometric exams that are required for applicants prior to approving applications.

In order to tackle the challenges, we need to better deconstruct the logistical challenges. We need to acknowledge out right that there is a qualitative difference between an applicant who is a citizen of London, England and is able to obtain an Electronic Travel Authorization in seven minutes who benefits from preconceptions of pull factors, whereas an applicant from Nigeria is seen as pushing their way into Canada.

Our proposed solutions recognize that in order to tackle the systemic issues, we must begin first by bandaging the wound that has resulted from family separation during an already difficult pandemic period.

Again, and ultimately, longer term, we propose a revisiting of dual intention and recrafting public policy so that the problems are addressed properly. For example, the fiancé visa could be revived, or more limited visitor records issued to allow genuine couples awaiting marriage or final processing enough time to file and demonstrate their on-going immigration compliance.

However, before implementing a solution, we need a proper and thorough diagnosis. Refusal rates of both sponsorships and TRPs must be examined utilizing an anti-racism lens and proper intersectional analysis. This process would involve collecting race-based data in the visa application process - a practice that the Government has been in the past reluctant to do. We believe, anecdotally - as we do not know if this data exists - that interviews and sponsorship delays are primarily being experienced in countries where Officers believe a greater amount of misrepresentation, marriage of convenience, or other inadmissibility concerns exist. Should that be the case, the Government should be transparent with the data that supports additional levels and layers of scrutiny. This would allow those applicants who are from these countries more reasonable expectations of processing times and encouragement to seek appropriate counsel or assistance.

Ultimately, unless outside Canada processing times are decreased to create an incentive to submit outside Canada sponsorships (with the right of appeal and with more robust interview mechanisms in place), the current system will encourage applicants to seek temporary entry into Canada prior to sponsoring their spouses. This will create more refusals on TRVs and other

temporary applications, which in turn then further delays the sponsorship application and could lead to inadvertent issues such as misrepresentation (for failure to disclose refusals). The current backlog and delay experienced by TRV applicants is a testament to overseas processing that has stopped working in a way to incentivize couples to apply while the applicant (or both partners) is abroad.

Recommendations

1. **Dual-Intent and Section 179(b) of the Immigration and Protection Regulations (“IRPR”)** - explore the possibility of suspending s. 179 (b) *IRPR* for a special subset of applicants (ie. on-going spousal/common-law/conjugal apps similar to public policy suspension of s. 117(9)(d) *IRPR*). This suspension should exist until the major barriers to international travel that allow spouses to see each other are removed. CBSA’s recent moves to track exits of foreign nationals and stricter border controls allow for better monitoring of compliance in this regard. We see couples as figuring out ways to extend their status legally or perhaps travelling to a second country (or to the country of the Applicant’s residence) to await processing should applications be delayed.
2. **Electronic Processing of Applications** - introduce E-filing and improve the technological infrastructure. In the interim, the government can exceptionally allow applicants and their representatives to scan all documents, swear to the veracity by statutory declaration, and upload via centralized email with IRCC reserving the right to see the originals.
3. **In-Canada Processing of TRVs** - establish special processing units in Canada to process overseas sponsorship applications. This will move processing away from certain overseas visa offices that due to COVID-related limitations and limited internet infrastructure are unable to process applications in an expeditious manner.
4. **Suspend Biometrics for Spousal Sponsorship Applicants** - for those with ongoing spousal, common-law, and conjugal sponsorships, they would have submitted their police certificates with their applications or been requested to obtain these as part of the visa office’s requirements. Biometrics collection can still be conducted at the port of entry. In the very rare case that an issue arises, landing could be delayed, and the applicant issued a visitor record/Temporary Resident Permit (“TRP”) in lieu.
5. **Visa Issuance** - temporary resident visas should be issued at different offices. We suggest inviting applicants to submit their passports to offices inside Canada for visa issuance. This allows the government to get around the problem of Visa Application Centres (“VACs”) being closed in some jurisdictions.

Question B:

b. Examine the government’s decision to reintroduce a lottery system for the reunification of parents and grandparents; to compare it to previous iterations of application processes for this stream of family reunification, including a review of processing times and the criteria required for successful sponsorship;

The 2021 round for Parent and Grandparent Sponsorships (“PGP”) sponsorships has started and we note that there are steps that the government can take to improve the program without much controversy that ultimately addresses real issues that Canadians face attempting to reunite with their loved ones.

