

THE CONVENTION REFUGEE CLAIM PROCESS



Edward Corrigan

Canada offers refugee protection to people in Canada who fear persecution and are unwilling or unable to return to their home country. People who are subject to a removal order cannot make a refugee claim.

CONVENTION REFUGEE

Convention refugees are people who are outside their home country or the country where they normally live, and who are unwilling to return because of a well-founded fear of persecution based on:

- * race
- * religion
- * political opinion
- * nationality or
- * membership in a particular social group, such as women or people of a particular sexual orientation.

PERSON IN NEED OF PROTECTION

A person in need of protection is a person in Canada whose removal to their home country or country where they normally live would subject them personally to:

- * a danger of torture;
- * a risk to their life; or
- * a risk of cruel and unusual treatment or punishment.

TWO WAYS TO APPLY FOR REFUGEE PROTECTION IN CANADA:

You can make a claim when you arrive in Canada, at the port of entry. This could be at an airport, a seaport or a Canada-United States border crossing. At ports of entry, claims are received by officers of the Canada Border Services Agency. For refugee claims made at the Canada-US border should be made in advance to ensure that you are not returned to the United States where you may be placed in detention by Homeland Security. It is also important to make sure that you qualify under one of the exemptions to the Safe Third Country Agreement to be admitted to Canada.

You can also make a claim from within Canada at a Citizenship and Immigration Canada office. In-Land refugee claims are exempt from the Safe Third Country Agreement. These exemptions have recently been amended.

Make sure you bring all the identification you can, including your passport, driver's licence and any other documents to help prove your refugee claim.

The officer receiving your refugee claim will assess whether your case is eligible to be referred to the Immigration and Refugee Board of Canada (IRB) for a decision.

You will be given a Personal Information Form (PIF), which must be completed and sent to the IRB. This form must be completed and filed with the Immigration and Refugee Board within 28 days of receipt. This time limit applies to all refugee claims. Failure to file the PIF could result in having your refugee claim declared Abandoned.

If you arrive at a land border, you may not be eligible to make a refugee claim because of an agreement between Canada and the United States known as the Safe Third Country Agreement.

Your refugee claim may not be eligible for referral to the IRB if:

- You have been recognized as a Convention refugee by another country to which you can return;
- You have already been granted protected person status in Canada.

You arrived via the Canada-United States border and do not meet any of the Exemptions to the Safe Third Country Agreement.

You are not admissible to Canada on security grounds, or because of criminal activity or human rights violations;

You made a previous refugee claim that was found to be ineligible for referral to the IRB;

You made a previous refugee claim that was rejected by the IRB; or

You abandoned or withdrew a previous refugee claim.

However, you may be eligible for a Pre-Removal Risk Assessment (PRRA) (see below).

REJECTED REFUGEE CLAIMS

If your claim for protection as a Convention refugee is not accepted and you wish to appeal the decision you must file a Notice of Application for Judicial Review within 15 days of receiving the negative decision. If you do not file a Notice for Application for Judicial Review the removal order that you received when you made your refugee claim 30 days of date of the negative refugee decision automatically becomes a Deportation Order.

If you leave before your Departure Order converts to a Deportation Order you are only prohibited from returning to Canada for one year. However, if you have a Deportation Order you are barred from returning to Canada for life unless you apply for and receive special permission from the Minister of Citizenship and Immigration to return to Canada.

FEDERAL COURT JUDICIAL REVIEWS:

The procedure for appealing a negative decision with respect to a refugee claim, or any other decision of an Immigration Officer, is that you must file the Notice of Application for Judicial Review within 15 days of the decision if it was made in Canada. If the decision was made outside of Canada you have 60 days to file the Notice of Application for Judicial Review.

The next step in the process is called filing a Record which must be done within 30 days of filing the Notice of Judicial Review. The Record is comprised of the file record, any affidavits in support and a Memorandum of Fact and Law setting out the grounds for the judicial review.

The Department of Justice then has 30 days to file a Respondent's Memorandum of Argument. The Applicant then has 10 days to reply to the Respondent's memorandum. Judicial Reviews are a very complicated procedure and expert legal advice should be sought.

