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ANNEX A

F-2176

CITIZENSHIP BY BIRTH ON CANADIAN SOIL

FOR INFORMATION

SUMMARY

- Recent news reports have raised the issue of women from other countries coming to Canada to give birth in order to obtain Canadian citizenship for their children.
- Any child born on Canadian soil is automatically a Canadian citizen at birth, regardless of the citizenship or immigration status of the parents of the child (except children of diplomats).
- A person is not inadmissible or denied a visa based solely on that person being pregnant or that they may come to Canada to give birth.
- There is limited data on the extent to which this phenomenon occurs. None of the previous Bills seeking to modernize the Citizenship Act proposed any change in this area.
- Preventing this occurrence would require consideration of legislative change to provisions within the *Citizenship Act* regarding birth on soil and/or the *Immigration and Refugee Protection Act (IRPA)* for changes to admissibility requirements.

BACKGROUND:

- Recent news reports suggest that many mothers are coming to Canada to give birth to allow their child access to the services and benefits Canada offers its citizens. The media has referred to this as “maternity tourism” and these children are referred to as “passport babies”. Media reports also claim that a number of foreign women have come to Canada to give birth on several occasions, making arrangements to give birth with a doctor before arriving. In 2008 an article in the Montreal Gazette on “Maternity Tourism” claimed that Quebec hospitals lose approximately \$20 million a year on medical services to non-residents. Reports in 2004 brought to surface South Korean tour operators organizing trips to Canada for women to give birth. CIC does not have in-depth information about the existence or frequency of these tours.

- Temporary visitors to Canada, unless from a visa exempt country, require a temporary resident visa. Visitor requirements under *IRPA* provide that visitors to Canada must have a valid travel document; be in good health; satisfy an immigration officer that they have ties that will take them back to their country of origin; satisfy an immigration officer that they will leave Canada at the end of their visit; and have enough money for their stay. Under *IRPA*, as long as visitor requirements are met, a person is not inadmissible or denied a visa and prevented entry into Canada based solely on being pregnant or that they may come to Canada to give birth.
- Under the current *Citizenship Act* (1977) Canadian citizenship is acquired through birth on Canadian soil (except children born in Canada to foreign diplomats); birth outside Canada to a Canadian parent; and by applying for, and being granted Canadian citizenship (naturalization). Canada's automatic acquisition of citizenship by birth in Canada exists regardless of the citizenship or immigration status of the child's parents.
- Citizenship by birth on Canadian soil provides children with the same rights and access to benefits as children born to Canadian citizens in Canada (e.g. medical, education, Canadian passport).
- The acquisition of Canadian citizenship by a child born in Canada to a foreign national parent does not give the parent of the child citizenship or immigration status within Canada; however, once that child turns 18 they are eligible under the *IRPA* to sponsor their parents for immigration to Canada provided they reside in Canada and meet the income requirements.
- Canadian and international court decisions suggest the citizenship status of children could affect the removal of their non-citizen parents as the best interests of the child are considered in decisions to enforce a removal order.
- The Reform Party, as Official Opposition, presented motions to amend government Bill C-63 (citizenship) in 1999 and Bill C-16 (citizenship) in 2000, to limit the acquisition of Canadian citizenship by birth on Canadian soil; however, no changes were made to these bills. These motions would have restricted citizenship by birth in Canada to those born to a Canadian citizen or a permanent resident.
- In 2005 the Minister asked the Standing Committee on Citizenship and Immigration to consider the issue and the possibility of placing restrictions on the acquisition of citizenship at birth in their consultations on citizenship. In 2005 the Standing Committee published *Updating Canada's Citizenship Laws: It's Time* which addressed the modernization of the 1977 Act. The Committee was divided on the issue with some members favouring maintaining the current provision while some suggested placing a requirement of attachment to Canada. Others found it difficult to make a recommendation due to the lack of statistical information on these births and thus the committee determined that due to inadequate information and evidence on the issue, a recommendation could not be made.

