

October 29, 1999

The Honourable Elinor Caplan, P.C., M.P.
Minister of Citizenship and Immigration
365 Laurier Avenue West
20th Floor, Jean Edmonds South Tower
Ottawa, ON K1A 1L1

Dear Minister:

Re: Processing Claims for Refugee Status by Fujian Migrants

We are writing on behalf of the National Citizenship and Immigration Law Section and the BC Branch Immigration Law Section of the Canadian Bar Association (the CBA), to express our concerns regarding efforts to process expeditiously refugee claims made by Fujian migrants presently in detention in BC, particularly those migrants detained in facilities in Prince George.

The immediate problems are the inability of the Legal Services Society (LSS) to fund counsel representation for the claimants, and the lack of accessibility to counsel. There is a real possibility that the IRB will proceed to determine claims of unrepresented claimants, for the sake of expediency. This raises serious issues of breach of right to counsel, with consequential delays should the determinations be challenged on that basis. Our goal is to see resolution of these difficulties and avoidance of unnecessary delay. We respectfully request that you and your officials facilitate immediate resolution. This can be achieved by Federal assurances of funding to the LSS, and CIC commitment to facilitate moving at least some hearings from Prince George to Vancouver.

Background

With the lack of detention facilities in the Lower Mainland, some 240 refugee claimants were transferred to a provincial facility in Prince George. We understand that this costs the Federal Government over \$300 per day per female detainee and almost \$200 per day per male detainee. Assuming that all 240 detainees were men, the cost of detention for the facilities alone would be \$48,000 per day, or \$1,440,000 per month. In addition, staffing and other costs are incurred by CIC to manage the operation.

The decision to detain these people at such a remote facility has created serious logistical problems for all participants in the refugee determination process, namely the IRB, the detainees and counsel.

Over the past weeks, representatives of the BC Branch Section have met with the LSS and the CRDD in an effort to resolve the bottleneck presently impeding processing of the Fujian claims in the CRDD. The CBA certainly appreciates the public interest in seeing the refugee claims expeditiously and fairly processed to conclusion. Our primary concern is for the claimants, individuals who have been detained now for as long as three months and whose detentions will continue pending resolution of claims and issues of removal.

IRB Logistics and Costs

The IRB has indicated their wish to deal with these detained cases on a priority basis. To this end, they have, for example, set a timetable that would see all of the cases ready to proceed to hearing no later than December 15, 1999, notwithstanding the fact that many of the detainees have not yet been served with their PIF packages and are without counsel. The IRB has also decided to establish a hearing facility at Prince George, so the costs of the hearings must be absorbed by the IRB rather than CIC. Yet CIC made the decision to detain these individuals at a remote location.

Legal Services Society Costs

The LSS, on which most detainees must rely for the appointment of counsel, is faced with an expenditure of over \$1,000,000 to provide legal representation for claimants from Boats 1, 2, 3 and 4.

The LSS is in a very difficult position. They have a statutory mandate to provide legal representation to those refugee claimants financially eligible for coverage. On the other hand, there are serious limitations on their financial resources. The LSS has indicated that while they may be in a position to provide legal aid counsel to the detainees in Prince George, they cannot cover the cost of travel and accommodation for counsel to fly from Vancouver to Prince George. Only about six lawyers in Prince George are willing to take on legal aid cases, none with much refugee experience, and even these lawyers are only willing to take on five or six cases each.

Qualified interpreters must also be made available. Since there is a shortage of such interpreters in Prince George, additional costs will be incurred for travel and accommodation for interpreters.

The Immigration Bar Wants to Help

The immigration bar, comprised primarily of lawyers from the Lower Mainland, is ready and willing to represent the claimants on a reduced Legal Aid referral tariff. Without resolution of the LSS funding dilemma, no referrals have been made.

In meetings held over the past weeks, jointly and separately with the LSS and the CRDD, the BC-CBA Immigration Law Section has endeavored to identify the points of delay and solutions for resolution. The immediate difficulties requiring resolution are:

- the inability of LSS to make referrals of counsel due to funding shortage; and
- the lack of accessibility to counsel, due to location of detention and proposed hearings.

The BC-CBA Immigration Law Section has proposed that a team of experienced counsel travel to Prince George in three 3- week sessions to complete PIF documentation and proceed with hearings. Counsel would be responsible for blocks of claimants with LSS tariffs applied at reduced rates to reflect economies of scale.

