

POLICY BRIEF

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Out of the shadows: A proposal for the regularization of migrants without status in Canada

EXECUTIVE SUMMARY

The Prime Minister of Canada has directed the Minister of Immigration, Refugees and Citizenship Canada (IRCC) to “build on existing pilot programs to further explore ways of regularizing status for undocumented workers who are contributing to Canadian communities.” This policy brief presents a two-pronged policy proposal and possible instruments to fulfill this obligation.

The proposal is based on an analysis of previous and current regularization programs in Canada and the European Union, and of the current immigration policies and practices that contribute to loss of status. It has two distinct but related goals:

1. Regularization: To enable eligible foreign nationals residing in Canada without status to obtain permanent residency status.

This category consists of people working in Canada without legal status and their family members; people without status who arrived in Canada as minors, reside in Canada, and were partially or wholly educated in Canada; and people who are long-term, non-removable residents of Canada.

2. Status Transition: To reduce the future incidence of non-status migrants by enabling a transition from temporary worker to permanent resident.

This policy would apply to temporary workers who possess valid work permits and temporary resident status but are ineligible to transition to permanent residence under existing federal programs because they work in occupations classified as lower skilled.

The proposal is guided by several objectives that should inform policy design: simplicity, accessibility to ensure uptake, a stable ongoing mechanism with adaptable content rather than a single time-limited initiative, and respect for the integrity of Canada’s managed immigration system.

INTRODUCTION

As the [Parliamentary Standing Committee on Citizenship and Immigration](#) notes, reliable data on the number of migrants without status in Canada is unavailable.

However, it states that non-status migrants, primarily enter Canada lawfully as tourists, temporary workers, international students or refugee claimants, and only subsequently lose their status through a variety of ways: their temporary visas may expire; they may work without authorization; refused refugee claimants may have exhausted their recourses; removal orders may not have been enforced; or, they may not qualify for transition programs for permanent residence.

No matter how they became people without status, it is that lack of legal status that prevents them from fully participating in Canadian society, increases their vulnerability to labour exploitation, negatively affects their physical and mental health, and keeps them in a state of constant and precarious limbo. It also prevents Canada from benefitting fully from their presence.

The federal government has recognized the vulnerability of this population, as well as their contributions to local communities, and has directed the Minister of Immigration, Refugees and Citizenship Canada in his [mandate letter](#) to "build on existing pilot programs to further explore ways of regularizing status for undocumented workers who are contributing to Canadian communities."

This policy brief proposes policy instruments that fulfill this obligation. It draws on past and current Canadian policy, IRCC's [Strategy to Expand Transitions to Permanent Residency](#), lessons from the European Union (EU) member states ([Regularizations of migrants without status in Europe: Scope, impact and lessons learned](#)) and a [Guidance Note](#) on regularization emerging from the Global Compact for Safe, Orderly and Regular Migration, an initiative in which Canada has played a leading role.

CONTRIBUTING FACTORS THAT RESULT IN LOSS OF STATUS

Many current immigration policies and practices create the conditions that increase the incidence of loss of status. These include:

- Canada has shifted away from one-step economic immigration (where people apply from overseas as economic immigrants and receive permanent residence as soon as they arrive in Canada) to an increased reliance on two – or multi-step immigration (where people enter initially as temporary workers or international students and have restricted access to the next step(s) which may lead to permanent residence). This has multiplied the risk of slipping inadvertently out of status. For example, an individual may enter Canada with an international study permit, apply for a post graduate work permit after they graduate from their course of study, and then apply for permanent residence through a Provincial Nominee Program or Express Entry. Each of these steps requires a candidate to meet criteria and submit an application, and then civil servants need sufficient time to process, approve and issue documents before the existing status expires and the person 'loses' status. Current lengthy processing times exacerbate the risk that an individual will fall through the cracks and out of status.
- A demand-driven system that has no caps for international students or temporary workers results in far more temporary entrants than there are permanent resident spaces in the Levels Plan into which they could, in principle, transition. This produces the conditions that will predictably and chronically generate a non-status population.
- Loosening the rules for employers to bring in more lower-skilled temporary workers (who have very limited pathways to permanent residence because most of these pathways focus on higher-skilled workers) creates the potential of an increased population of workers without status.

- Closed (employer-specific) work permits and poorly regulated sectors employing temporary workers create situations of exploitation and abuse. Denying temporary workers open permits that enable them to improve their conditions by moving to a new employer, puts them in the untenable position of enduring exploitation within the confines of their work permit or trying to improve their situation without a work permit.
- Sunsetting or changing programs (like the Live-in-Caregiver Program) leave some workers with no possible transition to permanent residence.
- No access to settlement services for temporary entrants prevents them from accessing the support, services and information they need to maintain their status or to transition effectively to permanent residence.

