

An Overview of Refugee Protection in Canada

Ontario Justice Education Network

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Rebeka Lauks

rebeka@laukslaw.com

OUTLINE

- Convention Refugee and Protected Person definitions
- Processes for applying for refugee status inside and outside of Canada
- Other remedies for people who do not qualify
- Canada's evolving processes to humanitarian crises

Why does Canada accept refugees?

- UN 1951 Convention Relating to the Status of Refugees and the 1967 Protocol
- Section 3(2) of the *Immigration and Refugee Protection Act* states the objectives of the refugee system in Canada:
 - (a) to recognize that the refugee program is in the first instance **about saving lives** and **offering protection** to the displaced and persecuted;
 - (b) to **fulfil Canada's international legal obligations** with respect to refugees and **affirm Canada's commitment** to international efforts to provide assistance to those in need of resettlement;
 - (c) to grant, as a fundamental expression of **Canada's humanitarian ideals**, fair consideration to those who come to Canada claiming persecution;
 - (d) to **offer safe haven** to persons with a well-founded fear of persecution based on race, religion, nationality, political opinion or membership in a particular social group, as well as those at risk of torture or cruel and unusual treatment or punishment;

Convention Refugees and Protected Persons

To obtain refugee status in Canada, a person must be either:

- a Convention Refugee, or
- a person in need of protection

Convention Refugees

Section 96 of the *Immigration and Refugee Protection Act*

- A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,
 - (a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or
 - (b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Key elements of the Convention Refugee definition

- Outside country of nationality (or former habitual residence if you are stateless)
- Well-founded fear of persecution
 - Subjective fear
 - Objective basis
- Must be based on a convention ground (aka “Nexus”)
 - Race, religion, nationality, membership in a particular social group or political opinion
- State protection is not available
- There is no location in the country where you could live safely
- Does the fear still exist → Forward looking risk

Protected Persons

Section 97 of the *Immigration and Refugee Protection Act*

- A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally to:
 - (a) Danger of torture, as defined in Article 1 of the Convention Against Torture (IRPA, Article 1) or
 - (b) Risk of cruel or unusual treatment or punishment.

Key elements of the Protected Person definition

- Outside country of nationality (or former habitual residence if stateless)
- Danger of torture
- Risk of cruel or unusual treatment or punishment
- State protection is not available
- There is no location in the country where the claimant could live safely
- Does the fear still exist → Forward looking risk

Differences between Convention Refugee and Protected Person

- Convention Refugee (s. 96) has specific grounds (Nexus)
- Protected Person (s.97) requires that the risk be personal and not general
- Protected Person (s.97) does not require “subjective fear”
- Legal tests
 - Protected Person (s.97) – there must be a probability of torture or risk to life/risk of cruel or unusual treatment (>50%)
 - Convention Refugee (s.96) – there needs to be a serious possibility (more than a mere possibility) of persecution (<50%)

Convention Refugee, Protected Person or neither?

- Fleeing from poverty, famine, natural disaster
- War
- A racial group is constantly being discriminated by civilians (i.e. refused employment, rental units) and repeatedly file police reports. The police takes down the complaint and files a report, but nothing further happens.
- Domestic violence
- Mandatory military service
- Victims of gang violence/crime
- Cannot receive medical treatment for a disease
- The police are seeking out a woman for participating in an illegal religion. In doing so, it makes numerous attempts to her family home to question her husband and to look for her. The woman was successful in her refugee claim. Could her husband also receive refugee protection?
- The state believes an individual is a pro-democracy leader, even though that person does not support such views
- A lesbian woman from a country where homosexuality is criminalized, but she could avoid punishment by keeping her relationship private.

How to Make a Refugee Claim

- A refugee claim can be made inside and outside of Canada:
 - 1)the Refugee Resettlement Program, for people seeking protection from outside Canada; and
 - 2)the In-Canada Refugee Program for people making refugee protection claims from within Canada.

