



February 10, 2022

Via email: [Minister@cic.gc.ca](mailto:Minister@cic.gc.ca)

The Honourable Sean Fraser, P.C. M.P.  
Minister of Immigration, Refugees and Citizenship  
365 Laurier Avenue West  
Ottawa, ON K1A 1L1

Dear Minister Fraser:

**Re: Expanded access to work permits for foreign nationals**

I write on behalf of the Immigration Law Section of the Canadian Bar Association (CBA Section) to suggest an amendment to section 206 of the Immigration and Refugee Protection Regulations (Regulations) to expand access to work permits for foreign nationals who are without status in Canada, cannot return to their country of nationality, and are not subject to a removal order. The Regulations do not provide foreign nationals with the ability to work in Canada where they are not subject to removal orders but who cannot return to their country of nationality due to dangerous conditions. This submission explains this unfortunate oversight and urges the Minister to fill the gap.

The CBA is a national association of 36,000 lawyers, law students, notaries and academics, from every jurisdiction of Canada, with a mandate that includes seeking improvements in the law and administration of justice, and access to justice. The CBA Section is comprised of over 1,200 lawyers, practising in all aspects of immigration law and rendering professional advice and representation in the Canadian immigration system to clients in Canada and abroad.

**Background**

Foreign nationals in Canada are eligible for a work permit under certain prescribed categories in the Regulations. Those in Canada without status can only apply for work permits in the limited circumstances.

Section 206 lists two scenarios in which foreign nationals with no other means of support are eligible for a work permit.

1. When a refugee claim has been referred to the Immigration and Refugee Board. All refugee claimants are issued a departure order, which remains unenforceable until the determination of the claim. Claimants are entitled to a work permit per s. 206(1)(a) during the determination process. In practice, Immigration, Refugees and Citizenship Canada (IRCC) allows these individuals to renew their work permits after refusal of their refugee claim and after the removal order comes into force – while they are remaining in Canada.

2. When foreign nationals are subject to an unenforceable removal order per s. 206(1)(b). This scenario applies to individuals who have been issued a removal order at some point in the past, and whose removal cannot be performed for a variety of reasons. For example, in cases of temporary suspension or administrative deferral of removal with respect to the country of nationality, per s. 230 of the Regulations.

Other circumstances include s. 207, which permits foreign nationals to apply for a work permit if they have approval in principle on their permanent residence application and may be out of status. Section 208 permits the issuance of work permits to temporary residents and foreign nationals who cannot continue their studies due to financial hardship.

### **The problem**

Many foreign nationals who are ineligible for work permits because they don't have a refugee claim or an unenforceable removal order, are also unable to return to their country of nationality because the country is on the list for Temporary Suspensions of Removal (TSR) or Administrative Deferral of Removals (ADR). These individuals find themselves in precarious financial and legal situations for extended times.

For example, this is the case of students who come to Canada and eventually obtain post-graduate work permits. Some are unsuccessful in their long-term goals to obtain permanent residency through regular categories (for instance, being unable to gain qualifying work experience in Canada). This is also the case for individuals who come as visitors and are unsuccessful in extending their authorized stay.

### **Risks of returning to country of nationality**

Dangerous, destitute or otherwise adverse conditions in a country of nationality – such as civil war or large-scale humanitarian crisis – prevent some foreign nationals from leaving Canada to return home. They may not meet the substantive eligibility criteria to make a refugee claim because the risk of hardship and harm arising from the situation in the country of nationality is not a ground on which the refugee status can be conferred.

The reasons for not returning to countries of nationality stem from the adverse, dangerous and sometimes deteriorating conditions. These are the same reasons for which Canada Border Services Agency (CBSA) issues an ADR or TSR for a country pursuant to s. 230 of the Regulations: the Minister may impose a stay the removal of foreign nationals “with respect to a country or a place if the circumstances in that country or place pose a generalized risk to the entire civilian population as a result of:

- a) an armed conflict within the country or place;
- b) an environmental disaster resulting in a substantial temporary disruption of living conditions; or
- c) any situation that is temporary and generalized.”<sup>1</sup>

Typically, these countries are experiencing a prolonged civil war or an armed conflict, or other situations expected to result in a humanitarian crisis for all or most of its citizens. This designation can be short-term or last decades, as with the Democratic Republic of the Congo.<sup>2</sup>

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<sup>1</sup> See *Immigration and Refugee Protection Regulations (IRPR)*, [s. 230](#).

<sup>2</sup> ADR and TSR are explained as follows on the [CBSA website](#):

Administrative deferral of removals [are] meant to be a temporary measure when immediate action is needed to temporarily defer removals in situations of humanitarian crisis. The ADR is not meant to address persistent and systematic human rights problems which constitute individualized risk. Once the situation in a country stabilizes the ADR is lifted and the CBSA resumes removals for individuals who are inadmissible to Canada and have a removal order in effect. An individual who is not allowed

Additional reasons to remain in Canada without status involve protracted obstacles in renewing passports or obtaining other travel documents. Individuals who apply for permanent residence under inside-Canada categories, such as on humanitarian and compassionate (H&C) grounds or under the Spouse/Common-law Partner in Canada class, is also a common reason for staying in Canada. These individuals are not eligible for a work permit until approved in principle. However, the approval process can take over 12 months, and often years.

