Canada prides itself on a humanitarian tradition toward the displaced and the persecuted throughout the world. In light of this tradition, Canada has established an inland refugee determination procedure to evaluate applications for refugee status in Canada. However, the tendency of the Canadian government to impose visa requirements on refugee-producing countries makes it extremely difficult for refugees from certain countries - including Haiti and Pakistan - to reach Canada to make a refugee claim. This in turn makes it extremely difficult for refugees from these countries to obtain Canadian protection at all.

Canada sometimes imposes visa requirements on other countries because they impose visa requirements on Canada. Canada may also impose visa requirements on other countries because nationals from those countries come to Canada to work illegally. As long as such countries are not refugee-producing, visa requirements may be justified.

In certain cases, Canada has also imposed visa requirements to prevent abuse of the inland refugee determination process. Sometimes people have come to Canada and claimed refugee status, knowing that they can work in Canada until they are deported for having made an unfounded claim. Since an unfounded claim can take well over a year, by the time a claim is denied or a claimant is deported, he can have worked in Canada and made a considerable sum of money in comparison with what he could have made working in his home country. The best defense against such abuse is a streamlined inland refugee determination procedure, through which manifestly unfounded claims can be dealt with quickly, abusers deported immediately, and potential abusers thereby deterred. Again, as long as such countries are not in fact refugee-producing, a visa requirement may be justified, and is not relevant to refugee policy.

However, if a country is refugee-producing, a visa requirement can play a critical role in Canadian refugee policy.

Michael Schelew practices law with the firm Heffers, Crozier and Schelew and is Vice President and former Refugee Coordinator for the Canadian section (anglophone) of Amnesty International. His views expressed in this article represent the views of the Canadian section (anglophone) of Amnesty International.

VIS A VIS VISAS
How Accessible Is Canada’s Refugee Determination Procedure?
By Michael Schelew

If nationals from refugee-producing countries are coming to Canada for the purpose of claiming refugee status and there is no past or present history of immigration abuse from nationals of these countries, then the imposition of a visa requirement is simply unjustified. It constitutes disguised repatriation, and runs counter to Canada’s international obligations and humanitarian tradition toward the displaced and the persecuted.

The situation is more complicated when refugee claimants are coming to Canada from a country which does have a history of immigration abuse but is also refugee-producing. The imposition of a visa requirement may be necessary. But at the same time, the imposition of a visa requirement makes it very difficult for an individual to obtain a fair determination of his right to Canadian protection as a refugee.

WHICH COUNTRIES ARE VISA COUNTRIES?
Those countries whose citizens can enter Canada for a temporary period without a visa are indicated on the chart on page 9.

If a person wishes to be admitted to Canada as a refugee, but he is a national of a country on which Canada imposes a visa requirement, he has two options.

He could attempt to obtain a visitor’s visa to come to Canada, and then make a claim upon arrival. But many refugee claimants would not be granted a Canadian visitor’s visa because they would have to convince the visa-granting officer that, first and foremost, they simply wanted to visit Canada as tourists, which would not be true. Moreover, as proof of this intention to come to Canada simply for a visit, the Canadian government often requires that the applicant have sufficient funds to be self-supporting while in Canada, a requirement that is often impossible for refugee claimants to satisfy. If a refugee claimant lies about these matters to an immigration officer in order to obtain a visa, he may face credibility problems with the decision-makers who consider his refugee claim here in Canada.

Often several visits to a Canadian Embassy are necessary before a visa is granted. In each country, the applicant must go once to the Embassy to obtain an appointment for an interview; again to attend the interview; and then, if the interview is a success, still again to obtain the visa. If a person’s life is in danger, this wait for a visa can be very serious. It is not beyond contemplation that a student or trade unionist in Guatemala, for example, could be murdered while waiting for a Canadian visa.

The situation is even more complicated when there are no Canadian diplomatic offices in a country where a visa requirement exists. The refugee claimant must then go to a third country where there is a Canadian diplomatic office in order to apply for a visa which he may not even be granted. For example, Salvadorans must go to Mexico to apply for Canadian visas. A refugee cannot simply board an airplane and fly to Canada without the necessary visa because Canada imposes sanctions on airline carriers which fly foreign nationals to Canada without the necessary documentation: the carriers must pay the removal, detention and medical costs of such passengers, and may also be fined.

