



Press Release

December 29, 2004

United States and Canada Implement Safe Third Country Agreement on Asylum

Washington D.C. – Eduardo Aguirre, Director of U.S. Citizenship and Immigration Services (USCIS), announced today the implementation of a bilateral agreement between the United States and Canada that affects asylum seekers both at U.S.-Canada land border ports-of-entry, and in transit through the United States or Canada during removal by the other country. The final rule implementing the agreement, published November 29, 2004, takes effect today.

“This agreement is an important step towards strengthening public confidence in the integrity of our asylum systems,” said Director Aguirre. “It also ensures that all asylum seekers will be heard, that they receive procedural safeguards, and that they will not be removed until either Canada or the United States has made a determination on the protection claim, in accordance with national laws implementing our treaty obligations.”

The initiative to enter into a Safe Third Country Agreement was included in the 30-point action plan under the Smart Border Declaration signed in December 2001 by Department of Homeland Security (DHS) Secretary Tom Ridge and Mr. John Manley, former Deputy Prime Minister of Canada. The Agreement highlights U.S.-Canadian cooperation to develop mutually beneficial approaches to our common security goals while simultaneously continuing to provide access to one of our two nations’ asylum systems for those with protection concerns.

What does the U.S.-Canada Safe Third Country Agreement accomplish?

The Agreement allocates responsibility between the United States and Canada whereby one country or the other (but not both) will assume responsibility for processing the claims of certain asylum seekers who are traveling from Canada into the United States or from the United States into Canada. The Agreement enhances the two nations’ ability to manage, in an orderly fashion, asylum claims brought by persons crossing our common border.

What are the terms of the Safe Third Country Agreement between the United States and Canada?

The Agreement permits the United States, subject to a host of important exceptions, to return to Canada two specific classes of asylum seekers: those attempting to enter the United States from Canada at a land border port-of-entry and those who assert protection claims while being removed by Canada through the United States. Upon return to Canada, the asylum seeker’s protection claims will be considered under Canadian law.

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Similarly, asylum seekers arriving in Canada from the U.S., either at a shared land border port-of-entry, or in transit during removal by the U.S., may be returned to the U.S. for consideration of their protection claims under U.S. law.

What are the family unity exceptions under the Agreement and the rule?

The Agreement's family unity exceptions, which have been incorporated into the rule, are generous. An asylum seeker with an "anchor" relative in the U.S. who is either in lawful immigration status (other than visitor status) or is 18 years or older and has an asylum application pending here will be allowed to enter the U.S. to join the relative. The range of family members who may qualify as "anchor" relatives under the Agreement is considerably broader than that recognized under other provisions of immigration law. The list of eligible family members includes spouses, sons, daughters, parents, legal guardians, siblings, grandparents, grandchildren, aunts, uncles, nieces, and nephews.

What are the other exceptions under the Agreement and this rule?

An alien who arrives at a land border port-of-entry is exempt from return under the Agreement if the alien:

- (1) Is a citizen of Canada or, not having a country of nationality, is a habitual resident of Canada;
- (2) Is unmarried, under 18 years of age, and does not have a parent or legal guardian in either Canada or the United States;
- (3) Is applying for admission at a United States land border port-of-entry with a validly issued visa or other valid admission document, other than for transit, issued by the United States, or, being required to hold a visa to enter Canada, was not required to obtain a visa to enter the United States; or
- (4) Has been permitted, as an unreviewable exercise of discretion by DHS, to pursue a protection claim in the United States because it was determined that it is in the public interest to do so.

How does the Agreement address the possibility that individuals will be removed without having their protection claims heard?

Under specific terms of the Agreement, an individual referred by either Canada or the United States to the other country cannot be removed to a third country until an adjudication of the individual's protection claims has been made. The Agreement also provides that an individual returned to the country of last presence shall not be removed to another country pursuant to any other Safe Third Country Agreement or regulation.

How will the U.S. implement the Agreement?

Under the final rule published November 29, 2004, asylum officers will conduct threshold-screening interviews of asylum-seekers arriving at U.S.-Canada land border ports-of-entry. During the screening interview, an asylum officer will determine whether an asylum-seeker qualifies for one of the Agreement's exceptions. In the case of an asylum-seeker who does qualify, the asylum officer will then proceed to determine if the asylum-seeker has a credible fear of persecution or torture, pursuant to existing regulations and procedures for asylum-seekers subject to expedited removal. In the case of an asylum-seeker who does not qualify for one of the Agreement's exceptions, the asylum-seeker will be removed to Canada, the country of last presence, in order to pursue his or her protection claim there.