



IDENTITY DOCUMENTS

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INTRODUCING IDENTITY DOCUMENTS

Every time we write a cheque or claim mail from the post office we're asked to prove who we are. We pull out our wallets and hand over the right card. We grumble about it sometimes, but we're used to being asked to produce ID.

And so it sounds reasonable to ask for ID from those coming to Canada. The Canadian Immigration Act was changed in 1993 to do just that. But this requirement has proved to be a hardship for those who fled their homeland without documentation. And it is a factor in keeping thousands of people in limbo.

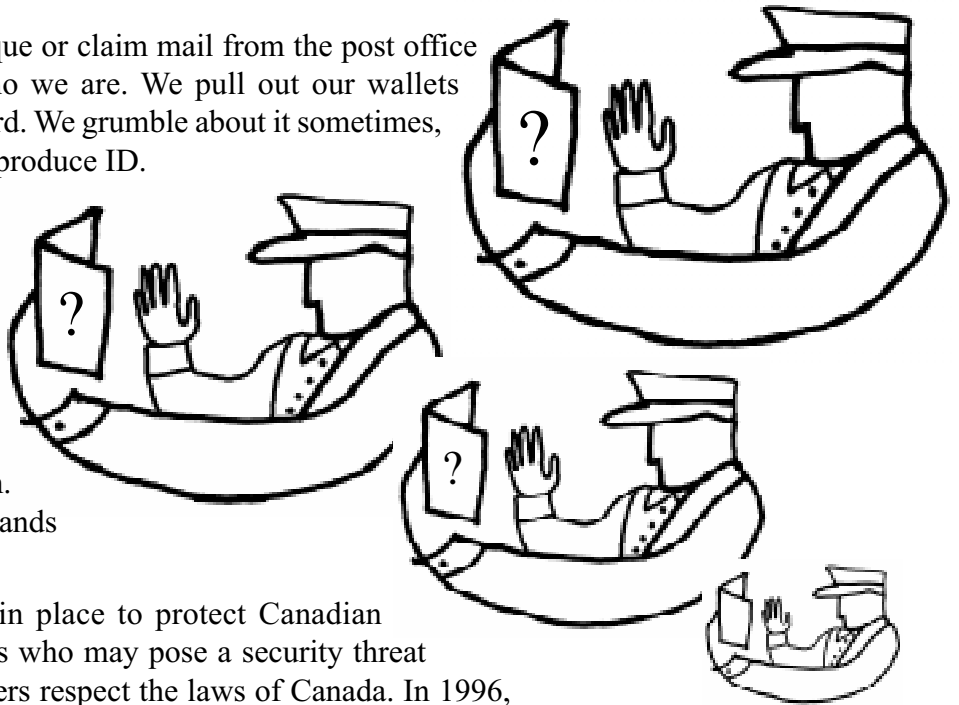
The requirement was put in place to protect Canadian society from criminals and others who may pose a security threat and to ensure that these newcomers respect the laws of Canada. In 1996, the Minister of Immigration stated: "Because they have no ID, we will not grant these people permanent resident status until they have had time to demonstrate respect for the laws of Canada ..."

While that sounds straightforward and necessary, it's not so simple. Many refugees who come from worn-torn countries or countries without a government or a central authority find it extremely difficult if not impossible to obtain such documentation. Others are unable to get identity documents from governments which persecuted them in the past or for fear of reprisals against family members back home.

Then there is the question of what documents are satisfactory. According to the Immigration Act, the appropriate identification for Convention refugees to produce when seeking to be landed is a valid and subsisting passport or travel document. The Act allows for other identity documents to be recognized, but in fact few if any other documents are deemed acceptable.

Because of these real difficulties, and as a result of calls for waiving this requirement for Convention refugees, in 1997 the government introduced the Undocumented Convention Refugee in Canada Class (UCRCC). Persons eligible under this Class could apply for landed status three years after their determination as Convention refugees (though the original requirement was five years). They must also meet other statutory requirements to be landed. The new class has not cleared up the problem.

The numbers tell the story. In late 1994 there were approximately 8,000 Convention refugees who could not be landed because of a problem with identity documents. And while this figure is for principal applicants and does not include children, 80% of those affected are women and children. Of that 8,000, only 21% (or 1,746 people) had been landed in the undocumented class since 1997. In 2000 the waiting period was reduced to three years to move things along, but by May 18 (the last available statistics), government reports show that only 161 people were landed.