- An Ipsos-Reid opinion poll carried out in 2004 asked Canadians whether they approved or disapproved of “automatically giving Canadian citizenship to any child born on Canadian soil, even if the parents are just visiting the country”. The poll indicated that 35% of Canadians support citizenship by birth on soil and 53% disapprove, while 12% did not know or did not have an opinion on the issue. This question was also asked in 1998 and produced similar results. In 1996, the poll indicated 29% supported citizenship by birth on soil and 53% disapproved of the practice.
- Most countries have limited citizenship by birth on soil. Some countries restrict the acquisition of citizenship to children born within their territory based on the status of their parents (Australia, New Zealand, United Kingdom and most countries in Europe). The USA, which is an immigration receiving country like Canada, also extends citizenship to all those born on their territory other than the children of foreign diplomats (See Annex A).
- The issue of birth on soil and the rights of parents without status and residence was the subject of a court challenge within the European Union (EU), illustrating the international level of importance of the birth on soil issue. In 2004 a judgement of the European Court of Justice provided that having a child born in the territory of EU member states does give resident rights to the parents of the child. This was based on the assumption that the rights of residence of a child would be deprived of effectiveness if a parent was not able to reside with the child. This case led to a change in legislation in Ireland, which at the time was the only country within the EU which allowed for citizenship by birth on soil. In 2005, new legislation provided that non-national parents of children born in Ireland must prove they have a genuine link to Ireland, before their children will acquire Irish citizenship.

CONSIDERATIONS:

- The frequency of people coming to Canada solely to give birth is not tracked and limited information is available to estimate the extent to which this occurs. In 1999 CIC commissioned a study through Consulting and Audit Canada, “Statistics on Children born in Canada of Parents who are neither Canadians nor Permanent Residents”, to analyze the issue of automatic acquisition of citizenship by birth on soil. The objective of the report was to establish the magnitude of the number of children born in Canada of parents who are neither Canadians nor permanent residents. The results of the study were inconclusive and the study indicated that clear statistics could not be acquired. In addition, the report further indicated that the desired statistics could only be obtained through an in-depth study with provinces and territories due to the fact that registration of birth falls under their jurisdiction.
- Using available data from the 1999 study by Consulting and Audit Canada, statistical extrapolation results indicate that in general the frequency of non-permanent residents (those claiming refugee status; foreign students and student visa holders; foreign workers and work permit holders; and those non-Canadian born dependents of those persons) coming to Canada to give birth to their children is less than 1% of all births in any given year in Canada. Statistics from this study do not include tourists and visitors to Canada as findings are based on information taken from Canadian Census statistics.

- Any changes to limit or address this issue would require consideration of legislative change to provisions within the *Citizenship Act* and/or the *Immigration and Refugee Protection Act (IRPA)*.
- Restricting citizenship to children whose parents are Canadian citizens or permanent residents could create an increase in cases whereby a person is made stateless. Canada has international obligations to the 1961 United Nations *Convention on the Reduction of Statelessness* that would need to be upheld.
- Restricting citizenship would mean that Canadian birth certificates would no longer be accepted as reliable proof of citizenship. This would result in an increase in the issuance of proof of citizenship documents to those born in and outside of Canada. Presently, approximately 60 000 proof of citizenship documents are issued a year. Legislative changes to birth on soil would increase this number substantially and could not be sustained under current funding levels. Restricting the acquisition of citizenship to persons born in Canada may require increased sharing of information between provincial and federal governments.
- Restricting citizenship to children whose parents are Canadian citizens or permanent residents could increase the number of persons in Canada who have a mistaken belief that they are Canadian citizens.
- In-depth research would be needed for CIC to determine the extent and frequency of the issue and would allow for the development of evidence based policy in this area.

NEXT STEPS:

- CIC will continue to monitor national and international developments and relevant court decisions on the issue.

