



Citizenship and  
Immigration Canada

Citoyenneté et  
Immigration Canada

# IP 5

Immigrant Applications in Canada made  
on Humanitarian or Compassionate Grounds

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### Updates to chapter

#### Listing by date:

**Date: 2005-06-09**

Sections 13.2 to 13.6 published on May 20, 2005 have been deleted as well as the sample letter in Appendix A, Annex 8.

Section 13 has been renumbered.

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### 2005-05-20

- Section 5.19 has been updated to include expanded guidelines on the best interests of the child.
- Section 13.1 has been modified to further explain the role of the H&C officer and the PRRA officer. It is stated that, in some cases, the PRRA officer should make separate H&C and PRRA decisions.
- Sections 13.5 and 13.6 have been updated to direct officers to the correct sample letter informing applicants of a negative risk opinion and allowing them to make submissions on any errors or omissions. The sample letter has been included in Appendix A, Annex 8.
- All references to the Montreal Call Centre have been removed.

### 2005-01-12

Section 13.7 has been updated to clarify that protected persons applying for permanent residence via H&C retain their protected person status and, therefore, retain all protected person exemptions. As a result, the following inadmissibility provisions do not apply to protected persons applying through H&C:

- financial inadmissibility [A39];
- medical inadmissibility based on excessive demand [A38(1)(c)];
- criminality [A36(2)];
- inadmissibility based on prior misrepresentation [A40(1)(a)];
- inadmissibility on the basis of an inadmissible family member [A42].

These applicants are now also permitted to provide alternative identity documents as protected persons (i.e., statutory declarations), as provided for in R178.

### 2004-11-05

The major changes that were made to this chapter include:

- Section 4.2 has been updated to clarify the delegations governing H&C authority. The technical amendments to the delegations clarify the policy intent of granting officers the delegated authority to assess all H&C applications at step 1, including when the applicant is inadmissible on technical grounds, grounds related to criminality, security, violation of human or international rights, organized crime, or health.
- Section 5.4 has been added to provide guidance in cases where H&C applications are submitted by permanent residents or Canadian citizens.
- Sections 5.9, 5.12, and 16.10 have been reworded to clarify that H&C applicants should not be refused permanent resident status for the sole reason of being inadmissible for being out of status [pursuant to A41].
- Section 5.18 has been expanded to indicate that when in-status spouses apply via H&C, it is reasonable for officers to inform applicants of their ability to apply in the spouse or common-law partner in Canada class. However, there is no facility to convert H&C applications to FC1 applications. This section has also been expanded to state that there are no determinative

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factors when processing H&C spousal applications. All factors in spousal cases, including marriage, must be considered.

- Section 5.19 has been expanded upon to detail that the obligation to consider the best interests of the child in an H&C application arises only when it is clear from the information submitted that the application relies on this factor.
- Section 5.20 further clarifies that the existence of an H&C sponsorship undertaking does not indicate that the applicant is a member of the family class.
- Section 5.22 has been updated to include the existence of a public policy in relation to resumption of citizenship (under Appendix F of this chapter).
- Section 5.28 has been updated for consistency with new Regulations governing paid representatives.
- Section 7.2 has been updated to detail exemptions to the Right of Permanent Resident Fee (RPRF) for H&C applicants:
  - Protected persons and their family members are exempted from this fee.
  - H&C principal applicants who are dependent children of Canadian citizens or permanent residents are exempted from this fee.
- Section 10 has been updated with procedures for applicants residing in the province of Quebec (interim until the joint directives are completed).
- Section 11.3 has been changed to detail the importance of justifying reasons for positive H&C decisions in national security cases.
- Section 13.7 has been updated to clarify that protected persons applying for permanent residence via H&C are exempt from medical inadmissibility based on excessive demand provisions [A38(1)(c)].
- Section 16.2 has been updated with an example of the type of situation in which the authority to waive the examination of non-accompanying family members could be appropriate.
- Section 16.9 is a new section. It explains that, in accordance with the technical revisions to the Regulations, family members who are outside Canada cannot be processed for permanent resident visas concurrently with the principal applicant in Canada. However, this change does not apply to H&C applications received at a CIC office prior to August 11, 2004.
- Section 21.3 has been updated with a reminder to officers that it is very important to use the special program codes for H&C cases.

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## 1. What this chapter is about

This chapter explains how to assess applications to remain in Canada based on humanitarian and compassionate grounds under R66. This assessment applies to applicants who are seeking an exemption from certain requirements for becoming a permanent resident from within Canada. Such applications are often called H&C applications; this abbreviated term will be used in this chapter.

### Which immigration category this chapter affects

Sponsored spouses and common-law partners who have legal temporary status in Canada are members of a class prescribed in the Regulations and are not H&C cases. This class is covered in IP 8.

H&C cases include:

- applicants with family relationships (see Section 12); and
- all other applicants (see Section 13).

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### 1.1. Which CIC offices this chapter involves

All H&C applications are sent to the CPC in Vegreville where service delivery agents or service delivery specialists review all applications and supporting documents.

If a positive H&C decision can be made, the application is processed at the CPC. If, for any reason, a decision cannot be made, the application is referred to a CIC, where officers or counsellors will make a decision on the referred application.

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### 1.2. Where to find other related guidelines

For information on related procedures, see appropriate manual chapter reference.

Processing applications to sponsor members of the family classes	See IP 2
Processing members of the family class	See OP 2
Spouse or common-law partner in Canada	See IP 8
Adoptions	See OP 3

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## 2. Program objectives

Discretion is a valuable element of Canada's immigration program. It benefits our clients and is consistent with the objectives of the *Immigration and Refugee Protection Act* (IRPA). This discretionary tool is intended to uphold Canada's humanitarian tradition.

The purpose of H&C discretion is to allow flexibility to approve deserving cases not anticipated in the legislation. Use of this discretion should not be seen as conflicting with other parts of the Act or Regulations but rather as a complementary provision enhancing the attainment of the objectives of the Act. It is not an appeal mechanism.

Discretionary decisions must be made with care and good judgment, considering the intent of these provisions.

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### 2.1. Balance between discretion and consistency

The legislation does not provide any explanation or guidance about what constitutes humanitarian and compassionate grounds. Delegated persons have full authority to make this decision. At the

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same time, to be fair to clients and to avoid just criticism, there must be as much consistency as possible in the use of this discretion.

As much guidance as possible is given to assist officers in striking a balance between the two seemingly contradictory aspects of discretion and consistency. However, the discretion of the decision-maker takes precedence over guidance when decisions are made.

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### 3. The Act and Regulations

#### Provisions for applications on humanitarian or compassionate grounds

For more information about	Refer to
Requirement for application before entering Canada	A11(1)
Humanitarian and compassionate considerations: Minister may grant permanent residence or exemption from criteria of Act or Regulations where justified on H&C or public policy grounds	A25(1)
Provincial criteria	A25(2)
Requirements for a foreign national to become a permanent resident in Canada	R72
Application under A25(1)	R66
Applicants outside Canada	R67
Quebec cases	R67(a)
Applicant is not otherwise inadmissible	R67(b)
Family members not inadmissible	R67(c)
Applicants in Canada	R68
Quebec cases	R68(a)
Applicant is not otherwise inadmissible	R68(b)
Family members not inadmissible	R68(c)
Accompanying family member outside Canada	R69(1)
Accompanying family member in Canada	R69(2)
Work permit	R200(1), R207
Study permit	R216(1)

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#### 3.1. Forms required

Form title	Form number
Application to Change Conditions, Extend my Stay or Remain in Canada	IMM 1249E
Request for Exemption from Permanent Resident Visa Requirement	IMM 5001E
Supplementary Information Humanitarian & Compassionate Cases	IMM 5283E
Document Checklist Humanitarian & Compassionate Cases	IMM 5280E
Guide – Applying for Permanent Residence from Within Canada Humanitarian and Compassionate Cases	IMM 5291E
Request for Screening Action	IMM 0703B

**Note:** The IMM 5001E is considered an “Application to Remain in Canada as a Permanent Resident” only after a positive H&C decision is rendered.

