



El Centro Para Gente de Habla Hispana

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Changes to the Immigration and Refugee Protection Act under Bill C-31

Bill C-31 is almost certain to become law before June 29, 2012. There are a number of provisions of the law which will come into effect immediately when the law passes. There are other provisions which will not come into effect until an order from Governor in Council (GIC or the Cabinet). The government has said they expect these provisions to come into effect in the fall of 2012.

The following provisions will come into effect on or before June 29, 2012:

Changes to H&C eligibility

Persons who are currently eligible to make applications for permanent residence on Humanitarian and Compassionate grounds (H&C) may no longer be eligible to do so. This will affect you if your claim for refugee protection is pending before the Refugee Protection Division or less than 12 months have passed since your claim for refugee protection was rejected, abandoned or withdrawn after the hearing started. The 12 month bar does not apply if your H&C application is based on the inability of your country to provide adequate medical care or on the best interests of a child directly affected.

If you file your H&C prior to C-31 coming into effect, your application will be considered. If you have a pending refugee claim, had your claim denied in the past 12 months or are considering making a claim, you should get advice about whether you should file an H&C application before the new law takes effect.

Changes to PRRA eligibility

Under the current law, any failed refugee claimant has the right to a Pre-Removal Risk Assessment (PRRA) prior to their removal from Canada. Under the new law, failed refugee claimants will not be allowed a PRRA for 12 months after their claim was rejected, withdrawn or abandoned. The only exceptions will be those who were excluded from protection under Article 1 E or F of the Convention. Any PRRAs that are still pending when the new law comes into effect will be terminated if the 12 months have not passed or the exception does not apply.

Investigative detention

Immigration officers will be given new powers to arrest and detain foreign nationals and permanent residents. Currently, officers only have the right to arrest and detain individuals who are inadmissible on national security grounds or who are believed to have committed serious human rights violations. The new law will allow arrest and detention on a number of grounds related to suspected criminality, even if the events took place in another country many years ago.

Designated Foreign Nationals

The Minister will have the power to designate a group of persons arriving in Canada without proper documents if there is not time to process them normally or they arrived in Canada with the assistance of human smugglers or criminals. The consequences of designation are quite severe and include faster processing of refugee claims, loss of appeal rights, lengthy detention and many years before they can apply to become permanent residents even if accepted as refugees.

The following are some of the provisions which will come into force upon order of the Governor in Council (GIC), likely in the fall of 2012:

Cessation

If you are a protected person you could be found inadmissible and lose your permanent residence status if you have:

- reavailed yourself of the protection of country of nationality
- become re-established in your country of nationality;
- acquired a new nationality and enjoy the protection of the country of that new nationality;

Protected persons who have not become permanent residents could also lose their status and be found inadmissible if the conditions in your country have changed and there is no longer a risk of return.

If you were ever found to be a protected person or a convention refugee and are not a Canadian citizen, you should consider applying for citizenship as soon as possible. Regardless of how long you have been in Canada, your status may be at risk if the above circumstances apply to you.

Designated Countries of Origin (DCOs)

The Minister will have the power to designate countries of origin for the purposes of refugee claims. The Minister will also define the criteria according to which a country will be designated. Claimants from DCOs will face much shorter timelines, will not have access to the RAD, and will not have access to PRRA for 36 months after their last decision.

Refugee Protection Division

Eligibility to make a refugee claim will be significantly restricted for people who have committed or been convicted of a broad range of offences, even if the incident in question was many years ago. The timeline for all claimants from claim to hearing will be much shorter under the new law. The Personal Information Form (PIF) will be replaced by a Basis of Claim (BOC) form, which is to be completed in 15 days instead of 28 days. Inland claimants will file their BOC immediately upon making their claim. Hearings will be 30 or 60 days from filing the BOC depending on the type of claimant (DFN, DCO, etc.).

Refugee Appeal Division (RAD)

A Refugee Appeal Division will be created allowing appeals from decisions of the Refugee Protection Division. Most appeals will be in writing without a hearing. Appeals will need to be filed and perfected within 15 working days. There will be no appeals for:

- Claimants from Designated Countries of Origin
- Designated Foreign Nationals
- Vacation, cessation or abandonment decisions

Other changes

In the Federal Court, there will no longer be automatic stays of removal for claimants from DCOs, designated foreign nationals, claims found to have no credible basis or to be manifestly unfounded. Removals will no longer be “as soon as reasonably practicable” but “as soon as possible”.

Immigration authorities will be given the power to collect biometric data from individuals seeking to travel to Canada. A number of the offence provisions dealing with human smuggling are being made broader and the penalties are being increased.