

Immigration Act, 1976

some claims referred to the refugee division will be completely without merit. This amendment will enable members of the panel of the refugee division which hears the claim to indicate in their reasons that there is no credible basis for the claim. Consequential effects on the appeal rights of those claimants will be covered in an amendment to Clause 19. The division is not required to make the second determination in every case. The provision can be used to correct the most obvious abuses of the refugee determination system that pass initial screening at inquiry. The amendment corrects a clerical error in that it deletes reference to a provision of Bill C-84. All of the consequential amendments following from Bill C-84 are dealt with, conditional on the passage of that Bill, in Clause 35.

Motion No. 70 deals with Clause 19. This amendment is consequential on amendment (B) to Clause 18. Where a claimant is determined by a panel of the refugee division not to have a credible basis for the claim, the claimant will not have the right of appeal, pursuant to Section 83.3, to the Federal Court of Appeal. The unsuccessful claimant will still be able to undertake an application for leave to seek judicial review pursuant to Section 28 of the Federal Court Act. It should be noted that judicial review under Section 28 is considered on the same grounds as the appeal pursuant to Section 83.3. The major difference between the two routes for redress is that pursuant to Section 28 of the Federal Court, the court cannot substitute its decision for that of the original decision-maker.

Mr. Sergio Marchi (York West): Mr. Speaker, I am just wondering if the Parliamentary Secretary knows what he just read to the House of Commons. It seemed to be drafted by the same people who put this Bill together.

First, on Motion No. 37, I would like to signal our support proposed by the Hon. Member for Spadina (Mr. Heap). I believe it has its origin in some of the testimony provided to us by Joe Stern of the Refugee Advisory Committee. He said it would be important for our refugee determination system to have at least a safeguard where an individual is barred from proceeding in the determination system for a series of reasons. It would be helpful if the Government, through the Minister, got in touch with the local UNHCR representative or in fact their office in Geneva, for the very same reasons that the Hon. Member stipulated earlier. The UNHRC would be in a good position, since it administers the Geneva Convention on a daily basis, to take a second look at the case of that individual and perhaps find a home for him rather than sending him back from where he came to face possible persecution or death.

● (1640)

That is a check and balance which I do not think is too onerous for the Government to accept. There would be no onus upon the UNHRC to find a home for such an individual, but the UNHRC would have that opportunity. If a decision is made against an individual, he or she will be leaving the country anyway. The UNHRC may be able to find a home for that individual in a country which Canada has not checked out, thereby ensuring that person's safety. I do not think that is

too much to ask the Government to accept. I seriously suggest that Members on the government side take a hard look at Motion No. 37 because I believe it is meritorious.

We will not oppose Motion No. 53, but that does not mean that we are satisfied with what it does in terms of cleaning up a portion of the Bill which we find repugnant. The Parliamentary Secretary suggested that Motion No. 53 would do that job. We very strongly disagree with that, and that is one of the reasons we moved amendments to remove the safe third country concept and the pre-screening provisions. We believed that by doing that we would offer maximum protection without prejudging. In order for that amendment to be successful the Government must show enough movement for subsequent amendments to be meaningful. I do not think the Government did that. I do not think the Minister signalled that at committee.

With all due respect to those who drafted them, the amendments with regard to the key areas of pre-screening, safe third countries, and appeal do not measure up to amendments to which witnesses wanted the Government to agree. Other groups suggested from the very outset that the Bill was so badly drafted that it was unamendable. Motion No. 53 is better than that which now exists but is a lot worse than it could have been.

Motion No. 57 is problematic, and I seek the advice of the Chair as to whether we could split Motion No. 57 into two parts. We find no problem with the provision to allow a UNHRC representative to act as an observer at the refugee board. In fact, we would go even further and suggest that the UNHRC representative should be in a position to present evidence at the refugee board hearing. However, the second part of the same amendment which says that the representative shall indicate the decision if the claimant is not a Convention refugee or does not have a credible basis for a claim, is problematic.

It goes without saying that Motion No. 70 is problematic because we do not believe in the credible basis test. Most of the witnesses who came before the committee pointed out problems associated with the credible basis test for a claim. The Canadian Bar Association, the Inter-Church Committee, the UNHRC, the Coalition for a Just Immigration and Refugee Policy, the Mennonite Central Committee, Rabbi Plaut, Ken Zaifman, the Hispanic Congress, Pierre Duquette, the Montreal Refugee Coalition, Amnesty International, the Nanaimo Immigrant Settlement Society, Professor Angus, Professor Hathaway, the Eelam Tamil Society, the Canadian Bar Association, the Sikh Professional Association of Canada and Mr. Arthur Helton all said that the "credible basis" definition is very vague and that the preferred definition would be "manifestly unfounded". It has a definition under the Convention which is well accepted and well understood. However, the credible basis test is not defined and is therefore very dangerous.