

APPENDIX KK

Ottawa 2, July 31, 1967.

Professor Kenneth McNaught,
Department of History,
University of Toronto,
Toronto, Ontario.

Dear Professor McNaught:

Your letter of July 7 to Mr. Curry on the subject of deserters from the American Forces raises several interesting questions.

It is quite true that the NATO Visiting Forces Act is applicable only to foreign military personnel actually on service in Canada, and that consequently a foreign soldier who comes to Canada after deserting somewhere else is not subject to its provisions. I am sure you will agree, however, that neither Canada nor any other member of NATO would be acting in the spirit of the North Atlantic Treaty if it granted immunity within its borders to deserters from the military forces of other members of the Alliance.

The doctrine of "asylum" is not recognized in the Canadian Immigration Act, or in any other Canadian statute to the best of my knowledge. In any event, common usage suggests that it really has no application to citizens of friendly countries, particularly those having democratic forms of government similar in principle to our own. The connotation surely is that a person seeking "asylum" aims to escape from political persecution by a regime having totally different standards from ours. A deserter from the American Forces, or from those of most other NATO members, is certainly not in danger of political persecution, though he may well be faced with prosecution.

People seeking admission to Canada must be examined either as immigrants or non-immigrants as defined in the Immigration Act. Those seeking permanent residence, as most deserters do, must be dealt with as prospective immigrants, and this means among other things that they must be able to meet the requirements set forth in Section 31 of the Immigration Regulations. The possession or non-possession of an immigrant visa or letter of pre-examination, under Section 28 of the Regulations, is primarily indicative that an immigration officer has examined the prospective immigrant and decided that he is or is not admissible under Section 31. Visas or letters of pre-examination are not issued or withheld simply as a means of allowing people in or keeping them out, but

only when the basic decision as to admissibility has been reached. The corollary, of course, is that a person is refused admission, or ordered deported, not simply because he lacks a visa or letter of pre-examination, although this may be the technical reason, but in substance because the lack of the document is indicative of a decision by an immigration officer that the person concerned is not admissible under Immigration law.

In reading Section 31 of the Regulations you will have noted that the admissibility of people who do not have relatives in Canada is made contingent on their likely ability to establish themselves successfully in Canada. Personal qualities are of major significance in reaching a decision on this point, and motivation is one of the qualities to be taken into account. A person who comes here because he believes it to be a good country to live in, and one that offers him better opportunities, is more likely—other things being equal—to make the transition successfully than is a man whose chief motive is to avoid responsibilities in his own country. Accordingly, there have to be rather special circumstances before we accept an applicant seeking to escape from his creditors, his wife, or some other legal obligation under the laws of his own country. I think you will agree that, under the Immigration Act, we have to look at military deserters in this general category.

As you will appreciate from the foregoing, our policy in dealing with deserters from any country, not just from the United States, stems not only from NATO commitments; it is based more broadly on the Immigration Act and Regulations. The policy is not a new one, nor is it aimed specifically at deserters in general or at American deserters in particular. Rather, it is a reflection of general immigration policy on the admission of people to Canada.

If you have further questions on the subject, please feel free to ask. I will be glad to hear from you again in any case.

Yours sincerely,

J.C. Morrison,
Director, Home Branch,
for Assistant Deputy Minister
(Immigration).