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### 4. Instruments and delegations

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#### 4.1. Ministerial authority to exercise discretion in granting permanent residence

The *Immigration and Refugee Protection Act* and the Regulations provide for circumstances in which foreign nationals may submit an application in Canada to become a permanent resident.



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However, in order to be eligible, a foreign national must be a member of a class set out in subsection R72(2).

The classes described in R72(2), whose members are eligible to apply for permanent residence in Canada, reflect the objectives of the Act but do not cover all circumstances. Thus, A25(1) gives the Minister the authority to use discretion to grant an exemption to these requirements.

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### 4.2. Officer authority to grant exemption from some requirements of the Act

Officers have the delegated authority to assess all H&C applications at step 1, including when the applicant is inadmissible on technical grounds, grounds related to criminality, security, violation of human or international rights, organized crime, health, etc.

Officers also have the delegated authority to grant an exemption from the requirements of the Act and Regulations with the exception of inadmissibility requirements related to health, serious criminality, human rights violations, organized crime and security.

These authorities can be found in instrument IL 3, Module 1 - Permanent residence and the sponsorship of foreign nationals - Items 43 through 46. IL 3 includes lists of delegates/designated officials in a series of annexes by region. Officers should consult the table below for the annex specific to their region.

Annex A	Atlantic Region
Annex B	Quebec Region
Annex C	Ontario Region
Annex D	Prairies/N.W.T. Region
Annex E	B.C. Region
Annex F	International Region
Annex G	Departmental Delivery Network
Annex H	NHQ

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## 5. Departmental policy

### 5.1. Humanitarian and compassionate grounds

Applicants bear the onus of satisfying the decision-maker that their personal circumstances are such that the hardship of having to obtain a permanent resident visa from outside of Canada would be

- (i) unusual and undeserved or
- (ii) disproportionate.

Applicants may present whatever facts they believe are relevant.

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**Note:** For further information on unusual and undeserved or disproportionate hardships see: Definitions, Section 6.

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### 5.2. Right to apply for permanent residence from within Canada

It is a cornerstone of the *Immigration and Refugee Protection Act* that, prior to their arrival in Canada, persons who wish to live permanently in Canada must:

- submit their application outside Canada; and
- qualify for, and obtain a permanent resident visa.

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Foreign nationals do not have the right to apply for permanent residence from within Canada except as provided by the legislation. Therefore, foreign nationals who do not qualify under IRPA to apply from within Canada must seek an exemption from the requirement to be a member of a class referred to in R72(2). A25(1) provides the flexibility to approve deserving cases that were not envisaged in the legislation and to process applications for permanent residence from within Canada.

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### **5.3. Eligibility to submit an H&C application**

Any foreign national who is inadmissible or does not meet the requirements of the Act or Regulations may make a written request for consideration under A25(1).

A request under A25(1) for an exemption from the in-Canada selection criteria based on humanitarian and compassionate or public policy considerations must accompany an application for permanent residence in Canada [R66]. The application must be submitted in accordance with the requirements specified in R10.

If applicable, a sponsorship in support of the applicant may accompany the application and may be considered in conjunction with all other factors presented to the decision-maker. However, sponsorships accepted in these circumstances are not a legal requirement nor in accordance with the Regulations and the foreign national is therefore not a member of the family class.

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### **5.4. H&C applications submitted by permanent residents or Canadian citizens**

Applications submitted by permanent residents or Canadian citizens are ineligible for consideration. The rationale for this is that a person who is already a permanent resident or a Canadian citizen has all the legal rights accorded to a person with that status. Therefore, there are no additional rights that can be gained by permanent resident status once they have already acquired those rights. These applications are usually made when permanent resident status or Canadian citizenship is in question.

If an H&C application is received from a permanent resident or Canadian citizen and loss of status is being examined, the officer will return the kit and the cost recovery processing fees and inform the client that permanent residents or Canadian citizens are not eligible for consideration (see sample letter in Appendix E, Annex 1).

If an H&C application is received from former permanent residents who have been allowed in as temporary residents and there is no information to indicate that a redetermination interview has been scheduled, the officer will return the kit and the cost recovery processing fees and advise that the local CIC will be in contact with them to set up a residency determination interview (see sample letter in Appendix E, Annex 2).

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### **5.5. Two-step assessment (H&C decision / Permanent residence)**

An application for consideration to remain in Canada on H&C grounds is comprised of two assessments:

- H&C assessment; and
- assessment of application for permanent residence in Canada.

For more information see:

- Section 5.6—First-step assessment: Toward the H&C decision;
- Section 11, Section 12, Section 13 and Section 14—Step one: H&C assessment procedures;
- Section 5.9—Second-step assessment: Toward the decision to confirm permanent residence; and

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- Section 16—Step two: Assessing admissibility procedures.

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### 5.6. First-step assessment: Toward the H&C decision

The decision-maker assesses H&C grounds and determines whether:

- the foreign national should be exempted from the selection criteria related to becoming a permanent resident from within Canada.

The applicant bears the onus of satisfying the decision-maker, at the time the application is made, that the H&C factors present in their individual circumstances are sufficient to warrant an exemption. The decision-maker considers the applicant's submissions in light of all the information known to the officer. If the information is extrinsic (i.e., information from a source other than the applicant or information to which the applicant does not have access or is not aware is being used in the decision), this information should be shared with the applicant, and submissions on the information should be invited, before the information is used in the decision. For more information see section 6.4 – Extrinsic information.

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### 5.7. A positive H&C decision

When a decision has been made to allow a foreign national to apply from within Canada on H&C grounds, **for purposes of the current application only this one-time decision:**

- exempts the applicant from the in-Canada selection criteria based on humanitarian and compassionate or public policy considerations to facilitate processing of the application for permanent residence from within Canada; and
- allows the foreign national to become a permanent resident in Canada subject to certain requirements [R72(b) and (e)]. It is to be noted that requirements for protected persons differ from those required of other H&C applicants. For more information, see section 13.7 - Processing refugee applications for permanent residence after deadline.

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### 5.8. Reopening a positive H&C decision

Once the H&C decision is made, the ability to reopen or revisit this decision is generally limited by the doctrine of *functus officio*, (i.e, once a decision is taken, the decision-maker has no more authority on the matter). Exceptions to this doctrine do exist - the ones most commonly applicable to the H&C context involve situations where there is evidence of misrepresentation or fraud in relation to a material fact. In other words, an H&C decision should not be reconsidered due to a simple change of circumstances.

For a common example in the H&C context, see Section 11.7, Withdrawal of sponsorship.

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### 5.9. Second-step assessment: Toward the decision to confirm permanent residence

Processing of the application for permanent residence follows a positive H&C decision.

In order to become a permanent resident, the applicant must meet the requirements for permanent residence in R68, including that the applicant and their family members, whether accompanying or not, are not inadmissible and otherwise meet the requirements of the Act and Regulations.

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**Note:** Where a positive H&C decision has been made, the foreign national should not be refused permanent resident status for the sole reason that they are inadmissible pursuant to A41 for being out of status. See: ENF 1 and ENF 2, for information on inadmissibility in relation to A34, A35, A36, A37, A38, A39, A40 and A42; and IP 1, Temporary Resident Permits, if warranted.

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Applicants in Quebec must meet provincial criteria. The applicant must also meet requirements in R72 including possession of a passport, and a medical certificate based on a medical examination within the preceding 12 months [R72(1)(e)(ii)].

The officer assesses all information relating to the requirements and admissibility of the applicant up to the time the applicant is granted permanent resident status, including the permanent residence interview. A negative decision may be made at any time during processing if the applicant or the applicant's family members are found to be inadmissible.

