



May 25, 2023

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: PR Pathways for out-of-status foreign nationals**

I write on behalf of the Immigration Law Section of the Canadian Bar Association (CBA Section) to recommend regularization policies for persons without valid immigration status. The CBA Section supports the priority in your 2021 mandate letter<sup>1</sup> to regularize status for undocumented workers who are contributing to Canadian communities. Recognizing that this measure will serve the public interest, the CBA Section has several recommendations to help achieve this objective.

The CBA is a national association of over 37,000 members, including lawyers, notaries, academics, and students across Canada. The CBA's mandate is to seek improvements in the law and the administration of justice. The CBA Section has approximately 1,200 members across Canada practising in all areas of immigration, refugee and citizenship law.

**Background**

IRCC cites estimates from academic sources on the number of undocumented immigrants in Canada, which may be as high as 500,000.<sup>2</sup> Many are steadily employed, in sanitation, food delivery, construction, healthcare, agriculture, etc. They make essential contributions to Canada's public health and economic prosperity. However, their lack of status often leaves them open to exploitation, abuse and crime, and unable to access healthcare, education, or social support.

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<sup>1</sup> The Rt. Hon. Justin Trudeau, P.C., M.P., Mandate letter to the Minister of Immigration, Refugees and Citizenship, 16 December 2021, [online](#).

<sup>2</sup> "CIMM – Undocumented Migrants– November 18, 2022" (2023-03-17) Government of Canada, [online](#).

Seeking to remove all people without status from Canada is unworkable. In the 2021-2022 fiscal year, the Canada Border Services Agency (CBSA) removed only 7,453 people after over \$300,000,000 of border enforcement spending.<sup>3</sup> Moreover, Canada has suspended removals to 17 countries – some for decades.<sup>4</sup> Realistically, most undocumented persons are here to stay. IRCC must exercise responsible, proactive governance in response to that reality.

Canada is also facing a labour deficit. The Bank of Canada found 43% of firms still consider labour shortages one of their top three concerns.<sup>5</sup> It would be economically disastrous to potentially lose hundreds of thousands of workers and the associated taxes.

Past regularization programs like the GTA Construction Worker program, the Guardian Angel program were encouraging first steps. National expansion is one avenue the CBA Section would support, particularly in the context of housing shortage. However, the potential of these programs was limited by low application caps. In addition, the programs often required applicants to demonstrate that they originally entered Canada with valid status, excluding former refugee claimants who make up a large portion of Canada's undocumented population.

### Proposal Program Criteria

The CBA Section proposes four programs that IRCC could implement to facilitate regularisation of status for four different undocumented groups.

We recommend that IRCC grant permanent residence to successful applicants. If this is not possible, we recommend a form of temporary residence that is subject to indefinite non-discretionary renewal. For example, there could be a special three- to five-year renewable Temporary Resident Permit with accompanying Work and Study Permits, which may open a pathway to permanent residence for some applicants as a member of the Permit Holder class under s. 65 of the IRPR).

To avoid incentivizing future noncompliance or irregular migration, IRCC could design these programs as one-time policies open only to persons in Canada at the time they are announced.

We propose that the first three proposed programs use the following criteria:

- Must have been in Canada when the program was announced and at the time of the application;
- Must have resided in Canada a minimum of five years continuously with or without status at the time of the application;
- Must not be inadmissible under ss. 34, 35, 36(1), 37, 38(1)(a), or 38(1)(b) of the IRPA;

We would distinguish each of the first three proposed programs in terms of an additional criterion:

- A. **Program for Undocumented Workers Who Contributed to Canada's Economy:** Must demonstrate at least 2880 hours of employment, authorized or unauthorized and full-time or part-time, in any field during the past five years through pay stubs, bank deposits, cash receipts or employer letters.

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<sup>3</sup> 2021 to 2022 Departmental Results Report: Canada Border Services Agency (2022-12-02) Canada Border Services Agency, [online](#).

<sup>4</sup> "Removal from Canada" (2023-04-27) Canada Border Services Agency, [online](#).

<sup>5</sup> "Business Outlook Survey—First Quarter of 2023" (2023-04-03) Bank of Canada, URL: [online](#).

- B. **Program for Undocumented Persons Who Entered Canada as Minors:** Must have been less than 18 years of age at the time they entered Canada;
- C. **Program for Persons from Moratorium Countries:** Must be a national of a country or countries covered by a Temporary Suspension of Removals or an Administrative Deferral of Removal, and no other countries.

For the fourth program, the CBA Section proposes a special stream for persons inadmissible to Canada for reasons besides noncompliance, but who still cannot be removed from Canada, and who have demonstrated a long record of changed behaviour plus strong ties to Canada:

- Must be present in Canada when the program is announced and at the time of the application;
- Must be 10 years since their most recent finding of inadmissibility under ss. 34, 35, 36(1), 37, 38(1)(a), or 38(1)(b) of the IRPA;
- Must demonstrate that they do not pose a danger to public health or safety;
- Must demonstrate eight years of full-time work experience during the past 10 years; and
- Must have immediate family in Canada (i.e., a spouse, common-law partner, conjugal partner, or dependent child as defined in s. 2 of the IRPR).

### **Cautions**

Many persons without status in Canada are former refugee claimants who originally entered Canada through channels considered irregular but legitimate under Canadian policy and law. The potential benefits of these programs are maximized without a requirement to show the applicant previously entered Canada with valid status or with their own valid travel document.

Unlike previous programs, the first three proposed programs do not require applicants to show formalized family ties in Canada. Doing so would exclude people who have contributed to Canada for years despite family separation, or who have strong non-family ties to their communities.

IRCC, CBSA, and ESDC should avoid using information disclosed in these programs to penalize noncompliant employers. This would balance allowing workers to present applications without risking employer retaliation, while also allowing the government's existing investigations against abusive and/or noncompliant employers to continue without disruption.

Applicants should be permitted to include dependent spouses and children (even those overseas) for simultaneous processing. This measure will eliminate administrative inefficiency by averting the need to process separate family sponsorship applications.

### **Conclusion**

The CBA Section appreciates your review of our proposal. 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 Lisa Middlemiss)*

Lisa Middlemiss  
Chair, Immigration Law Section

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