We recognize that crafting a new intake system for the parent and grandparent sponsorship program will take time and involve the combined efforts of some of Canada’s brightest minds in finding solutions to a complex problem.

There is a strong undercurrent that emphasizes assimilation as well as a push to weigh financial factors over family reunification. Canada needs to recognize that underpinning family reunification is a critical underlying reproductive economy that supports the Canadian economy as a whole by freeing up other members of the family to actively contribute to Canada’s oft-measured productive economy. These reproductive economic subfactors are usually ignored by the metrics used by Statistics Canada and are thus lost to public policy makers and wielders of statecraft. We urge the government to take a harder and closer look at the reproductive economy.

Given the lack of universal child care in Canada, immigrant families rely on their sponsored parents or grandparents to look after their children while they make a living and pay their taxes to build a better Canada.

While one of our proposals above notes the possibility of considering multiple streams for the Parent and Grandparent Sponsorship Program, we must however caution the possibility of creating a hierarchical or tiered arrangement for the PGP program. We propose multiple streams, not multiple tiers or hierarchies.

Recommendations

1. **Calculating the Minimum Necessary Income (“MNI”) & Family Size** - we propose that instructions should be clearer and more attuned to cultural realities on how to count the size of the family when determining the MNI. Canada hosts a plethora of cultures and must therefore be sensitive to the diverse cultural realities of its population. For example, there are many families who live in multi-generational and multi-family homes. Instructions on IRCC’s website are not specific enough to offer clarity to sponsors and applicants. Simplifying the language of the instructions and adding examples as points of reference will go a long way in determining sponsor eligibility and results in more efficient workflow for IRCC. More should also be done to screen for eligibility so that Applicants who do not meet requirements can be considered under a separate stream (see Proposal 5) rather than take up a space from another family and litigation (through humanitarian and compassionate ground appeals).
2. **Siblings as co-sponsors** - we propose that the government look into amending the regulations to allow siblings to co-sponsor their parents or grandparents. Currently, only spouses and common-law partners are allowed to be co-sponsors in an application. There is a sense that the applicants in this pool belong to cultural communities that have a more shared family responsibility matrix. IRCC should be more open to this

cultural reality. It is normal for some Canadian cultures to share responsibility for parents/grandparents - example: Canadians of East/Southeast Asian heritage.

3. **Re-Allocate the Unused PGP Sponsorship Slots Quickly** - the government already recognizes that slots remain unused every year because the sponsors ultimately find themselves disqualified during the application process, or because the applicants face some form of inadmissibility. We propose that these slots be re-allotted quickly, and that a waitlist of possible applicants be maintained to ensure that the government meets its target number of parents/grandparents sponsored into Canada. The numbers as allocated through the level plans are already quite low; let us ensure that these targets are met.
4. **Dual-Intent and Section 179(b) IRPR** - in light of the proposed temporary public policy suspension of section 179(b) IRPR with respect to spouses, common-law and conjugal partners, we propose that the government should also consider the same suspension for parents/grandparents applying for super visas or regular TRVs. We recommend clearer regulations and a more robust set of instructions to visa officers that must be followed once the suspension is lifted.
5. **Multi-Stream PGP Sponsorship Programs** - perhaps one of the possible configurations to be considered is to create multiple streams for the PGP program that consider hybrid family and economic sponsorships. Assuming that parents and grandparents cannot contribute directly to the Canadian economy does not help anyone. Many parents and grandparents are still within their working prime, especially in a world where there is a growing trend of an older workforce given longer life expectancies. In a report outlining the data from the 2016 census, Statistics Canada noted that “the share of the employed population aged 55 and over increased significantly.” Another way to look at this would be to fold an aspect of the caregiver program into the PGP program. There are many ways to look at this and perhaps the time is right to think out of the box in bringing parents and grandparents to Canada.

Question C:

c. Temporary resident visa (TRV) processing, delays faced by international students in securing TRVs particularly in Francophone Africa, authorization to travel to Canada by individuals with an expired Confirmation of Permanent Residency; use of expired security, medical and background checks for permanent immigration;

We are deeply concerned about the Anti-Black racism that continues to lead to high refusal rates from African and Global South Countries. Polestar Immigration examined refusal rates in 2019 and found that 75% of African visas were refused compared to 39% as the global rejection rate. We are in the process of examining the most recent figures from 2020, which suggest that refusal rates have increased in COVID and that the countries that have 70% or higher refusal rates continue to disproportionately represent the same African and Global South Countries.