A final positive determination is made only at the interview for permanent residence.

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### 5.10. Applicants under a removal order

Persons under a removal order who submit an H&C application and pay the appropriate fee are entitled to a decision on that application. There is no **requirement to delay removal** unless a positive determination has been made during a step-one H&C assessment [R233]. Therefore, clients seeking a decision prior to removal must submit their application well before removal is scheduled.

For information on removals, see ENF 10.

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### 5.11. H&C assessments that cannot be completed prior to removal

If the H&C application cannot be completed prior to the applicant's removal from Canada, a decision will be made after removal and the applicant will be informed of the decision.

Officers should	Officers should not
upon request, counsel applicants that: <ul style="list-style-type: none"><li>• their H&amp;C application will be considered after removal;</li><li>• when a decision is made, they will be informed in writing; and</li><li>• if their application is approved and they are otherwise admissible to Canada, they will be allowed to return to Canada for processing.</li></ul>	request that applicants attend an H&C interview in Canada after the date scheduled for their removal. To avoid this, officers should contact the local removals unit to obtain information about removal plans before scheduling an H&C interview. Where an interview is required and it cannot be done prior to removal, it may be conducted via telephone or by an officer following removal.

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### 5.12. Inadmissible applicants

Although foreign nationals who are inadmissible may submit an H&C application, a **positive H&C** decision to waive certain selection criteria **does not overcome admissibility requirements**. If after the H&C decision is made, it is determined that the foreign national is inadmissible, the application for permanent residence **must** be refused. However, requirements for protected persons differ from other H&C applicants. For more information, see section 13.7 - Processing refugee applications for permanent residence after deadline.

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**Note:** Where a positive H&C decision has been made, the foreign national should not be refused permanent resident status for the sole reason that they are inadmissible pursuant to A41 for being out of status. See ENF 1 and ENF 2, for information on inadmissibility as it relates to sections A34, A35, A36, A37, A38, A39, A40 and A42; and IP 1, Temporary Resident Permits, if warranted.

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### 5.13. Options for rehabilitation or pardon - Criminally inadmissible

Criminally inadmissible persons should, if eligible:

- apply for rehabilitation, if the conviction was outside Canada; or
- apply for a pardon, if the conviction was in Canada.

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For further information, refer to:

- ENF 14, Section 5.2 for essential elements of deemed rehabilitation; and
- IP 1, Section 14, for procedures on allowing criminally inadmissible persons who are not eligible for rehabilitation or pardon to remain in Canada.

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### 5.14. Simultaneous claims for H&C consideration and for refugee protection

A foreign national who has submitted a claim for refugee protection or a legal challenge to a negative decision by the IRB's Refugee Protection Division may make an H&C application at the same time. **It is inappropriate to counsel clients to withdraw** from these other processes as a condition of an H&C application. This must be left up to the client.

A signed withdrawal statement is neither mandatory nor necessary before granting permanent residence. After granting permanent resident status, the officer should inform either the Refugee Protection Division of the IRB (for a refugee claim) or the Department of Justice (for a judicial review application) of the positive decision to grant permanent residence.

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### 5.15. Criminal charges formally laid and still outstanding

Decision-making can be particularly challenging when an H&C applicant is the subject of outstanding criminal charges in Canada or elsewhere.

The following table of examples and possible actions may assist:

Examples:	Possible actions
The criminal charge is very serious (i.e., a conviction would be a significant factor in any H&C decision) and/or it appears that it will be quite some time before the matter is resolved.	It may be appropriate to refuse the application. The refusal should be based on facts at the time the H&C decision is made, particularly the uncertainty relating to the outcome of the outstanding criminal charges.
All other factors of the case are very favourable but for an outstanding charge for shoplifting. The matter is expected to conclude before the courts within the next three months.	Officers may decide that, even if the applicant had a conviction for shoplifting, there are enough positive factors to offset the relatively minor and single incident of criminality.
There is a more serious matter such as an outstanding charge for the attempted murder of a family member.	If a family member is sponsoring the applicant, it may be appropriate to refuse the application and instruct the applicant to await the conclusion of the criminal matter before pursuing an application for permanent residence in Canada.  If, however, H&C factors are compelling and the situation merits an exemption, officers should follow the guidelines in the procedures sections of this chapter.

Applicants bear the responsibility of providing all information in order to demonstrate that their personal circumstances warrant exemption from the permanent resident visa requirement.

Officers should provide an opportunity for the applicant to address any concerns about the alleged criminal conduct and the outstanding charges, in the context of the H&C application.

For further information, refer to policy Section 5.28 and Section 5.29.

## IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds

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### 5.16. Known or suspected inadmissibility of family members abroad

An important factor in an H&C decision is the admissibility of family members residing abroad, whether they intend to immigrate or not. All family members must be examined for medical, criminal and security admissibility requirements.

The CPC or inland CIC becomes aware of inadmissibility either as a result of information provided by the applicant in their submission for H&C consideration or information received from the visa office after they have completed the required medical, criminal and security verifications of family members outside Canada.

The inadmissibility of overseas family members could have serious consequences for the family unit such as permanent separation of family members and the admissibility of the applicant. This information is to be considered in conjunction with all other factors of the case.

Officers are delegated the authority to waive the requirement under R68(c) that non-accompanying family members be examined in order for a foreign national to become a permanent resident when appropriate. For more information, see section 16.2 - Admissibility of overseas family members.

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### 5.17. Known or suspected adoption of convenience

See OP 3 for information on adoptions of convenience.

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### 5.18. Spouses and common-law partners

Spouses and common-law partners of Canadian citizens or permanent residents who do not have legal temporary resident status in Canada cannot apply as members of the spouse or common-law partner in Canada class. In such situations, a spouse or common-law partner without temporary resident status may apply to remain in Canada based on humanitarian and compassionate grounds.

Occasionally, spouses with valid temporary resident status may apply for permanent residence through an H&C application. In these instances, it is reasonable for officers to inform applicants that they may apply in the spouse or common-law partner in Canada class. However, there is no facility to convert H&C applications into spouse or common-law partner in Canada class [FC1] applications. Where the sponsor and all family members meet IRPA requirements and the applicant would otherwise qualify for the spouse or common-law partner in Canada class, officers may consider this a positive factor when assessing the application. However, should applicants wish to benefit from IRPA (e.g., medical exemption for a sponsor's partner), they will have to withdraw their H&C application and re-apply as a member of the spouse or common-law partner in Canada class. For further information, see Operations Memorandum IP 02-09 at: [<http://www.ci.gc.ca/cicexplore/1976archive/english/guides/om-nso/2002/op/op02-46.htm>]

All H&C applications should be assessed using the same criteria of undue, undeserved or disproportionate hardship, including cases of spouses and common-law partners.

Marriage or the existence of a common-law relationship is **not** automatically considered **sufficient grounds for a positive humanitarian and compassionate decision**. There are no determinative factors when processing an H&C application. While a marriage or the existence of a common-law relationship is an important factor to consider, the officer must take into consideration all the circumstances of the case before deciding whether or not to grant an exemption. Among other factors, the officer should consider the consequences the separation would have on the relationship and the other family members.

When a couple decides to marry or enter into a common-law relationship despite the fact that a spouse or partner's immigration status is not legal or is undecided, it is reasonable to anticipate that there will be a separation for immigration processing. There is no legal entitlement for a spouse or common-law partner without temporary resident status to remain in Canada.

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### 5.19. Best interests of the child

The *Immigration and Refugee Protection Act* introduces a statutory obligation to take into account the best interests of a child who is directly affected by a decision under A25(1), when examining the circumstances of a foreign national under this section. This codifies departmental practice into legislation, thus eliminating any doubt that the interests of a child will be taken into account.