While these individuals continue to stay in Canada without status, they do not necessarily come to the attention of CBSA, are not subject to enforcement proceedings, and do not receive removal orders. Individuals ineligible for a work permit are prevented from earning a living, which leaves them in a difficult predicament legally and practically if unable or unwilling to depart Canada.

In summary, a foreign national from a country subject to a removal moratorium under s. 230, must also be subject to a removal order to benefit from s. 206(1)(b) and become eligible to an open work permit. Many, however, don't have removal orders.

The excessive processing times for inland applications for temporary resident permits – upwards of 12 months – also preclude a meaningful and practical solution to obtain a work permit in a reasonable time under s. 208 of the Regulations.

### **Consequences of staying in Canada**

Applicants who are not eligible for a work permit but cannot return to their home country often suffer severe consequences while remaining in Canada. They must choose between working without authorisation or applying for social assistance to support themselves and their families. In many provinces, their lack of a status renders them ineligible for social assistance. Being ineligible for a work permit results in other hardships: persons forced to work without authorization are more vulnerable to exploitation and mistreatment by employers. Women are especially vulnerable, as they are more likely to suffer from sexual harassment. Working “under the table” limits employment options and likely keeps foreign nationals in menial and strenuous jobs that are physically and mentally exhausting.<sup>3</sup>

IRCC officers may reprimand H&C applicants for engaging in unauthorized work despite few other options to support their families, and may consider non-compliance a negative factor in their application assessment. Nonetheless, the work demonstrates an applicant's ability to financially establish themselves in Canada.

Provinces such as Alberta and British Columbia deny eligibility for a driver's license or healthcare coverage to foreign nationals without a valid temporary status. This exclusion affects their ability to earn

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into Canada on grounds of criminality, international or human rights violations, organized crime, or security can still be removed despite the ADR.

Temporary suspension of removals [halt] removals to a country or place when general conditions pose a risk to the entire civilian population. Examples include armed conflict within a country or place or an environmental disaster resulting in a substantial temporary disruption of living conditions. An individual who is not allowed into Canada on grounds of criminality, international or human rights violations, organized crime, or security can still be removed despite the TSR. The primary difference between the TSR and the ADR are that an ADR is generally put in place within a short period of time to immediately respond to a change in country conditions.

<sup>3</sup> Government of Canada, [Vulnerable foreign workers who are victims of abuse](#). See also Magalhães L, Carrasco C, Gastaldo D. [Undocumented migrants in Canada: a scope literature review on health, access to services, and working conditions](#). *J Immigr Minor Health*. 2010; 12(1); Fay Faraday, [Profiting from the precarious](#), 2014; CBC, [Exploitation of migrant care workers has increased since COVID-19 struck, report says](#); Western University Centre for Research & Education on Violence Against Women & Children, [Exploring the Intersections of Sexual Violence and Precarious Work: A Literature Review](#).

a living, and can also have dire health consequences when they do not seek timely medical care due to prohibitive out-of-pocket costs.

### **Proposal to amend R206 of the Regulations**

Not granting work permits to foreign nationals in Canada who are not subject to removal orders and cannot return to their country of nationality due to large-scale disasters, humanitarian crises, and other dangerous conditions puts them at risk of poverty and workplace abuse. The countries subject to TSR and ADR reflect the implicit recognition that it is fair, humane and compassionate to allow foreign nationals without status to remain in Canada and not to expect or compel them to return to severely adverse conditions in their home countries. As such, they should be granted the right to work permits until their country of nationality is removed from the list.

To remedy this oversight, the CBA Section recommends an addition to section 206:

206 (1) A work permit may be issued under section 200 to a foreign national in Canada who cannot support themselves without working, if the foreign national

- (a) has made a claim for refugee protection that has been referred to the Refugee Protection Division but has not been determined;
- (b) is subject to an unenforceable removal order; or
- (c) **is a citizen of a country for which the Minister has imposed a temporary suspension of removal or an administrative deferral of removal.**

Permitting these foreign nationals to have work permits would not impede CBSA's ability to issue and eventually enforce removal orders, since work permits given under section 206 do not confer temporary resident status, pursuant to s. 202 of the Regulations. The reference to "may be issued" in section 206 maintains IRCC's authority and discretion to refuse the work permit.

### **Alternative proposal**

Alternatively, should you not wish to amend the Regulations, a policy pursuant to s. 25.2(1) of the *Immigration and Refugee Protection Act* may be issued to achieve the same objective of providing legal means of self-support in Canada to those who cannot return to a country of nationality subjected to ADR or TSR.

The CBA Section appreciates the opportunity to propose remedial action through legislation or policy to authorize work permits for vulnerable foreign nationals in Canada who are excluded from the existing work permit categories. We would be pleased to discuss our recommendations, offer additional insights, and assist with the development and implementation of relevant policies and regulatory amendments.

Yours truly,

*(original letter signed by Véronique Morissette for Kyle Hyndman)*

Kyle Hyndman  
Chair, Immigration Law Section