PREVIOUS CANADIAN REGULARIZATION MODELS

Canada has introduced a [variety of ways to regularize people without status](#) over the years. Each had its own targeted migrant group, eligibility criteria and application process, and each used different policy instruments to achieve its objective.

Summary of regularization models 1960-2023	
1960-1972	Chinese Adjustment Statement program (approx. 12,000 regularized)
1986-1973	Amendment to the Immigration Appeal Board Act (approx. 13,000 regularized)
1973	Adjustment of Status Program (approx. 39,000 regularized)
1981	Special Regularization Program for Haitians Residing in Quebec (approx. 4,000 regularized)
1983-1985	Minister's Review Committee (approx. 1,000 regularized)
1994-1998	Deferred Removal Order Class (approx. 3,000 regularized)
2002	Special Regularization Procedure for Algerians Residing in Quebec (approx. 900 regularized)

2004 ongoing	Humanitarian and Compassionate Applications (applications ranging between 8,000 and 11,000 each year, and those accepted ranging between 3,000 and 5,000 annually, in the period 2016-2020)
2019-2024	Temporary public policy for out-of-status construction workers in the GTA (approx. 452 workers and family members regularized in 2019-2023; modified because of low uptake, and extended to end of 2024 with total target of up to 1,000)
2020-2021	Temporary public policy for pending and failed asylum seekers working in direct patient health care during COVID (Quebec and the rest of Canada) (of 3,115 approved in principle, only 380 received Permanent Resident status as of May 2021)

Most of the previous Canadian regularization models have included minimum residency requirements, inadmissibility on the basis of security and serious criminality, provisions to include family members, and the attainment of permanent resident status as the final outcome of the regularization process.

Some models have been open only to particular groups of migrants such as those from specific countries of origin, or those working in certain sectors, or those living in particular parts of the country, or failed refugee claimants who could not be deported. Others have required evidence of 'good moral character' or 'integration' or 'economic stability' or 'humanitarian and compassionate reasons', but these criteria have generally been vague, loosely defined and open to interpretation and discretion by immigration personnel.

The number of people regularized in each of the models mentioned above is fairly small, ranging from 900 (2002 Algerians in Quebec) to 39,000 (1973 Adjustment of Status Program).

LEARNINGS FROM PREVIOUS CANADIAN REGULARIZATION MODELS

Program design will affect the take-up and success of the program. An assessment of past programs clearly identifies some dos and don'ts:

Dos:

- The people whom the policy is intended to benefit are more likely to apply if:
 - criteria are clear, simple, broad and objective
 - public information explaining how to apply to the program is available in multiple languages and modalities
 - trusted third parties provide information and assistance
 - the application process and modalities to apply (electronically, in person, by mail) are accessible
 - firewalls are created so that applicants are assured that they will not be subject to detention or deportation if they apply
 - application fees are affordable
- The simpler and broader the criteria, the more efficiently, expeditiously and cheaply the civil service can administer the program; this is good for civil service morale and for public perception

Don'ts:

- The more restrictive the criteria, the fewer will be eligible to apply
- The more documentation required to apply, and the more documentation required from employers or other third parties, the fewer will be able to apply
- The more complex, subjective, discretionary and document-heavy the criteria, the slower, more expensive and inefficient the process for IRCC to administer.

LESSONS FROM EUROPEAN REGULARIZATION MODELS

Over the past 15 years, European countries have implemented a variety of regularization programs for migrants without status. They vary in terms of eligibility criteria, administrative processes, and rationale (recognition of contribution of labour,

humanitarian need, children's rights, demonstrated integration, contribution to community life, or combinations thereof). However, [studies](#) have consistently shown their positive impact on migrants in terms of employment, quality of life, access to services, and physical and mental health.

An analysis conducted on [regularization programs in the EU, and in particular in Spain, Ireland and Italy by Heylin and Triandafyllidou](#) identified characteristics that contributed to significant success. These were consistent with the learnings from previous Canadian models discussed above, and included:

- Clear, realistic, objective criteria for eligibility that do not cast the net too narrowly or depend too much on individual administrative discretion
- A role for civil society organizations in supporting applicants through the application process
- Flexibility in the documents required to prove residency, employment or identity
- Accessible multi-channel application processes that do not require advanced digital skills or access to computers
- The provision of firewalls to protect the applicants from deportation or detention
- The provision of temporary residence and work permits while the application is in process
- Ongoing regularization mechanisms, rather than one-time schemes to address endemic situations in immigration systems that allow migrants to fall out of status.

