Canadian Arab Federation Policy Paper on Bill C-50
May 12, 2008

Standing Committee on Finance: Bill C-50, An Act to implement certain provisions of the budget tabled in Parliament on February 26, 2008 and to enact provisions to preserve the fiscal plan set out in that budget

I. Introduction

The Canadian Arab Federation (CAF) is a national, not-profit, membership-based organization representing Canadians of Arab descent on public policy issues. Since its founding in 1967, CAF has sought to create non-partisan relationships with the media and government officials in order to highlight issues of importance to the Arab Canadian community, including those concerning immigration and refugee protection and rights.

Since the events of 9/11, we have witnessed this community become increasingly susceptible to racism, discrimination and exclusion and fear that this trend will continue if the amendments made to the Immigration and Refugee Protection Act are passed.

We are grateful for the opportunity to make a submission on An Act to Implement Certain Provisions of the Budget tabled in Parliament on February 26, 2008 which will enact provisions to preserve the fiscal plan set out in that budget. However, we have two preliminary objections.

II. Preliminary Issues

CAF objects first to the manner in which the proposed changes are being passed in an undemocratic manner through parliament. The unusual, backdoor way of proposing changes to the Immigration and Refugee Protection Act ensures that any recommendations made by the House Committee on Citizenship and Immigration will not impact the final outcome of the legislation. As a consequence of this unorthodox and surreptitious process, the Finance Committee’s willingness and desire to sincerely address our concerns and request is questioned. This is because we are forced to be here by virtue of the process set down and dictated by the government, but we are also told that the committee’s hands are tied therefore CAF seriously questions the ability of the Committee to act in a sincere and genuine fashion.

CAF also opposes the substance of the proposed changes. There are 10 parts to this Bill; 9 deal with fiscal matters. Part 6 amends the Immigration and Refugee Protection Act to, among other things, authorize the Minister of Citizenship and Immigration to give instructions with respect to the processing of certain applications and requests in order to support the attainment of the immigration goals established by the Government of Canada.

III. Submissions on Substantive Legislative Amendments
If C-50 passes the House of Commons and the Senate, immigration applications made on or after February 27, 2008 will be affected in the following ways:

Clause 116

The Immigration and Refugee Protection Act (IRPA), Section 11 (1) currently says that an officer “shall” issue a visa if the applicant meets the requirements of the Act. With the proposed changes, the section will be reworded to say that the officer “may” issue a visa even when the applicant has met all criteria as set out in the immigration regulations. This is critical and extremely significant.

The proposed amendments eliminate the right to permanent residence for applicants who meet the requirements of the Act, and provide for applications in the economic class to be simply discarded, according to rules that are unknown and will not be subject to parliamentary approval. In effect, the change will deny the rights of applicants to appeal their rejection in court if they have been refused for whatever reason. This is fundamentally unfair because immigration officers will wield enormous discretionary powers to refuse an application and decisions will not be necessarily based on law and facts that can be challenged on the restricted and limited scope of judicial review.

This deliberate and careful use of “may” to replace “shall” in the clause signifies that the applicant loses the legal right to have the visa issued. Currently, if an applicant meets the requirements of the law and the Ministry of Citizenship and Immigration Canada is not issuing the visa, he or she can go to Court and seek a mandamus because there is an obligation under the law to provide one. If Bill C-50 is passed, the applicant no longer has that recourse despite any reason given for the application not being processed.

Clause 117

In regards to humanitarian and compassionate (H&C) applications, section 25 currently says that the Minister “shall” examine such applications. Under the proposed changes, the wording is amended to indicate that the Minister “may” examine the application if the applicant is outside Canada. This would mean that the Minister is under no legal obligation to examine H & C outside Canada.

For example in cases involving refugee children in Canada (who under the IRPA are not permitted to sponsor members of their family to come to Canada) and Canadians whose family members abroad will be excluded because of extraordinary circumstances and consequently will not be united with their loved ones from overseas the Minister is not obliged to examine.

Amendments which eliminate the obligation to study humanitarian applications outside Canada are particularly disturbing for CAF. For example, there are two situations where the law does not provide children with a right to family reunification and humanitarian and compassionate applications are the only recourse:

• Under Canada’s Immigration and Refugee Protection Act, separated refugee children in Canada cannot apply for family reunification with their parents and siblings who are outside Canada. The only way for these children to be reunited with their parents and siblings is through humanitarian and compassionate consideration.
• The excluded family member rule [Regulation 117(9) (d)] keeps many children unfairly separated
from their parents. The only way for affected families to explain why they should be able to reunite in Canada is through a humanitarian and compassionate application.

