Press Office
U.S. Department of Homeland Security

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 the publication of a final rule to implement a bilateral agreement between the United States and Canada affecting asylum seekers at U.S.-Canada land border ports-of-entry, and transiting through the United States or Canada during removal by the other country. The regulations implementing this agreement will take effect in 30 days.

"The agreement ensures that all asylum seekers will be heard and that individuals will not be removed until Canada or the United States has made a protection determination. USCIS and Citizenship and Immigration Canada have worked diligently to anticipate and resolve potential challenges related to this agreement's implementation. We have ensured that asylum seekers have procedural safeguards, such as decision-making review and the opportunity for asylum seekers to have an individual present when interviewed about exceptions to the Agreement," said the Director.

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 Foreign 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. The Agreement, signed in December 2002, could not take effect until both countries published final implementing regulations. Canada published its final regulations on November 3, 2004.

The agreement applies only to asylum seekers at a U.S.-Canada land border port-of-entry or being removed from Canada or the U.S. through the other country. The 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 U.S.-Canada 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 U.S.-Canada 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 Canada, if coming to the U.S. from Canada, or returned to the U.S., if going to Canada from the U.S., for consideration of any request for protection based on fear of persecution or torture. 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.

The final rule 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

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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 have some form of lawful immigrant or non-immigrant status (other than a visitor's visa), or have an asylum claim pending and be 18 years of age or older.

The Department of Justice is also publishing a companion final rule, which will govern the process by which immigration judges of the Executive Office for Immigration Review will apply the Agreement to cases arising under their jurisdiction.

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