# REFUGEE UPDATE

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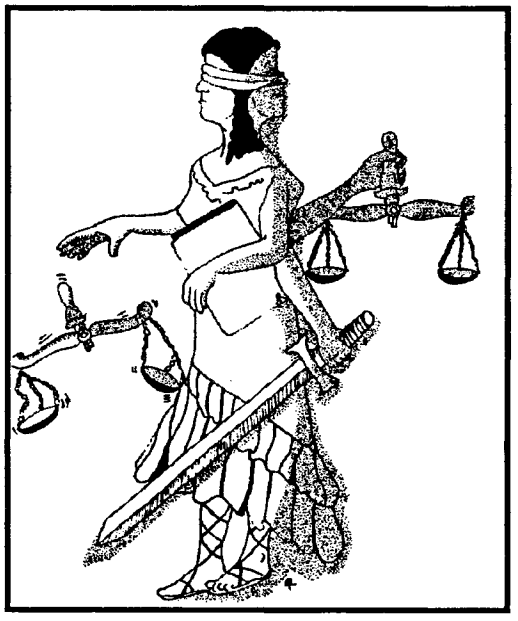
## INSIDE





# THE FACE OF DETERRENCE

*Deterrence is a key concept used by Western nations to keep out asylum seekers. Deterrence measures include checking documents at border points and rejecting entry at border points for persons without legal or proper identification documents, and fining airlines who allow undocumented persons to board.*

*The following is the testimony of a Sudanese woman who travelled legally to Canada – with a proper visa, her passport, a return ticket, and enough money for her visit – but who was caught up in the deterrence strategy of immigration officials. The identities of people in this account have been protected while an investigation is underway by the Canadian Arab Federation and Canada Immigration.*

**STATEMENT BY A-EL – A.**
**THURSDAY, FEBRUARY 17, 1994**

I planned to visit Canada at the request and invitation of a Canadian friend of mine, who lives in New Brunswick. From 1991 until 1993, Rosemary worked as a Medical Technologist at the Hospital, where my husband also works. It was during this period that we became friends. In December 1993, Rosemary sent me a fax inviting me to come visit her.

In January 1994, I obtained a visitor's visa from the Canadian Embassy in Riyad, Saudi Arabia. I also bought my return tickets in Riyad.

I am a Sudanese national employed in Saudi Arabia as a part–time bus monitor and part–time teacher.

On February 11, 1994, I flew with my two daughters Arwa (age 6) and Reem (age 2 and 1/2 years) form Riyad to Paris, a trip of almost 8 hours. There I had a 4 hour wait for my connecting and 8 and 1/2 hours flight to Toronto. I arrived in Toronto on Canadian Airlines flight #055 14:55 expecting to be met by Samer, a family friend.

I wore my Muslim head covering and was dressed as usual for Muslims from India. I was also wearing about $2,000 worth of jewellery.

At about 15:20 I arrived at Terminal 3 Immigration. I was asked for my visa by a male immigration official – Officer D. H. I showed it. I was also asked to produce my air ticket. When asked why I had an open return I explained that I was not sure exactly on which date I would return to Saudi Arabia. I was asked to show how much money I had. I showed the officer about $1,300 in cash. Officer H. asked why I came to Canada. I told him that I came to Canada to visit a friend of mine in New Brunswick. I gave him my friend's name and phone number. I was asked why I had no air ticket to New Brunswick, to which I explained that I could have bought an air ticket but preferred to travel to New Brunswick by train. I was asked where my husband was and what he did. I explained that he worked at Hospital in Saudi Arabia. When asked, I gave

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details of my own employment.

I was asked by H. if I planned to stay in Canada. I answered "no". The officer asserted that the true answer was "yes". He repeatedly asked why I came to Canada and repeatedly asserted his belief that I intended to stay in Canada.

During the wait I was asked if I wished to contact the Sudanese Government. Because I felt that the matter would be resolved soon, I declined the offer.

I was instructed to wait for further questioning with an interpreter. I saw an Arabic interpreter at the location at about 16:00 but apparently was not available for me and I was made to wait longer.

About one hour after my first contact with Immigration Canada, still without an interpreter, H. asked me if I was pregnant. I felt insulted, for cultural reasons, by what I considered to be a rude question for a man to ask a woman. I said no. An hour later I was asked the same question by a female officer and without hesitation answered yes.

At about 17:00, H. asked me if my husband ever goes to Sudan and if he has problems with the Government of Sudan. I explained that my husband has no problem with the Sudanese Government and can travel to Sudan at will. I was then asked the same questions with regard to myself. I informed the officer that I had no problem travelling to Sudan. I further informed him that he could check my passport and would confirm that I in fact visited Sudan for the months of August and September of 1993.

**I TOLD ROSEMARY THAT I WAS NOT SURE WHAT COUNTRY I WAS IN ANY MORE, AND THAT I COULDN'T BELIEVE THAT TREATMENT TO WHICH I WAS SUBJECTED. I ALSO TOLD ROSEMARY IF CANADA IS LIKE THIS I PREFER TO GO BACK TO SAUDI ARABIA.**

During the long wait for the interpreter I became increasingly concerned about the condition of my children. My children had become hungry and thirsty. Although a water fountain was present, my youngest daughter was unable to drink from it. I repeatedly asked for a cup. Eventually, I was brought a small cone shaped disposable paper cup by D. H. It fell apart after a few uses. One female officer gave a colouring book and one orange to my children. The orange was given even though Officer H. protested that eating was not allowed in the area where we were being held. I appreciated the gesture of kindness as my children had been crying for most of the previous two hours.

At about 18:30 I received a call from Samer who advised me to co–operate with the officials.

At 19:00 I was informed that no interpreter would arrive that day and that I would have to go to an immigration facility. When I asked if it was a hotel, I was told it was "like a hotel". I stressed that if it was not a proper and safe hotel I would prefer to pay for accommodation elsewhere.

