



Advocacy Column On humanitarian and compassionate grounds: preventing family separation

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A recent JCACAP Advocacy Column raised concerns about the Canadian government's deportation of parents of Canadian children who have been deemed inadmissible to Canada under the Immigration and Refugee Protection Act (1). It was argued that the act of separating children and parents violates the principles of the "Best Interests of the Child", as stipulated in the United Nation's Charter on the Rights of the Child, a charter to which Canada is a signatory (2).

The assertion that the Canadian government perpetrates family separation has been countered by the argument that the parent under a deportation order could "simply" take their Canadian child(ren) with them, implying that the parent, not the government, is responsible for any resulting family separation. However, this deflection does not absolve the Canadian government of responsibilities to Canadian children, including their wellbeing. The current Canadian practice of forcing a parent to choose between extracting their child from Canada (the child's country of birth, and the safety and benefits inherent in staying) or family separation cannot be construed as consistent with the principles of the "Best Interests of the Child" (3).

In reply to written expressions of concern about the impact of this particular deportation practice on Canadian children, representatives of the Canadian government insisted that they do take the "Best Interests of the Child" into account (3). To try and understand how they square that circle, more information was solicited. As outlined in an earlier Advocacy Column (3), the pathway to obtain additional information was circuitous, but eventually resulted in a response from the Canadian Border Service Agency (CBSA), an entity which is overseen by the Ministry of Public Safety, and which arranges deportations. Unfortunately, this first response from the Vice-President of the Intelligence and Enforcement Branch of the CBSA included only a minimal description as to how the "Best Interest of the Child" was taken into consideration. Another expression of concern and solicitation for additional explanation was then sent to the then Minister of Public Safety, the Honourable Dominic LeBlanc; this letter was again redirected to CBSA but resulted in a more detailed response from the same CBSA Vice-President which has

consequently raised more issues. This second CBSA letter, received March 2024, again reiterated that "*The CBSA always considers the best interest of the child in carrying out its mandated duties*". However, the additional information provided in this letter denotes a concerning narrow application of what might be understood to be taking into account the "Best Interests of the Child". For example, it was noted that the CBSA may allow "... *additional time for children to attend a scheduled medical appointment...*" before parent deportation. The CBSA Vice-President then clarified that:

"The discretion that a (CBSA) removal officer may exercise to defer a removal is limited, and is restricted to 'when' a removal order will be executed rather than 'whether' the individual will be removed. However, a removal officer cannot defer a removal indefinitely."

The letter added that "*The decision to grant a foreign national temporary status or permanent status to remain in Canada on humanitarian and compassionate grounds falls to the ... Minister of Immigration, Refugees and Citizenship.*"

Considering points made in this second CBSA letter, it appears that the next step to inform advocacy efforts is to better understand how the Ministry of Immigration, Refugees and Citizenship determines exemptions to parent deportation based on qualification for humanitarian and compassionate grounds. Clues to what factors might influence eligibility are suggested in the Canadian Government's Guide 5291- Humanitarian and Compassionate Considerations (4). Within this guide, "*Best interest of any children*" is listed as one example of "*Factors that may be considered*". In further elaboration, the guide lists variables that may be considered including age of the child, child's establishment in Canada, conditions in the country of origin that could impact the child, medical needs of the child, child's education, or child's gender. Unfortunately, more specific details and examples are not provided. The guide also stipulates that "*The best interests of a child do not outweigh*

all other factors in a case". Additionally, it notes that the applicant "... must provide specific information and supporting documents to demonstrate how the child or children inside or outside of Canada would be affected".

Rather than requiring that each applicant provide "*specific information and supporting documents*", humanitarian and compassionate grounds ought to automatically apply if a Canadian child is involved. The onus would then be on the Canadian government to present evidence as to why a given case should not be eligible for such grounds. Can the Canadian government not recognize and agree that separating or displacing families is generally undesirable for a child and not in their best interest, and protect these minimal basics of child welfare? Furthermore, expectations stemming from the Convention on the Rights of the Child ought to be in force, such that:

"...the justification of a decision must show that the (right of the child) has been explicitly taken into account. In this regard, States parties shall explain how the right has been respected in the decision, that is, what has been considered to be in the child's best interests; what criteria it is based on; and how the child's interests have been weighed against other considerations, be they broad issues of policy or individual cases" (5).

Further clarification of the current processes and requirements for determining whether a given case qualifies or not on humanitarian and compassionate grounds is needed. Any aspects that are unreasonable and unjust need to be challenged. Canadian mental health providers, including those within the Canadian Academy of Child and Adolescent Psychiatry, are in a strong position to advocate. We should be prominent advocates, along with other Canadian stakeholders, arguing for the best interests of the child and against family separation.

References

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