Seeking Protection Outside of Canada

1. Convention Refugee class

1. Outside of home country
2. Cannot return to home country due to well-founded fear of persecution based on Convention ground

2. Country of asylum class

1. Outside of home country
2. Have been seriously affected by civil war or armed conflict, or have been denied basic human rights on ongoing basis

Seeking Protection Outside of Canada

Criteria :

- 1) Outside of your home country and outside of Canada;
- 2) Sponsored by
 - a) The government after referred by the United Nations High Commissioner for Refugees (UNHCR) or another designated referral organization
 - b) A private sponsorship group (group of 5, community sponsor group or Sponsorship Agreement Holder), if the applicant has been recognized by the UNHCR or the government in their current country of residence as a refugee
- 3) Must have no reasonable prospect, within a reasonable period, of a durable solution in third country

Seeking Protection Inside of Canada

- Refugee applications must be made to an officer:
 - Port of Entry Claim
 - Inland Claim
- A person is not eligible to make a claim if:
 - A removal order has been issued against them
 - They were previously granted refugee status under the Act
 - A previous claim was rejected
 - A previous claim was found to be ineligible, withdrawn or abandoned
 - A previous claim was made in a country with which Canada has an information sharing agreement (United States, Australia, New Zealand or United Kingdom)
 - They are a convention refugee in another country and can return there
 - They have been determined to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality
 - They arrived directly/indirectly from designated safe third country (currently United States) unless they fall into the exceptions

Safe Third Country Agreement

- applies to persons who apply at a land port of entry, but does not apply at an airport/seaport or an inland office.
 - Example: person crosses the US-Canada Border and makes a refugee claim
- **Exceptions:** stateless persons, US nationals, claimants who have a family member legally in Canada, and unaccompanied minors.

** challenge to the STCA currently pending at the Supreme Court of Canada (oral arguments presented in October 2022)

Other remedies?

- Pre-removal risk assessments
- section 25 of the *Immigration and Refugee Protection Act* – apply for permanent residence on Humanitarian & Compassionate (H&C) grounds
- Special programs or measures, such as
 - Guardian Angels (Asylum Claimants Working on the Front Lines) program
 - Immigration measures and support for Ukrainians and their families

