

Non-Status Immigrants in Canada

Brief to the Standing Committee on Citizenship and Immigration

December 8, 2006 - Toronto

Founded in 1983, the Mennonite New Life Centre of Toronto (MNLCT) has twenty-three years of experience serving newcomers to Canada. With twelve full time staff and numerous volunteers, the New Life Centre offers settlement services, language instruction and child minding, as well as a variety of emotional integration and support programs, including art therapy, anger management and individual counselling. We offer services in English, French, Mandarin, Serbo-Croatian and Spanish. A majority of our clients come from the Latin American community.

The Mennonite New Life Centre originates in a long tradition of peace and service work by Mennonite churches. Mennonite history is marked by a long series of migrations, motivated by religious persecution, as well as the desire to maintain a distinct way of life based on deeply held values of peace and non-violence. Mennonites therefore have a strong concern for immigrants and refugees, particularly the most vulnerable.

Non-status immigrants, persons who have overstayed a visa or received a negative decision on a refugee claim, are the most vulnerable group of newcomers served by the New Life Centre. Non-status immigrants face a high risk of labour exploitation, as well as formidable barriers to accessing basic services. In addition, these newcomers live with severe emotional stress, in constant fear of being detained and deported. Currently, the New Life Centre sees about 100 non-status clients per year, of an estimated 200 000 across Canada. We believe that our non-status clients and their families must be offered a path out of this life of insecurity and chronic poverty.

Around the world, Canada is regarded as a positive example of the successful integration of refugees and immigrants, an integration that respects both cultural integrity and human rights. We share our concerns in this brief because we are proud of this reputation and wish for it to be fully reflected in the experience of all newcomers, regardless of status.

The Mennonite New Life Centre thanks the Standing Committee on Citizenship and Immigration for their proven commitment to deliberation on the concerns of non-status immigrants. We trust that the following recommendations, rooted in the experience of frontline workers, will help to inform your reflections and policy proposals.

This brief highlights three specific areas of concern with regards to the experience of non-status clients: labour exploitation, barriers to service access, and barriers to legal status. We urge the government to take prompt action on these urgent issues.

1. Exploitation of non-status workers

The New Life Centre has served many non-status clients with complaints of exploitation by employers. For those working without the correct documents, the risk of deception and exploitation is disturbingly high. The possibility of being turned in to immigration authorities and losing everything makes undocumented workers extremely reluctant to make a complaint against their employer. Employers know that non-status workers are in a vulnerable position. Many make

sizeable profits off the backs of these vulnerable workers. For example, the Toronto housing boom has been heavily subsidized by the underpaid labour of undocumented workers.

Non-status workers are concentrated in those sectors of the economy with the lowest wages, and the least monitoring of working conditions. They work in agriculture, construction and the garment industry. They clean offices, serve fast food and care for other people's children. Men and women carry out dangerous and physically demanding tasks, often without proper training and workplace safety measures. They face an increased risk of workplace accidents, with no access to WSIB coverage.

Case example:

Mr C. came to the Mennonite New Life Centre for assistance, after being exploited in a painting job in Toronto. Recently arrived in Canada, and without a work permit, Mr C. was pleased to encounter someone who spoke his language in the neighbourhood Tim Horton's, and even more pleased to be offered a job as a painter. The promised wages were \$8/hour, with the first pay cheque to be issued after three weeks. For the next three weeks, Mr C. was picked up every morning at 5:00 am by a mini-van which dropped off undocumented workers at different workplaces across the GTA. The hours were long and exhausting, but Mr C. kept up his motivation, and even told his family back home that he soon would be able to send a little money. However, on the morning he was supposed to receive his first pay cheque, the mini-van never showed up. Mr C.'s phone calls were never answered or returned.

Recommendations:

- Allow applications for an initial work permit from persons already residing in Canada
- Revise the immigration points system to reflect the wide range of labour needs in Canada, including needs for manual labourers.
- Prioritize access to permanent immigration over temporary labour programs. If there is an identified labour shortage, workers should be allowed to enter the country with landed status. In the alternative, if temporary workers are used to fill labour shortages, they should have full access to enforcement mechanisms and opportunities to apply for permanent residence.
- Sign the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

2. Difficulties in accessing public services

Social services exist to meet basic human needs, such as health, education, and freedom from violence. Non-status immigrants experience all of these basic needs, but encounter formidable barriers to accessing services. Without legal immigration status, they are ineligible for provincial health coverage. Many do not have the financial resources to pay for health care out of pocket. As a result, minor and easily treatable health problems can develop into much more serious conditions. This is of particular concern given the poor health and safety standards in many of the workplaces where non-status immigrants are employed.

Fear is a major barrier to service access. In Toronto, School Boards and the Police Services Board have taken promising steps to implement some aspects of a "Don't Ask, Don't Tell" policy, in order to move towards guarantees of access to services, regardless of immigration status. However, the

Canadian Border Services has recently questioned these promising directions in Police Services Board policy. Many non-status immigrants continue to fear being turned in to immigration officials and eventually deported, as a result of trying to access services. As a result, school-age children may go without education or women stay in abusive relationships, for fear of reporting violence to the police.