Officers must always be alert and sensitive to the interests of children when examining A25(1) requests. However, this obligation only arises when it is sufficiently clear from the material submitted to the decision-maker that an application relies, in whole or at least in part, on this factor. An applicant has the burden of proving the basis of their H&C claim. If an applicant provides insufficient evidence to support the claim, the officer may conclude that it is baseless. As with all H&C decisions, the officer has full discretion to decide the outcome of a case.

It is important to note that the codification of the principle of **best interests of a child** into the legislation **does not mean** that the interests of the child outweigh all other factors in a case. The best interests of a child are one of many important factors that officers need to consider when making an H&C or public policy decision that directly affects a child.

In reaching a decision on an H&C application, officers must consider the best interests of any child **directly affected** by the decision. “Any child directly affected” in this context could mean either a Canadian or foreign-born child (and could include children outside of Canada).

The relationship between the applicant and “any child directly affected” need not necessarily be that of parent and child, but could be another relationship that is affected by the decision. For example, a grandparent could be the primary caregiver who is affected by the immigration decision, and the decision may thus affect the child.

The outcome of a decision under A25(1) that directly affects a child will always depend on the facts of the case. Officers must consider all evidence submitted by an applicant in relation to their A25(1) request. Thus, the following guidelines are not an exhaustive list of factors relating to children, nor are they necessarily determinative of the decision. Rather, they are meant as a guide to officers and illustrate the types of factors that are often present in A25(1) cases involving the best interests of the child. As stated by Madame Justice McLachlin of the Supreme Court of Canada, “. . . The multitude of factors that may impinge on the child’s best interest make a measure of indeterminacy inevitable. A more precise test would risk sacrificing the child’s best interests to expediency and certainty. . . .” (*Gordon v Goertz*, [1996] 2 S.C.R. 27).

Generally, factors relating to a child’s emotional, social, cultural and physical welfare should be taken into account, when raised. Some examples of factors that applicants may raise include:

- the age of the child;
- the level of dependency between the child and the H&C applicant;
- the degree of the child’s establishment in Canada;
- the child’s links to the country in relation to which the H&C decision is being considered;
- medical issues or special needs the child may have;
- the impact to the child’s education;
- matters related to the child’s gender.

The facts surrounding a decision under A25(1) may sometimes give rise to the issue of whether the decision would place a child directly affected in a situation of risk. This issue of risk may arise regardless of whether the child is a Canadian citizen or foreign-born. In such cases, it may be appropriate to refer to sections 13.1 to 13.6 of this chapter for further guidance.

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For supplementary reading on relevant case law, refer to *Baker v. MCI*, [1999] 2 S.C.R. 817; *Legault v. MCI*, [2001] 3 F.C. 277; *MCI v. Hawthorne*, [2003] 2 F.C. 555, *Owusu v. MCI*, [2004] 2 F.C. 635, and see the Convention on the Rights of the Child, [Can. T.S. 1992 No. 3] at <http://www.unhcr.ch/html/menu3/b/k2crc.htm>.

### 5.20 Sponsorship

An H&C application based on a family relationship is normally supported by a sponsorship application from a Canadian citizen or permanent resident. This is a practical way for relatives in Canada to support an application and to demonstrate their commitment to support their family member in Canada. Sponsorship applications are included in the H&C application kit and can be submitted at the same time as an H&C application.

The existence of a sponsorship does not mean that the applicant is considered a member of the family class. Only persons applying for a visa outside Canada as a member of the family class [R116] or persons applying to become permanent residents as members of the spouse or common-law partner in Canada class [R123] are members of the family class. Successful H&C applicants are granted an exemption from the requirement to be a member of one of the prescribed classes of persons who can apply for permanent residence from within Canada.

**Lack of a sponsorship** does not mean that the H&C request should be refused; rather, it is a **factor** to be taken into account by the decision-maker and may affect an applicant's ability to become a permanent resident if they are inadmissible for financial reasons.

The **sponsorship approval** decision must be made **before** looking at the **H&C request**. This is so that existence of sponsorship or lack thereof and comparative importance of this fact can be considered in the H&C decision. See Section 10 for more information specific to Quebec cases.

In the case of applications submitted under H&C grounds, sponsors and applicants do not have a right of appeal to the IAD.

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### 5.21 Prolonged stay in Canada has led to establishment

Positive consideration may be warranted when the applicant has been in Canada for a significant period of time due to circumstances **beyond the applicant's control**.

The following table may assist in clarifying circumstances beyond the applicant's control:

Circumstances beyond the applicant's control	Circumstances not beyond the applicant's control
If general country conditions are considered unsafe due to war, civil unrest, etc., CIC may temporarily suspend removals to that country; when the conditions improve, removals can resume. However, situations may arise where suspension of removals continues for a number of years and there is no other viable destination option for the applicant. If it is unlikely that conditions will improve soon and the situation of no alternative destination continues, this could reasonably be considered a hardship due to circumstances beyond the applicant's control.	An applicant in Canada for a number of years is unwilling to sign a passport application or provide particulars for a passport application. In such a case, inability to leave Canada is not considered beyond the control of the applicant and could reasonably be viewed as a very strong negative factor.

When the period of inability to leave due to circumstances beyond the applicant's control is of significant duration and where there is evidence of a significant degree of establishment in Canada, these factors may combine to warrant a favourable H&C decision.



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### 5.22 Public policy

The Minister may, from time to time, establish categories of persons whose applications for permanent residence may be considered for processing as “public policy” cases. A public policy under A25(1) in relation to resumption of citizenship can be found in Appendix F.

### 5.23 Administrative law principles - A guide to decision-making

Before processing an H&C application, officers should review the table of administrative law principles in this section along with the summary explanation provided for each principle in the subsequent policy sections. The summary explanations are only overviews of each principle and do not constitute an exhaustive presentation of legal principles applicable to H&C decision-making.

**Table 3: List of administrative law principles**

Delegated authority, Section 5.24	The “Case to be met”, Section 5.29
Duty to consider, Section 5.25	Bias: The right to a fair and impartial decision, Section 5.30
Onus on applicant, Section 5.26	Right to a decision, Section 5.31
All the evidence, Section 5.27	Right to reasons, Section 5.32

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### 5.24 Delegated authority

As a holder of decision-making authority delegated from the Minister, officers cannot exceed the scope of the delegation granted.

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### 5.25 Duty to consider

Officers are obliged by legislation to consider formal applications for an exemption under A25(1) on H&C grounds on behalf of the Minister when the applicant has satisfied the requirements of R10 and R66.

The onus is on the applicant to satisfy an officer that there are grounds for an exemption.

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### 5.26 Onus on applicant

Officers do not have to elicit information on H&C factors and are not required to satisfy applicants that such grounds do not exist. The onus is on applicants to put forth any H&C factors that they feel exist in their case.

Although officers are not expected to delve into areas that are not presented, officers should attempt to clarify possible H&C grounds if these are not well articulated by the applicants.

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### 5.27 All the evidence

An officer should consider and weigh all the relevant evidence and information, including what the applicant and the officer consider to be important. Officers must not ignore evidence or place too much emphasis on one factor to the exclusion of all other factors. They must look at the whole picture. Any information or evidence that is not relevant or should not be given much weight should be documented appropriately.

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### 5.28 The right to be “Heard”

One of the fundamental components of natural justice or fairness is the right to be heard. This means that applicants have a fair opportunity to present their case. For the purpose of assessing an H&C application, the applicant's written submissions may contain the information an officer needs to make a decision.

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The right to be heard **does not require** an absolute right to a **personal interview or hearing** and, if an interview is held, **there is no right for the applicant's representative to attend** the H&C interview. However, representatives are welcome to attend when available on the date set for the interview. The presence of a representative should not impede the interview process.

A representative **does not necessarily mean a lawyer or other legal representative**. A representative may be a friend, relative or any other interested person who is there with the permission of the applicant.

It is to be noted that, effective April 13, 2004, new regulations state that **paid** representatives must be authorized:

- to conduct business on behalf of clients when dealing with the Government of Canada in immigration and refugee matters; or
- to provide advice or assistance.