Two blue jacketed security guards arrived and took me and my children in an official car to the immigration facility. On our arrival at the facility I stated that we were very tired, hungry, and thirsty. I asked if I could buy food for my children.

Instead of being taken where we could get food, we were locked in a waiting room. It was clear to me that the immigration facility was in fact a detention centre. The room was dirty and there was a stench of urine in the air so strong that I was left nauseated. The officer on duty refused my request to leave the door open for ventilation. I was concerned because the waiting room was filled with men who were also being held. I found it hard to accept that I would be confined with my children in an area with strange men. I protested to an officer about being put in a detention room with men. I was told that I would have to wait there until my papers were processed because, as the guard put it, "in Canada we believe in paper".

We were made to wait in the holding room for almost 2 hours. Someone brought us 2 or 3 sandwiches, and 2 cups of milk then, but the smell in the air had left us unable to eat.

At about 20:40 I was subjected to a very detailed search. The officer photographed me and my children and took my jewellery and money except for $30. All my baggage was also taken from me. By this time my baggage was badly damaged by the immigration officials and detention centre security guards.

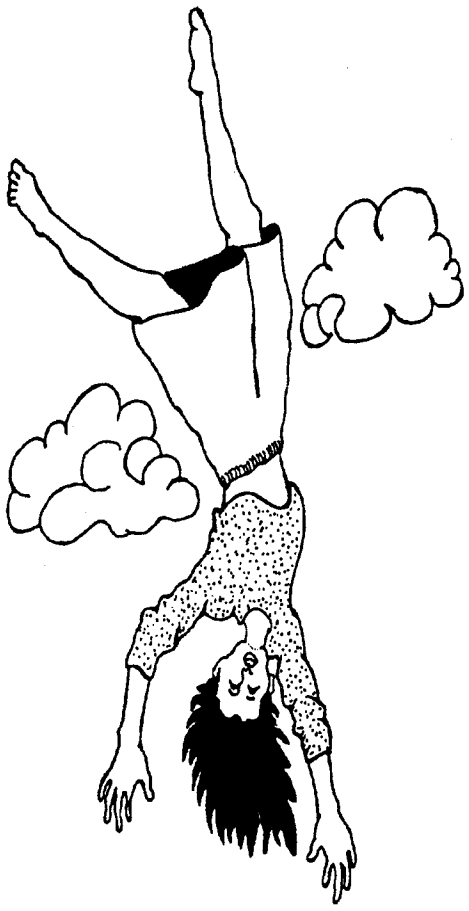
We were then taken to a room. The room was clean and had a television and bathroom. I was concerned because the door had no lock. I asked for some more food and something to drink. I was brought 2 cups of milk. My daughters fell asleep as soon as we reached the room.

At 22:30 I had my first chance to call my friend Rosemary. I was very upset. I told Rosemary that I was not sure what country I was in any more, and that I couldn't believe that treatment to which I was subjected. I also told Rosemary if Canada is like this I prefer to go back to Saudi Arabia.

My youngest daughter woke at 5:30 the next morning. She was extremely hungry having eaten almost nothing

since the flight to Toronto the day before. I was informed that I was not allowed to obtain food as it was too early. My daughter cried until about 7:30 when we were allowed to go for breakfast in the dining room.

I discovered that the main meal was ham and eggs. Being Muslim, we cannot eat pork. My daughters and I are allergic to eggs. The only other items available included bread, milk, juice, butter, danishes, coffee and tea. Servings were limited. When I took a second 2 ounce glass of juice I was challenged. I was allowed to take it only when the worker saw that I was taking food for more than myself. We found the foods unfamiliar. My younger daughter Reem drank some juice and ate some of a danish. I along with Arwa only drank milk. The officer in charge was sitting at the same table at which we ate. She saw how little was eaten and asked about Arwa. I explained that there was little that the children or I could eat. As we didn't really eat we were finished by 8:00 but were not allowed to return to our room until 8:30.



On returning to our room I requested a change of clothes and asked to be allowed to stay in my room to rest as I felt very tired. These requests were declined. At 9:00 we were ordered to leave our room and return to the dining room. At 10:30 we were ordered back to the airport as the officials said they now had a translator.

When it was time to leave, the security guards told me to pick up my baggage. I told the guards that I was not able to carry the baggage myself as I was pregnant. A female guard asked me "why do you travel with such big bags with two children while your are pregnant"? She then asked me: "why do you come to Canada?" The other guard said: "She is doing this to have a Canadian baby." The two guards then laughed.

At 11:00 I was once again waiting at the area I was originally held at on my arrival to Canada. At 13:00 I told Officer H. that we were tired and hungry. I asked him for 3 tuna sandwiches and 3 juices and offered to pay for the food. Officer H. said that I could get food, but it would cost a lot of money. I agreed to pay, and he said that he would arrange it. He then disappeared.

At about 14:30, H. returned. I asked H. about the food, but he stated that eating was not allowed there. By this time my children were miserable and crying. I asked a second female officer for food hoping that I would get more sympathy but she told me I would have to talk to my officer, D. H.

I didn't understand why H. was allowed to drink coca–cola and that other officers were allowed to drink hot drinks in their work place, but we were not allowed juice or food.

For the second day, we felt hungry, thirsty and tired. I asked H. for a cup so that my youngest could drink from the water fountain. He said no.

As I felt tired, I laid myself down on some chairs and rested. A passing female officer asked H. why I was lying on the chairs and he informed her that I was pregnant. The two laughed. Other officers were also talking about me or my daughters. I felt that we were on display for their amusement. The comments of Arwa, my older daughter, indicated that she too could feel the embarrassment of being talked about this way.

