

ImmQuest

"Qui bene interrogat bene docet" "He who questions well teaches well"

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Controversial Changes for Immigration to Canada

Edward C. Corrigan, B.A., M.A., LL.B

The Federal Conservative Budget Implementation Bill C-50, which contained changes to the *Immigration and Refugee Protection Act* and Regulations, survived several votes in the House of Commons on June 2, 2008. It passed final reading by the House of Commons on June 9, 2008 by a 120-90 vote. This vote was in spite of the fact that all of the opposition parties opposed the bill. Only a handful of Liberals turned up for the votes.

The NDP and Block voted against the bill, while officially opposing the bill the Liberals largely abstained, fearing the fall of

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The not Funny Ha Ha Ha Story

David Matas

It took twenty years from the time of sponsorship for the Ha sisters to arrive in Canada. The reasons for that prolonged delay cast a harsh light on the inner workings of the refugee sponsorship and family reunion system at Canadian visa posts abroad.

The Ha family fled the killing fields of Cambodia to Vietnam in May 1975. The parents had eight children, two boys and six girls. One sister Kim Mai married Truong Trong Nguyen, a Vietnamese

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Please send your questions to *ImmQuest* care of Mario D. Bellissimo at mdb@obr-immigration.com. If you have any questions you would like asked of either Citizenship and Immigration Canada or the Canada Border Services Agency send it along and we will ask on your behalf.

Controversial Changes for Immigration to Canada

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the government and the call for an election. The Liberal controlled Senate has signaled that the Harper Government's Budget Bill and the *Immigration Act* amendments will be passed quickly by the appointed Upper House.

Included in the Budget Bill were sweeping and controversial immigration reforms that could, potentially, dramatically change the way Canada selects immigrants to come to this country. Under the changes, the Citizenship and Immigration Minister will have the power to issue "instructions" to their department to give priority to categories of immigrants whose job skills are in demand in Canada. The Minister would also have the power to refuse applications in other categories.

Richard Kurland, a Vancouver Immigration lawyer has commented, "Concentrating such power in the hands of the minister will invite the "politicization" of the immigration system." There's no longer a transparent, predictable, outcome in any immigration application. It's no longer first come, first served. In comes ministerial priorities and cherry-picking."

The changes to Canada's immigration policy introduced by Prime Minister Pierre Elliot Trudeau back in the late 1960s ended discriminatory immigration practices for Canada and embraced a vision of a non-discriminatory multi-cultural Canada. The current Immigration system is set up so that there is a standard set of laws and regulations that apply to everyone in a class equally. The theory is that each application in a class will be treated fairly in the queue on the basis of the date they are submitted in a complete form.

For spousal sponsorships and for dependent children the waiting list is fairly short and rarely exceeds 6 months. However, skilled worker applications can take up to four and even five years depending on the country of origin. This lengthy wait is not very responsive to the needs of the Canadian labour market.

Some countries have special problems, for example the prevalence of false academic credentials, which lengthen the process.

Sometimes security issues delay the procedure. However, the basic principle is that everyone is treated fairly.

The Conservative Government of Stephen Harper did something very unusual. They added the new amendments to the *Immigration and Refugee Protection Act* as part of Bill C-50 dealing with the budget. This procedure is directly contrary to normal Parliamentary practice. The tradition is that a budget bill is a matter of confidence and if

defeated, the government falls and there is an election. This principle is especially important in the current minority government situation.

By including the Immigration amendments with the budget Prime Minister Harper prevented debate on an important issue by Parliament. If the Conservative government was defeated on this Immigration issue Harper would have called an election claiming that it was a matter of confidence and part of the budget.

Prime Minister Harper apparently believed this was a way to force through the new Immigration changes without debate or force an election on an issue that the Conservatives thought they could win. The Liberals did not want to fight an election on this Immigration issue as they do not think it will work to their advantage. The NDP and the Bloc voted against the Budget but because the Liberals abstained Harper's government did not fall.