At the same time, blocks of claimants could be rotated to temporary detention in Vancouver, for hearings where there exists a pool of readily available counsel if LSS funding is available.

The Bar's offer to handle the claims through block referral at reduced tariff rates is made with the sincere desire to have these claims resolved efficiently, properly and expeditiously. We want to avoid sacrifice of individual rights to representation, the risk of legal challenges of decisions, or challenges to any LSS refusals of referral, with consequent delay.

The LSS has recently commenced a process of requesting counsel bids for representation of blocks of claimants, with all hearings to be held in Prince George on an expedited basis. It is not known whether this process for reducing the tariff through bidding will result in adequate numbers of counsel being referred, or adequate funding being allocated. We continue to be concerned with issues of quality and quantity of counsel facilitated through this process.

The Federal Government Must Do Its Part

Resolution of the current difficulties requires Federal and BC Government assurances of funding to the LSS, and CIC commitment to facilitate at least some hearings in Vancouver. Funding and legal resources for Vancouver hearings are viable, there are practical limits on both if hearings are exclusively held in Prince George.

So long as detention and hearings are limited to BC resources, and if detention is absolutely necessary (we do not concede that point), then solutions must be found to facilitate counsel representation. Transferring detainees to the Lower Mainland for hearings may allow the LSS to fund representation within its existing budget. Alternatively or concurrently, adequate funding for provision of legal representation in Prince George must be ensured, to cover travel and accommodation costs for a team of lawyers and interpreters (six to ten of each) going to Prince George to meet with clients, prepare their PIFs, and represent them at hearings.

We suggest that CIC bear responsibility for ensuring funding for the following reasons:

- immigration is a federal responsibility;
- in processing refugee claimants, a duty of fairness is required;
- the LSS does not have funding to absorb the demand presented by the migrants; and
- failure to construct a system that allows counsel to participate will result in voluminous and unnecessary litigation, creating a further drain on the resources of all concerned.

The cost of travel and accommodation for lawyers and interpreters going to Prince George is relatively modest. A return flight from Vancouver to Prince George, booked 7 days in advance, costs \$170. An additional \$170 per day will cover each person's hotel (\$110 single occupancy), ground transport (\$20) and meals (\$50). The total cost for 10 lawyers and 10 interpreters would be \$3,400 per day. Assuming these teams of lawyers and interpreters were able to do one case each per day for preparation and one case per day for hearing, the total time required to process claims for the 240 applicants would be 48 days, for a total cost of \$163,200. Assuming each of the 20 team members made six trips, total transportation costs would be \$20,400. A total cost of about \$180,000 is a very generous estimate.

CIC quickly dedicated resources to meet its obligations at port of entry examination and referral in a timely manner, because the situation required that it be done. It is now incumbent on the Federal and BC Governments to ensure that proper resources are dedicated to the IRB and to the LSS, so they can carry out their responsibilities in a fair and responsible manner. Legal counsel are prepared to assist in facilitating timely hearings of the claims. We are handcuffed because neither the Federal Government

nor the BC Government will assume responsibility for adequate financial resources to the LSS to permit referral of counsel and to ensure a process that permits access to counsel. These failures are regrettable and are causing the current delay in processing.

Conclusion

As a matter of law, refugee claimants are entitled to legal representation through LSS referral. Counsel are not an impediment to the process, they are an asset. Experienced counsel can assist claimants in promptly preparing relevant information and completion of PIFs, to ready the case for hearing. Counsel can appropriately advise claimants whose claims are clearly without merit and also assist in prioritizing claims where there is clear merit. The legal Bar has an interest in maintaining the integrity of the process and assuring fairness for the claimants.

We fear that failure to resolve the issues of adequate funding for representation and access to counsel will result in actions that will irrevocably impair the integrity of the process for these claimants and perhaps future claimants as well. We are further concerned with the reluctance of the Federal and BC Governments to publicly acknowledge the source of delay, and the threat that legal counsel and the IRB process will be made scapegoats.

In the interest of preserving the integrity of CRDD processes and the entitlement of these claimants to a fair and timely hearing we urge you and your officials to reach an accommodation with the BC Government regarding the need for financial resources and disbursement of detainees to accommodate fair and expeditious processing of these refugee claims.

Yours very truly,

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