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**FOREIGN NATIONALS: NEEDS IDENTIFICATION
MEETING WITH FOREIGN NATIONAL FEDERALLY SENTENCED
WOMEN**

Federally Sentenced Women Program

1994

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CSC

**FEDERALLY SENTENCED WOMEN PROGRAM
BIBLIOGRAPHY APRIL 1996**

JANUARY 1996 - UPDATED BIBLIOGRAPHY

Correctional Program Strategy for Federally Sentenced Women, July 1994.

Stratégie des programmes correctionnels à l'intention des femmes purgeant une peine fédérale, juillet 1994.

Foreign Nationals: *Needs Identification meeting with Foreign National Federally Sentenced Women, 1994.*

Détermination des besoins des Délinquantes étrangères. Réunion avec les délinquantes étrangères purgeant une peine fédérale, 1994.

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FOREIGN NATIONALS: NEEDS IDENTIFICATION MEETING WITH FOREIGN NATIONAL FEDERALLY SENTENCED WOMEN

INTRODUCTION

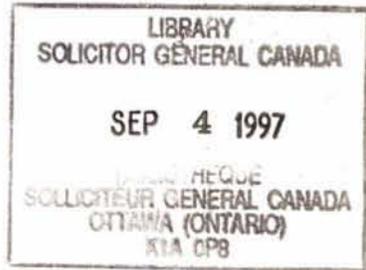
According to the census of incarcerated women conducted on July 13, 1994, there are 25 Federally Sentenced Women (FSW) who are considered foreign nationals.¹ There are 23 housed in the Ontario region, 1 in the Atlantic and 1 in the Pacific. Although this group is small it is, nevertheless, important to examine their specific needs and concerns to insure that they are met in the new facilities.

LEGAL FRAMEWORK

A *foreign national* is an individual who does not have Canadian citizenship. According to Immigration legislation, a person who is a landed immigrant can be issued a deportation order if he or she commits an offence under the Criminal Code. The decision about who should be deported is made on an individual basis by a Citizenship and Immigration Canada (CIC) adjudicator. All individuals are given a right to a hearing in which they can present their case.²

Individual deportation orders also can include family members who are considered to be dependents of that individual. Dependents who are Canadian citizens or are permanent residents eighteen or more year of age are not included.³

¹ See Appendix 1 for definition of different types of foreign nationals as well as some information for the Immigration appeal process.
² Immigration Act Chapter 1-2 section 2 (d)
³ Ibid section 33 (1)



Offenders who have a deportation order will be deported upon obtaining parole or statutory release once having served their sentence. Previously, (under the Penitentiary Act) some foreign nationals were given parole by exemptions for deportation, so that they could be deported as soon as possible. However, this practice was deemed inappropriate as these offenders often did not serve the incarceration period given to them. This practice of parole by exemption for deportation is no longer authorized by CCRA.

Offenders who are foreign nationals have the option of transferring to their country of citizenship to serve their sentence, pursuant to the Transfer of Offender Act. This transfer, however, requires the consent of the offender. As well, a transfer treaty between Canada and the particular country is required.

BACKGROUND

Under CSC jurisdiction, foreign nationals have the same rights and privileges as any other offender.⁴ However, there are practices that are specific to this group. For example, offenders who are foreign nationals should be advised of their right to see a consular representative of their country, advised of the existence and nature of transfer of offender treaties, and be provided with interpreters to ensure they understand their rights. Although they have the same access to programs and privileges as other offenders, it is also important to assess if there are any needs particular to this group.

⁴ Information taken from the CASE MANAGEMENT BULLETIN, report created by the Working group on Foreign National Offenders

ACTION TAKEN

Since there is little written information about the specific needs of this population, it was necessary to use other methods to gather the information. Therefore, individual informal meetings were held with two members of the *Working Group on Foreign National Offenders*. This is an interdepartmental group whose primary responsibility is the development of a Memorandum of Understanding between Citizenship and Immigration Canada and CSC on the sharing of information between the two departments.