For further information on authorized representatives, see IP 9.

If the applicant is given a period of time within which to provide information or make further submissions, officers should not make a decision on the application until after this time period has elapsed.

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### 5.29 The "Case to be met"

There is no particular "case to be met." Applicants determine what they feel are the H&C factors for their particular circumstances and make submissions on them. While officers do not have to elicit H&C factors (i.e., delve into areas that are not presented in the applicants' submissions), it is a good practice to clarify possible H&C grounds if these are not well articulated.

Situations may arise where an officer has information or evidence from a source other than the applicant (extrinsic evidence – see Definitions, Section 6). If the information will be used when making the H&C decision, officers must share the information with the applicant and allow submissions to be made on this information.

In instances where the source of the information is confidential, the obligation remains to share the gist of the information with the applicant, so that they are aware of the case to be met. There is no need to release the identity of the confidential source. This is a sensitive situation in which an officer must exercise discretion. If required, officers should seek advice from the regional program specialist.

In cases where the information on file is not relevant to the decision, officers should note the file to this effect.

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### 5.30 Bias: The right to a fair and impartial decision

The second major component of natural justice or fairness is the right to have a fair and impartial decision-maker. In other words, officers should approach the case with an open mind and be free to come to a decision in light of all the facts known and the submissions made. Decision-making must be carried out in an impartial and objective manner.

**Example:** Examples of a failure to approach the case with an open mind could be:

- Too much reliance on the factors set out in the H&C guidelines, to the exclusion of any other submissions made by the applicant.
- "Pre-judgment" by the decision-maker; each individual case must be determined on its own merits.

Officers may consult with colleagues and supervisors in relation to cases under consideration but the final decision must be that of the officer responsible for the case.

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### 5.31 Right to a decision

Decisions must be rendered within a reasonable time period and applicants informed of the decision in writing.

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### 5.32 Right to reasons

The established rule is that formal, written reasons are not required unless the statute requires it. Because there is no statutory right to reasons in relation to H&C decision-making, the written decision need only state that there were or were not sufficient H&C grounds for exercising discretion. However, the rationale for an H&C decision should be recorded in notes to file.

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## 6. Definitions

The definitions below are not meant as “hard and fast” rules; rather, they are an attempt to provide guidance to decision makers when they exercise their discretion in determining whether sufficient H&C considerations exist to warrant an exemption from the Act.

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### 6.1. *De facto* family members

*De facto* family members are persons who do not meet the definition of a family class member. They are, however, in a situation of dependence that makes them a *de facto* member of a nuclear family in Canada. Some examples: a son, daughter, brother or sister left alone in the country of origin without family of their own; an elderly relative such as an aunt or uncle or an unrelated person who has resided with the family for a long time.

A25(1) authorizes the Minister to exempt an applicant from the in-Canada selection criteria based on humanitarian and compassionate or public policy considerations.

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### 6.2. Exemption

A25(1) authorizes the Minister to exempt an applicant from the in-Canada selection criteria based on humanitarian and compassionate or public policy considerations.

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### 6.3 Intrinsic information

Intrinsic information is:

- information that is provided by or readily available to the applicant; and
- information that the applicant is aware will be used in the decision.

**Example:** Information provided by an applicant's spouse at an interview to determine the *bona fides* of a marriage is considered intrinsic because the applicant has access to it and would reasonably expect it to be used in the decision.

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### 6.4 Extrinsic information

Extrinsic information is:

- information that is from a source other than the applicant; and
- information that the applicant does not have access to or is not aware of and is being used in the decision.

**Example:** Information received from an anonymous source that is integral to the H&C decision.

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**Example:** Following a request about the authenticity of documents, the visa office replies that the documents are not authentic. Although the documents were submitted as part of the H&C application, the information related to their authenticity will be used as the basis for the decision.

**Example:** Officers should share extrinsic information with the applicant and allow them to make submissions on it.

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### 6.5 Humanitarian and compassionate decision

A positive H&C decision is an exceptional response to a particular set of circumstances. An H&C decision is more complex and more subjective than most other immigration decisions because officers use their discretion to assess the applicant's personal circumstances.

Applicants must satisfy the decision-maker that their personal circumstances are such that they would face unusual, undeserved, or disproportionate hardship if required to apply for a permanent resident visa from outside Canada.

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### 6.6 Humanitarian and compassionate grounds

Applicants making an application under A25(1) are requesting processing in Canada due to compassionate or humanitarian considerations. Section A25(1) provides the flexibility to approve deserving cases for processing within Canada, the circumstances of which were not anticipated in the legislation.

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### 6.7 Unusual and undeserved hardship

Unusual and undeserved hardship is:

- the hardship (of having to apply for a permanent resident visa from outside of Canada) that the applicant would face should be, in most cases, unusual, in other words, a hardship not anticipated by the Act or Regulations; and
- the hardship (of having to apply for a permanent resident visa from outside Canada) that the applicant would face should be, in most cases, the result of circumstances beyond the person's control.

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### 6.8 Disproportionate hardship

Humanitarian and compassionate grounds may exist in cases that would not meet the "unusual and undeserved" criteria but where the hardship (of having to apply for a permanent resident visa from outside of Canada) would have a disproportionate impact on the applicant due to their personal circumstances.

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## 7. Procedure: Role and responsibilities of applicants - H&C application for permanent residence

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### 7.1. Obtaining and submitting an application

Applicants should obtain the application guide IMM 5291E, Applying for Permanent Residence from within Canada: Humanitarian and Compassionate Cases, either by requesting it from a CIC Call Centre or by downloading it from the CIC Internet site.

Applicants should:

- read and understand all the instructions in the guide;

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- ensure that they have presented facts that support their belief that the hardship of having to obtain a permanent resident visa from outside of Canada would be (i) unusual and undeserved or (ii) disproportionate;
- complete and sign the application and other required forms; and
- forward the application to CPC-V with proof of payment of the appropriate fees.

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### **7.2. Cost recovery**

Applicants must pay the applicable cost recovery fee. The fee is non-refundable even if the H&C application is refused; fees are charged for the process, not the result. Payment must be made to a designated financial institution where an official receipt will be issued. Applications without an official receipt will be returned.

It is to be noted that the following H&C applicants are exempted from the Right of Permanent Residence Fee (RPRF):

- Protected persons within the meaning of subsection A95(2) and their family members. In the H&C context, this refers to Convention refugees or protected persons who apply for permanent residence outside the 180-day deadline (for further information, see section 13.7 - Processing refugee applications for permanent residence after deadline); and
- An H&C principal applicant in Canada who is a “dependent child” of a Canadian citizen or permanent resident.

For information on fees, consult:

- Part 19 IRPA Fees Regulations or
- IR 5: IRPA Cost Recovery

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## **8. Procedure: Screening the application - H&C application for permanent residence**

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### **8.1. Screening the application: CPC-V**

All H&C applications are sent to the CPC in Vegreville as this office holds responsibility for the review and screening of all applications and supporting documents.

CPC-V screens the application to verify that:

- the appropriate forms have been submitted (see Obtaining and submitting an application, at Section 7.1);
- all forms are signed and dated and all boxes complete;
- the applicant and, if applicable, the sponsor reside in Canada;
- the address for any family members abroad is complete and in the script of the country of residence;
- all required supporting documents are included (refer to Document Checklist); and
- the receipt for the correct processing fee(s) is included.

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### 8.2. Process for incomplete applications

An application which does not meet the requirements of R10 and R11 or that does not pass the screening steps will not be processed.

CPC-V will return an incomplete application to the applicant [R12].

## 9. Procedure: Note-taking for two-step assessment and decision process

### 9.1. General guidelines for note-taking

Officers may use point form in most cases but sometimes they will need to record notes more fully (e.g., using Q & A format). As an example, the following situations may require more complete notes:

- strong reactions by the applicant;
- interference from others present at the interview; or
- issues which are crucial to the decision.

