

EN

EN

EN



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19.10.2009
COM(2009)562 final

REPORT FROM THE COMMISSION TO THE COUNCIL

on the re-introduction of the visa requirement by Canada for citizens of the Czech Republic in accordance with Article 1(4)(c) of Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, as amended by Council Regulation (EC) No 851/2005 as regards the reciprocity mechanism

TABLE OF CONTENTS

1.	Introduction.....	3
2.	The reimposition of the visa requirement on 14 July 2009.....	3
3.	Steps taken after the reimposition of the visa requirement on 14 July 2009	4
3.1.	Position of Canada	5
3.1.1.	Asylum claims.....	5
3.1.2.	Visa application procedure.....	6
3.1.3.	Violation of immigration rules.....	6
3.2.	Position of the Czech Republic	7
3.2.1.	Asylum claims.....	7
3.2.2.	Visa application procedure.....	7
3.3.	Canada-Czech Republic Experts Working Group	8
4.	Assessment.....	8
5.	Conclusion.....	9

1. INTRODUCTION

On 14 July 2009, in accordance with Article 1(4)(a) of Council Regulation (EC) No 539/2001, as amended by Council Regulation (EC) No 851/2005, the Czech Republic has notified the Commission and the Council that as of 14 July 2009 Canada unilaterally applies the visa regime to nationals of the Czech Republic. This notification has been published in the Official Journal on 6 August 2009¹, which means that in accordance with Article 1(4)(c) of Council Regulation (EC) No 539/2001, as amended by Council Regulation (EC) No 851/2005, the Commission shall report to the Council within 90 days from this date of publication; therefore, by 6 November 2009.

This report takes stock of the steps taken by the Commission following this notification.

2. THE REIMPOSITION OF THE VISA REQUIREMENT ON 14 JULY 2009

As mentioned in the fourth visa reciprocity report² Canada had lifted the visa requirement for nationals of the Czech Republic on 31 October 2007.

On 13 July 2009, the Canadian authorities informed the Czech authorities through several channels, including a formal Diplomatic Note, that the visa requirement would be reintroduced for Czech nationals as from the next day.

In the press release by Citizenship and Immigration Canada of 13 July 2009 the following was announced:

"Beginning 12:01 a.m. EDT on July 14, 2009, Czech nationals will require a visa to travel to Canada, Citizenship, Immigration and Multiculturalism Minister Jason Kenney announced today. For the first 48 hours, Czech citizens may apply for entry on arrival in Canada. After 11:59 p.m. EDT July 15, 2009, a visa will be required.

Since the visa requirement was lifted on the Czech Republic in October 2007, nearly 3,000 claims have been filed by Czech nationals, compared with less than five in 2006. The Czech Republic is now the second top source country for refugee claims. The relatively higher acceptance rate of refugee claims originating in the Czech Republic masks the troubling fact that more than half of the claims are abandoned or withdrawn before a final decision is made by the Immigration and Refugee Board, indicating that many claimants may not be genuine refugees.³

...

¹ OJ C 184, 6.8.2009, p. 2.

² COM(2008) 486 final/2, p. 6.

³ In the first visa reciprocity report (COM(2006) 3 final, p.14, footnote 13), the Commission recalled that "...Canada abolished the visa requirement ... for the Czech Republic in 1996. However, it was reintroduced ... in 1997 ... following an influx of asylum seekers. Canadian authorities emphasised that thorough evaluations are necessary before lifting the visa requirement again, in order to avoid the repetition of such a situation."

Canada regularly reviews its visa policies toward other countries. Countries are aware that if they do not satisfy the conditions of a visa-exemption, a visa may be imposed.

This change means that nationals from the Czech Republic who want to travel to Canada will first need to apply for a Temporary Resident Visa and meet the requirements to receive one. It is up to the applicant to satisfy the visa officer their visit to Canada is temporary, they will not overstay their approved time in Canada, they have enough money to cover their stay in Canada, they are in good health, they do not have a criminal record, and are not a security risk to Canadians. These requirements are the same for anyone who wants to visit Canada.

Applicants from the Czech Republic will submit their applications to the Canadian visa office in Vienna, Austria which currently serves nationals from several other European countries."

On the same day Canada also introduced the visa requirement for Mexican nationals. Also in this case, the main reason was the large number of refugee claims from Mexico, making it the number one source country for refugee claims in Canada.