REGULARIZATION AND CANADA'S MANAGED IMMIGRATION SYSTEM:

Opponents of regularization programs sometimes allege that regularization will be a 'pull factor' that attracts more irregular migration. If this is true, this should affect the scope and content of a regularization policy. If it is a claim unsupported by logic or evidence, then the appropriate response is public education.

Counting non-status migrants poses a challenge for all states. The Canadian government is unable to specify the number of non-status migrants in Canada with any precision, and this creates two hurdles for critics who demand proof that regularization will not increase irregular migration: First, how does one prove a negative (i.e., that more migration will not happen?).

Secondly, how can one show a change over time without knowing what the baseline is?

The claim that regularization will operate as a 'pull factor' might mean one of two things in the Canadian context:

1. People who would not otherwise migrate to Canada through irregular means will do so to take advantage of a regularization scheme for non-status migrants.
2. People already present in Canada with some form of temporary status will deliberately exit that status in favour of living without status (rather than return to countries of origin or retain temporary status in Canada) in order to take advantage of a regularization scheme.

The first claim presumes that the pool of non-status migrants in Canada consists entirely or primarily of people who entered Canada irregularly through clandestine or deceptive means, and then continued to evade detection by Canadian immigration authorities while living and working 'under the table.' The 'pull factor' predicts that regularization will induce more people to migrate in this way.

In fact, however, government reports affirm that most non-status migrants in Canada entered Canada with some form of status (migrant worker, refugee claimant, international student, temporary resident etc.) and then lost that status. In other words, they entered through lawful channels and routine processes that regularization will not alter. The vast majority of entrants require and obtain visas and permits in advance of arrival as tourists, students or workers. For obvious reasons, the law does not require refugee claimants to obtain visas in advance, and relative to other countries, Canada receives few refugee claimants in any case. Canada's geographic position, visa requirements and extraterritorial enforcement preclude large-scale clandestine 'irregular' entry. It is extremely difficult to enter Canada without detection. Irregular entry is not a significant source of non-status migrants, and regularization will not make the existing geographic or regulatory hurdles that prevent irregular entry any easier to surmount¹.

¹ Indeed, the evidence is weak that regularization increases irregular migration even in states where irregular migration is more significant.

The second hypothesis is that a regularization program will encourage people in Canada with temporary status to deliberately become non-status to take advantage of a regularization program. This prediction ignores qualitative research showing that migrants on temporary visas and permits try hard to avoid falling out of status and to regain status once lost². This includes efforts to extend, renew, bridge and restore permits and visas in the face of complex and delay-ridden bureaucratic processes. The precarity and hardship of living without status for several years prior to eligibility for regularization is not attractive. Additionally, the proposal sketched below also creates a pathway to permanent residence for temporary work permit holders, and is crafted to ensure that those with temporary status become eligible for permanent residence sooner than those without.

There would be no incentive to 'prefer' living without status in the hopes of eventual regularization over transitioning from temporary worker to permanent resident status.

In sum, the 'pull factor' objection is uninformed by the context of the Canadian migration regime. For some, it may also reflect a belief that people who breach Canada's immigration law (because they lack legal status) are thereby 'criminals' or more likely to commit violent criminal offences. This misconception, which fails to distinguish between regulatory breach and criminal offenses, is stoked by labelling non-status migrants as 'illegal' migrants. Therefore, the term 'non-status' (rather than 'irregular' or 'illegal') should be preferred when describing subjects of regularization.

The foregoing analysis suggests that the appropriate governmental response to the 'pull factor' objection is to accompany a regularization program with leadership and an effective communications strategy, as it did when it decided to resettle Syrian refugees over some objections.

² Goldring, L. and Landolt P. 'From Illegalised Migrant Toward Permanent Resident: Assembling Precarious Legal Status Trajectories and Differential Inclusion in Canada,' (2022) 48 *Journal of Ethnic and Migration Studies* 33.

The proposal which follows has been developed in a way that respects the integrity of Canada's managed migration:

- IRCC and CBSA (Canadian Border Services Agency) practices regarding visa issuance, admissions, and the operation of Canada's exterritorial border control apparatus (including along the Canada-US border) will continue to determine who enters Canada lawfully; a regularization program will not reduce the control that IRCC and CBSA exert over these initial admissions.
- The program will be application driven with eligibility criteria. It will not be an amnesty for all those in Canada without status.
- The program will not disadvantage other migrants with temporary status who wish to apply for permanent residence.
- The program will not be open to migrants with other avenues to permanent residence (e.g., refugee claimants who have not exhausted available recourse).