The judicial review material is then considered by a judge of the Federal Court. If the Federal Court judge grants the Application then a date is set for a hearing of the arguments and a decision is made with written reasons issued. If the Federal Court Judge grants the judicial review then the refugee claim is sent back to the Immigration and Refugee Board for consideration of a new panel of the IRB.

It is important to note that while an Application for Judicial Review is in process for a failed refugee claim any removal proceedings are stayed.

On rare occasions where a Federal Court judge certifies a legal question of general importance the matter is referred to the Federal Court of Appeal. There an appeal is heard by a panel of three judges of the Federal Court of Appeal.

PRE-REMOVAL RISK ASSESSMENT:

If your refugee claim is rejected and your application for judicial review is denied and if you are told to leave Canada, you will be given a notice that the removal order is being enforced. In most cases, if you are given a removal order, you can apply for a pre-removal risk assessment (PRRA).

Once the PRRA application is given to the failed refugee claimant, you are not eligible for the In-Canada Sponsorship process.

During the PRRA process, an officer will review the documents related to your case and any other evidence that you provide. If you had made a refugee claim, the evidence that will be considered will be limited to any new or different evidence that was not presented when you had your hearing at the Refugee Protection Division. In some special cases, you will be asked to attend an interview before a decision is made about whether you can stay in Canada.

If you are eligible for a PRRA, you will be sent an application form and guide. When you receive your PRRA forms, your removal order is stopped for 15 days. The removal order will not be in effect until:

- * you notify Citizenship and Immigration Canada (CIC) that you do not intend to apply for a PRRA, or you abandon or withdraw your application for a PRRA.

- * the 15-day deadline passes (if you do not send an application to CIC for a PRRA) or

- * you apply for a PRRA and the decision is negative.

Note: Seven days will be added to the 15-day deadline if the PRRA notice was mailed to you, and not delivered in person. This is to allow time for the notice to be sent to you.

You can submit written evidence within 30 days of receiving the PRRA Application to help explain the risk that you would face if you are removed from

Canada.

In reviewing your case, the officer will consider:

- * the risk of persecution as defined in the Geneva Convention
- * the risk of torture and
- * the risk to your life or the risk that you may be subjected to cruel and unusual treatment or punishment.

The overall acceptance rate for a PRRA is only 2-3%.

NOT ELIGIBLE FOR A PRRA:

Those not eligible for a PRRA include those:

- * subject to extradition (extradition is a formal request that Canada return you to another country because you are a suspected or convicted criminal).

- * ineligible for a hearing at the Immigration and Refugee Board because you came to Canada from a safe third country.

- * a repeat refugee protection claimant who is being removed from Canada less than six months after you previously left

- * already recognized as a protected person or

- * recognized as a Convention Refugee by a country to which you can return.

If the PRRA officer accepts your claim, you may receive the status of "protected person." This means you can stay in Canada and you can apply to become a permanent resident of Canada.

If your PRRA claim is not accepted you will receive a written notice. Your removal order comes into effect again and you may receive a reasonable period of time to ensure your departure from Canada. If you do not leave you can be legally deported.

If your application for a PRRA is not accepted you can apply for a review of the decision to the Federal Court of Canada. However, applying to the Federal Court of Canada for a Judicial Review of a negative PRRA does not halt any removal proceedings.

There is also provision under the Immigration and Refugee Protection Act (IRPA) for Humanitarian and Compassionate Applications. These H & C applications do not put a halt to any removal proceedings. The success rate for these H & C applications is very low at only 2-3%.

This brief overview is not to be considered as a definitive review of the law on making claims for protection under the refugee Convention and Canadian law on dealing with refugees. For further information please consult a legal professional.

Edward C. Corrigan is a lawyer certified as a Specialist in Citizenship and Immigration Law and Immigration and Refugee Protection by the Law Society of Upper Canada in London, Ontario, Canada. He can be reached at corriganlaw@edcorrigan.ca or at (519) 439-4015.