Lawyers are very concerned about the changes. Giving the power to the Minister of Citizenship and Immigration to arbitrarily change the Immigration selection criteria without any political accountability leaves the process open for abuse. It is also manifestly unfair to individuals who, in good faith, have applied to immigrate to Canada.

This change could mean that their Immigration applications can be passed over at the whim of the Minister, with no debate and with little or no notice.

There is a real potential for abuse and it is also inherently unfair to those that are being bypassed by individuals who are selected by an as of yet undefined criteria. This process clearly could delay sponsorship of parents and even other applicant categories. If these changes are done in an unaccountable manner it is contrary to normal democratic and legal procedures.

Harper's Conservative government Immigration focus is clearly economic and a move away from the other types of Immigration

such as family class and humanitarian Immigration to Canada. While economic immigration is important, and we must deal with shortages in our labour market, this should not be done at the expense of other Immigration categories.

Further, it must not be done in an unfair way that hurts the interests of other skilled workers who are applying to immigrate to Canada. This change may also discourage skilled worker applications to Canada as it will lengthen wait time for many prospective immigrants.

Creating new opportunities for foreign students to work in Canada and for them to have the ability to apply from within Canada is a partial solution to current labour shortages. Expanding the Foreign Worker program and giving it the resources so that it can effectively respond to the demands of the Canadian job market would help reduce shortages. Creating an In-Canada Experience Immigration category also would be a way to assist our economy in meeting its labour needs.

None of these changes should be done at the expense of other individuals who are applying to immigrate to Canada. These issues also must be debated and be subject to Parliamentary scrutiny. No laws dealing with non-budgetary matters should be buried in a budget bill to prevent proper debate or to serve as a pretext for an unnecessary election.

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The not Funny Ha Ha Ha Story

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citizen, on 1 December 1985. Another sister, Tien Ha, went to New Zealand, sponsored by her husband's family.

A brother, Thanh Ha, fled Vietnam to Malaysia and came to Canada in July 1986 as a landed immigrant and government assisted refugee. At that time, his sister Thien Mai was thirteen. His sister Thu Mai Ha was nineteen. His sister Mai Ha was twenty

five. He sought and found a private sponsor for his family, the Archbishopial Corporation of Winnipeg constituent group Our Lady of Fatima Church. They sponsored the family on 8 July 1988.

Several years passed without any answer to this application despite repeated inquiries by the son in Canada and the father in Vietnam. Finally, a visa office employee informed the father that his file had been misplaced. A visa officer informed the father that he would be refused under this application and that the father should arrange for the son in Canada to sponsor him and the rest of the family. The father was led to understand that it was the policy of the visa office to reject sponsorship by non-family of any person with a close family member who had official status in Canada.

The church sponsorship was in fact refused on 28 June 1991. At that time, Thien Mai was eighteen, that is to say, still part of the family class. At that time, Immigration Regulations defined "dependent daughter" to include a daughter who "is less than 19 years of age and unmarried".

Privately sponsored refugees were required then, as they are required now, to show that they can successfully establish in Canada. Technically what had happened was the visa office concluded the family in Vietnam could not successfully establish without the private sponsorship of the son in Canada. The reasoning behind that conclusion was that family sponsorship is longer than church sponsorship. Church sponsorship lasts one year. The sponsorship of Thanh Ha was five years.

The policy to refuse private sponsorships from non-family members when there was a family member in Canada with official status was never officially announced or made available to the public. The experience of those who dealt with visa offices at the time was that the policy was firm but unwritten. It was applied only after visa officers examined the private sponsorship from non-family members.

Thanh Ha, on 5 October 1992, sponsored his family, using the form of sponsorship the visa office eventually told the family in Vietnam that the visa office preferred. He sponsored the father, mother, brother and sister Thien Mai Ha. He did not sponsor his sisters Mai Ha and Thu Mai Ha because he could not. They were over age at the time and not members of the family class. He sponsored Thien Mai Ha because he thought that, even though she was over age, she was still a member of the family class as a full time student.