When H. told me I was being returned to the detention centre I protested. I stated my wish to be allowed to go to the home of Samer, or to go to a proper hotel at my own expense, or to be allowed to go back to Saudi Arabia. These 3 options were refused.

I was asked again by another officer if I wished to claim refugee status. Again I maintained that I did not wish to claim refugee status.

One female officer asked her fellow officers "why not let her go back?" She said to the others it would be easy to let us go back.

Another female officer saw my children's miserable state and gave each a plum and a mandarin orange.

I was soon informed that I could leave for Paris at 8:00 the next day. When I asked if I could get a connecting flight home to Riyad the officer told me he didn't care. The officer then gathered some papers that my children were drawing on, and along with their pens and crayons he threw everything into the garbage. I was again informed that I was being sent back to the detention centre.

Two detention centre security guards arrived but left when I refused to go with them. The previous night left me with so bad an experience that I did not wish to subject myself or my children to more of the same humiliation and abuse.

At 15:00, another couple of security guards from the detention centre arrived. Again I refused to go with them

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to the detention centre.

Three more officers, these differently uniformed with yellow stripes on their pants, arrived along with their supervisor. I was ordered to go back with them to the detention centre. I tried to explain my situation but was told to be quiet by one of them. A second officer threatened to take me to jail, which he said was a worse place then the detention centre, and that I would be separated from my children. The third said that if I didn't go voluntarily, I would be hand cuffed and dragged there. He assured me that my children would never forget this experience.

I asked their supervisor to let me go to a hotel or to let me return to Saudi Arabia. I was told that I had to go to the detention centre. I asked to be allowed to phone the Sudanese Embassy but my request was denied. I told the officers that I would go with them if I was allowed to talk with Samer, my friend Rosemary or the Sudanese Embassy.

The officers refused my request and proceeded to handcuff me. With my hands bound behind my back and, an officer grabbing each arm, I was dragged. I saw my children become very upset at what was happening. I was also concerned because I saw my children carried away without their jackets and shoes. I called out for them to stop and that I would walk on my own. My hands remained cuffed behind my back. I asked the officers to help my children put on their jackets. They replied that the children were fine the way they were. I asked them why they were all wearing jackets, if wearing jackets was unnecessary for my children.

We ended up waiting outdoors for 10 or 15 minutes for a car to come. By the time the car arrived Reem was clearly shivering.

We were returned directly to the detention centre holding room. This time I felt very vulnerable as there were three men in the room, and I was left with my hands cuffed behind my back unable to care for myself or my daughters.

When the officer returned to uncuff my hands, his face showed that he too found the stench in the room somewhat overwhelming. I was taken outside and the handcuffs were removed. I was then returned to the holding cell. Just before I was returned I asked for food but was told that I could not have food now.

A cleaning women who heard my request for food brought us 2 cups of milk and 2 juices.

At about 17:30 I began to cry. My small child Reem was sleeping and Arwa was banging on the door. I felt very weak. I was soon informed by a female officer that I would have to repeat the registration process done only last night. I told her that I felt weak and could not stand. This was ignored.

Once again we were photographed. My money was counted. My jewellery was described. Then all was taken from me.

I told the officer that I felt dizzy. I was allowed, under escort, to put my youngest child in a room on the next floor, and then was returned with my older child. My youngest remained unattended in the room on the upper floor.

I repeated that I was hungry, thirsty and tired. Again this was ignored. The officer was confiscating my 2 medications so I decided to take a dosage of each before it was taken away from me. One was a vitamin supplement for my pregnancy and the other was an oral medication for a skin condition. I was asked to sign a paper for the confiscated articles. I told the officer that I had difficulty seeing. I was ignored.

At about 17:40, amid stomach craps, I lost consciousness. When I awoke I found myself on the floor and on myself. I heard the detention centre staff telling me to: "Stop doing that!","Your children are here" "Wake up and look after your children!" Another voice said: "She is sick; she is not our responsibility".

**MY HUSBAND REFUSED TO BELIEVE THE STORY CITING THAT THINGS LIKE THIS COULD NOT HAPPEN IN CANADA.**

I was quickly put into a car with my children, and with me vomiting all the way, we were returned to the officials at Canada Customs at Terminal 3. I was too disoriented to see but I heard a female voice say that I was there only 2 hours earlier. I continued to vomit in the Immigration Canada holding area. I heard a female voice say: "Hey you! Stop doing that!"

A nurse examined me, and subsequently called an ambulance. I was taken to Etobicoke General Hospital. At the hospital I received immediate care.

The attending doctor gave me an injection for the vomiting and ran blood tests. I was also given medicines. The doctor assured me that my unborn baby was alright.

I was subsequently asked to pay a $500 deposit and $200 for the ambulance, a $138 fee for a medical report on my condition on arrival, and a doctor bill of $35. I was informed by the doctor that if I didn't pay his $35 bill he would sue for it. To date I have not paid any bill stemming from the care I received. I was released from the hospital at 23:00. Upon my release I went to Samer home.

The next day when I spoke with my husband I tried not to worry him with details of the ordeal we endured but Arwa told her father of my arrest and detention. My husband refused to believe the story citing that things like this could not happen in Canada.

# ARRIVALS, ACCEPTANCE, REMOVALS, ETC

## ARRIVALS

Refugee and asylum–seekers, whether moving to Canada or waiting here for an answer to their claims, faced more restrictions in 1993. Only 20,472 claims were made in 1993 compared with 37,720 for the 1992. While 1747 Claims were made in January 1994 (compared with 3413 in Jan. 1993), this was further reduced to 1377 for the month of February (see the Chart below).