Canada has an obligation, under the UN Convention on the Rights of the Child, to consider the best interests of the child in any decision taken affecting a child. This obligation is reflected in the provisions in the Act relating to humanitarian and compassionate applications (section 25). With the proposed amendment, visa officers would no longer be required to consider the best interests of the child.

- In addition to affecting children, section 117(9) (d) also has ramifications that extend to other family members. This impact is felt most by refugees separated and torn apart by war, foreign occupation and conflicts. At the time of application, family members may be missing, suspected as dead or their whereabouts unknown; therefore, these family members are not listed. After arriving in Canada, the family is now BARRED and permanently prohibited from sponsoring their other family members once they resurface. The only option remaining that vetoes s. 117(9) (d) is s. 25 overseas. This is confirmed by our jurisprudence in the Federal Court of Appeal.

Canada plays a direct role (for example, in the invasion and occupation of Iraq) in creating conditions that give rise to such separation and therefore our government has an obligation to review H & C factors in applications where Canadians are forever barred from sponsoring their family members due to extraordinary circumstances.

Clause 118

The Minister can establish categories of applications to process and determine each application’s priority, set the number of applications for processing in a given year and provide for the disposition of applications and requests. As a result, many applications will not even be processed. There is reason for genuine concern about the sorts of instructions a Minister will issue which would result in discarding applications. In effect, the Minister will impose a quota onto the immigration system without any approval by the Canadian Parliament.

The power to issue instructions applies not only to Economic Class applicants outside Canada, but to almost all applicants for Permanent Residency, be they in Canada or outside Canada (except refugees and H&C applicants in Canada). Should the amendments to the Immigration and Refugee Protection Act pass, the Minister can issue instructions affecting the processing priority of Family Class immigrants and place limits on the numbers of Family Class immigrants to be processed, and directing that certain Family Class applications be discarded and unprocessed.

The government claims that it is not their intention to use the instructions to slow down or thwart family reunification; however, as we all know, governments and civil servants who are delegated powers are not prevented from making decisions and taking actions just because they or their predecessor said it was not their intention to do so. CIC explains that the bill gives such wide powers to issue instructions in order to have “flexibility”. This “flexibility” however can and will give rise to “arbitrary” and “discriminatory” decisions and actions.

Much of the confusion arising from the bill lies in its wording. The bill says "instructions apply to A, but not B, C, D...", but in fact, what this suggests is "instructions apply to A (but not B), to C, to D..."
The difference in punctuation and in our respectful opinion, flawed legislative drafting, creates ambiguity and incomprehension.

Accordingly, CAF submits that “instructions” can and will apply to:

- Applications for permanent residence made outside of Canada, except refugees.
- Family Class sponsorship applications.
- Applications for permanent residence made inside Canada, except refugees.
- Applications for temporary residence status made inside Canada.
- Applications for H&C made outside Canada (but not made inside Canada).

For any of the categories subject to instructions, the Minister would be able to:

- Establish categories of applications to be processed.
- Determine the order in which the applications should be processed.
- Fix a limit on the number to be processed.
- Provide rules for repeat applications.
- Retain, return or otherwise dispose of applications that, following the instructions, are not processed.

IV. Immigration Policy Shift without discussion or debate

In addition, CAF is deeply troubled by the emerging policy shift in which we are witnessing workers being identified as cheap and exploitable labour brought to Canada with temporary visas. The insistence by the government that they are allowed flexibility by this arrangement underscores the fact that workers who are brought to Canada for temporary labour are “low-skilled” and do not have the necessary points allowed to settle in Canada as permanent residents. Workers are trained and then forced to depart – this is a waste of time, talent and resources.

Considering the points above, it is CAF’s submission that Bill C-50 is a recipe for racism and discrimination by the Minister of CIC; subject to the whims and desires of the government of the day. Given Canada’s history of racist exclusion and the use of immigration policy this is a valid conclusion.

