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Andrew & Renata Kaldor Centre for International Refugee Law

Research Brief

PROTECTED ENTRY PROCEDURES

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What is protected entry?

Protected entry procedures are visa pathways that authorise asylum seekers to safely cross international borders for the purpose of accessing protection under international refugee or human rights law. The 'primary focus' of these procedures is to provide a safe and orderly means of crossing international borders.[1]

How does protected entry work?

Protected entry is implemented by countries of settlement within specified countries of origin or first asylum.

The manner in which these procedures operate can vary, depending on a range of factors including the protection needs of the individuals in question and the objectives of the implementing country.

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For example, an asylum seeker may be able to apply for protection in another country before crossing an international border (eg. at an embassy), and officials of the settling State may process applications in whole or in part within the country of origin – a pathway known as 'in-country processing'.[2] Alternatively, an asylum seeker may apply for protection in another country while in a country of transit.

Protected entry can remove the need for an individual to take a potentially dangerous journey across an international border. In the European context in late 2018, experts concluded that a harmonised EU framework for protected entry would help to reduce the many thousands of deaths each year of people trying to reach Europe on their own.[3]

However, these procedures need to be carefully designed in order to ensure the protection of applicants throughout the process of application, and to ensure that they function to expand access to protection. As with any method of processing, protected entry should be used to supplement, and not replace, national asylum procedures and other protection pathways.[4] The Kaldor Centre has recommended that procedures should also be based on a multi-year commitment by States and have transparent and flexible application criteria and processes.[5]

Contemporary protected entry procedures:

Italy's Humanitarian Corridors

In December 2015 a coalition of Italian faith-based organisations signed an agreement with the Italian government to operate a two-year pilot program for the protected entry of asylum seekers.[6] The Humanitarian Corridors, as they are known, were first established in Lebanon, flying 1,000 mainly Syrian asylum seekers to Italy through 2016 and 2017.[7] The Italian government and faith-based organisations have since extended the Corridors and opened them to asylum seekers in Ethiopia and Niger. Faith-based organisations have since worked with governments in France, Belgium, San Marino and Andorra to establish other Humanitarian Corridors.

Brazil's Humanitarian Visa for Syrians

Since September 2013, the government of Brazil has offered humanitarian visas for Syrians and other nationals affected by the Syrian civil war. The visas authorise recipients to travel to Brazil where they can then lodge a claim for protection.[8] The program was renewed in September 2015 and strengthened through a formal partnership with UNHCR.[9]

Australia's In-country Special Humanitarian visa

Currently Australia has an In-country Special Humanitarian visa (subclass 201) and a small number of individuals are resettled under this visa category each year.[10] In 2019-20 the Australian government received 7,627 applications for the subclass 201 and issued 1,195 visas.[11] In 2016 the Australian Human Rights Commission called on the Australian Government to "explore options for enhancing access to in-country processing and other

'protected entry' procedures for people facing persecution who are still within their country of origin".[12]

United States' Central American Minors (CAM) Program

In March 2021 the Biden administration announced that it would reopen the Central American Minors (CAM) Program, an in-country program originally established in December 2014 by the Obama Administration.[13] The program is designed to assist eligible children to seek protection in the U.S.[14]

For the Obama administration, the CAM program was a response to a dramatic rise in the number of unaccompanied children seeking to reach the United States from El Salvador, Guatemala and Honduras.[15] The program was ended by the Trump administration in late 2017.[16] The Biden administration has announced that as a first step it will be processing 'eligible applications that were closed when the program was terminated'.[17] It will then begin accepting new applications and will be issuing 'updated guidance' on that process.[18]

As of 15 March 2021, there are few details available about how the program is intended to operate under the Biden administration. During the Obama administration, CAM had operated as follows:

1. Only available to people under 21 years of age; residing in El Salvador, Guatemala, or Honduras; who have a parent lawfully based in the US.
2. The US-based parent requested their Central American-based child be resettled in the US.
3. The minor attended a pre-screening interview at a US Resettlement Support Centre in Central America
4. A DNA test was used to confirm the parental relationship.
5. If the parental relationship was confirmed, the minor was interviewed by staff from the US Department of Homeland Security to determine their refugee status
6. The minors who qualified as refugees were resettled in the US.
7. The minors who did not qualify as refugees could be considered for a two year parole in the US.

News outlets reported that as at August 2017 that around 13,000 applications had been submitted and of those around 3,000 minors had qualified for protection or parole under the program.[19] There were reportedly considerable delays in the application process, including in the lodging of DNA tests, and the conducting of interviews and security checks.[20] This led some scholars and human rights advocates to conclude that the CAM program had limited capacity and had not offered an effective alternative pathway to protection.[21] In a statement issued on 10 March 2021, however, UNHCR said the program has a 'proven track record' and welcomed its reopening as a way to provide eligible children with 'a safe and orderly way to be reunited with their parents legally residing in the United States'.[22]

Past procedures:

Orderly Departure from Vietnam

In response to the mass displacement of people from Vietnam during the late 1970s, the United Nations High Commissioner for Refugees (UNHCR) signed a Memorandum of Understanding on Orderly Departure with the government of the Socialist Republic of Vietnam in May 1979.[23] This agreement would become known as the Orderly Departure Program (ODP), and between 1979 and the late 1990s it facilitated the resettlement of over 650,000 people in countries around the world (the vast majority in the United States).[24]

Canada's Source Country Class

From 1997 to 2011 the Canadian government ran a Source Country Class alongside its main refugee and humanitarian resettlement programs. The Source Country Class functioned under the Immigration and Refugee Protection Regulations, and superseded the Designated Classes that had operated since the late 1970s.[25]

Under the regulations the Source Country Class allowed persons within designated countries to apply directly to Canada from inside those countries. The designated countries changed slightly over time, and at various points included Colombia, Guatemala, El Salvador, Sudan, Sierra Leone, Bosnia-Herzegovina, Croatia Cambodia, Liberia, and the Democratic Republic of Congo.

According to Citizenship and Immigration Canada, designated countries had to be places 'where persons are in a refugee-like situation, applications can be processed without endangering the embassy staff or the applicant, and the intervention would be in line with Canada's overall humanitarian strategy and the work of the UNHCR'.[26]

Eligibility was otherwise based on the applicant:

- Having a well-founded fear of persecution for reasons of race, religion, nationality, political opinion, or membership in a particular social group;
- Being seriously and personally affected by civil war or armed conflict in the designated country;
- Having been detained with or without charges or punished in some form for an act that, if committed in Canada, would be a legitimate exercise of freedom of expression or a legitimate exercise of civil rights with regard to trade union activity or political dissent.[27]

In 2009 Citizenship and Immigration Canada conducted a review of the Source Country Class, and identified problems with low application rates, an inability to designate new countries in a timely manner, and a lack of referring agencies through which individuals in need could gain access to the Source Country application process. In a report on the operation of the Source Country Class in Colombia, the Canadian Council of Refugees noted that officials could not rely on referring agencies, such as non-governmental organisations, to access prospective applicants due to the risk of fraud, and the processing of a small number of applications was

therefore slowed by a high volume of external inquiries. While the Council argued that the Class should nonetheless remain operational, it was repealed in March 2011.[28]

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Endnotes

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