THE PROPOSAL

Based on the learnings from previous and current models in Canada and the EU, the following model for the regularization of non-status migrants in Canada is proposed.

TWO-PRONGED APPROACH

As indicated above, to address the policy problems in a sustainable way, it is necessary to put in place a program that goes beyond a one-time initiative to assist the current population of non-status individuals, and also tackles the contributing factors that lead to people falling out of status. This will reduce future numbers and the ongoing incidence of people residing in Canada without status.

The proposal therefore addresses two distinct but related goals:

- I) Regularization to permanent residency of eligible foreign nationals currently residing in Canada without status
- II) Reduction of the future incidence of non-status migrants

TARGETED POPULATIONS

The **proposed regularization policy** would apply to the following three categories of non-status migrants:

- People who are working without legal status and their family members. Their labour contribution and presence over an extended period supports regularizing them. They perform necessary and in-demand labour for Canadian employers under conditions of precarity that expose them to the risk of abuse and exploitation
- People without status who arrived in Canada as minors, resided in Canada, and were partially or wholly educated in Canada. The rationale for regularization is that they are long term de facto residents who spent formative years in Canada and, in functional and moral terms 'belong' to Canada
- People who are long-term, non-removable residents of Canada. Most have been declared inadmissible to Canada and have been living in 'limbo' for an extended and indeterminate period. Numbers are calculable and small. Indefinite limbo imposes indeterminate insecurity while advancing no valid public policy regarding public safety or national security. It is punitive, traumatizing, and a violation of international human rights

A separate **status adjustment policy** would apply to:

- Temporary workers who possess valid work permits and temporary resident status but are ineligible for transition to permanent residence under existing federal programs because they work in occupations classified as National Occupation Code (NOC) C&D, now classified Training, Education, Experience, Responsibility (TEER) 4&5.

The proposal is guided by three objectives that should inform policy design:

1. Simplicity

- a. Clear, objective eligibility criteria that are not occupationally restricted, and are easy for potential applicants to understand
- b. Outcomes that are transparent and predictable for eligible applicants
- c. Evidentiary requirements that are sensitive to the impediments of living/working without status (e.g., difficulty of having continuous full-time employment, pay stubs, documentation of employment etc.)

- d. Broad eligibility criteria that can be applied by civil servants with speed and efficiency to prevent inventory accumulation; processing capacity that can be managed by sequencing according to year of arrival in Canada

2. Effective uptake/accessibility

- a. Widely accessible communications strategies in multiple languages, and formats to raise awareness of the program and how to access it
- b. Civil society organizations, unions, settlement agencies, legal counsel available as trusted intermediaries to assist in the application process and to provide information to potential applicants
- c. Digital, paper and in-person submission of applications in recognition of differing digital skills and access to computers among target populations
- d. Firewalls to encourage eligible applicants to submit their applications without fear of detention or deportation

3. Stable mechanism with adaptable content

- a. The use/adaptation of past or current policy instruments to adjust start/end dates, eligibility criteria, etc., while maintaining stable legal mechanisms

There are a variety of legal instruments that could be used or adapted to implement the proposals in this brief. They include:

- **Humanitarian and compassionate consideration on public policy grounds** (Section 25.2 of Immigration and Refugee Protection Act (IRPA))
- **Temporary resident permits** issued to non-citizens who are otherwise inadmissible; and after a specified short period of time, and in the absence of subsequent inadmissibility, the temporary permit holder transitions to permanent resident status. (Section 24 IRPA /Section 65 IRP Regulations)
- **Public policy considerations and ministerial instructions:** IRPA contains various provisions that allow the Minister to issue special instructions to immigration officers to enable the Government of Canada to best attain its immigration goals.

These offer an alternative legal instrument for articulating and implementing regularization for migrants without status, and adjustment of status from temporary worker to permanent resident.