Special measures for Ukraine

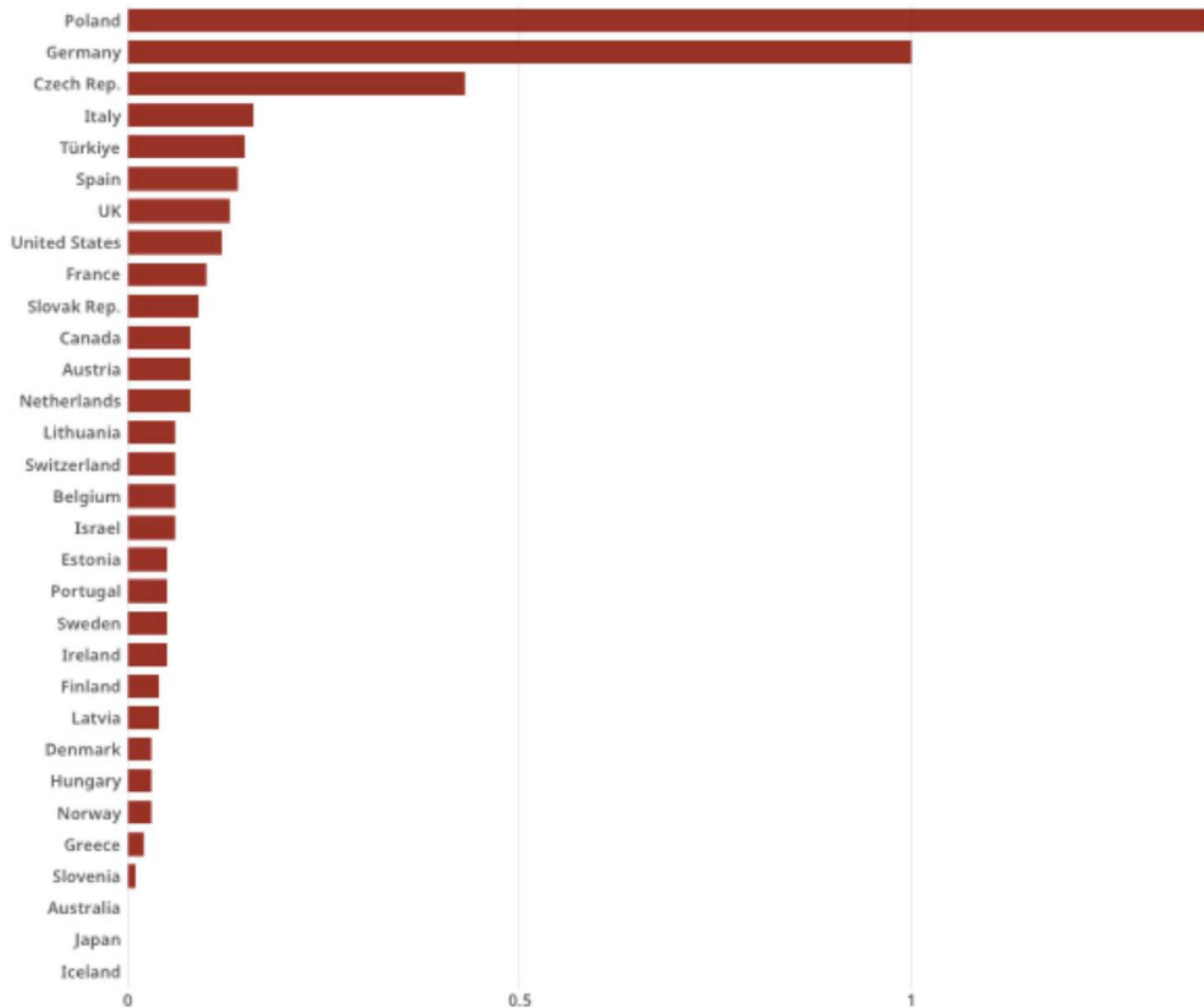
The following measures have been put in place to help Ukrainians in and outside Canada:

1. Priority processing of *Canada-Ukraine Authorization for Emergency Travel* Applications
2. Increased newcomer services for Ukrainians arriving in Canada
3. Waiving of application fees
4. Support for flights to Canada
5. Priority processing of Ukrainian family sponsorship applications
6. Priority processing of Ukrainian matters before the Immigration and Refugee Board
7. Administrative deferral of removals to Ukraine

Refugees from Ukraine to OECD countries

mid-September 2022

in millions



For the number of refugees from Ukraine in EU countries, the source of the data is UNHCR. For other OECD countries, data come from national sources • Source: OECD (2022), *International Migration Outlook 2022*, Figure 4.1.