THE GENEVA CONVENTION RELATING TO THE STATUS OF REFUGEES

The Geneva Convention relating to the Status of Refugees was adopted in 1951. This Convention regulates the rights of refugees and the obligations of the countries which are parties to it. Canada ratified the 1951 Convention and the 1967 Protocol relating to the Status of Refugees on June 4, 1969. They came into force for Canada in September 1969.

The federal government is, therefore, bound by its obligations under the Refugee Convention of 1951, as clearly stipulated in the following Articles with regard to identity documents.

ARTICLE 25: ADMINISTRATIVE ASSISTANCE

1. When the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he [or she] can not have recourse, the Contracting States in whose territory he [or she] is residing shall arrange that such assistance be afforded to him [or her] by their own authorities or by an international authority.
2. The authority or authorities mentioned in Paragraph 1 shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities.
3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary ...
4. The provisions of this Article shall be without prejudice to Articles 27 and 28.

ARTICLE 27: IDENTITY PAPERS

1. The Contracting Parties shall issue identity papers to any refugee in their territory who does not possess a valid travel document.

ARTICLE 28: TRAVEL DOCUMENTS

1. The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory unless compelling reasons of national security or public order otherwise require ...





WHAT IS WRONG WITH THE I.D. REQUIREMENT (1)

Lack of a precise definition of “satisfactory identity document:”

While Section 46.04 (8) of the Immigration Act requires Convention refugees to be in possession of a “satisfactory identity document” in order to be landed, there is no definition of what constitutes such a document in the Act. There is no consistency within the Department of Immigration across Canada on what is a “satisfactory identity document,” nor is there consistency in the acceptance or rejection of such documents.

In the absence of such a definition, it is up to individual immigration officers to decide which documents to accept or reject. In many cases, immigration officers treat suspiciously and reject the identity documents produced by Convention refugees.

No binding guidelines in determining the validity of identity documents:

There are no guidelines or criteria that could assist immigration officers in determining which identity documents are satisfactory and which are not. Nor is there a list outlining which kinds of documents are acceptable. Further, there are no solid or processing standards for review of IDs. This results in the arbitrary application of the “satisfactory document” test by immigration officers who rarely give the benefit of the doubt to the applicant.

Lack of proper training on evaluation of IDs:

Immigration officers receive no formal training when it comes to the evaluation of identity documents. There are no guidelines stating when a document should be sent for forensic analysis, and no training provided for officers in this regard. This leads to inconsistency and, ultimately, lack of fairness.

Lack of studies on the impact of the ID requirement:

The identity document requirement was put in place without Citizenship and Immigration Canada substantiating why it was necessary, its potential impact or consequences. No discussion papers were prepared or studies conducted which indicated there was a need, and there were no complaints from local Immigration Centres. Because this response to the problem of refugees arriving without IDs was not properly analyzed, questions are left hanging in the balance. Was the security of Canada truly at risk by the landing of Convention refugees without IDs? Have criminality and security objectives which precipitated its introduction been met?

There has been no follow-up. There is no record of any studies having been undertaken by CIC to determine whether this requirement has discouraged people from coming to Canada without identity documents. Nor has there been an attempt to determine whether any war criminals or other persons who pose security risks have been prevented from being landed by this provision.

All in all, the need for identity documents is a requirement without proven basis.



WHAT IS WRONG WITH THE I.D. REQUIREMENT (2)

Lack of mechanism for family reunification:

Convention refugees can sponsor family members *only* if and when they have been landed. Those without “satisfactory” IDs must wait years to be eligible for landing, and thus their reunification with their family abroad is delayed indefinitely. This has devastating results.

Lack of sensitivity to refugee situations:

When refugees are fleeing persecution or wars, the first priority is to save their lives. They often flee in an emergency and thus leave behind nearly all their possessions. It is unrealistic to demand that refugees acquire documents from the same government that has caused them to flee and seek refugee status in a safe country. It is also impossible to get any type of documents from a country where the state has collapsed and there is no central authority to issue or verify identity documents.

Moreover, the identity of Convention refugees is established through the refugee determination process, and so this is an unnecessary step.

The ID requirement discriminates against in-Canada Convention refugees:

Refugees applying for landed status from abroad can be landed without a “satisfactory identity document” while Convention refugees in Canada are required to produce such a document if they want to be landed. This is a double standard on the part of Citizenship and Immigration Canada and it discriminates against Convention refugees who are already here.

The ID requirement is in conflict with Canada’s international obligations:

Canada is a signatory of the 1951 Refugee Convention, articles 25 and 27 of which deal with the issue of refugees without identity documents.

