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Operational Bulletin 600-A (modified) – July 20, 2016

i This section contains policy, procedures and guidance used by IRCC staff. It is posted on the department's website as a courtesy to stakeholders.

Temporary public policy for applications for permanent residence on humanitarian and compassionate grounds as a result of lifting the temporary suspension of removals on Haiti and Zimbabwe

Summary

On February 4, 2016, the Government of Canada gave nationals of Haiti and Zimbabwe who are in Canada another six months (until August 4, 2016) to apply for permanent residence in Canada on humanitarian and compassionate (H&C) grounds and benefit from an administrative deferral of removal until they receive a decision on their application. This is in

addition to the six months that were given following the lifting of the temporary suspension of removals (TSR) for Haiti and Zimbabwe on December 1, 2014, which has expired on June 1, 2015.

Background

On November 26, 2014, the Minister of Citizenship and Immigration signed a temporary public policy for nationals of Haiti and Zimbabwe who would be affected by the lifting of the TSR.

On December 1, 2014, the Minister of Public Safety lifted the TSR on Haiti and Zimbabwe.

A temporary suspension of removal (TSR) halts removals to a country or a place where there is a generalized risk to the entire population, such as war, civil unrest or environmental disaster. As a result, individuals who are unsuccessful in their refugee claim or are inadmissible and who, under normal circumstances, would be subject to removal are allowed to temporarily stay in Canada. As per section 230 of the *Immigration and Refugee Protection Regulations*, the Minister of Public Safety has the authority to impose, maintain or lift a TSR. Individuals who are subject to a TSR may choose to return to their country voluntarily. This stay of removal would not apply to individuals who are inadmissible for criminality, serious criminality, security, violating human or international rights, organized crime or to a person referred to in section F of article 1 of the *United Nations Convention Relating to the Status of Refugees*.

Purpose

The temporary public policy gives nationals of Haiti and Zimbabwe who are in Canada the opportunity to apply for permanent resident status and to remain in Canada while awaiting a decision on their application. Individuals

who meet the eligibility criteria listed below have until August 4, 2016, to apply.

The purpose of this Operational Bulletin (OB) is to provide functional guidance with respect to the processing of applications for permanent residence on H&C grounds by nationals of these countries.

Administrative deferral of removal

If nationals of Haiti or Zimbabwe meet the eligibility criteria described below, the Canada Border Services Agency (CBSA) will administratively defer removals of affected individuals who submit an application for permanent residence on H&C grounds within six months of the current temporary public policy. The deferral will continue until a selection decision (stage 1) on the H&C application for permanent residence is made. H&C applications that were submitted as a result of OB 600, between December 1, 2014, and June 1, 2015, are also included. However, when an applicant has submitted an application, but it has not yet been created in the Global Case Management System (GCMS), the applicant must be able to demonstrate proof of such application having been submitted (copy of the H&C application and proof of fees paid or notification of intent to apply for a loan) to be entitled to a deferral.

Applicants must meet all of the eligibility criteria below in order to apply under the temporary public policy and benefit from a deferral of their removal pending the H&C selection decision, otherwise the CBSA may take action to effect the removal. Other avenues of recourse, such as a pre-removal risk assessment (PRRA), may still apply.

Eligibility criteria for temporary public policy: applications for permanent residence submitted under H&C grounds

- A foreign national is eligible under the temporary public policy and, by extension, for deferral of removal if the principal applicant meets the following criteria:
 - is a national of Haiti or Zimbabwe;
 - is currently residing in Canada and was residing in Canada on the day of the TSR lifting (i.e., December 1, 2014);
 - is the subject of a removal order (including conditional removal orders) or is out of status;
 - has never been found to be ineligible to have a refugee claim referred to the Immigration and Refugee Board (IRB);
 - is not inadmissible on grounds of security, human or international rights violations, serious criminality, criminality or organized criminality;
 - has not been excluded by the IRB from refugee protection under the *United Nations Convention Relating to the Status of Refugees*;
 - has not had criminal charges dropped by the Crown to effect a removal order;
 - has never had an outstanding criminal warrant; and,
 - has
 - made an application for permanent residence on H&C grounds that was pending on or before February 4, 2016, the date this temporary public policy came into effect,
 - applied for permanent residence on H&C grounds in Canada no later than six months from February 4, 2016 (i.e., on or before August 4, 2016), or
 - applied for refugee protection and their claim for refugee protection was pending on February 3, 2016, the day before this temporary public policy came into effect, and the refugee claimant applies for permanent residence on H&C grounds no

later than six months from a negative decision by the Refugee Protection Division of the IRB.