Annex:

A - International Comparisons of Birth on Soil

ANNEX A: INTERNATIONAL COMPARISONS OF BIRTH ON SOIL

	CANADA	US	NEW ZEALAND	AUSTRALIA	UK
RULE	Any child born on Canadian soil is automatically a Canadian citizen at birth, regardless of the citizenship or immigration status of the parents of the child.	A person can become a US citizen by birth in the US.	At least one parent must be a NZ citizen or one must be entitled to reside in NZ indefinitely (permanent resident).	<p>At least one parent must be an Australian citizen or permanent resident.</p> <p>A child who is born in Australia to parents who are not citizens or permanent residents will acquire Australian citizenship automatically on their 10th birthday as long as they are ordinarily resident in Australia (exception for diplomats)</p> <p><i>Ordinarily Resident:</i> Place in which a person has his/her home or in which he/she resides and to which he/she returns from absences of a special and temporary nature.</p>	<p>At least one parent must be a British citizen or permanent resident.</p> <p>If the British citizen parent is the father, he must be legally married to the mother at the time of the birth.</p>
DIPLOMATIC STATUS	Children of foreign diplomats born in Canada do not acquire Canadian citizenship at birth.	Children of foreign diplomats born in the US do not acquire US citizenship at birth.	Children of foreign diplomats born in New Zealand do not acquire New Zealand citizenship at birth.	Children of foreign diplomats born in Australia do not acquire Australian citizenship at birth.	Children of foreign diplomats born in the UK do not acquire British citizenship at birth.

ANNEX B: BIRTH RATES IN CANADA

Location of Birth														
Year	Births to Mothers whose primary residence is outside of Canada	NFLD	PEI	NS	NB	QC	ON	M B	SK	AB	BC	Yukon	NWT	Nunavut
2006	289	9	0	7	3	25	167	12	3	9	45	1	2	6
2005	372	11	0	7	2	30	226	13	2	19	60	2	0	0

Statistics Canada

Births and Birth Rate for Canada		
Year	Number of births	Birth Rate*
2007/2008	364,085	11.1
2006/2007	357,289	10.9
2005/2006	346,082	10.7
2004/2005	339,270	10.6
2003/2004	337,762	10.6
2002/2003	330,523	10.5
2001/2002	328,155	10.5

* birth rate per 1,000 population

Statistics Canada

ANNEX C: INTERNATIONAL COMPARISONS OF BIRTH ON SOIL

	CANADA	US	NEW ZEALAND	AUSTRALIA	UK	IRELAND
RULE	<p>Any child born on Canadian soil is automatically a Canadian citizen at birth, regardless of the citizenship or immigration status of the parents of the child. (Exception for diplomat)</p>	<p>A person can become a US citizen by birth in the US. (Exception for diplomat)</p>	<p>At least one parent must be a NZ citizen or one must be entitled to reside in NZ indefinitely (permanent resident). (Exception for diplomat)</p>	<p>At least one parent must be an Australian citizen or permanent resident.</p> <p>A child who is born in Australia to parents who are not citizens or permanent residents will acquire Australian citizenship automatically on their 10th birthday as long as they are ordinarily resident in Australia (exception for diplomats)</p> <p><i>Ordinarily Resident:</i> Place in which a person has his/her home or in which he/she resides and to which he/she returns from absences of a special and temporary nature.</p>	<p>At least one parent must be a British citizen or permanent resident. (Exception for diplomat)</p> <p>If the British citizen parent is the father, he must be legally married to the mother at the time of the birth.</p>	<p>A person born in Ireland to parents, at least one of whom is an Irish citizen, is entitled to Irish citizenship.</p> <p>If both parents are non-nationals, a person born in Ireland is entitled to Irish citizenship only if, during the four year period immediately preceding the person's birth, one of the parents has been residing in Ireland for a period of no less than three years.</p>

- The issue of birth on soil, the rights of parents without status and residence was the subject of a court challenge in the European Union (EU) illustrating the international level of importance of the birth on soil issue. In 2004 a judgement of the European Court of Justice provided that having a child born in the territory of EU member states does give resident rights to the parents of the child. This was based on the assumption that the rights of residence of a child would be deprived of effectiveness if a parent was not able to reside with the child.