Paragraph (2) of Article 25 obliges Contracting Parties to “deliver or cause to be delivered to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities.” This means that Canada is required to provide the paperwork normally afforded by the home governments of refugees.

Article 27 of the 1951 Refugee Convention is even more explicit in this regard: “The Contracting Parties shall issue identity papers to any refugee in their territory who does not possess a valid travel document.” Article 27 is straightforward and unequivocally obliges the Contracting States to issue identity documents without any exceptions. France, Belgium, the UK, Germany and other European countries comply, but not Canada. (see: www.caledoninst.org/94598288.htm)

WHEN AN IDENTITY IS IN QUESTION

The Travails of Nassim Popal

Over the past four years, Nassim Popal of Afghanistan has produced piece after piece of ID in an attempt to be landed in Canada and to sponsor his family to join him from their temporary and dangerous residence in Pakistan. In turn, piece after piece was rejected through the discretionary powers of immigration officers in Canada. Finally Popal and his lawyer took the matter to court, requesting a judicial review of his case.

The case was heard on February 3, 2000, and a judgement rendered on March 17. The judge concluded that Citizenship and Immigration Canada had erred in law in rejecting Popal's passport, erred in not providing reasons for rejecting the various IDs, and didn't try to verify IDs about which they had doubts. As a result, CIC has kept – and continues to keep – a family separate when CIC had enough documents to facilitate a family reunion. The judge underscored Popal's concern that his children are getting past the age at which their father can sponsor them. Already one child has passed the age of 18 and is no longer eligible for family sponsorship. That means it will be much harder for that child to join the rest of the family in Canada.

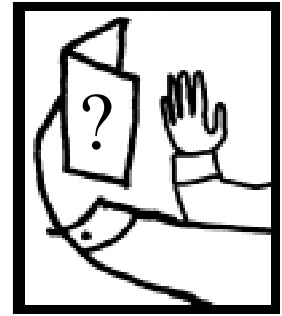
Back in 1994, when he first applied to be recognized as a Convention refugee, Nassim Popal's identity was accepted by the Immigration and Refugee Board on the basis of his Afghanistan driver's license.

The next month (December 1994), Popal applied for landed immigrant status, including his family on his application, as the law allows. Just over a year later (in January 1996), he was asked for additional proofs of his identity, and it was specifically suggested that a passport would be appropriate. Popal procured a passport from the Afghan Consulate in New York City, which was valid for one year. A notarized copy of the passport was sent to CIC on March 21, 1996. It was in April of 1998 that Popal was given what is called a landing appointment, and again he was advised to bring ID with him.

At the appointment, Popal produced the originals of his now-expired passport, his Afghan driving license with a translation, an Ontario driving license and his OHIP card. He was informed that as the passport was expired, it was no longer "subsisting" or continuing to exist, and was therefore not a valid ID. The other identification was declared not satisfactory and he was told to obtain other IDs, such as a marriage or birth certificate.

Anxious to meet any requirements, Mr. Popal arranged to have his original marriage certificate sent from Pakistan and translated into English. This was duly forwarded to CIC. Again, it was rejected. Further, the processing of his file was suspended and the documents were seized. What is surprising about the rejection of the marriage certificate is that it went against the recommendation of the Canadian Immigration visa officer in Islamabad whose expert advice had been sought. The visa officer had written: "Marriage certificates in Afghanistan and Pakistan are generally completed by the Mullah, who are authorized to perform marriages under Muslim law. Mullahs have a good knowledge of the Quran but are mostly uneducated. To see certificates with erasures and white-out areas is a common occurrence. They are often incomplete, but nevertheless genuine."

The judge in the case set aside Citizenship and Immigration Canada's decision to reject Popal's identification documents, including the passport which he declared was valid and subsisting. He told the department to reevaluate Popal's application in light of these decisions, and to act "as expeditiously as possible," given both the time that has elapsed since the original application was made and the age of the dependants in question.



While Nassim Popal awaits news that he can reunite with his family, the question of what makes a satisfactory identity document grows. So too does concern that without binding regulations and formal training, immigration officers continue to reject countless authentic identity documents.

THE UNDOCUMENTED CONVENTION REFUGEE IN CANADA CLASS (UCRCC)

On January 31, 1997, the Undocumented Convention Refugee in Canada Class (UCRCC) was created in response to calls to mitigate the suffering of Convention refugees who could not be landed due to lack of identity documents. Convention refugees are only eligible for inclusion in this Class if:

- they are citizens or habitual residents of nations listed in Schedule XII of the Immigration Regulations;
- they are unable to satisfy the identity document requirement of the Immigration Act;

AND

- five years (currently reduced to three years) have elapsed from the date that they were determined to be Convention refugees.