In this context, “negative decision” refers to the initial Refugee Protection Division’s decision rejecting the claim for refugee protection, or determining it abandoned or withdrawn. The six-month time frame from the negative decision begins on the day the Refugee Protection Division renders its decision on the claim for refugee protection, whether rejecting the claim or determining it abandoned or withdrawn, irrespective of any avenues of recourse, including any appeal at the Refugee Appeal Division of the IRB or judicial review by the Federal Court.

i **Note:** Normally, individuals who have received a negative determination at the IRB within the last twelve months are barred from applying for H&C consideration. However, individuals eligible under this temporary public policy are exempted from this 12-month bar and can apply for H&C consideration within six months of the negative IRB decision.

Immigration, Refugees and Citizenship Canada (IRCC) decision maker

When assessing the H&C application, prolonged stays in Canada contributing to establishment and integration into Canadian society, the best interests of the child, family ties, adverse country conditions, as well as other elements put forth by the applicant will be considered as per existing provisions in the program delivery instructions on H&C considerations.

When a country has been subject to a TSR for a number of years (since 2004 for Haiti and since 2002 for Zimbabwe), an officer may consider that the applicant’s continued presence in Canada may be due to circumstances

beyond their control. When the decision maker concludes that the individual's prolonged stay in Canada as a result of the TSR has led to their establishment, positive consideration may be warranted.

How to apply for H&C consideration (including applicants in Quebec)

On May 21, 2016, the Government of Canada introduced further special measures for eligible nationals of Haiti and Zimbabwe who wish to apply for H&C consideration under the February 4, 2016, temporary public policy:

- Under a new simplified application process, eligible applicants are no longer required to provide the *Schedule A Background / Declaration* form [IMM 5669] and the *Additional Family Information* form [IMM 5406] up front with their application. These forms will only be requested to assess admissibility (stage 2) if the application is approved in principle (stage 1).
- If required, eligible applicants who have not yet submitted their application can now apply to access the Immigration Loans Program to cover the processing fee of their application.

H&C application forms, along with fee receipts or the signed notification of intent (PDF (Portable Document Format), 50.29KB (Kilobyte)), to notify IRCC of the intent to apply for an immigration loan to cover the processing fee of the application, must be sent to the Backlog Reduction Office in Vancouver (BRO-V) as per regular procedures. These applications must be postmarked no later than August 4, 2016. For individuals who had a pending refugee claim on February 3, 2016, an application for permanent residence on H&C grounds must be submitted no later than six months from the first negative decision on their refugee claim from the IRB.

Applications and supporting documents must be mailed to the following address:

Backlog Reduction Office – Vancouver
#600 – 605 Robson Street
Vancouver, BC V6B 5J3

The envelope should specify the country of origin and be clearly labelled with “**Haiti – TSR**” or “**Zimbabwe – TSR**”. Processing fees apply. The fee receipts or the signed notification of intent (PDF (Portable Document Format), 50.29KB (Kilobyte)) to apply for an immigration loan to cover the processing fee must accompany the application.

Applicants who received a negative decision on an application for permanent residence on H&C grounds may reapply and, provided they meet the eligibility criteria and apply within the six-month time frame, may benefit from the administrative deferral of removal. Applicants should include all relevant, up-to-date information in their application in order to be accurately assessed.