In addition, a group interview was conducted with foreign nationals incarcerated at the Prison for Women in Kingston, Ontario. This group interview was conducted on September 13, 1994. A general invitation to participate was given to all women considered foreign nationals. Of the 23 women presently residing at the Prison for Women, 10 women attended. The interview was not designed to generate specific statistical information, but rather to bring to light some of issues and concerns as voiced by the women themselves.

QUESTIONS

The group interview was informally structured to enable the women to freely identify the issues they thought important. The questions covered and the rationale behind them are as follows:

1) How many FSW who are foreign nationals also have landed immigrant status?

Rationale: Women who have landed immigrant status may have different concerns than those who resided in another country at the time of

sentence. A women who is a landed immigrant may have already formed ties with the community and therefore may have similar, if not identical, needs as the non-foreign national population. However, since she may be deported there may be additional concerns regarding her family.

2) How many have children born in Canada?

Rationale: Women who have children born in Canada and have a deportation notice, may need additional support and appropriate guidance so that they can make a suitable decision with regards to their children.

How many have families in Canada?

Rationale: This reflects the amount of family support an offender receives, as well as some of the difficulties she may experience if given a deportation notice.

4) What are some of the particular needs, on day-to-day basis, within the institution?

Rationale: Identification of day-to-day needs encountered within the institution is relevant to the overall management of the foreign national population.

5) Was the information given to the offender with regards to their immigration status sufficient for the understanding of their options and rights?

Rationale: Immigration statutes are complex, it is necessary to know if women had received adequate information and were able to understand it. What are the consequences of receiving a deportation notice?

FINDINGS

I) GENERAL PROFILE

The meeting was attended by 10 women. With the exception of 1, they all understood and spoke English.

- The majority of the women (8) had landed immigrant status.
- Most stated spending a significant portion of their adult life in Canada.
- About half of the women have children born in Canada.
- The majority have other relatives in Canada.
- The majority of women expressed a degree of confusion as to their specific situation with regards to their deportation status.

II) ISSUES RAISED BY FOREIGN NATIONALS - FEDERALLY SENTENCED WOMEN

The women expressed several concerns regarding the process of deportation. These concerns were:

- Having deportation orders despite the fact that they have no connection to their country of origin. For example, some do not speak the language or know the culture, or had not been back since they were children.
- Having deportation orders despite the fact that they had children born in Canada. For some women, therefore, there was the added problem of making arrangements to take the children with them. For others, whose

children were older (teenagers), this meant separation.

- Not being informed of their rights as foreign nationals. One woman wanted to serve her sentence in the United States, but was not informed until six months later that she could have legally applied to do so at the beginning of her sentence.
- Some felt that their case manager was working against them, wanting them to get deported. This resulted in women not being able to manage their sentence and not establishing a good relationship with their case manager.
- Some stated that they often did not have, or follow, a correctional plan if they were given a deportation status. This was also true for women whose case managers thought they could be deported. For most of their sentence, these women did not attend the required meetings. Sentences were managed by case managers as if deportation was going to occur in the near future, when in fact only a small percentage get to that stage.
- Concern that the lack of adherence to correctional planning would effect their parole hearing.
- Women stated that their situation was not adequately explained to allow them to make any educated decisions. As well, the information given was inconsistent.
- Many stated becoming very dependent on their immigration lawyers for information.
- Many had problems retaining lawyers for their cases since legal aid does not provide them with assistance.

In regards to day-to-day needs, the women stated that the needs were generally the same as others. However, some needs were identified by the women:

- There was no diversity in the meals.
- The canteen did not have items available to meet their particular needs. Black women stated needing specific hair products as well as cosmetics and skin products. They strongly felt that they should not have to make a special request for such items.
- Concern that there was not appropriate translation services available.
- Women whose working language is French, claimed that there is no translation of memos or of the postings in the facility. Also, requests for the translation of specific documents from their file took unreasonably long.
- Translation services are, at times, provided by other inmates. This creates the possibility of confidentiality/privacy problems if the translation is of information in an inmate's file that she did not want disclosed.