Convention refugees applying for landed status under UCRCC are required to submit a second application after the three-year waiting period has elapsed. At that time, applicants can be landed on the basis of a statutory declaration.

The following chart, complete as of May 18, 2000 and compiled by Citizenship and Immigration Canada, lists the landings that have occurred under the Undocumented Convention Refugee in Canada Class since its introduction in July 1997. At its introduction, CIC estimated that 1,800 refugees would be landed within the first year alone. In fact, only 747 persons were landed in the same period, raising concerns about the effectiveness of the class. At present, Somalia and Afghanistan are the only two countries listed in Schedule XII.

MONTH	Democratic Republic of SOMALIA	AFGHANISTAN	TOTAL
1997 (July-December)	88	0	88
1998	637	22	659
1999	805	33	838
2000 (First quarter)*	155	6	161
TOTAL	1685	61	1746

* Latest available figures



WHAT IS WRONG WITH THE UCRCC

UCRCC FAILED TO MEET ITS OBJECTIVES:

At the time of its introduction, Citizenship and Immigration Canada projected that 1,800 would be eligible for landing in the first year. In 1998 only 747 undocumented refugees were landed. From 1997–May 2000, there were only 1,746 UCRCC landings in Canada – altogether less than the target for the first year. If one of the objectives in creating this Class was to facilitate the landing of undocumented refugees, then this was not met. Thousands continue to be in limbo and remain without permanent resident status.

THE WAITING PERIOD IMPOSED BY UCRCC IS UNREASONABLE:

Convention refugees applying for landed immigrant status are eligible to apply for landing after a three-year waiting period, but it is not necessary to have a mandatory waiting period at all. There is no rationale to justify that several years of waiting is sufficient to demonstrate respect for the laws of Canada or to detect those who may be guilty of crimes. There is no evidence to show that people with criminal records or war criminals would be identified any more readily as a result of this waiting period.

THE WAITING PERIOD IS ARBITRARY:

There is no reason to believe that five years or three years – or any amount of time – does anything but delay the integration of the individual refugee or family into Canadian society. The waiting period chosen is apparently arbitrary.

THE WAITING PERIOD DOES NOT ENCOURAGE PEOPLE TO GET DOCUMENTS:

Refugees, by definition, are not expected to obtain documents from their governments. In some cases, refugees are unable to obtain documents in the case of countries where the state has collapsed or where there is no functioning central authority to issue such documents. Thus, there is no logic in imposing a waiting period as an incentive to produce IDs if there is no way to obtain them in the first place – it only unfairly punishes those who cannot. On the contrary, the ID requirement and the waiting period can have the opposite effect, encouraging some to become desperate enough to acquire any type of document, including less than genuine ones, in an attempt to satisfy the requirement.

THE LANDING PROCESS UNDER UCRCC IS FLAWED:

The landing process under UCRCC is flawed because:

1. The applicant has to submit two applications: an initial one after being determined a Convention refugee, and a second application after the waiting period is over. This is an unnecessary duplication of work.
2. There are considerable inconsistencies in the application of the Operations Memorandum by different local Immigration Centres. The OM, which regulates UCRCC, is a guideline only and so each immigration officer can interpret it differently. It should be made compulsory, to regulate and enforce the acceptance of statutory declarations, eliminating the resulting wide inconsistencies and the tendency to disregard the '97 OM altogether, leaving refugees no means of landing.

UCRCC PROLONGS FAMILY SEPARATION:

Landed immigrants or Canadian citizens can sponsor family members who meet the criteria of the family classification, which includes spouses and children under 19 years of age. However, Convention refugees in the UCRCC cannot sponsor family members until they have complied with the mandatory three-year waiting period, which begins only after they are determined to be Convention refugees (which may have taken two to three years already). In some cases, that waiting period causes some undocumented refugees to lose forever the right to sponsor family members abroad because dependant children pass the age of 19. These delays may be somewhere between five and ten years, making family reunification impossible.

CHALLENGING THE I.D. REQUIREMENT

Because of the great hardships that the ID requirement causes refugees, and because of the imposition of arbitrary waiting periods that cause further delays in the landing of refugees, a Challenge under the Canadian Charter of Rights and Freedoms was mounted in February 1996 by members of one of the affected refugee communities.