The second option available to a national of a visa country who wants to be admitted to Canada as a refugee is to make a claim for refugee status at a Canadian Embassy in a third country or possibly in his home country. If he goes to a third country, a claimant may risk being deported while waiting for a decision to be made on his claim. For example, in Brazil, refugee claimants from neighboring countries are allowed six months to obtain refugee status in another country. After that, they are deported. Processing a claim for refugee status abroad often takes longer than six months. Moreover, whether in the home country or in a nearby country, people from repressive countries are sometimes afraid to enter a Canadian Embassy at all, let alone to make a refugee claim. Often they fear that the

SPECIAL MEASURES FOR CHILEANS

Chilean nationals who had been facing expulsion from Canada will be permitted to become permanent residents of Canada provided they entered Canada prior to the imposition of the visitor visa requirement in January 1980; can demonstrate an ability to support themselves; can comply with normal medical and security checks; and are free of serious criminal objection. According to special measures announced in April 1982 by Employment and Immigration Minister Lloyd Axworthy, the Chilean nationals affected are anyone whose claims for refugee status had been turned down and/or who had hoped to stay in Canada for humanitarian reasons.
Embassy might be under surveillance by their country’s government or that local people working in the Embassy might advise the local authorities of their presence in the Embassy. Sometimes refugee claimants fear that Canadian officials might call the local police. Even though the Canadian government did this on one occasion in Chile, it is not Canadian government policy to report refugee claimants to the local authorities. But whatever the reality, the perception of danger exists, and very few will risk going into a Canadian Embassy, or the embassies of other countries, to make claims for refugee status.

Those who do take these risks are by no means certain of having their claims evaluated as fairly as they would be in Canada. Practices vary from embassy to embassy and it is virtually impossible to document the circumstances of negative decisions, since the claimants never reach Canada. But accounts from successful claimants and from friends and relatives of unsuccessful claimants suggest that there are several difficulties inherent in the procedures for evaluating claims abroad.

To my understanding, the procedure used to evaluate refugee claims abroad is an interview with an immigration officer followed by a decision by that officer. All negative decisions are reviewed by a senior officer. On occasion senior officials in Ottawa or the Minister of Immigration may participate in cases which come to their attention; as may Canadian churches, the Canadian section of Amnesty International, etc.

An immigration officer abroad performs numerous functions. He may have the necessary training and experience in the legal criteria to be applied in evaluating a claim or in the appropriate methods of eliciting a claim. An anxiety may impede his ability to divulge sufficient information to meet the level of detail required for a successful claim. Even in Canada many refugee claimants show continuous anxiety about the confidentiality of the information they give and fear possible danger in exposing all details of political involvement and persecution. This problem is greatly compounded when a claim is made in or near the country where the claimant fears that the persecution will take place.

A refugee making a claim at a Canadian Embassy has no right to independent counsel. In several cases, when a claimant has appeared at a Canadian Embassy with a representative, he has not been allowed to have that person attend the interview. Moreover, in many repressive countries, the local bar has been intimidated, making it difficult if not impossible for a refugee claimant to obtain private legal counsel to act for him. This lack of counsel can result in a claimant not having adequate preparation or in particular not being aware of the criteria to be applied in determining the claim and therefore not being able to present the extent of the information and detail required or the importance of documentary or other corroborative evidence. Without counsel, a claimant may also lack the moral and psychological support so necessary to being able to relate to a government official details of the traumatic, psychologically disturbing, and often deeply humiliating experiences that he may have had to endure.

Also, claims abroad are not able to challenge the competency of a translator, nor make written submissions of a persuasive nature. Often they are not given the opportunity to present corroboration of evidence such as medical reports of physical abuse and torture or psychiatric assessments of the effects of torture. Even if such evidence were invited by the Canadian authorities, it is highly unlikely that a claimant would be able to produce such reports in his own country. Doctors and psychiatrists who could provide such reports might put their own safety at risk if they gave corroboration evidence of torture and mistreatment. Furthermore, attempts by an immigration officer to verify a claimant’s story by seeking corroborative testimony could jeopardize the claimant’s security.

The criteria applied abroad in determining who is a bona fide refugee bar has been intimidated, making it difficult if not impossible for a refugee claimant to obtain private legal counsel to act for him. This lack of counsel can result in a claimant not having adequate preparation or in particular not being aware of the criteria to be applied in determining the claim and therefore not being able to present the extent of the information and detail required or the importance of documentary or other corroborative evidence. Without counsel, a claimant may also lack the moral and psychological support so necessary to being able to relate to a government official details of the traumatic, psychologically disturbing, and often deeply humiliating experiences that he may have had to endure. Also, claims abroad are not able to challenge the competency of a translator, nor make written submissions of a persuasive nature. Often they are not given the opportunity to present corroboration of evidence such as medical reports of physical abuse and torture or psychiatric assessments of the effects of torture. Even if such evidence were invited by the Canadian authorities, it is highly unlikely that a claimant would be able to produce such reports in his own country. Doctors and psychiatrists who could provide such reports might put their own safety at risk if they gave corroboration evidence of torture and mistreatment. Furthermore, attempts by an immigration officer to verify a claimant’s story by seeking corroborative testimony could jeopardize the claimant’s security.