The rising numbers of Czech refugee claimants – most of them are of Roma origin – in Canada has been discussed repeatedly at meetings between Canadian and Czech authorities since the lifting of the visa requirement on 1 November 2007, and in particular in the run-up to the reintroduction of the visa requirement on 14 July 2009.

3. STEPS TAKEN AFTER THE REIMPOSITION OF THE VISA REQUIREMENT ON 14 JULY 2009

On 20 July 2009, the Czech Republic notified the Commission and the Council that, in accordance with Article 4(1)(a) of Council Regulation (EC) No 539/2001, the Czech Republic has imposed the visa requirement for holders of Canadian diplomatic and service passports as from 16 July 2009.

The issue of the reimposition of the visa requirement by Canada for Czech citizens has been discussed in Council at several occasions: the General Affairs and External Relations Council of 27 July 2009 and 14 September 2009, the Justice and Home Affairs Council of 21 September 2009, and the Committee of Permanent Representatives (Coreper) on 23 July 2009. At these occasions Member States expressed concern about the situation and indicated that the issue should be solved quickly by the Commission and should not escalate.

Following the reintroduction of the visa requirement, the Commission consulted both the Czech and Canadian authorities regularly on the issue, notably at expert meetings with Czech authorities on 14 July and 30 July 2009 and at a tripartite meeting between the Director-General of the Directorate General for Justice, Freedom and Security, the Canadian Ambassador Hornby and the Czech Permanent Representative Vicenová on 24 July 2009. Furthermore, the Commission accompanied a Czech delegation for consultations with Canadian authorities in Ottawa on 10 September 2009. In addition, the issue was discussed at the EU-Canada Ministerial Troika in Ottawa on 1 October 2009.

3.1. Position of Canada

3.1.1. Asylum claims

Canada has explained that the decision was not taken easily. The Canadian asylum system was overburdened by refugee claims. The introduction of the visa requirement has helped to address the disproportionately high influx of asylum claimants arriving from the Czech Republic in 2008 and 2009. Canada had indicated to the Czech Republic from the start and even before the lifting of the visa requirement on 1 November 2007 that an influx of Czech asylum seekers could lead to the re-imposition of the visa requirement⁴. Nevertheless, Canada has stated that the re-introduction of the visa requirement is not a reflection of the treatment of minorities in the EU or in particular the Czech Republic. Refugee status determinations in Canada are made on a case-by-case basis by the Immigration and Refugee Board (IRB) – an administrative tribunal at arm's-length from the government⁵.

Canada explained that "*imposing a visa requirement for the Czech Republic is part of a broader systematic approach to reform Canada's asylum system. Canada's asylum system is overburdened by an ever-increasing number of claims every year, many of which are unfounded, withdrawn or abandoned.*"

Canada indicated that since the lifting of the visa requirement as from 1 November 2007 Canada has received nearly 3,000 asylum claims from the Czech Republic. Out of the 196 cases finalized in 2008 by the Canadian Immigration and Refugee Board (IRB) 84 claims (i.e. 43%) were accepted. In the period January-July 2009, the IRB finalized 391 cases of which 86 cases (i.e. 22%) were accepted. Since the introduction of the visa requirement Canada has received very few asylum claims from Czech citizens, returning to pre-visa exemption trends in asylum claims.

The IRB collects information from a variety of sources on social, political, economic and human-rights conditions around the world to inform their decisions. In this regard, the IRB undertook a fact-finding mission to the Czech Republic from 21-31 March 2009⁶. Following that mission the IRB released two issue papers: in June 2009 the "*Fact-finding Mission Report on State Protection*"⁷ and in July 2009 the

⁴ On 19 October 2007, in view of lifting the visa requirement for Czech citizens the Canadian Embassy in the Czech Republic had sent a Diplomatic Note to the Ministry of Foreign Affairs of the Czech Republic in which Canada indicated that it hoped that once the visa requirement was lifted, there would be no need for a re-imposition. Therefore, Canada asked for assurances for enhanced cooperation on migration integrity issues and in the area of law enforcement in order to avoid that certain factors, like an influx of asylum seekers or an increase in the level of fraudulent or altered Czech passports, could lead to the re-imposition of the visa requirement.

⁵ The IRB is an administrative tribunal, and is independent of both Citizenship and Immigration Canada (CIC) and the Canada Border Service Agency (CBSA) and the Minister of Citizenship, Immigration and Multiculturalism.