Given Canada's history of racialization of Black migrants, specifically drawing to the Order-in-Council PC 1911-1324 which denied Black migrants on the basis of climate unsuitability, it is incumbent on Canadian immigration to explore how to create a more racially just, anti-Racist framework for assessing TRVs and study permits from African countries. Prioritizing on a limited subset of candidates from French-speaking countries through the Student Direct Stream will not bring into Canada a greater, more diverse set of the world's top students which our system leaves at the door, many holding merit-based scholarships for top institutions.

Furthermore, assessments of international students and visitors seeking to enter Canada should place a greater emphasis on the Applicant's commitment to return to their countries at the end of their authorized stay, rather than perceptions and speculations about the generalized country conditions.

We support the extension of COPRs and leniency post-COVID to allow those who were approved in principle and/or hold expired COPRs to return to Canada when the travel restrictions allow for this. Applicants should not be required to submit significant new documentation other than any changes to relevant admissibility and family information. Humanitarian and Compassionate Exceptions should be granted where change in circumstance leads an Applicant to no longer meet a requirement of the *IRPA*, barring any serious inadmissibility.

Finally, we believe that new documentation should only be required in exceptional circumstances, particularly police certificates and medical exams. Applicants should not be required to obtain new police certificates and medical exams unless new information arises to suggest the Applicant is no longer admissible to Canada.

Recommendations

- 1. Enhanced Anti-Racism Training Particularly for Locally Engaged Staff and Immigration Officers** - Such training would work to understand and address the explicit and implicit biases, particularly when visa officers assess applications for citizens in neighbouring countries. This process should include periodic checks, across visa office, to ensure certain visa offices are not disproportionately refusing applicants from certain countries based on geographical discrimination and physical appearance, without considering the substantive merits of their case.
- 2. Create a Taskforce to Study Anti-Black Racism in Canadian Immigration and to Implement Changes Directly to Visa Officer Training** - This taskforce should also include Indigenous representation alongside including prominent Black-Canadian scholars to provide academic input.
- 3. Special Processing of French-Language Students from Global South Countries** - French-language speaking applicants should be prioritized through faster processing, perhaps at independent visa offices, should this be a priority of the Government.
- 4. Extensions Granted to Those Holding COPRs or Who Were Approved in Principle** - this includes limiting further information requests unless clear concerns of admissibility arise.

Conclusion

We thank you for considering these submissions and our recommendations. We recognize that immigration law is complex, and that the COVID-19 pandemic has required several band-aid solutions. We hope that some of our recommendations are adopted, but more importantly that our issues raise a deeper commitment to look at our existing systems more holistically, with a historical lens, to effect longer term change.

We are happy to address any questions or concerns with the materials raised.

Sincerely,

Edris Arib, MPP, LLB
Executive Director and Co-Founder, Arenous Foundation
Vancouver, British Columbia, Canada

Lou Janssen Dangzalan, B.A., LL.L., J.D., M.A., M.Soc.Sci
Canadian Immigration Lawyer; Researcher and Policy Advisor,
Toronto, Ontario, Canada

Will Tao, J.D., B.A.
Canadian Immigration and Refugee Lawyer; Director and Co-Founder, Arenous
Foundation
Vancouver, British Columbia, Canada

Karen Jantzen, B.A. J.D. Candidate
Allard Faculty of Law at the University of British Columbia
Vancouver, British Columbia, Canada

About Arenous Foundation

We are the Arenous Foundation. We are a Canadian-based independent non-profit civil society organization with a mandate to advocate, research, and educate on topics related to Canadian immigration law, migrant communities, and topics of race equity and intersectionality.

Over the course of this year, we have had the privilege of presenting and researching for various organizations that have been directly impacted by the COVID-19 pandemic. We have spoken to several post-secondary institutions, to settlement services, professional organizations, and advocacy groups. We have also had the privilege to participate directly in workshops with senior Immigration, Refugees and Citizenship Canada (“IRCC”) policymakers and contribute feedback that has led to numerous positive changes.

Just recently, we were invited to brief the Congressional Asian Pacific American Caucus (“CAPAC”) on the way Canada’s immigration system has shifted and may shift as a result of COVID-19. Among our members are two Canadian immigration and refugee lawyers, Lou Janssen Dangzalan and Will Tao, who have been very active during this pandemic advising on policy issues and assisting with the increased demand of immigration clients.