Below are general guidelines for note taking during the two-step assessment and decision-making process.

#### General guidelines

<p style="text-align: center;"><b>Be objective:</b></p> <ul style="list-style-type: none"> <li>• record facts</li> <li>• do not record opinions or interpretations of the facts</li> </ul>	<p style="text-align: center;"><b>Be clear and concise:</b></p> <ul style="list-style-type: none"> <li>• use common language and avoid jargon</li> <li>• use complete words</li> <li>• avoid extraneous comments</li> </ul>
<p style="text-align: center;"><b>Organize notes with explanatory headings so readers can follow the case history:</b></p> <ul style="list-style-type: none"> <li>• paper file review</li> <li>• interview</li> <li>• decision</li> <li>• pending or outstanding information</li> <li>• representation</li> <li>• interpreter information</li> </ul>	<p style="text-align: center;"><b>Record notes at the first available opportunity:</b></p> <ul style="list-style-type: none"> <li>• review notes after the interview to make sure they are clear</li> <li>• make revisions where required</li> <li>• expand on parts considered particularly important</li> </ul>
<p style="text-align: center;"><b>Notes should include:</b></p> <ul style="list-style-type: none"> <li>• how the decision was made, i.e., based on paper file review or interview</li> <li>• the start and finish times of the interview</li> <li>• summary of correspondence and communication</li> <li>• contents of all non-routine correspondence, form numbers of routine correspondence sent and summary of any telephone conversations</li> </ul>	<p style="text-align: center;"><b>Record the interview:</b></p> <ul style="list-style-type: none"> <li>• indicate who was present</li> <li>• make it clear who said what</li> <li>• if an interpreter was used, include the name of the interpreter and relationship to the applicant, language of interpretation and instructions given to the interpreter</li> <li>• if the officer left the office during the interview, record this and explain it</li> </ul>

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<ul style="list-style-type: none"><li>the date and the note taker's initials</li></ul>	<ul style="list-style-type: none"><li>tone of the interview (e.g., was the applicant angry or upset)</li></ul>
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### 9.2. Revisions to notes

Revisions are acceptable and should be done at the first opportunity while the information is fresh. FOSS notes should represent a complete record of all action taken in the case. To the extent possible, there should be no information that appears **only** on the paper file. Where it is not possible to record all information in FOSS, it should be clearly indicated that more information can be found on the paper file.

### 9.3. Recording reasons for the decision

Officers should record reasons as follows:

- Record all the factors considered in making the decision, both positive and negative, in simple, straight-forward and dispassionate language.
- Explain the thought process behind the decision. Make no assumptions; fill in the gap between the facts listed and the decision.
- Avoid absolute statements like “there is no evidence” or “there would be no hardship”; usually what is meant is that there is insufficient evidence or insufficient hardship.
- Use neutral terms, as an example, it is preferable to say, “he states” rather than “he claims” or “he admitted.”
- Where possible, avoid strong comments on the credibility of the information. As an example, if an officer writes “I do not believe,” this suggests that the officer is questioning credibility. In this case, the officer should demonstrate that the issue has been fully investigated (e.g., the applicant was interviewed) and the phrase “I am not satisfied” should be used; it is less contentious and keeps the onus on the applicant to satisfy the officer.
- Comment on the evidence rather than the inference drawn from the evidence. Once officers are satisfied that an issue has been adequately addressed, they need not go any further to try to reinforce the decision.
- Record how the applicant was given the opportunity to be heard (e.g., applicant was provided with an opportunity to satisfy the officer of the H&C considerations in relation to the case).

## 10. Procedure: Applicants residing in the province of Quebec

Revisions are acceptable and should be done at the first opportunity while the information is fresh. FOSS notes should represent a complete record of all action taken in the case. To the extent possible, there should be no information that appears **only** on the paper file. Where it is not possible to record all information in FOSS, it should be clearly indicated that more information can be found on the paper file.

#### Instance

An H&C application with or without a sponsorship [IMM 1344] is received from a Quebec resident.

#### Action required

Determine whether sufficient humanitarian and compassionate grounds exist to allow for the application to be processed in Canada. Follow standard IP5 procedures.

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The officer determines that there are no humanitarian or compassionate grounds to allow for processing this application in Canada, The officer determines that there are humanitarian or compassionate grounds for processing this application in Canada.	Refuse the application.  Forward a copy of the application [IMM 5001E] and the Supplementary Information Form [IMM 5283E] to the <i>Ministère des Relations avec les citoyens et de l'Immigration</i> (MRCI) for selection, specifying the category (HC1 or HC2) in which the application is being processed.  MRCI will inform CIC of the selection decision and whether a sponsorship undertaking has been signed.
MRCI does not issue a CSQ.	Evaluate the possibility of proposing admission to another province or territory.
MRCI does not issue a CSQ and the applicant does not move. The applicant moves to another province.	The application must be refused as there is no CSQ. The local CIC in that area finalizes the case. The local CIC does not revisit the initial H&C decision (unless there is evidence of misrepresentation or fraud).

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### 11. Procedure: Step one: H&C assessment procedures common to all applicants

Officers should follow the H&C assessment procedures in this section in conjunction with:

- Section 10, when processing applicants residing in the province of Quebec;
- Section 12, when processing applicants with family relationships; or
- Section 13, when processing all other applicants.

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#### 11.1 Procedural fairness

Officers must follow procedural fairness in making their decisions.

**Officers should:**

- carefully consider all the information before them;
- inform the applicant when considering outside information, giving the applicant a chance to respond;
- request any additional information needed;



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- weigh all the facts according to their degree of importance;
- separate facts which favour a finding of hardship from those that do not;
- consider the objectives of the Act; and
- make complete file notes (see Section 9.1).

Officers may discuss cases with their colleagues and supervisor to share ideas. However, officers must make their own decisions based on the facts before them.

For further information, refer to definition of H&C decision in Section 6.5, and H&C grounds in Section 6.6.

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### 11.2 Assessing the applicant's degree of establishment in Canada

The applicant's degree of establishment in Canada may be a factor to consider in certain situations, particularly when evaluating some case types such as:

- parents/grandparents not sponsored;
- separation of parents and children (outside the family class);
- *de facto* family members;
- prolonged inability to leave Canada has led to establishment;
- family violence;
- former Canadian citizens; and
- other cases.

The degree of the applicant's establishment in Canada may include such questions as:

- Does the applicant have a history of stable employment?
- Is there a pattern of sound financial management?
- Has the applicant integrated into the community through involvement in community organizations, voluntary services or other activities?
- Has the applicant undertaken any professional, linguistic or other study that show integration into Canadian society?
- Do the applicant and family members have a good civil record in Canada (e.g., no interventions by police or other authorities for child or spouse abuse, criminal charges)?

Notes
1. Officers should not assess the applicant's <i>potential for</i> establishment as this falls within the scope of admissibility criteria.
2. Establishment of the applicant up to the time of the H&C decision may be considered.
3. For Quebec cases, see Section 10.

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### 11.3 Process for known or suspected inadmissibility of applicant (or family members)

Decision-making can become complicated when, prior to or during the consideration of H&C factors, a known or suspected inadmissibility is identified.

This can occur at the outset when reviewing the FOSS client history or information provided by the applicant on the IMM 5001E.

Some examples of known or suspected inadmissibility are when the applicant (or an accompanying family member in Canada) is:

- medically inadmissible;
- submitting the H&C application based on a medical condition;
- receiving social assistance;
- the subject of a removal order for criminality or other serious inadmissibility such as security, organized criminality, or human or international rights violations;
- the subject of outstanding criminal charges in Canada or elsewhere;
- suspected of having committed criminal acts or omissions outside of Canada;
- the subject of Minister's danger opinion; or
- not a Convention refugee or a person in need of protection as determined by the Immigration and Refugee Board by reason of section F of Article 1 of the *Handbook on Procedures and Criteria for Determining Refugee Status* (an exclusion case).

