

Regularization in Canada

Policy Submission - Migrant Rights Network, July 2022

Regularization and Equality

There are over 500,000 people, including families, living in Canada without any valid immigration permits.¹ Without permanent resident status, we are unable to assert our rights at work or access basic healthcare, and we face discrimination and exploitation because of the well-founded fear of deportations.

Non-status people are part of communities. We are neighbours, classmates, parents, spouses, children, coworkers and caretakers. We experience insecure housing, abuse at work, poverty and fear. The uncertainty about the future, constant stress of making ends meet and risks of detention and deportation negatively impacts our health. Living without status requires a tremendous amount of resilience.

One of the tools to address this harm is regularization of status. Getting secure immigration status (Permanent Resident status) is the primary concern of most undocumented people. It is rightly seen as the most direct way to living a life of dignity and safety. Once regularized, a person can access the same rights as any other resident. This is why migrants and over 483 organizations are calling for regularization and full and permanent immigration status for all residents now, and in the future.

Why regularization?

Prime Minister Trudeau instructed the Minister of Immigration to “explore ways of regularizing status for undocumented workers”.² This move took place after a massive two year campaign led by migrants for “Status for All”. It is clear that the Liberal government plans to move in the right direction, now what is important is the kind of regularization program that is introduced.

If the regularization program only grants temporary residence is permitted, not all rights will be accessible, the relief will be short lived and many people may become undocumented again. If strict criteria are applied then few people will qualify and others will become at greater risk of detention and deportation.

¹ Hershkowitz, M. G. Hudson, and H. Bauder. 2021. “Rescaling the Sanctuary City: Police and Non-Status Migrants in Ontario, Canada.” *International Migration*. 59(1): 38-57

² Minister of Immigration, Refugees and Citizenship Mandate Letter, December 16, 2021.

<https://pm.gc.ca/en/mandate-letters/2021/12/16/minister-immigration-refugees-and-citizenship-mandate-letter>

On the other hand, regularising all undocumented people reduces inequality and social exclusion because people are more able to participate in all the economic, social and cultural facets of the society we all live in. It ensures that all of us that live here have equal rights.

Regularization of all non-status people will increase labour rights and address the labour shortage crisis. Undocumented people in Canada already live and work here, and provided with permanent resident status will be able to move freely to take available jobs³.

Most non-status people pay taxes through rent, Harmonized Sales Tax on purchases, and often income tax. Their employers, many of whom are very profitable businesses, do not pay their fair share through employer statutory remittances. Regularizing all non-status people would increase Canada's tax base substantially and contribute to essential programs such as EI, CPP and workers compensation.

Full regularization will also create more effective social policy. Currently, there are no reliable statistics on undocumented people in Canada. Creating a regularization program will ensure that these workers and families enter into everyday life, allowing for more informed and effective social policy to be created.

How do people become undocumented?

People are forced to become undocumented through a number of ways:

- Canada's refugee determination system arbitrarily and unfairly excludes many applicants who are not granted asylum.
- As Canada has moved towards a greater number of temporary permits, including study, work, and super-visas, many thousands of people eventually are not able to renew their permits. Most low-waged racialized migrants have no access to permanent resident status.
- Migrant spouses or partners of abusive Canadian citizens, often women, also become undocumented because their sponsors promise to but never submit applications.
- Many people are the victims of unscrupulous and ineffective immigration lawyers, consultants, and employment agencies who misrepresent immigration options, and mislead people forcing them to eventually become undocumented.
- Others simply are not able to navigate the complex immigration system without support, and support is difficult and expensive to access.

³ Goldring, L. and P. Landolt. 2022. "From Illegalised Migrant Toward Permanent Resident: Assembling Precarious Legal Status Trajectories and Differential Inclusion in Canada." *Journal of Ethnic and Migration Studies*. 48(1): 33-52.

Regularization is an effective strategy

From 1960 to 2004, Canada had a number of regularization programs, the largest of which was the Adjustment of Status Program created by Prime Minister Pierre Trudeau in the early 1970s⁴. Two regularization programs, both quite small and exclusionary, were piloted during COVID-19.

Regularization is a feature of immigration policy in the European Union. Ireland is currently regularizing undocumented people. Between 1996 and 2008, 24 of 27 EU Member States implemented regularization programs, and some several times. An estimated 5.5 to 6 million people were regularized in that time.⁵ The largest programs were the Italian 2002 program that regularized 634,000 people and the Spanish 2005 program that regularized 578,375 people.⁶

Recommendations for Regularization

We need a comprehensive regularization plan so that all undocumented people are able to access it. A smaller or more exclusionary program will not meet the potential gains outlined above. Regularization should be considered a minimum floor of rights whereby when any group is excluded, the overall economy suffers. If the pandemic taught us anything, it is that everyone is connected and the exclusion of any person or group of people from equal rights and services is harmful to the whole.