**REFUGEE CLAIMS MADE AT BORDER POINTS AND INLAND OFFICES**

| MONTH | 1992 | 1993 | 1994 |
|---|---|---|---|
| JAN | 3845 | 3413 | 1747 |
| FEB | 3200 | 980 | 1377 |
| MAR | 2915 | 339 | - |
| APR | 2554 | 1112 | - |
| MAY | 2427 | 1174 | - |
| JUN | 2582 | 1402 | - |
| AUG | 2777 | 1799 | - |
| SEPT | 3417 | 2020 | - |
| OCT | 3256 | 1856 | - |
| NOV | 3822 | 1847 | - |
| DEC | 4305 | 1934 | - |

SOURCE: CANADA IMMIGRATION.

## DETERRENCE/INTERDICTION

Interdiction has been continuing vigorously since 1990, despite the change of government. With the addition of 10 positions in 1993, the Immigration Control Officer (ICO) network now totals 27 officers in 26 locations. This increase represents the final phase of an enhanced Control Strategy that began in 1990. The CIO network addresses the problems associated with "illegal migration" by interdicting people suspected to be "illegal migrants" aboard before they can get access to Canada's refugee determination system. The effectiveness of ICO network interdiction could be judged by the following "improperly documented arrival statistics", collected at Canada's five major airports:

| | |
|---|---|
| 1990 | 8,104 |
| 1991 | 6,569 |
| 1992 | 5,074 |
| 1993 (FIRST 9 MONTHS) | 2,137 |

SOURCE: 1994 BUDGET ESTIMATES, CANADA IMMIGRATION.

The training and liaison of the ICOs have been complemented by a new administrative fee schedule that rewards air carriers who commit themselves to document screening. The airlines enlisted in this incentive program through Memorandum of Understanding work closely with the ICOs.

## REMOVALS

The removal of rejected refugee claimants will continue to remain a priority for the government and a challenge for refugee advocates into the foreseeable future. As could be seen from the table below, removals are expected to increase by 73 percent in the FY 1994–95 compared with the FY 1992–93:

| YEAR | REMOVALS | INCREASE (%) |
|---|---|---|
| 1991–92 | 4,841 | - |
| 1992-93 | 6,721 | 39 |
| 1993-94* | 9,000 | 34 |
| 1994–95** | 11,600 | 29 |

*FORECAST

** ESTIMATES

SOURCE: 1994 BUDGET ESTIMATES, CANADA IMMIGRATION.

## IRB ACCEPTANCE RATE FALLS TO 46%

On February 28, 1994, the Convention Refugee Determination Division of the Immigration and Refugee Board (IRB) released its year-end statistical summery on refugee determination. It shows the continuous trend of the decline of the IRB acceptance rate:

| | |
|---|---|
| 1989 | 76% |
| 1990 | 70% |
| 1991 | 64% |
| 1992 | 57% |
| 1993 | 46% |

In its News Release, the IRB has declared that 55 percent of the claimants had been granted Convention refugee status in 1993. This figure should not be mistaken as the rate of acceptance. In all its previous News Releases, the IRB itself calculated the rate of acceptance by comparing the number of accepted claims with the total of claims rejected and withdrawn.

During the year 1993, 35,584 claims were referred to IRB's refugee division – an increase of 4600 or 15 per cent over 1992. The increase is due to the elimination of the first hearing and the transfer of 17,000 claims from Immigration Department to the CRDD.

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A conspicuous trend is the increase of the rate of withdrawal or abandonment – 5004 withdrawn claims compared with 3520 in 1992 (42 per cent increase). According to the IRB, this is "partly because of the processing of transitional claims, many of which had already proven difficult to schedule or complete at the old initial hearing stage." The average time nation–wide for processing each claim is seven and a half months compared with six months last year. The refugee determination system continued to face a growing caseload. At the end of December 1993, some 20,000 claims were pending a hearing or final decision (compared with 17,776 at the end of 1992).The figures below give the distribution of claims referred to the IRB among the regions of Canada. They demonstrate that Ontario and Quebec remain the key points of arrival for asylum seekers.

| | #OF CLAIMS | PER CENT |
|---|---|---|
| ONTARIO | 15,049 | 57.5 |
| QUEBEC | 7,899 | 30.2 |
| OTTAWA/ATLANTIC | 1,413 | 5.8 |
| B.C. | 1,141 | 4.4 |
| PRAIRIES | 562 | 2.1 |
| **TOTAL** | **26,164** | **100.0** |

The major source countries continued to be Sri Lanka, the Republics of the former USSR, Somalia, Iran, Pakistan, Israel, India, Lebanon, China, and El Salvador. Since the end of 1992 Yugoslavia and Ghana have ceased to be among the 12 countries. They have been replaced by Romania and Peru. Other major refugee producing countries were Bangladesh with 554 claims, Guatemala: 506, Haiti: 470, Ghana: 421, Zaire: 389, Nigeria: 367, Yugoslavia: 357, and Sudan: 289.

A noticeable trend is the rise of CIS/USSR to the second rank with the total of 2799 claims. Of this figure 829 claims were made in the name of the USSR. The share of other countries emerging out of the collapse of the Soviet system were as follows: Russia 774 claims, Ukraine 444, Moldova 400, Estonia 161, Belarus 40, Latvia 33, Azerbaijan 32, Uzbekistan 22, Kazakhstan 20.