Procedures for eligible applicants residing in Quebec

- Applicants must submit their H&C application forms along with the *Demande d'examen du parcours d'intégration au Québec en vue de l'obtention du certificat de sélection* form to the BRO-V. They must meet the eligibility criteria for the temporary public policy before IRCC can refer their application to the Ministère de l'Immigration, de la Francisation et de l'Intégration (MIFI).
- The MIFI (Ministère de l'Immigration, de la Francisation et de l'Intégration) will assess applicants based on Quebec establishment factors. The MIFI (Ministère de l'Immigration, de la Francisation et de l'Intégration) will notify IRCC of its decision on the *Avis sur le parcours*

d'intégration and whether a Quebec Selection Certificate (CSQ) is issued or not. **If the MIFI (Ministère de l'Immigration, de la Francisation et de l'Intégration) issues a CSQ**, IRCC will examine the application for H&C consideration as per existing provisions in the program delivery instructions on H&C consideration taking into account the assessment by the MIFI (Ministère de l'Immigration, de la Francisation et de l'Intégration). **If the MIFI (Ministère de l'Immigration, de la Francisation et de l'Intégration) does not issue a CSQ** but IRCC finds sufficient H&C grounds to grant an exemption, IRCC will inform the MIFI (Ministère de l'Immigration, de la Francisation et de l'Intégration) of its decision. If the MIFI (Ministère de l'Immigration, de la Francisation et de l'Intégration) does not reconsider their CSQ decision, IRCC will contact the applicant to determine if they are prepared to reside in a province other than Quebec.

- If the application is approved (stage 1), IRCC will assess admissibility and make a final decision on the application.

When an H&C application is received at the BRO-V

The BRO-V

- opens the envelopes marked with “Haiti – TSR” or “Zimbabwe – TSR” within one week of receipt;
- creates an application in GCMS;
- promotes the application into GCMS within three weeks of receipt.

If the applicant has notified IRCC of their **intent to apply for an immigration loan** by way of a signed notification of intent (PDF (Portable Document Format), 50.29KB (Kilobyte)), the BRO-V

- processes the loan application as per the processing flowchart (Annex C).

If the applicant paid the fee and is **eligible**, the BRO-V

- adds the following note in the *IMM* screen in GCMS: “Applicant applied for H&C consideration under the OB 600-A and meets the eligibility criteria for the temporary public policy.”;
- sends the *Demande d'examen du parcours d'intégration au Québec en vue de l'obtention du certificat de sélection* form and supporting documents to the MIFI (Ministère de l'Immigration, de la Francisation et de l'Intégration);
- upon receipt of the MIFI (Ministère de l'Immigration, de la Francisation et de l'Intégration)'s decision, makes a stage 1 decision.

If the applicant paid the fee and is **not eligible**, the BRO-V

- adds the following note in the *IMM* screen in GCMS: “Applicant applied for H&C consideration under the OB 600-A but does not meet the eligibility criteria for the temporary public policy due to [insert reason]. Processing of application will continue as per regular procedures.”;
- sends a letter to the applicant: Annex D if the applicant applied under the simplified process and there are forms missing, or Annex A if the applicant applied under the regular process and there are no forms missing;
- processes the application as per regular procedures;
- if the application is approved, requests a CSQ.

Coding

The following GCMS special program codes must be used for all applicants who are **eligible** under the February 4, 2016, temporary public policy criteria:

- Haiti: “**MHA2016**” *
- Zimbabwe: “**MZI2016**” *

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- * The MHA2016 and MZI2016 codes are scheduled to be created in GCMS on July 23, 2016. In the meantime, officers should use the MHA special program code for Haiti and the MZI special program code for Zimbabwe.
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Work permits

Prior to submission of application for permanent residence

The administrative deferral of removals for individuals who meet the eligibility criteria for the temporary public policy means that these removal orders will not be enforced. These individuals may apply for a work permit under paragraph R206(1)(b) through the Case Processing Centre in Vegreville (CPC-V) or online. It should be noted that this work permit will not confer status.

For applicants who are not under a removal order and would not, therefore be eligible to apply for a work permit under paragraph R206(1)(b), officers may consider issuing a work permit under paragraph R205(a) ensuring that the foreign nationals are able to support themselves and integrate into the Canadian labour market, resulting in an economic benefit to Canada.

After submission of application for permanent residence

Foreign nationals who have applied for permanent residence in Canada can apply for open work permits if they meet the criteria of section R207. See *Temporary Foreign Worker Program: Applicants in Canada*.