The basis of the Challenge was that section 46.04 (8) of the Immigration Act, mandating the ID requirement discriminates against Convention refugees, is in violation of section 15 of the Canadian Charter of Rights and Freedoms. Section 15 of the Charter allows for equality for “every individual before and under the law and the right to the equal protection and equal benefit of the law without discrimination.” An agreement was reached in December 2000 through negotiations with Citizenship and Immigration Canada and under supervision of the Federal Court. Under that agreement, in cases where no identity document is available, the term “satisfactory identity document” of section 46.04 (8) is to be interpreted so that sworn statements attesting to the applicant’s identity satisfies the requirement. The section itself remains contentious.

Equality for

“every individual before and under the law

and the right to the equal protection

and equal benefit of the law

without discrimination”

A Charter challenge launched by nine members of the Somali refugee community in Ottawa has resulted in an agreement with Citizenship and Immigration Canada (CIC) on the contentious issue of the “ID” requirement for refugees.

On December 14, 2000, Judge James K. Hugessen of the Trial Division of the Federal Court signed a consent order detailing the components of the agreement and the accompanying schedule which went into effect immediately.



WHAT DOES THE AGREEMENT MEAN?

The agreement allows Convention refugees who are unable to produce satisfactory IDs to provide two sworn declarations attesting to their identity. The first one is to be from the refugee themselves, the second from either someone who knew them before they came to Canada, or from a settlement agency which is prepared to attest to their identity. There are a number of conditions that must be met, but if met, they allow the refugee to be landed in accordance with the normal landing process, without the three year wait. The waiting period remains in place for those who cannot meet the conditions required by this agreement.



WHO DOES THIS AFFECT?

The agreement applies immediately to members of the Somali community in Canada and any other refugees who cannot produce satisfactory identity documents. Citizenship and Immigration Canada has agreed to brief all of its officers about this agreement and its implications.

The agreement is in effect until June 3, 2002, although there is provision to extend that period if application is made by either the plaintiffs or the government.



WHAT ARE THE CONDITIONS?

1. Convention refugees who are unable to produce satisfactory IDs as required by section 46.04 (8) of the Immigration Act are – under this agreement – allowed to swear declarations attesting to their identity.

These declarations must include attestation by the applicant to:

- his/her name,
 - date of birth,
 - country of nationality
 - and an explanation as to the applicant’s inability to produce IDs from his/her country of origin.
2. As well, the declaration should include a reasonable explanation of any material discrepancies between information provided in the applicant’s PIF (Personal Information Form) and/or application for landing, or any other discrepancies in documents provided by the applicant.



WHAT ARE THE CONDITIONS? (continued)

3. In addition, the applicant must produce a second declaration attesting to the applicant's identity. This can happen in ONE of two ways:

a) The applicant must provide another sworn declaration from a Canadian citizen, landed immigrant or any other person who knew the applicant for landing or his/her family prior to the applicant's arrival in Canada;

OR

b) the applicant for landing must provide a sworn declaration attesting to his/her identity from an official of an established and credible organization representing nationals of his/her country of origin. This declaration must include a detailed explanation of the organization's attestation of the identity of the applicant, including the steps taken to establish the identity of the applicant for landing.

4. Persons swearing declarations as to the applicant's identity must provide information regarding how they knew the applicant, his/her family, the circumstances under which they first met with the applicant or family members, family relationship if any and how the applicant and persons attesting to his/her identity first made contact in Canada.

5. In addition to the above, an applicant for landing is required to provide an immigration officer with a reasonable and objectively verifiable explanation related to country conditions as to why he/she cannot obtain official IDs from the country of origin.



THE ROLE OF THE IMMIGRATION OFFICER

1. An immigration officer has the discretion to accept or reject the sworn declaration. However, under this agreement, officers must use the following criteria as the basis of their decisions. They are required to determine whether:

- explanations as to the inability of the applicant to obtain IDs from the country of origin are reasonable and objectively verifiable;
- the sworn declarations are consistent with other documents submitted in support of the application for landing;
- explanations for any discrepancies are reasonable;
- sworn declarations from persons who knew the applicant prior to arrival in Canada or officials of a credible organization demonstrate sufficient and credible knowledge of the applicant and evidence of identity is not contradicted in any material way by other information.

2. Prior to an immigration officer's final decision, applicants must be advised of and given an opportunity to correct or contradict any negative assessment made. In the event of such a negative assessment the applicant must – on request – be provided with copies of the immigration officer's notes.