All top refugee producing countries have faced decreased rates of acceptance. Even a war–ravaged country like Sri Lanka has faced a 16% decrease from its acceptance rate in the similar period of 1992. Following is the percentage of decrease for all top–12 refugee producing countries:

**DECREASE IN ACCEPTANCE RATE FOR SAME PERIOD, (DEC.31) 1992 TO 1993**

| | |
|---|---|
| PAKISTAN | 31% |
| INDIA | 2% |
| PERU | 3% |
| IRAN | 12% |
| ISRAEL | 20% |
| SRI LANKA | 6% |
| LEBANON | 15% |
| EL SALVADOR | 9% |
| CHINA | 1% |
| SOMALIA | 1% |
| CIS/USSR | 7% |
| ROMANIA | 4% |

## TOP TWELVE COUNTRIES

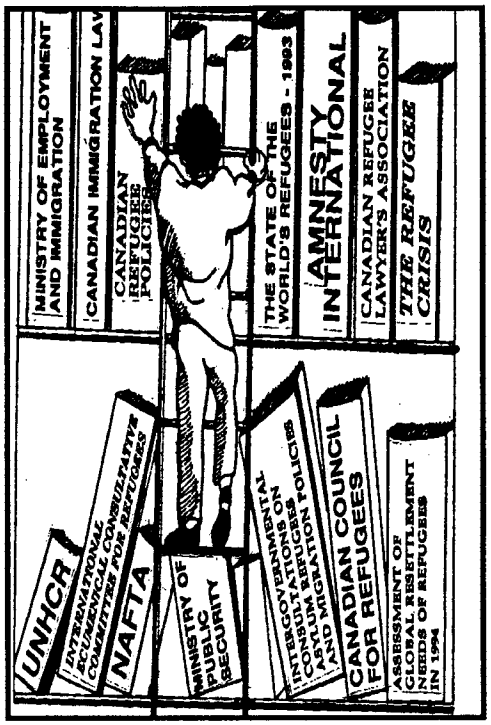
JANUARY 1 - DECEMBER 31, 1993

| 1993 RANKING | | 1992 DEC. 31 | CLAIMS | WITHDRAWN ABANDONED* | HEARING REJECT* | HEARING ACCEPT* | % ACCEPTANCE DEC. 31 1992 | % ACCEPTANCE DEC 31 1993 |
|---|---|---|---|---|---|---|---|---|
| 1. | SRI LANKA | 1 | 4780 | 222 | 978 | 3725 | 92 | 76 |
| 2. | CIS/USSR | 6 | 2799 | 451 | 1190 | 1314 | 51 | 44 |
| 3. | SOMALIA | 2 | 2348 | 125 | 109 | 2229 | 91 | 90 |
| 4. | IRAN | 5 | 1178 | 130 | 332 | 800 | 75 | 63 |
| 5. | PAKISTAN | 3 | 1147 | 395 | 742 | 375 | 56 | 25 |
| 6. | ISRAEL | 12 | 1077 | 303 | 729 | 157 | 33 | 13 |
| 7. | INDIA | 9 | 928 | 256 | 642 | 226 | 22 | 20 |
| 8. | LEBANON | 8 | 819 | 127 | 556 | 313 | 46 | 31 |
| 9. | CHINA | 4 | 800 | 99 | 710 | 180 | 19 | 18 |
| 10. | ROMANIA | - | 635 | 81 | 324 | 264 | 43 | 39 |
| 11. | PERU | - | 596 | 40 | 170 | 397 | 68 | 65 |
| 12. | EL SALVADOR | 7 | 556 | 145 | 505 | 150 | 28 | 19 |
| OTHERS | | - | 8501 | 2630 | 4461 | 3971 | 44 | 36 |
| TOTAL | | - | 26164 | 5004 | 11448 | 14101 | 37 | 46 |

* INCLUDING CLAIMS MADE IN 1992 WHICH WERE AWAITING A DECISION AS OF JANUARY 1993.

SOURCE: IMMIGRATION AND REFUGEE BOARD AS COMPILED BY JRS/CANADA.

*Refugee Update has been encouraged by students and persons outside Canada to report on decision–making in the Immigration and Refugee Board (IRB). The following are excerpts from decisions of the Federal Court of Canada, reviewing decisions of the IRB. These are taken from Lexbase, a national fax network for immigration practitioners. Refugee Update is grateful to Richard Kurland for making this information available and we encourage our readers to subscribe to Lexbase, fax (514) 847–1370.*




# DECISIONS FROM THE FEDERAL COURT OF APPEAL

**FEBRUARY 15, 1994**
Change in Country Conditions: El Salvador]
Nadon, J. I fail to see how the Board can conclude that the change in El Salvador removes his fear. [...] As I have stated earlier, the Board, in its brief analysis, recognizes that the jury is still out as to whether the change in country conditions is effective and meaningful. The Board even states that ... There is concern about the re–emergence of the death squads and people are wary of the peace process. [..] [Appeal allowed]

**FEBRUARY 14, 1994**
[Actual Country Conditions: Iraq]
McGillis, J. [...] I am of the opinion that the Board acted in a patently unreasonable fashion in determining on the facts of this case that the applicant would face punishment in Iraq for reasons related solely to his violation of a law of general applicant. The uncontradicted evidence of the applicant established that his absence from Iraq was unauthorized, he evaded military service in two wars and expressed political opinions contrary to the governing regime. In reaching its conclusion that the applicant would only be punished for breaching a law of general application, the Board has ignored cogent documentary and oral evidence that the applicant would risk severe extrajudicial treatment at the hands of one of the most repressive, abusive regimes in the world. Furthermore, its finding that the Iraqi authorities would be unlikely to take persecutory action against the applicant on his return is unsupported by the evidence.[...] [Appeal allowed]

**JANUARY 28, 1994**
MacGuigan, J.A. [...] The appellant, an assistant airport manager, smuggled two students involved in the pro–democracy movement, in an air container shipped to Hong Kong. According to his testimony, his motivation was in part one of accommodating his wife's friendship with one of the smuggled young women, in part one of sympathy for the pro–democracy movement. [...] The panel was in error in setting up an opposition between friendship and political motivation. His motives were "mixed" rather than "conflicting". People frequently act out of mixed motives, and it is enough for the existence of political motivation that one of the motives was political. [...] [Appeal allowed]