The criteria applied abroad in determining who is a bona fide refugee...
NEW U.S. POLICY ON SOUTHEAST ASIAN REFUGEES

Indochinese refugees arriving in countries of first asylum in Southeast Asia after April 30, 1982, are now eligible for resettlement in the United States only if they have close relatives in the U.S. or if they fear persecution because of having worked for the U.S. Government or for a former non-Communist government in Indochina. The new requirements, which do not affect refugees already in refugee camps, are intended to discourage people from leaving their homes. The U.S. has a quota of 100,000 Indochinese refugees for its 1981-82 fiscal year.

In the first four months of 1982, 18,849 people (15,843 by boat; 3,006 by land) sought asylum in third countries in Southeast Asia and 27,615 people (20,589 by boat; 7,026 by land) were either resettled in third countries or moved to Refugee Processing Centres pending resettlement in third countries. Canada's 1982 quota for Indochinese refugees is 4,000, not including family and group sponsorship.

Indochinese Refugee Camp Caseloads
April 30, 1982

<table>
<thead>
<tr>
<th>Country</th>
<th>Caseload</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thailand</td>
<td>138,451</td>
</tr>
<tr>
<td>Land</td>
<td>87,604</td>
</tr>
<tr>
<td>Boat</td>
<td>5,630</td>
</tr>
<tr>
<td>Kampuchean</td>
<td>92,217</td>
</tr>
<tr>
<td>Philippines</td>
<td>9,819</td>
</tr>
<tr>
<td>Hong Kong</td>
<td>8,816</td>
</tr>
<tr>
<td>Indonesia</td>
<td>5,511</td>
</tr>
<tr>
<td>Macau</td>
<td>5,217</td>
</tr>
<tr>
<td>Korea</td>
<td>1,139</td>
</tr>
<tr>
<td>Other (Singapore, China, South Korea, Japan)</td>
<td>2,160</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>220,113</strong></td>
</tr>
</tbody>
</table>

Source: United Nations High Commissioner for Refugees.

N.B. These figures do not include refugees in the Refugee Processing Centres in Indonesia and the Philippines.

The Will of Heaven
by Nguyen ngoc Ngn
by C.D. Le, Secretary-General, Canadian Federation of Vietnamese Associations.

Shortly before the fall of South Vietnam in April 1975, Tran van Huong, a 71-year-old former school teacher from the Mekong Delta, succeeded President Thieu to the presidency after the latter's resignation and departure from Vietnam. In his acceptance speech, Huong said, "If this is the will of Heaven for our country to fall to the Communists, then Saigon will become a mountain of our bones and a river of our blood. And we will stand to fight together to the last drop of our blood."
The statement made by Huong in the last hours of the Republic of Vietnam crystallized the mood of the Vietnamese people as they found themselves betrayed by their ally and abandoned by their leaders. "When everything was collapsing around them, when their country was being swallowed by the Communists, when their families and their own lives were shattered beyond their comprehension and their control, the Vietnamese people could find only one explanation: the will of Heaven."

In The Will of Heaven, Nguyen ngoc Ngn has been able to depict the complex feelings of the Vietnamese people in the most turbulent years of their country's history. Twelve years ago he was a teacher of Vietnamese literature in a high school in Saigon. Now he works in a grain elevator in Prince Rupert, British Columbia. His account of his conscription into the South Vietnamese army; his brief effort at teaching under the new regime; his voluntary enrolment in a ten-day "re-education" program that turned out to be a three-year internment in various labor camps; and his tragic flight from Vietnam tells a human story amid the story of the tumultuous events that swirled around him and thousands of other Vietnamese, like a tornado engulfing a willow tree in an open field.


The Way of the Willow
written and directed by John Kent Harrison

This film dramatizes the events in the life of the Tran, a Vietnamese family, from the moment they meet their sponsors at Mirabel Airport through the turbulent first seven days of their life in Montreal in the middle of winter. For the Tran the experience has to do with freedom and the will to survive; for the Canadian sponsors, the issue is the extent and depth of commitment.

The Way of the Willow can be borrowed free of charge (for non-commercial use) from regional offices of the National Film Board.

Canada and the Indochinese Refugees
by Howard Adelman

This new book documents the role of Canada and the Canadian public in the Indochinese refugee movement, from 1975 to 1980. It includes chapters on the development of refugee policy at the federal and provincial levels; the role of the media; the roles of churches, ethnic groups and the grass-roots movement; and the opposition to Canada's policies toward the refugees.

Published by L.A. Weigl Educational Associates Ltd., Regina, 1982.