



February 12, 2014

Via email: Les.Linklater@cic.gc.ca

Les Linklater
Assistant Deputy Minister, Strategic and Program Policy
Citizenship and Immigration Canada
365 Laurier Avenue West
Ottawa, ON K1A 1L1

Dear Mr. Linklater:

Re: Updating Regulations to reflect changes in 2013 Budget Bill

We are writing to express our concern that amendments to the *Immigration and Refugee Protection Act* in the *Economic Action Plan 2013 Act, No. 1*,¹ have created a situation where certain refugee claimants do not have access either to the Refugee Appeal Division (RAD) or a statutory stay pending judicial review. We ask the government to remedy this unintended consequence and restore the right to a stay for these claimants.

These recent amendments eliminated a right to appeal to the RAD that had been mistakenly granted to certain claimants under the *Protecting Canada's Immigration System Act*.² Specifically, the coming into force of section 36(1) of the *Balanced Refugee Reform Act*³ (BRRRA) on August 15, 2012 established that as the start date for eligibility for recourse to the Refugee Appeal Division. It became clear that the intention of the Minister was to have only subsection 36(2) come into force at that time rather than the whole section. This error was addressed in sections 167 and 168 of the *Economic Action Plan 2013 Act, No. 1*, which removed access to the RAD for "asylum claimants who were referred to the IRB between August 15 and December 14, 2012, and whose claims have not yet been decided by the Refugee Protection Division at the IRB as of June 26, 2013."⁴

However, the legislation creates a problem for claims referred between August 15 and December 15, 2012. Because the regulations have not been amended to allow these claims access to the

¹ SC 2013, c.33 (received Royal Assent June 26, 2013).

² SC 2013, c.13.

³ S.C. 2010, c. 8.

⁴ Citizenship and Immigration Canada, "Refugee Appeal Division," online: www.cic.gc.ca/english/refugees/reform-rad.asp (date modified: June 28, 2013).

transitional provisions, they are subject to section 231 of the Regulations. Section 231 grants a stay only to an individual who “makes an application for leave for judicial review...with respect to a decision of the Refugee Appeal Division...” Under the previous version of the regulation, these claims would have the benefit of a statutory stay on an application for judicial review of a decision of the Refugee Protection Division. The result is that claims referred between August 15 and December 15, 2012 have neither a RAD appeal nor the benefit of a statutory stay pending judicial review.

This is neither fair nor does it appear to have been the original intent of the legislation. There should be a regulatory amendment to ensure that the transitional provision of R231 applies to the cases referred between August 15 and December 15, 2012. These claims would have had access to them if the the error with the BRRRA coming into force had not occurred. Given that many of these cases are currently before the Board and being given decisions, the issue is urgent.

We look forward to your attention to this matter as soon as possible and to make the necessary amendments the Regulations.

Yours truly,

(original signed by Kerri Froc for Mario Bellissimo)

Mario Bellissimo
Chair, Immigration Law Section