The settlement service sector is also affected by this dynamic. Many non-status immigrants fear to approach settlement agencies, which have uneven policies with regards to serving the non-status population. Settlement counsellors at the Mennonite New Life Centre work hard to build trust and to offer quality assistance. However, they often run into barriers and difficulties when trying to refer non-status clients for needed services.

Government funding restricts eligibility for settlement services to those with legal status. Settlement agencies like the New Life Centre, which are committed to serving all newcomers regardless of status, struggle to keep up to the needs and are forced to spend significant energy seeking alternative sources of funding to expand the scope of their services.

Case example:

Ms M. came to the New Life Centre on a Friday afternoon, anxious and upset. She was five months pregnant and had seen neither a doctor nor a nurse during the entire period of her pregnancy. With time passing, she was concerned for the health of her unborn child and worried about giving birth. Ms M. and her boyfriend had come to Canada four years earlier and claimed refugee status. After their claim was rejected, they supported themselves for a time by working for a cleaning company. However, Ms M.'s boyfriend left her when he learned of her pregnancy. Ms M. faced giving birth alone, without financial or medical support.

Recommendations:

- Expand eligibility criteria for federally funded settlement services, so that all newcomers can access settlement services without fear, including information and assistance with regards to regularization of their immigration status.
- Intervene with other government departments to sensitize them to the importance of making basic services such as education, health, and police protection accessible to all, regardless of immigration status

3. Legal Processes

New Life Centre staff assist many clients with making a refugee claim or humanitarian and compassionate application. We accompany clients in the long and anxious period of waiting for a decision and witness the anxiety, grief and fear of those whose cases are rejected. Life and death decisions are made by a single, fallible decision maker at the Immigration and Refugee Board, with no opportunity for an appeal on the merits. Refused refugee claimants find themselves with no other recourse than to pay a lawyer to help them with an appeal to the Federal Court, which can only rule on procedural mistakes, or hope against all odds for a positive decision on a PRRA or Humanitarian and Compassionate Application. Meanwhile, the PRRA can only consider new evidence and decisions on a Humanitarian and Compassionate Application are discretionary. Success rates for all of these processes are very low and none constitute a full appeal on the merits, as contemplated by the Refugee Appeal Division already provided for in the Immigration and Refugee Protection Act.

It is heartbreaking for settlement workers to explain to clients that Canada's refugee system does not allow itself to correct its own mistakes.

It is equally heartbreaking for settlement counsellors to work with clients with compelling reasons for seeking a new life in Canada whose circumstances do not fit the refugee definition or the criteria for immigration as a skilled worker. For many, the only option is a Humanitarian and Compassionate Application. The requirement that all applicants meet both the requirements of “excessive hardship,” often interpreted to mean direct risk to life or security, and “successful integration,” particularly economic integration, is unnecessarily restrictive. Our clients are often discouraged to learn that this application does not protect them from deportation.

Case example:

Mr L.'s refugee claim was rejected. However, he assumed that no deportation order had been issued, since he never received any communication to this effect from CIC. For several years he worked in the underground economy, using a borrowed social insurance number. Eventually, he got tired of living “underground”, so he decided to seek legal assistance. He soon found out, however, that he was not eligible for Legal Aid. The lawyers that he called informed him that they would charge several thousand dollars to do the application. Most of them required the money in advance. With many questions and initial distrust, Mr L. finally came to the New Life Centre for help with a Humanitarian and Compassionate Application. After making the application, he began to spend his nights at different addresses, for fear of being arrested by immigration officers.

Recommendations:

- Immediately implement the Refugee Appeal Division as provided for in the Immigration and Refugee Protection Act (IRPA).
- Implement a more relaxed Humanitarian and Compassionate Application process, with expanded eligibility criteria and special consideration for survivors of domestic and sexual violence. Protect applicants against deportation while their application is being processed. In this regard, the Mennonite New Life Centre supports the CCR Proposal for the Regularization of Individuals and Families without Status.
- Implement a Regularization or Adjustment of Status Program for those whose situations do not fall into either of the above categories. Introduce a moratorium on deportations of non-status persons who come forward to have their status regularized, at least until their case has been reviewed. The Mennonite New Life Centre recognizes that any regularization program will necessarily include security screening as for any application for permanent residence in Canada.

Conclusion

Canada needs workers, including manual labourers. Jobs in the underground economy are not hard to find, but fair treatment is a much rarer commodity. Every day, thousands of undocumented workers gamble with their health and safety in order to survive. The Canadian economy benefits, but the undocumented workers receive no rights and protections in return.

The New Life Centre recognizes the right of a sovereign nation to establish criteria and parameters for its immigration system, including security screening. However, we strongly object to broad generalizations in public discourse which link refugees and non-status immigrants to national

security concerns. We also believe firmly that no person residing on Canadian soil should suffer violation of their human rights due to labour exploitation or denial of basic services.

We urge the Standing Committee to make strong recommendations to the Minister, both to respond to the urgent and immediate needs of non-status immigrants already in Canada, and to increase access to legal immigration channels, for the benefit of Canada and all who seek to become contributing members of this nation.

Submitted by: Mennonite New Life Centre of Toronto
December 8, 2006