



U.S. Citizenship
and Immigration
Services



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Press Release

United States and Canada to Implement Safe Third Country Agreement on Asylum

Washington D.C. – Eduardo Aguirre, Director of U.S. Citizenship and Immigration Services (USCIS), announced today a proposed rule to implement 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.

Highlighting 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' robust asylum systems, the Safe Third Country Agreement forms part of the Smart Border Declaration 30-point action plan signed in December 2001 by Department of Homeland Security Secretary Tom Ridge and Mr. John Manley, Canada's former Deputy Foreign Minister. "The Agreement, once implemented, will enhance the ability of the U.S. and Canada to manage asylum claims brought by persons attempting to cross our common border without proper documents in an orderly fashion," said Eduardo Aguirre, Director, USCIS.

Currently, aliens arriving from Canada at land border ports-of-entry may have their protection claims heard in the United States, irrespective of whether Canada has already considered them, because the asylum provisions of the Immigration and Nationality Act permit any alien physically present in (or arriving at) the United States to seek asylum. However, these provisions do not allow aliens to apply for asylum in the U.S. when they may be returned, pursuant to a bilateral or multilateral agreement, to a safe third country where they would have access to full and fair protection procedures. Until now, no such agreement has existed.

Founded on the premise that there can appropriately be limits on the ability of an asylum seeker to choose a country of refuge, so long as that asylum seeker has a full and fair opportunity to present a claim for protection, and to receive asylum if eligible for the benefit, the U.S.-Canada Safe Third Country Agreement permits the United States to return to Canada certain asylum seekers who either are attempting to enter the United States from Canada at a land border port-of-entry or who are being removed from Canada in transit through the United States. Similarly, it permits Canada to return to the United States certain asylum seekers attempting to enter Canada from the United States at a land border port-of entry and certain aliens being removed from the United States through Canada. In either case, the Agreement provides (with important exceptions) that the asylum seeker be returned to the "country of last presence" for consideration of his or her protection claims, including asylum, withholding of removal, and protection under the Convention Against Torture, under the laws of that country. The Agreement adheres to both the United States' and Canada's long-standing commitment to protect refugees by ensuring that asylum seekers' protection claims are heard and decided in one of the two countries.

Importantly, the proposed rule also implements the Agreement's several exceptions to its general proviso that asylum seekers attempting to enter the U.S. from Canada at land border ports-of-entry be

returned to Canada for consideration of their protection concerns. These exceptions include, among others, an exemption for unaccompanied minors and exemptions for some asylum seekers with certain family members in the United States. The exceptions for asylum seekers with family members in the U.S. recognize that those family members may be able to provide important support to an asylum seeker while he or she is pursuing protection, and includes a range of relatives far broader than those customarily recognized under U.S. family-based immigration laws, i.e., spouses, sons, daughters, parents, legal guardians, siblings, grandparents, grandchildren, aunts, uncles, nieces and nephews. In order for asylum seekers to qualify for these exceptions, their family members in the U.S. must simply have some form of lawful immigration status (other than a visitor's visa), or a pending asylum claim.

The Agreement will be implemented after the public has had an opportunity to comment on the proposed rule over the next 60 days, the comments are reviewed and carefully considered, and the Departments of Homeland Security and Justice each issue an interim or final rule.

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On March 1, 2003, U.S Citizenship and Immigration Services (USCIS) became one of three former INS components to join the U.S. Department of Homeland Security. USCIS is charged with fundamentally transforming and improving the delivery of immigration and citizenship services, while enhancing the integrity of our nation's security.