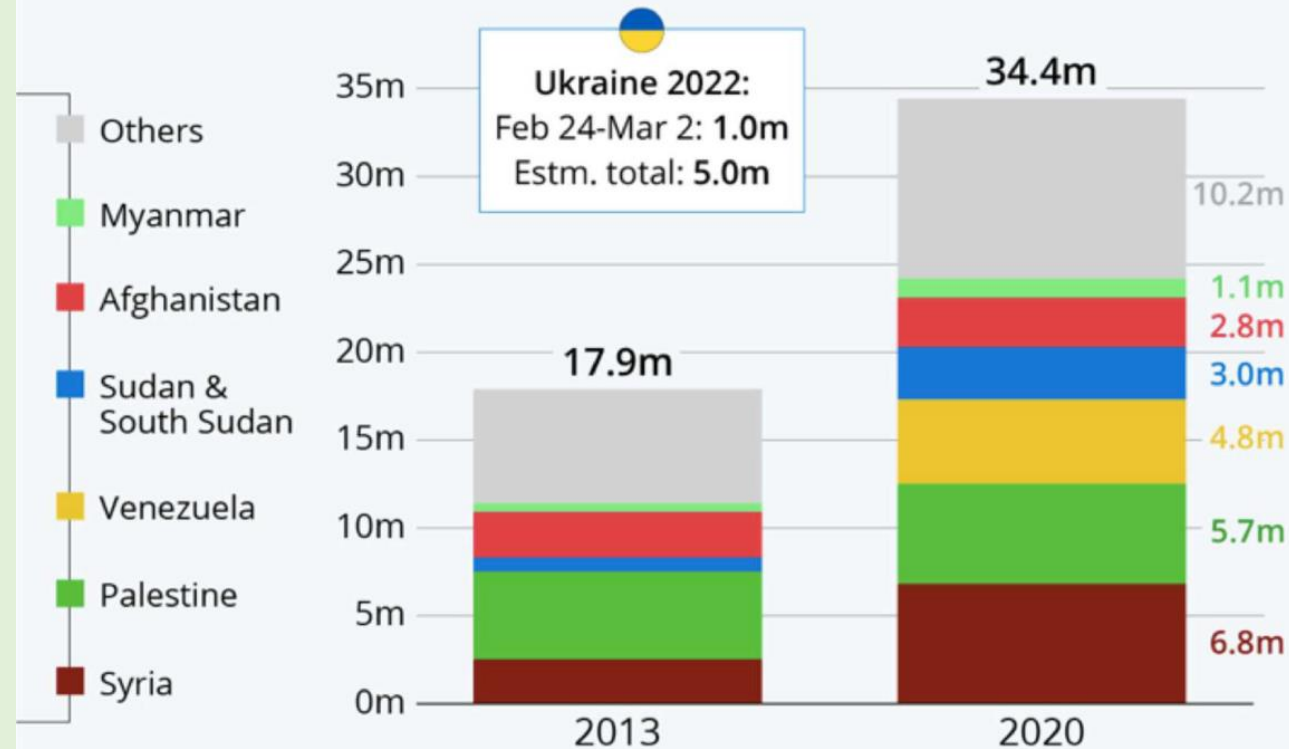
Intake in Canada

- Ukrainian citizens and returning Canadian permanent residents of Ukrainian origin who arrived in Canada by land or air between January 1 and November 27, 2022
 - Arrived in Canada by land: 18,248
 - Arrived in Canada by air: 106,363
- Applications for the emergency travel authorization received and approved between March 17 and November 30, 2022
 - Applications received: 715,177
 - Applications approved: 435,932

<https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/ukraine-measures/key-figures.html>

The World's Refugee Crises

Number of internationally displaced people
by country of origin*



* includes refugees, asylum-seekers and Venezuelans abroad

Sources: UNHCR, U.S. Mission to the UN



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Afghanistan

- The Special Immigration Measures Program for Afghans who assisted the Government of Canada
 - Arrived in Canada: 9,080
- A Humanitarian Program - women leaders, human rights defenders, persecuted religious or ethnic minorities, LGBTQ individuals, journalists / those who helped Canadian journalists
 - Arrived in Canada: 14,895
- A Permanent Residence Pathway For Extended Family Members Of Former Interpreters
 - Arrived in Canada: 670
- Special program to sponsor Afghan refugees without refugee status from the UNHCR or a foreign state
 - Already reached cap of 3,000 applicants

Data as of December 2022 - <https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/afghanistan.html>

Syria

Refugee category	Number of refugees
Government-Assisted Refugee	21,745
Blended Visa Office-Referred Refugee	3,945
Privately Sponsored Refugee	18,930
TOTAL	44,620

Data as of October 2020 - <https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/welcome-syrian-refugees/key-figures.html>

Questions?

Rebeka Lauks – rebeka@laukslaw.com