Processing fees apply.

Study permits

The administrative deferral of removals for individuals who meet the eligibility criteria means that these removal orders will not be enforced. Affected individuals are eligible to apply for a study permit under paragraph R215(1)(d) through the CPC-V or online. It should be noted that this study permit will not confer status.

Processing fees apply.

Interim Federal Health Program

Rejected refugee claimants affected by the lifting of the TSR

Rejected refugee claimants who are affected by the lifting of the TSR and who are under an administrative deferral of removal will be eligible for coverage of benefits under the Interim Federal Health Program (IFHP). These individuals will be eligible for full IFHP coverage, which includes basic, supplemental and prescription drug coverage, under the *Rejected Claimant* eligibility group, for the duration of their administrative deferral of removal.

Before issuing an IFHP certificate, the officer must first confirm that the individual is a rejected claimant under an administrative deferral of removal. Once confirmed, coverage can be issued in GCMS under the *Rejected Claimant* eligibility group. The IFHP coverage effective date must be the same as the dates issued for the administrative deferral of removal, and the “valid until” date must be set to 20 years. IFHP coverage will be automatically terminated in GCMS when the client leaves Canada or becomes eligible for provincial or territorial health insurance.

Counselling of clients

Removal postponed

Clients who contact the IRCC Call Centre should be provided with an update on case status and should be counseled on the administrative deferral of removal provisions that have been put in place for Haiti and Zimbabwe. These individuals should be informed that their removal is considered deferred if they are eligible (see the eligibility criteria for temporary public policy).

Persons must meet all the eligibility criteria in order to be considered for a deferral of their removal pending their H&C review. Where all the criteria are not met, the CBSA may effect removal immediately. Such persons may be eligible to apply for a PRRA.

Transitional provisions for H&C applications for permanent residence received prior to this temporary public policy and while stage 1 decision is pending

In cases where an H&C application was received between June 1, 2015, and February 4, 2016, IRCC

- sends a letter (Annex B) that gives the applicant the opportunity to update their H&C application within 60 days;
- after the 60 days have passed, conducts the eligibility assessment within three weeks.

If the applicant is **eligible**, IRCC

- adds the following note in the *IMM* screen in GCMS: "Applicant applied for H&C consideration and meets the eligibility criteria for the temporary public policy under OB 600-A.";
- adds the applicable GCMS special program code;
- for applicants who are residents of Quebec, sends the *Demande d'examen du parcours d'intégration au Québec en vue de l'obtention du*

certificat de sélection form and supporting documents to the MIFI (Ministère de l'Immigration, de la Francisation et de l'Intégration);

- makes a stage 1 decision; for Quebec cases, only upon receipt of the MIFI (Ministère de l'Immigration, de la Francisation et de l'Intégration)'s decision.

If the applicant is **not eligible**, IRCC

- adds the following note in the *IMM* screen in GCMS: "Applicant applied for H&C consideration and does not meet the eligibility criteria for the temporary public policy under OB 600-A due to [insert reason]. Processing of application will continue as per regular procedures.";
- processes the application as per regular procedures;
- for applicants who are residents of Quebec, if the application is approved, requests a CSQ.

Other permanent resident categories

When an applicant has submitted an application for permanent residence under an in-Canada class (e.g., spouse or common-law partner in Canada class, live-in caregiver class, Canadian experience class or permit holders class) and no stage 1 decision has been made, that application will continue to be processed but the applicant will not benefit from an administrative deferral of removal under the temporary public policy.

If that applicant meets the eligibility criteria as indicated in this OB, they may qualify for an administrative deferral of removal if they submit an H&C application on or before August 4, 2016. An H&C request may be appended to an existing application for permanent residence when no stage 1 decision has been made; no fees are required as per section R307. The request must be sent to the office processing the application for

permanent residence. The officer will assess the eligibility criteria for the temporary public policy and follow the steps outlined above (GCMS note, special program coding, etc).

Pre-removal risk assessment

Persons whose H&C applications are rejected and who are subject to an enforceable removal order may be eligible for the PRRA through the regular process. Removal of those who apply under the PRRA is stayed under section R232.

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