**OCTOBER 27, 1994**
(Documentary evidence)
McGillis, J. The Board held that the Applicant "provided no conclusive proof of his identity...". On this point, no doubt, the Board erred by applying the wrong test. The Applicant did not have to provide "conclusive" proof of his identity, but proof "on a balance of probabilities" that he was who he said he was. The identity card was accepted by the Board without any questions being asked and it was not challenged by the Refugee Hearing Officer in her questions, nor in her final submissions. [...] [Appeal allowed]

**JANUARY 26, 1994**
Gibson, J. [...] The Tribunal expresses concern about the "...somewhat evasive and confusing" nature of the Applicant's testimony. It acknowledges the submissions of Applicant's counsel in this regard relating to the passage of time and the Applicant's "minimal educational standards". [However] The Tribunal appears to completely ignore evidence before it in the form of a written psychiatric report that indicates the Applicant suffers from Post–Traumatic Stress Disorder and Depression with the result that "...he gets very forgetful, loses his train of thoughts, concentration and becomes very afraid, especially when the past is discussed." The Applicant is entitled to an assurance that such evidence was taken into account in the credibility finding against him that apparently was based on the evasiveness and confusion in his testimony. [...] [Appeal allowed]

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**FEBRUARY 4, 1994**
(Exclusion clause)
Jerome, A.C.J. [...] By failing to recognize the fact that the use of violence was not advocated by the Front, but rather by a dissident faction, the Board has cast an overly broad net in its application of the exclusion clause to the applicant's claim for Refugee status. [...] The Board's conclusion is based on the very "guilt by association" that has been consistently warned against by the Court of Appeal in Ramirez, Moreno, and Sivakumar. In order to implicate a claimant as an accomplice to international crimes, the Board must be satisfied that the claimant had knowledge of the commission of international crimes and shared the organization's purpose in committing them [...] The Board must be extremely cautious in its application of the exclusive clause, particularly in situations such as this one where it has concluded that the claimant has a well-founded fear of persecution in his country of origin. In light of the potential danger faced by such a claimant, the Board must base its decision to exclude only on clear and convincing evidence, not simply on suspicion and speculation [...] [Appeal allowed]

# NEWS FROM EUROPE

## FRANCE

### SOMALIANS ARE NOT ENTITLED TO CONVENTION REFUGEE STATUS

In a ruling on Somalian asylum--seekers, the Committee of Appeals by refugees decided that without de facto authorities or a Government in place in Somalia, the nationals of this country are not entitled to refugee status according to the terms of the Geneva Convention.

"After the disappearance of all legal authority", ruled the Committee, "clans, subclans and factions of a same ethnic group are fighting to create or expand zones, of influence within the national territory without, however, being able to exercise organised authority in these zones which would enable them, in this case, to be considered as the de facto authority". The fear of persecution of Somalian asylum--seekers "cannot, as a consequence, be a simulated into the notion of fear of persecution within the meaning of the Geneva Convention which subjects the recognition of refugee status to the existence of personal fear, created by the authorities of the country whose citizenship the applicant holds, or encouraged or voluntarily tolerated by these authorities".

The Committee concluded that even if an applicant had "substantiated" that he had been persecuted, "his/her appeal cannot be admissible".

## SWEDEN

### POLICE ACCUSED OF VIOLATING UN CONVENTION ON THE RIGHTS OF THE CHILD WHEN THEY RAIDED A CONVENT

A spokesman of the Justice Ministry has pointed out that the Swedish police must respect the UN Convention on the Rights of the Child when dealing with refugee cases. According to Swedish case law, conventions and other international documents which Sweden has ratified are binding even if they have not been transposed into its national law. On the contrary, the immigration authorities maintain that as long as the aforementioned Convention has not been transposed into national law it is not binding.

## PORTUGAL

### AIRLINE REFUSES TO CARRY 3 PASSENGERS TO CANADA FOR FEAR OF FINES

3 Zairese nationals travelling on false passports were refused, on 29 January, the right to continue their journey to Montreal for which they had valid tickets. The airline, TAP, left them in Lisboa to avoid having to pay a fine (administrative costs, according to the Canadian authorities) of about 500,000 escudos for each of them to Canada had they been allowed to continue their journey. They subsequently applied for asylum in Portugal and were retained in the "international zone" of the airport. After obliging them to get off the flight, TAP felt that it was no longer responsible for them. It was only after Amnesty denounced the situation that the border authorities (SEF) decided to provide them with food.

TAP is being extremely cautious about the passengers it transport to countries which fine airlines for bringing in passengers with insufficient or false documents. According to its Public Relations Officer, TAP paid up about 110 million escudos in fines in 1993.

SOURCE: MIGRATION NEWS SHEET, BRUSSSELS, BELGIUM.

GRAPHIC PRODUCED BY PAUL KALEMKIARIAN FOR THE REFUGEE AWARENESS WEEK, TORONTO, 1994.

# ASYLUM REFORM REGULATIONS IN U.S.A.

In July 1993, the U.S. President, Bill Clinton, mandated the Immigration and Naturalization Service (INS) to reform the nation's asylum system.

The INS Commissioner Doris Meissner said, "We will no longer take piecemeal steps" on reorganization. She noted that the INS is adding $172.5 million to its FY'94 budget and plans a 22 percent increase in the budget from FY '94 to FY '95. She said that the increased funding and new measures "amount to a full reinventing of the INS, and that is what we are looking forward to."

The reform has been justified by the fact that the United States is facing with a growing number of applications for asylum: in 1991, there were 56,000 applications, while in 1993 asylum applications increased to 150,000. As a result of the failure of the system to keep pace with the upcoming applications, the country was left with a total backlog of 329,817 at the end of 1993 (see the table below).

Asylum Applications filed with the INS, FY 1993 (Preliminary)

| | |
|---|---|
| PENDING BEGINNING | 213,944 |
| APPLICATIONS FILED | 150,386 |
| APPLICATIONS GRANTED | 5,105 |
| APPLICATIONS DENIED | 18,110 |
| APPROVAL RATE (%) | 22 |
| APPLICATIONS CLOSED | 11,298 |
| PENDING END | 329,817 |

SOURCE: INS, ASYLUM DIVISION, DEC.21,1993.