The relationship between such facts and the H&C decision is important since officers are not making a determination of admissibility or inadmissibility at this point. They are looking at all the applicant's personal circumstances, as provided by the applicant and as known to the Department, to determine if there are sufficient reasons for making a positive H&C decision.

The facts relating to the known or suspected inadmissibility may be relevant to the H&C decision (for example, the applicant has a criminal conviction). When considering the H&C decision, officers must not be concerned with whether or not the conviction makes the applicant inadmissible. However, they may consider factors such as the applicant's actions, including those that led to and followed the conviction.

Officers should consider:

- the type of criminal conviction;
- whether the conviction is an isolated incident or part of a pattern of recidivist criminality;
- length of time since the conviction;
- what sentence was received; and
- any information about circumstances of the crime.

It is particularly important that officers justify their decisions in national security cases. This is because a positive H&C decision may stay the removal of applicants inadmissible for reasons of security [A34], war crimes [A35], or organized criminality [A37]. It may also create expectations

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when the application must be refused. Therefore, it is important to fully explain reasons for positive H&C consideration in these cases.

### 11.4 Addressing Issues of fraud or misrepresentation

When misrepresentation or fraud related to a material fact has occurred or is suspected, the officer should request written information from the client or schedule an interview, depending on the situation and type of information required.

The following describes situations and action to be taken. At each step, officers should update FOSS.

#### Actions required - Instances of fraud or misrepresentation

Instance	Action required
An officer suspects the applicant used fraud or misrepresentation to obtain the positive H&C decision	Send a letter to the applicant: informing that the application may have to be reconsidered; indicating reasons (the suspected fraud or misrepresentation); and advising that submissions may be made.
No reply from the applicant	See Loss of contact with the applicant, Section 17.3
Applicant's submissions received	Review the applicant's information and decide whether there is evidence of fraud or misrepresentation
After review of submissions, based on the information available, there was fraud or misrepresentation of a material fact	Send a letter to inform the applicant that: the original exemption is cancelled; the applicant is subject to an A44(1) report; and the applicant may submit information about their current situation to be taken into account in making the A44(1) report recommendation.
Applicant submits information about current situation	Review all information on file, including new information. Make an A44(1) report recommendation. Send a letter to inform the applicant of decisions made. (Reminder: When the applicant wishes to make a new H&C submission, a new application and new fees are required.)

#### Actions required- Insufficient evidence of fraud or misrepresentation

After review of submissions, there is insufficient evidence of fraud or misrepresentation	Send a letter to inform the applicant that: <ul style="list-style-type: none"> <li>• there is insufficient evidence of the fraud or misrepresentation;</li> <li>• normal processing of the application will continue.</li> </ul>
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### 11.5 No sponsorship completed

Where an H&C application based on reunification of relatives or applicants with family relationships is not supported by a sponsorship, officers should:

- inform the applicant that an approved sponsorship, although not mandatory, is an important factor in an H&C application;
- give the applicant an opportunity to have the sponsorship forms completed or explain why there is no sponsorship; and
- make the H&C decision when all the relevant facts are available.

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### 11.6 Sponsorship submitted but refused

Where a sponsorship application was submitted but refused, officers should:

- inform the applicant that the sponsorship has been refused (if this information has not already been relayed); and
- make the H&C decision when all relevant facts are available.

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### 11.7 Withdrawal of sponsorship

A sponsorship once entered into by the sponsor and CIC (federal government) can only be set aside if both parties agree. Generally, requests from sponsors to withdraw an undertaking should only be accepted prior to an H&C decision. However, it is important that officers be sensitive to issues of family violence.

**If the sponsorship is withdrawn before the H&C decision is made officers should:**

- inform the applicant that the sponsorship has been withdrawn;
- give the applicant an opportunity to provide additional information in light of the change of circumstance; and
- make the H&C decision when all relevant facts are available.

**After a positive H&C decision:**

- officers should not cancel the undertaking even in the case of a marriage breakdown.

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### 11.8 Referral to local or inland CICs

If a positive H&C decision cannot be made, the application is referred to an inland CIC where officers or counsellors will investigate issues of concern and make a final decision. Applications are usually referred to a local CIC when:

- the case is complex or requires an in-depth assessment of *bona fides* or degree of hardship before a decision is made;
- a personal interview is required; or
- refusal is a possible outcome.

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## 12. Procedure: H&C assessment procedures specific to applicants with family relationships (Other than the spouse or common-law partner in Canada class)

When assessing applicants with family relationships, officers should follow the procedures common to all applicants detailed in Section 11, as well as, the specific factors in this section.

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### 12.1 General factors to consider

All H&C applications should be assessed using the same criteria of undue, undeserved or disproportionate hardship. However, the following factors should also be considered:

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- Canada's interest in light of the legislative objective to maintain and protect the health, safety and good order of Canadian society;
- whether the applicant could have been a member of the family class had they applied outside of Canada;
- whether a sponsorship was submitted and approved. If so, this is a factor among all of the others that may be considered favourable. However, lack of a sponsorship does not mean that the exemption request should be refused; and
- the degree of establishment in Canada (see Assessing the applicant's degree of establishment in Canada, Section 11.2).

In addition to the points for consideration given in each situation, officers should consider any and all factors relevant to the decision.

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### **12.2 Factors related to country of origin**

Officers should consider the following factors:

- the links with the applicant's country of origin (e.g., amount of time resident in their country of origin, ability to speak language, return visits since arrival in Canada, family members remaining in the country of origin); and
- the links of family members to the applicant's country of origin, if applicable (e.g., amount of time spent in applicant's country of origin, ability to speak language of applicant's country of origin, other family members in applicant's country of origin).

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### **12.3 Factors related to current immigration or citizenship status**

- Officers should consider the following factors:
- the current immigration or citizenship status of each member of the family;
- the applicant's immigration status at the time the family links were formed (i.e., status at time of marriage, of having children); and
- if the applicant's status was lost after the family links were formed, what was the original status (e.g., temporary resident, permanent resident) and under what circumstances was the status lost.

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### **12.4 Factors related to links with family members**

- Officers should consider the following factors:
- what are the effective links with family members (children, spouse, parents, siblings, etc.) in terms of ongoing relationship as opposed to simple biological fact of relationship;
- where the applicant is residing in relation to the family members, particularly their children;
- if there has been any previous period of separation, what was the duration and the reason;
- if the applicant and their spouse are separated or divorced, was there a court order in relation to custody arrangements;

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- if the applicant is the non-custodial parent, had they been exercising any visitation rights?
- what do the materials filed with the family court indicate about the family's circumstances?
- the degree of psychological/emotional support in relation to other family members;
- whether the family will have the option of being together in another country or be able to maintain contact; and
- the impact on family members, especially children, if the applicant is removed.

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### 12.5 No sponsorship

Officers should consider:

- The reason for lack of sponsorship (verifying that the lack of sponsorship was not due to lack of information or an oversight on the part of the prospective sponsor). The lack of sponsorship will fall into one of the following three categories:
  - ◆ sponsorship submitted but refused due to ineligibility of the sponsor;
  - ◆ sponsorship not submitted as sponsor self-screened out due to ineligibility; and
  - ◆ sponsor unwilling to submit sponsorship.
- Whether the reason for lack of sponsorship impacts on any H&C aspects of the application.