3. Although there are no timeframes for the processing of landing applications under this agreement, CIC is obligated to "process identification documentation as expeditiously as possible in all circumstances."

... CONSEQUENCES OF NOT BEING LANDED

There are thousands of refugees and immigrants who are not landed due to barriers put in place by the system. As refugee researcher Andrew Brouwer of the Maytree Foundation has stated, without landed status, “Life in Canada is, in many ways, like living in legal limbo.” Those without landed status are denied many rights and benefits accorded to others in Canada with terrible consequences for them, their families and society at large.

In particular, refugees and immigrants who are not landed **cannot**:



REUNITE WITH SPOUSES, CHILDREN AND OTHER FAMILY MEMBERS resulting in prolonged family separation (sometimes up to ten years), which is contrary to the spirit of the final text of the 1951 Refugee Convention, and the United Nations Convention on the Rights of the Child that recognizes the right of children to be united with their parents (Article 10);



GET ACCESS TO POST-SECONDARY EDUCATION AND CERTAIN TRAINING PROGRAMS as they are not eligible for provincial student loans and scholarships. This effectively bars one of the neediest student populations from the opportunity to acquire skills and training. On this issue, the Universal Declaration of Human Rights states: “Everyone has the right to education — technical and professional education shall be made generally available, and higher education shall be equally available to all on the basis of merit” (Article 26);



TRAVEL OUTSIDE CANADA AND RETURN, because those without landed status are denied Canadian travel documents and are not guaranteed re-entry to Canada if they leave the country. This restriction of mobility rights is in violation of the 1951 Refugee Convention, which binds “the contracting parties to ... issue travel documents to refugees lawfully residing in their territories” (Article 28 (1));



GET EMPLOYMENT, particularly in professions and trades that require specific insurance, which include education and health care. They must apply for and regularly renew and pay for a work permit. Moreover, most employers are unwilling to hire anyone without permanent residency status;



PARTICIPATE EFFECTIVELY IN THE POLITICAL PROCESS OF CANADA, because the right to vote or run for elective office is restricted to Canadian citizens. It is only possible to apply for citizenship three years after obtaining permanent resident status. The result can be entire communities who are politically disempowered.

OTHER CONSEQUENCES OF NOT BEING LANDED:

MENTAL HEALTH PROBLEMS such as depression and suicidal tendencies
which can result in large medical bills and the loss of health of those in limbo;

FAMILY CONFLICTS AND BREAKDOWNS;

LACK OF SELF-ESTEEM;

INABILITY TO INTEGRATE.

The **GETTING LANDED** Project

? WHO WE ARE

The process of becoming landed immigrants, or “getting landed,” is long and complicated at the best of times. Many refugees and immigrants face barriers along the way which delay the process and keep them in limbo, hoping to get status and get on with their lives.

There are real consequences to not having permanent resident status in Canada and being in limbo. Refugees and immigrants need status to get student loans, because without them, college, university and other training programs are beyond the reach of most. Without status they cannot sponsor family members and must wait to reunite with loved ones. Without status they are not guaranteed re-entry into Canada and so, in effect, travel is barred. They are barred from employment in certain sectors and they cannot participate in the political process. This limbo situation — this sense of uncertainty — causes refugees and immigrants tremendous psychological and economic hardship.

The **GETTING LANDED** Project has been launched in response to these formidable challenges and is dedicated to removing the barriers that keep refugees and immigrants in limbo.

The **GETTING LANDED** Project is an initiative of: the Southern Ontario Sanctuary Coalition, Citizens for Public Justice, the Public Justice Resource Centre, the Ad Hoc Coalition Against the Head Tax, and the Coalition for a Just Immigration and Refugee Policy. The Project is managed by the Public Justice Resource Centre and Citizens for Public Justice, and headed by Project Coordinator Ahmed Hashi.

The Project is funded in part by the Maytree Foundation. The four limbo issue kits are published by the Public Justice Resource Centre, with the partial assistance of the United Nations High Commissioner for Refugees (branch office in Canada).

? WHY WE FORMED

The primary goal of this Project is to achieve political change on specific immigration policies that cause refugees and immigrants undue delays in obtaining landed immigrant status.

? OUR OBJECTIVES

To put in place a public education and advocacy strategy
aimed at removing barriers to the landing of refugees and immigrants;

To undertake a broad based public awareness campaign
amongst the general public, politicians, media and others;

To empower the refugee community
by providing information and training on how to work with the media
and participate in the public policy-making process;

To enhance capacity-building amongst Coalition members.