The backlog is growing by a rate of 10,000 per month. An INS projection says that the backlog could reach 450,000 by the end of FY 1994, and that 100,000 new cases could be added in January 1995 as a result of the settlement of the American Baptist Churches (ABC) V. Thorbourgh litigations.

On March 29, 1994, the INS Published a News Release and proposed what it termed as "Fast-Track Handling of Asylum Claims." The comprehensive new regulations are intended to "reform the political asylum system as directed by the President." The main focus of the new regulations is to expedite refugee determination process (by giving discretionary power to the INS officials) and to refer claims that "cannot be granted" to an Immigration Judge (IJ) in the context of exclusion and deportation. There is no relief to the decision of the IJ.

Currently refugee claimants may pursue their asylum applications before the INS Asylum Officer Corps (AOC) until receiving a decision, but if denied, they can restart the whole process before IJs during the removal proceedings. "Existing regulations," said Meissner, "require US to interview all applicants, adjudicate all requests for work authorization, justify all denials in writing, wait for advisory opinions from The State Department, and take other time-consuming steps."

The proposed reforms call for a system of "grant-refer":

1. Granting asylum and work authorization within 60 days to "meritorious cases" and referring cases that cannot be granted to IJs.
2. Eliminating the preparation of detailed denials by asylum officers in cases where they do not grant asylum and to applicants who have not legal immigration and referring them automatically, and mandatorily, to IJs for adjudication as part of exclusion or deportation proceedings.
3. Giving asylum officers discretion in conducting personal interviews. Certain Cases "lacking any merit will not be interviewed.
4. Eliminating the requirement that an asylum officer send the applicant a Notice of Intent to Deny (NOID), thereby eliminating the 30 day rebuttal period for challenges to the NOID.
5. Eliminating the need in virtually all cases for asylum officers to determine whether "withholding of deportation" is an appropriate benefit after the denial of asylum application.
6. Specifying that information contained in an asylum application may be used as a basis for removal proceedings before an IJ against otherwise deportable aliens.
7. Authorizing asylum officers and IJs to deny otherwise approvable claims on the ground that the applicant can be deported or returned to a country in which the alien would not face harm or persecution and would have access to full and fair procedures for determining the asylum claim in that country, in accordance with appropriate international agreements (safe country).
8. Discouraging applicants from filing claims before IJs that differ from the claims they filed before asylum officers requiring that the original asylum application be forwarded to the IJ at the time the case is referred by the asylum officer.
9. Withholding work authorization until claims are approved.
10. Reduce the overall proceeding time for final decisions, including hearing before an IJ, to 180 days.
11. Set a fee of $130 for filing asylum applications.

CONTINUED ON PAGE 10.

12. Allow asylum adjudicators to proceed without having to wait for advisory opinions from the Department of State.
13. Limit to immigration judges the authority to grant or deny withholding of deportation in most cases.

Another impact of the reform will be leaving some half a million people in limbo for many more years to come: similar to the Backlog Clearance Programme in Canada. It is specified that the INS is not going to touch the present backlog of 450,000 cases until 1995. The increase of the INS Asylum Officer Corps from 150 to 334 by the end of 1994, even if approved by the Congress, will not be enough to keep pace with the number of refugee claims,let alone clearing the present backlog. Commissioner Meissner has said that a Safe Country agreement with Canada will not likely go ahead until the U.S. has its backlog under control.

Bill Frelick, senior policy analyst for the U.S. Committee for Refugees, commented that "the proposed 'reforms' have a multiplying effect that, taken together will seriously impede the ability of a poor person with legitimate fears of persecution from being recognized and protected as a refugee in the United States."

# SAFEGUARDING THE INSTITUTION OF ASYLUM

*Rosemarie Rogers and Emily Copeland of the Fletcher School of Law and Diplomacy at Tufts University have written a book called Forced Migration: Policy Issues in the Post-Cold War World. It analyzes the major features of the present international context of forced migration and the set of international, governmental, and private arrangements created to manage and alleviate the problem. The book identifies the opportunities and challenges that forced migration poses to the international community and reflects on new policies and institutional relationships that may be called for.*

*To offer you a glimpse of this book, we have reproduced, with the kind permission of the authors, some passages that touch on the issues of refugee protection and asylum concerns.*

Many countries which shelter large numbers of refugees are among the poorest in the world, yet they contribute considerable resources to maintaining these populations in asylum over long periods of time. If developing countries are to remain open to those in need of safe haven, it will be crucial that the industrialized countries not only continue to provide material resources for the care–and–maintenance of asylum populations, but offer broad support for return programs (which must include effective development assistance), make judicious allocations of available resettlement opportunities, offer assistance for local integration where that may develop as an option, and keep their own borders open to bona fide asylum seekers.

The asylum systems in East and Southeast Asia have been maintained through cooperation among asylum, resettlement, donor and origin countries. A number of positive steps were taken. Among these are the resettlement of long-stayers in camps, a move from group to individualized asylum determination procedures, and the expansion of what is a de facto emigration program from Vietnam. However, three main issues remain on the policy agenda. First, it must be assured that the new asylum standards are applied fairly throughout the region. Second, the return home of the screened out populations must be managed more effectively than has been the case so far: since Vietnam had originally refused to accept back its rejected asylum seekers, and many in this population do not wish to return, tens of thousands still remain in camps in the region. Finally, it is necessary to address the root causes of the economic migrations, which include Vietnam's continued isolation in the international community.