- The **Live-in caregiver program (1992-2014)** created a pathway from temporary worker to permanent resident status on the basis of having performed labour for a minimum period of time that is chronically in demand. (Section 113 IRP Regulations)

PRONG I: Regularization to permanent residency of eligible foreign nationals currently residing in Canada without status

(Note that the number of years in square brackets [] are for illustration purposes only)

Regularization would be provided to:

A. Transitioning non-status workers and those who arrived as minors to permanent residence

- **Eligibility:**
 - Foreign nationals present in Canada on date set by Ministerial Order
 - Foreign nationals not in possession of status as permanent resident, temporary work permit holder, or international study permit holder at time of application; refugee claimants who have exhausted the recourses available to them
 - Over the age of 18 AND at least one of the following:
 - Worked in Canada for the equivalent of [4] years cumulatively over a period no greater than the [8] years prior to application, and is not inadmissible for security or serious criminality offenses (IRPA ss. [34](#), [35](#), [36\(1\)](#), [37](#)).
 - Arrived in Canada as a minor and resided in Canada for no less than [3] years
- **Process:**
 - eligible applicants granted Approval in Principle (AIP) pending completion of processing to permanent residence

- AIP entitles access to open work permit, ordinary Social Insurance Number, access to publicly insured health care (provincial or [Interim Federal Health Program](#) (IFHP)), and settlement services
- applicant may include accompanying family members in application

B. Long-term, non-deportable residents

- **Eligibility**
 - Foreign Nationals found inadmissible on grounds that currently preclude applications for Humanitarian and Compassionate (H&C) consideration or Temporary Resident Permit applications, or were refused H&C grounds
 - Have been resident in Canada for at least [7] years since their finding of inadmissibility
 - There is no reasonable prospect of removal as demonstrated by non-removal for previous [6] years
 - There have been no new or additional acts constituting inadmissibility during that period

PRONG II: Reducing future incidence of non-status migrants

In order to prevent migrants already in Canada with temporary status from falling out of status, and for equity purposes, a complementary and parallel prong to the regularization program for non-status migrants is proposed for the adjustment of status from temporary to permanent status, particularly for temporary entrants working in NOC C&D (lower-skilled and lower paid occupations (now TEER 4&5)).

This is because the federal government offers few avenues to permanent residency for these workers in lower-skilled, lower-paid occupations who entered and are working in Canada lawfully, despite that they:

- are filling positions that are needed in Canada on an ongoing basis
- are more vulnerable to exploitation, abuse and unsafe working conditions because their work permits are tied to specific employers
- are in effect providing employers with a wage subsidy by working for wages, and in working conditions, inferior to what permanent residents and citizens would accept. This depresses wages,

reduces incentives for employers to invest in training, better wages and working conditions, automation, or to hire populations in Canada who are under-represented in the labour force.

Temporary work permit holders in these occupations have earned access to permanent resident status through their contribution to Canada. Expanding the pathways to permanent residency for them is not only critical to reducing the potential number of people who may lose status in Canada, but will also be good for our economy. Drawing from precedents in Canada and elsewhere, the simplest and most efficient mechanism would create a predictable pathway for transitioning status from temporary worker to permanent resident:

- **Eligibility**
 - Temporary entrants with proof of cumulative employment on temporary work permits in NOC C&D/TEER 4&5 occupations for [3] of previous [4] years
 - Not otherwise eligible to apply under Express Entry
 - Not inadmissible under security or serious criminality provisions
 - Family members in Canada or abroad included as accompanying family members
- **Process**
 - Adapt Live-in Caregiver regulation (1992-2014) for this population group but not restricted to a particular occupation
 - If applicant meets criteria, they are provided with Approval in Principle (AIP) pending final determination, an open work permit, access to health care and all settlement services

This proposal for transitioning temporary workers to permanent residence is crafted against a background of the existing Express Entry model for the selection of economic immigrants. Another option available to the government is to expand eligibility for the Express Entry model. For example, it could remove the requirement that [Post Graduate Work Permit](#) (PGWP) holders be employed only in NOC 0,A,B/TEER 0,1,2,3 (managerial, professional, skilled) occupations in order to qualify for Express Entry programs. A dedicated transition mechanism does not preclude reform of Express Entry. Indeed, reform of the Express Entry system warrants closer attention and analysis, but lies beyond the scope of this policy brief.

CONCLUSION

People without status in Canada work, pay taxes, raise families and contribute to their communities, but they live in the shadows, afraid of detection. Because of their lack of status, they face serious barriers in terms of accessing services, rights and protections enjoyed by most people in Canada. They are vulnerable to exploitation by employers, landlords and immigration consultants. They cannot fully participate in Canadian society.

Current and past regularization programs in Canada and the European Union have had positive impacts on migrants in terms of employment, quality of life, access to services, and physical and mental health. They also have had economic and social benefits for the population at large.

Now is the time to develop an ongoing regularization mechanism that not only provides the opportunity for eligible migrants who have fallen out of status to become permanent residents, but that also reduces the future incidence of non-status migrants.

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