Canada has prided itself on being a beacon for tolerance and acceptance since its history began. We are told that Canada is a champion of social responsibility, human rights and justice. A closer look at Canada’s immigration history and policy offers an alternative viewpoint:

In 1629, the first black slaves arrived on Canadian soil from Africa, continuing on until the slaves escaped their servitude via the Underground Railway in the 1850’s.

From 1869-72, a series of immigration laws introduced measures to protect European immigrants arriving to Canada by boat and offered generous terms of settlement (often free land) to European immigrants.

Only a few years later, from 1880-85, thousands of Chinese workers were brought to Canada to build the Canadian Pacific railway.
On July 20, 1885, a $50 head tax (increased to $100 in 1900 and then to $500 in 1903) is levied upon all Chinese immigrants courtesy of An Act to Restrict and Regulate Chinese Immigration into Canada.

In 1907, Canada experienced its first race riots in Vancouver when the Asiatic Exclusion League is formed to halt immigration of Chinese, Japanese, Sikh and other Asian immigrants to Canada. South Asian immigrants were required to have $200 in their possession upon arriving to Canada.

The next year, the Continuous Passage Act is legislated, allowing the Canadian government to accept immigrants who have come to Canada by an uninterrupted journey. At this point in history, a continuous journey from most Asian countries is unavailable, and in 1914, 400 immigrants from India are denied entry to Canada from Vancouver after it is judged that their journey was not continuous.

On May 4, 1910, the Immigration Act is passed to ensure that immigrants deemed impossible to assimilate based on their country of origin may be prohibited from immigrating to Canada. The government retains this power of discrimination until 1978. From about 1910 onwards, the Canadian government would actively discourage the immigration of Jewish immigrants, culminating in the refusal of the ocean liner St. Louis to dock in 1939, forcing 900 Jewish refugees to return back to Germany where many of its passengers perished. During World War 2, Canada only accepted 5000 Jewish refugees, arguably the worst record amongst all refugee-receiving states. From 1941-5, 23,000 Japanese Canadians (of which over half are born in Canada) were interned, displaced, dispossessed, and detained.

Given the above examples, CAF submits that the “wide discretionary powers” and the “Ministerial instructions” under Bill C-50 represent a regression to the use of immigration law as a tool for racist selection and exclusion without knowledge or accountability.

Therefore, Bill C-50 represents a shift away from objective and clearly defined criteria applicable to all equally towards the use of law to be applied to all unequally.

The need for objective and clearly defined criteria

The Immigration Act was amended on March 23, 1967, and discrimination based on ethnic and race were replaced by a “points” system which now discriminates based on the socio-economic status of the applicant. In 1978, a new Immigration Act is passed which offers a promise of a fair and non-discriminatory measure of assessing and accepting immigrants. The new system puts into effect an adjustable quota system and refugees are recognized as a separate class of immigrants eligible for Canadian sanctuary.

CAF submits that instead of building upon the more neutral and fair “point system”, the government is reversing and resurrecting the primitive immigration systems and policies under which discrimination against applicants based on race, ethnicity and country of origin will be possible and permissible.

V. Summary of Proposed Changes and CAF’s Objections
s. 11 (1) "May" is to be changed from "shall". This means that the officer now has discretion to void the visa or document even if the applicant fulfills all of the requirements of the Act.

s. 25 "May" is to be changed from "shall". This means the Minister is not under a duty to consider H&C applications made from overseas, contrary to our obligations under the UNCRC.

s. 87.3 These powers will allow the Minister to set quotas, discard rules, etc. based on whatever category the Minister chooses including quotas set for each visa post, type of occupation, race, gender, nationality, etc for all applications made inside or outside Canada, including family class, except refugees.

s. 120 These provisions will be retroactively applied which could negatively affect tens of thousands of applicants who based their applications on Canada's laws at the time of their application. There is a Constitutional presumption against retroactive legislation when that legislation affects constitutional rights. Therefore legality of this proposed amendment is of serious concern.

VI. Conclusion

While CAF shares the Minister’s desire to address the backlog of roughly 925,000 immigration applications, it is our position that the manner in which she is doing it and the proposals themselves are just counterintuitive and will instead create a system of immigration based on discrimination. Family reunification and permanent residency, once considered to be the backbone of Canada’s immigration system, are discarded in favour of exploitable labour and no parliamentary overview of the decisions made by the Minister of Citizenship and Immigration or her delegates who will not be subject to review.

All of which is respectfully submitted, this 12th day of May 12, 2008.

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