III) PROPOSALS MADE BY FOREIGN NATIONALS - FEDERALLY SENTENCED WOMEN.

Overall, the women stated that better communication and mutual respect with case managers would address some of the concerns expressed. However, they felt that other tools would alleviate some of the problems.

- An information kit about the immigration process would be useful. As well, a list of immigration lawyers and advocate groups could be provided.
- Case managers should have some knowledge of the legal entitlements of foreign nationals.
- Case managers should have some knowledge of the appropriate referrals to give foreign nationals. Ms. Leslie Milbury, a member of the Working Group on Foreign Nationals, suggested that arrangements needed to be made to ensure foreign nationals have access to consular representatives in the new regional facility.

ANALYSIS

The main issue facing foreign nationals is the lack of accurate information regarding their rights and deportability status. There seems to be a significant amount of uncertainty with regards to their future. This is augmented by the concerns expressed regarding the adequacy of correctional planning and program participation. Most of the women that participated in the interview acknowledged that it was ultimately their responsibility to gather the information for their immigration hearing. However, they asserted that the lack of support, as well as the lack of information about the process, made their situation more difficult.

Issues that arise with regards to their to-day living, such as diversity of meals, may be partly addressed within the new facilities, since the units in which the women will be housed will be self-contained. Therefore, in this case the women will be cooking their own meals. Links in the community will need to be established to

ensure that there is access to appropriate translation sources. As well, the suggestions put forth by the women themselves should be examined in detail and given consideration. It is important to acknowledge that the information gained from the interview, although important in terms of issue identification, is not a comprehensive exploration of the difficulties experienced by foreign nationals - Federally Sentenced Women.

APPENDIX 1

DEFINITION OF THE TERM FOREIGN NATIONAL

Under CSC jurisdiction a Foreign National (FN) is any offender who does not have a Canadian Citizenship. This includes, refugees, landed immigrants, visitors and illegal aliens.

CONVENTION REFUGEES: Persons who are outside their country of nationality or former habitual residence and who have a well founded fear of persecution due to their race, religion, nationality, membership in a particular social group or political opinion, and are unable or, owing to that fear, unwilling to return there. Everyone claiming refugee status in Canada must be found to be a Convention refugee before acquiring the right to apply in Canada.¹

IMMIGRANT: A person who comes to settle in Canada as a permanent resident.

PERMANENT RESIDENT: Someone who has been granted admission as an immigrant but who has not become a Canadian citizen.

VISITOR: A person, other than a Canadian citizen, permanent resident or Minister's permit holder, who is lawfully in Canada, or seeks to come to Canada, for a temporary purpose.

IMMIGRATION APPEAL

FN offenders, after being given a removal order from Canada by Immigration, are entitled to appeal. The Appeals Division hears appeals from permanent residents and recognized Convention refugees who have been ordered removed from Canada as a result of criminal convictions. ²

¹ Information provided by Immigration and refugee Board, Communication Branch via FACSIMILE.

² Immigration and Refugee Board, Immigration Appeal: What it is and How it Works pg. 5

An offender may appeal the removal order issued by Immigration on the following grounds:

- ◆ that the removal order itself is not valid and/ or
- ◆ that in taking into consideration all the circumstances of the case, they should not be removed from Canada.³

The following are the various circumstances the Appeals Division considers in reaching a decision about the deportation status of an offender:

- the seriousness of the offence;
- the likelihood of re-offending;
- the evidence of rehabilitation;
- the length of time spent in Canada;
- the degree of establishment in Canada;
- the effect of removal on family members remaining in Canada; and
- the community and family support available.⁴

³ Ibid. Pg. 9

⁴ Ibid.