Overall principles

Develop a simple broad program

- The goal of the program must be regularization of all undocumented people residing in Canada. Undocumented should be defined as any person in Canada without a valid immigration permit.
- If residency in Canada is defined, it should as simple as possible and should include all periods in Canada, including prior to being undocumented, and should be as short as possible. A residency requirement should be no more than two years in Canada.

⁴ Jean McDonald. Migrant Illegality, Nation-Building and the Politics of Regularization in Canada. *Refuge* Vol 26 Number 2.

⁵ Baldwin-Edwards, M. and A. Kraler. Eds. 2009. *REGINE: Regularisations in Europe*. Brussels: Pallas Publications.

⁶ Kraler, A. 2019. "Regularization of Irregular Migrants and Social Policies: Comparative Perspectives." *Journal of Immigrant and Refugee Studies* 17(1): 94-113, and Moffette, D. 2018. *Governing Irregular Migration: Bordering Culture, Labour and Security in Spain*. Vancouver: UBC Press.

- Dependents, spouses, and de facto family members must be included and a wide range of documents must be allowed to prove family relations.
- There should be first-stage processing of work permits so that non-status residents can prepare to normalize their life as applicants await a final decision. Permits should be automatically renewed until the application is fully processed.
- Organizations of migrants and migrant rights organizations are crucial partners for successful implementation of the regularization program. A permanent coordinating table must be established with Migrant Rights Network so that undocumented people are involved from design to implementation to evaluation.
- The program should be permanent and available on an ongoing basis because the factors leading to people becoming undocumented will continue for the foreseeable future. Changes must also be made to immigration and refugee policy to ensure that all migrants including workers, refugees, international students and others are guaranteed permanent resident status so that they do not become undocumented⁷.

Clear and simple application process

- Applications must be simple, such that undocumented people are able to apply themselves, online via mobile devices or on paper. There should be a large selection of acceptable documents for the purposes of establishing identity and residence in Canada, none should be mandatory.
- The application should not depend on anyone else (e.g., job letters or proof of work in occupations or spousal ties to Canadian citizens). This will reduce dependency on employers and risks of exploitative or violent relationships. The recent pilot programs required proof of previous employment in specific jobs which excluded many people.
- Third-party applications including from employers and support organizations should be allowed, but they should not be mandatory.
- If applications from third-party groups, lawyers or consultants are not successful, applicants must be given a second opportunity to update their application to mitigate inadequate representation by exploitative third-parties.
- Resources should be made available to legal clinics and community groups to support undocumented people in accessing the program.
- Decisions must be based on clear, objective criteria. Reasons for refusal should be documented and argued.

No Exclusions or Inadmissibility

- People should not be excluded based on past failures to comply with immigration law. Being undocumented creates the conditions for such non-compliance.

⁷ See Migrant Rights Network letter to Cabinet, October 2021 with initial proposals for changes: <https://migrantrights.ca/wp-content/uploads/2021/10/Letter-to-Cabinet-Migrant-Rights-Network-October-2021.pdf>. More specific proposals can be provided.

- Inadmissibility criteria must be suspended. If there are inadmissibility grounds, there must be a simple procedure for applicants to challenge their exclusion on these grounds.

No Detention or Deportations

- There must be a prohibition on detentions and deportations throughout the course of the regularization program; without this, the regularization program will fail as undocumented people will not apply.
- No one should be deported if their application is rejected.

Comprehensive Communications strategy

- The regularization program must be announced at least 6 months in advance to allow for dissemination of information to more isolated undocumented people. The full list of documents required and a sample application must be provided at this stage so that migrants are able to prepare.
- Information must be provided in the top languages spoken by undocumented people.
- Social media friendly content in a range of languages and mediums must be created to help communicate the program.
- Clear and timely communication must be made to civil society organisations including the Migrant Rights Network that have strong links to undocumented people.

**Migrant
Rights
Network**

Migrant Rights Network Secretariat

info@migrantrights.ca

720 Spadina Avenue, Suite 223

Toronto, Ontario, M5S 2T9

www.MigrantRights.ca

Migrant Rights Network is Canada's largest migrant-led coalition with 43 member organizations in 8 provinces consisting of thousands of migrant workers, students, refugees, families and non-status people.