Western European countries (and the United States) have also found it difficult to enforce immigration control. Liberal democracies lack the political will to expel large numbers of rejected asylum seekers, especially when such measures are opposed by a part of the domestic population. Refugee advocates have reason to oppose carrier sanctions, summary procedures at borders [interdiction] and lack of appeal procedures, but the same groups or individuals are hesitant to acknowledge states' rights to expel persons who are legitimately found not to be in need of protection. Yet this is the other side of maintaining effective asylum policies.

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# THE SINGH DECISION

Each year refugee coalitions across Canada commemorate and celebrate April 4th as Refugee Rights Day. On that date in 1985, the Supreme Court of Canada handed down a ruling that said refugee claimants in Canada deserve the same standards of justice under the Canadian Charter of Rights and Freedoms as all others in Canada. This ruling, known as the Singh decision, significantly raised the standard of fairness that refugee claimants receive in Canada.

The case began in the early 1980's, when refugee claims were processed under Canada's first inland refugee determination system (1978–1989). Seven Sikhs from the Punjab (India), mostly with "Singh" as their surnames, claimed refugee status in Canada. Under that system, the claimants were interviewed by an immigration officer and a written transcript was sent to the Refugee Status Advisory Committee. That committee rejected their claims. They then applied for redetermination of status to the Immigration Appeal Board, which would have afforded them an oral hearing on the merits of their claim.

Under section 71 of the 1976 Immigration Act, the Immigration Appeal Board (IAB) could refuse to hear cases which it felt would not succeed. The IAB refused to hear the Singh case and the decision was upheld by the Federal Court of Appeal which ruled that the IAB acted within the law in refusing to hear the case. Having exhausted all legal remedies, these refugee claimants – members of a group known to be persecuted in India at the time – were faced with deportation without ever having had an oral hearing on the merits of their case.

The case was brought to the Supreme Court in 1984. The Canadian Council of Churches intervened and argued that the claimants were entitled to treatment under the newly enacted Charter of Rights and Freedoms. Section 7 of the Charter guarantees the right to life liberty and security of the person and the right not to be deprived of these rights accept in accordance with natural justice. The churches argued that deportation of these Sikh refugee claimants to India violated the "security of the person" clause in the Charter. They also argued that the process whereby the claimants would be deported did not conform to "principles of fundamental justice" because the claimants had been denied an oral hearing. Lawyers for the Minister of Immigration made four major arguments. They said the guarantees in section 7 of the Charter should be interpreted to apply to only legal residents of Canada. They said that the Immigration Department requires the ability to impose restrictions on refugee claimants, and that granting a hearing to all refugee claimants would create tremendous costs and a huge backlog of cases.

On April 4, 1985, the Court ruled that refugee claimants were covered by section 7 of the Charter on the basis that the word "everyone" in the section included "every person physically present in Canada". Concerning the Immigration Appeal Board's authority to refuse to hear a case, the court ruled "such procedures do not accord the refugee claimant fundamental justice and are incompatible with section 7 of the Charter." The court also ruled against the practice of deciding refugee claims on the basis of a written transcript. It said "the procedures followed for determining Convention refugee status in these cases are in conflict with section 2(e) of the Canadian Bill of Rights, which "grants the right to 'a fair hearing in accordance with the principles of fundamental justice.'" Further, the ruling said administrative convenience is no justification to deny legal rights. And finally, the Court ruled that a "refugee who does not have a safe haven elsewhere is entitled to rely on this country's willingness to live up to the obligation it has undertaken to the U.N. Convention."The Singh decision was clearly a proud moment in the history of refugee protection in Canada. But it was a victory which must be defended. There are those who strongly disagree with the Singh ruling. The immigration policy of the Reform Party, for example takes a thinly veiled aim at Singh in calling for the "notwithstanding" provision of the Charter to "ensure that Parliament can ultimately control entry into Canada."

The increasingly stringent measures adopted by EC member countries to control unfounded asylum applications through the safe home country concept, and to put some or much of the asylum and refugee determination on safe third countries, have put several additional concerns on the policy agenda. First, it will be necessary to monitor carefully these concepts' application to ensure the protection of bona fide asylum seekers from refoulement. Second, there will be a need for generous burden–sharing with economically weak host third countries: the new measures will create considerable economic strain on a country like Poland. The countries surrounding the EC are not eager to become a cordon sanitaire for the Community.

There is also an argument for a review of existing migration systems. If most countries created an additional number of migration channels (along the lines of the opportunities opened up for some labour migrants from Eastern Europe), even on a modest scale, and if a country like Switzerland opened its doors more widely (including to migrants from regions from which the asylum seekers come), some who now request asylum based on unfounded claims might instead apply to enter as labour migrants. Barring rejected asylum applicants from seeking subsequent entry through this widened migration door should deter some from abusing the asylum system.

Finally, the right–wing extremism that has come to the fore in almost all Western European countries calls for stronger responses by these countries' political leaders, in terms of condemnation of such behaviour and support for public education programs. At present this xenophobia threatens to become an obstacle to the objective analysis of Europe's capacity to absorb refugees and other migrants.

## UNHCR-ASSISTED CASES BY COUNTRY OF RESETTLEMENT, 1990–92

| COUNTRY | 1990 | 1991 | 1992 |
|---|---|---|---|
| AUSTRALIA | 7,275 | 3,303 | 3,481 |
| CANADA | 10,340 | 6,924 | 4,846 |
| DENMARK | 525 | 394 | 415 |
| FINLAND | 634 | 390 | 542 |
| NETHERLANDS | 546 | 612 | 529 |
| NORWAY | 800 | 1,038 | 1,082 |
| NEW ZEALAND | 837 | 587 | 338 |
| SWEDEN | 1,082 | 1,117 | 2,459 |
| SWITZERLAND | 254 | 269 | 353 |
| USA | 24,462 | 15,720 | 19,463 |
| OTHERS | 5,274 | 2,537 | 3,500 |

SOURCE: THE UNHCR'S REFUGEES, DECEMBER 1993.


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