⁶ The aim of the IRB's mission was to address information gaps related to the situation and treatment of Czech Roma as well as their access to state protection and the possibility of internal relocation.

⁷ Fact-finding Mission Report on State Protection, June 2009 (http://www2.irb-cisr.gc.ca/en/research/publications/index_e.htm?docid=388&cid=64)

"Fact-finding Mission Report on the Situation and Treatment of Roma and Potential for Internal Relocation"⁸.

Canada clarified that the notion of "safe country of origin" as suggested by the Czech Republic is not legally possible according to Canadian legislation⁹. Canada has acknowledged that its asylum system needs to be reformed to reduce delays and abuse and that the system needs to be streamlined to provide faster protection for real victims of persecution, while removing more quickly those having unfounded claims.

3.1.2. Visa application procedure

Canada explained that the consulate in Prague was closed following the lifting of the visa requirement on 1 November 2007. So far there are no plans to re-open the consulate. As a matter of general policy, Canadian consulates cover larger areas and Canada does not have consulates in every country. Canada pointed out that Czech citizens do not have to go to Vienna to apply for their visa; they can use travel agencies in five cities (Brno, Liberec, Prague, Prerov and Velke Mezirici), send their application form by mail to the Canadian Embassy in Vienna, or use the drop box at the Canadian embassy in Prague. The system of applying via travel agencies is mostly used.

In urgent cases, visa applicants have to travel to Vienna where the applications can be processed in one day at the Vienna consulate. Moreover, travel is further facilitated through the issuance of multiple entry visas. Besides, the acceptance rate is 99 percent. As a result, the vast majority of Czech applicants do not require a visa interview. Of those who do, most of the interviews are conducted over the telephone unless there are exceptional circumstances.

3.1.3. Violation of immigration rules

As far as the increase in immigration violations is concerned, the percentage of immigration violations grew from one percent of the total number of Czech travellers to Canada in 2006, when the visa requirement was still in place, to 6.7% in 2008. Specifically this percentage rose to 30.1% during the period of January-May 2009. Immigration violations include all documented infractions of Canadian immigration laws, inadmissible individuals at a Canadian port of entry and interceptions of individuals en route to Canada. As immigration violations include only documented infractions, the number of immigration violations may be under-reported.

⁸ Fact-finding Mission Report on the Situation and Treatment of Roma and Potential for Internal Relocation (http://www2.irb-cisr.gc.ca/en/research/publications/index_e.htm?docid=386&cid=64)

⁹ Canada has a Safe Third Country Agreement with the U.S. This Agreement was signed on 5 December 2002, and implemented on 29 December 2004. Under the Agreement, refugee claimants arriving in North America must make a claim in the first safe country they reach – either Canada or the U.S. However, the notion of a safe third country should be distinguished from the notion of a safe country of origin; the notion of safe country of origin means that in principle a person from such safe country of origin would not be granted asylum. However, it does not exclude individual examinations of claims and cannot be invoked as a ground for inadmissibility.

3.2. Position of the Czech Republic

The Czech Republic expects Canada to lift the current visa obligation on Czech citizens travelling to Canada within months, not years.

3.2.1. *Asylum claims*

The Czech Republic has been consulting Canada on the growing number of Czech asylum seekers in Canada during recent months and reiterated its will to constructively consider all steps which could help overcome the problem. In this regard, the Czech Republic proposed two possible solutions: mutual recognition of each other as safe countries of origin, and that Canada should modify its asylum legislation to reduce its attractiveness for economically motivated migrants to Canada. Furthermore, the Czech Republic has explained that the fact that Czech citizens have been granted asylum by the Canadian authorities (which the Czech Republic considers in itself absurd) has increased the incentives for Czech citizens to abuse the Canadian asylum system.

The Czech Republic does not accept that the re-introduction of the visa requirement by Canada is used as part of a broader systematic approach to reform Canada's asylum system as it does not treat the cause but only the symptoms of its overburdened system. The minority and human rights situation in the Czech Republic is not in itself the cause for the increase of Czech refugee claims in Canada, but the generous and permissive Canadian asylum systems that offers better material conditions and income, including the social benefits allocated to refugee claimants.

Besides the ones above, two other reasons for Roma emigration usually stated are unemployment and feelings of insecurity (due to the rise of right wing extremism); the latter has been countered by recent action by the Czech authorities.

It is to be noted that Canada is the main destination for Czech Roma migrants, as there was already a successful first wave of emigration in the nineteen-nineties and many are now seeking to join their families in Canada.

With regard to minorities and in particular Roma, the Czech Republic reiterated that the situation of Roma in the Czech Republic does not differ substantially from the situation in other EU Member States with larger Roma populations¹⁰ and provided documents on the situation of minorities and in particular of Roma in the Czech Republic and the further recent reinforcement of its laws and policies towards the integration of minorities and in particular Roma communities.

3.2.2. *Visa application procedure*

The Czech Republic has constantly reiterated its request for the reopening of the Canadian consulate in Prague for as long as Canada has not returned to a visa-free regime. The Czech Republic finds it unacceptable that Czech citizens have to travel

¹⁰ European Union Minorities and Discrimination Survey, Data in focus report, European Union Agency for Fundamental Rights, April 2009 (http://fra.europa.eu/fraWebsite/attachments/EU-MIDIS_ROMA_EN.pdf)

to Vienna to apply for a visa and therefore considers the opening of a visa office in Prague as a minimum step forward.

3.3. Canada-Czech Republic Experts Working Group

Following a commitment by the Czech Republic and Canada to cooperate in addressing issues following Canada's reintroduction of the visa requirement for Czech nationals, a Canada-Czech Republic Experts Working Group was set up. As a follow-up to two telephone conferences on 20 and 27 August 2009, a Czech delegation met with Canadian authorities in Ottawa to discuss the issue and steps forward on 10 September 2009. The Commission participated in the meeting.

Besides the issue of the visa reintroduction and the visa process for Czech citizens, Canada explained its migration and refugee process and provided information on multiculturalism. The Czech Republic provided presentations on its laws and policies with regard to the protection of minorities in the Czech Republic. It was agreed to meet on a periodic basis in this setting.

4. ASSESSMENT

This is the first time that a third country has re-imposed a visa requirement for citizens of a Member State. This highly regrettable situation should be brought to an end as soon as possible. Canada is aware that the European Union's common visa policy is based on the principle of reciprocity.

It is particularly unsatisfactory that Czech citizens are not able to obtain visas at the Canadian embassy in Prague. The Commission acknowledges that Canada provides several visa process facilitations to Czech citizens in the Czech Republic (see paragraph 3.1.2 above) but calls upon Canada to return to the previous situation regarding the visa issuance process for Czech citizens by reinstating visa issuing facilities in the Czech Republic.

The Commission welcomes the willingness of all sides to engage in a dialogue and encourages Canada and the Czech Republic to continue their consultations in the framework of a Canada-Czech Republic Experts Working Group to address all issues in relation to the re-imposition of the visa requirement; e.g. for Canada to clarify its asylum system and the immigration violations by Czech travellers, and for the Czech Republic to clarify the implementation of its programmes and policies regarding minorities and in particular Roma communities. The Commission calls upon Canada to set out clearly a path of measures it intends to take to lift the visa requirement for Czech citizens in the near future.

The Commission notes that the Czech Republic has decided to require visas for holders of Canadian diplomatic and service passports. Unless the measures mentioned in the previous paragraphs are established, in a satisfactory manner, by the end of 2009 the Commission will recommend imposing or re-imposing a visa requirement for certain categories of Canadian citizens (holders of diplomatic and service passports).

5. CONCLUSION

Unfortunately, in relation to Canada the first reversal of visa reciprocity and reintroduction of the visa requirement for the Czech Republic since the introduction of the new visa reciprocity mechanism has to be deplored. This highly regrettable situation should be brought to an end as soon as possible.

Although Canada provides several visa process facilitations to Czech citizens in the Czech Republic, pending restoration of visa-free travel for Czech citizens the Commission calls upon Canada to return to the previous state regarding the visa issuance process for Czech citizens by reinstating visa issuing facilities in the Czech Republic. The Commission encourages Canada and the Czech Republic to continue their consultations in the framework of a Canada-Czech Republic Experts Working Group to address all issues in relation to the re-imposition of the visa requirement, and reiterates its readiness to facilitate and participate in those discussions. The Commission calls upon Canada to set out clearly the measures it intends to take to lift the visa requirement for Czech citizens in the near future. Furthermore the Commission will recommend imposing or re-imposing a visa requirement for certain categories of Canadian citizens, unless Canada takes positive steps towards facilitating formalities for Czech citizens wishing to visit Canada and setting out a path towards the restoration of visa-free travel for them.