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### 12.6 Spouse or common-law partner without temporary resident status

Officers should consider the following factors:

- Is the officer satisfied that there are undeserved and disproportionate hardships? (See Section 6 for definitions of undeserved and disproportionate hardships.)
- Is the marriage or common-law relationship *bona fide*, that is, a marriage or relationship with the intention of residing permanently with the other spouse and not entered into for the primary purpose of remaining in Canada or gaining admission?
- The legality of the marriage. (See chapter OP 2, Processing Members of the Family Class.)
- What are the circumstances and timing of the marriage or common-law relationship? For example, did the marriage take place after the applicant was refused a temporary resident extension or when removal was imminent?
- How long has the couple been in the relationship?
- Are there children born of the relationship?
- What are the religious, social and cultural norms of the applicant's community?
- All there previous dealings with the Department that might be relevant (for example, a previous marriage of convenience, enforcement action, refused immigration applications, or misrepresentation)?
- For further information on spouses and common-law partners, see Section 5.18.

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### **12.7 Spouses not sponsored**

In addition to the factors outlined in Section 12.4, Section 12.5 and Section 12.6, officers should consider the following factors:

- Does the reason for lack of sponsorship impact on any H&C aspects of the application?
- Are there children born of the relationship?
- Are there any other factors that are relevant to the decision?

---

### **12.8 Sponsored children**

Officers should consider the following factors:

- proof of relationship;
- how custody agreements or court decisions, if any, affect H&C decision; and
- the best interests of the child (see Section 5.19).

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### **12.9 Children not sponsored**

Officers should consider the following factors:

- proof of relationship;
- whether the reason for lack of sponsorship impacts on any H&C aspects of the application;
- how custody agreements or court decisions, if any, affect H&C decision; and
- the best interests of the child (see Section 5.19).

---

### **12.10 Separation of parents and children**

The removal of an individual without status from Canada may have an impact on family members who do have the legal right to remain (i.e., permanent residents or Canadian citizens). Other than a spouse or partner, family members with legal status may include children, parents and siblings, among others. The lengthy separation of family members could create a hardship that may warrant a positive H&C decision.

In evaluating such cases, officers should balance the different and important interests at stake:

- Canada's interest (in light of the legislative objective to maintain and protect the health, safety and good order of Canadian society);
- family interests (in light of the legislative objective to facilitate family reunification);
- the circumstances of all the family members, with particular attention given to the interests and situation of dependent children related to the individual without status;
- particular circumstances of the applicant's child (age, needs, health, emotional development);
- financial dependence involved in the family ties; and

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- the degree of hardship in relation to the applicant's personal circumstances (see Definitions, Section 6.6, Humanitarian or compassionate grounds).

<b>Notes:</b>
1. The applicant's submissions may be considered in light of international human rights standards such as the <i>International Covenant on Civil and Political Rights</i> , the <i>American Declaration on the Rights and Duties of Man</i> , and the <i>Convention on the Rights of the Child</i> .
2. International case law suggests that the State's interests in protecting society and regulating immigration are to be weighed or balanced in relation to the interests of the individual facing removal and the impact of this removal on their family members.
3. Adult applicants may present submissions from, or on behalf of, members of their family, setting out the family members' views. For children, such submissions should be considered in accordance with the children's age and maturity, recognizing the increasing capacity of children as they mature, to present their own views.

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### 12.11 Parents and grandparents (sponsored or not)

Family members may submit an H&C application **either with or without** the support of a sponsorship undertaking.

Officers should consider the following factors:

- proof of relationship;
- what hardship would occur if the application for a visa exemption were refused;
- information the applicant provided to a visa office when obtaining a temporary resident visa, if applicable;
- the level of interdependency;
- support available in home country (other family members);
- whether the applicant is able to work; and
- if there is significant degree of establishment in Canada (see Section 11.2, Assessing the applicant's degree of establishment in Canada).

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## 13. Procedure: H&C assessment procedures specific to all other applicants - Other immigration categories

When assessing other applicants, officers should follow the procedures common to all applicants detailed in (Section 11), as well as the specific factors in this section. Officers should also refer to Section 10 when processing applicants destined to the province of Quebec.

### Personalized risk

Positive consideration may be warranted for persons whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally to a risk to their life or to a risk to security of the person.



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### 13.1. Role of CPC-V

H&C applications unsuitable for processing by the Case Processing Centre in Vegreville (CPC-V) are transmitted to the appropriate H&C unit. Included in applications that CPC-V cannot process are those that contain risk factors and that cannot be approved on non-risk H&C factors.

PRRA offices may request from CPC-V H&C-with-risk applications, for concurrent assessment with a previously submitted PRRA application. Where operationally feasible, CPC-V transmits such applications directly to the requesting PRRA unit.

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### 13.2. Role of H&C Units: Preliminary screening without formal H&C assessment

When the H&C application is referred by the Case Processing Centre to the H&C Unit, the Unit performs a preliminary screening of applications and documentation to determine whether the application indicates a claim to personal risk.

If there is no claim of personal risk, the application is referred to an H&C officer.

If there is a claim of personal risk, but there appears to be sufficient other non-risk H&C grounds for accepting the application, the application is referred to an H&C officer.

If there is a claim of personal risk, but there does not appear to be sufficient other non-risk H&C grounds for accepting the application, the application is referred to the PRRA unit.

---

### 13.3. Role of H&C officer

The H&C officer assesses only non-risk factors when reviewing the application and considering all the information presented by the applicant.

If, **after** assessment of only non-risk factors, the H&C officer finds that there are sufficient grounds to allow the application without a need to examine risk, the file is processed to completion according to normal procedures.

If, **after** assessment of only non-risk factors, the H&C officer does not find sufficient grounds to allow the application, and the applicant has asserted risk factors in respect of the application, the file is transferred to the PRRA unit for assessment, in accordance with section titled "*Referral to PRRA Unit*" below. (See also sections "*Role of PRRA Coordinator*," and "*Role of the PRRA Officer*," below.)

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### 13.4. Referral to PRRA Unit

Where, on the basis of the preliminary screening, or on the basis of the assessment of non-risk factors by the H&C officer, there are insufficient non-risk grounds for approval by the H&C Unit, and the applicant has claimed personal risk factors, the application is referred to the PRRA unit.

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### 13.5. Role of PRRA Coordinator

On receipt of the referral from the H&C unit, the PRRA coordinator determines whether a removal order exists with respect to the applicant. When there is an existing removal order, the PRRA coordinator determines whether the applicant also has a pending PRRA application that may be processed simultaneously. If there is an outstanding removal order, but no PRRA application is pending, the PRRA coordinator consults with the Removals Unit at the CBSA on whether a simultaneous PRRA application should be initiated.

If a PRRA application has been submitted, the PRRA coordinator refers the case to a PRRA officer for simultaneous decision. If a PRRA application will soon be initiated, the coordinator retains the file until the PRRA application is received, so that the PRRA officer may assess both applications at the same time.

In the absence of a submitted PRRA or an imminent PRRA initiation, the PRRA coordinator refers the application to a PRRA officer for decision.

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### 13.6. Role of PRRA Officer

Where, with respect to an H&C application referred to a PRRA officer in accordance with section "Role of the PRRA Coordinator" above, there is a pending PRRA application, the PRRA officer concurrently assesses the case with respect to the PRRA criteria and all H&C factors that have been raised, including personal risk.

The officer must render separate decisions with respect to the H&C application and the PRRA application, if applicable. While there may be common ground between the PRRA application and the risk factors considered with respect to the H&C application, the latter application and decision are more broadly based, in that the PRRA officer must consider the totality of the case, including "non-risk" factors, and may render a decision on "non-risk" factors only. Risk factors within an H&C application are not determined solely with the thresholds, standards, or criteria of a pre-removal risk assessment (PRRA). Rather, when risk is cited as a factor in an H&C application, the risk is also assessed in the context of the applicant's degree of hardship, as detailed within this manual chapter.

Once approved or rejected, the PRRA officer records each decision, and the date of decision, in FOSS or NCMS as applicable. The PRRA officer writes the letter informing the applicant of the decision taken in accordance with this chapter (IP5). Both decisions, if applicable, are sent to the respective CBSA Removals Unit, which will deliver the decision to the applicant by hand, in accordance with section 15.8 of ENF10.. The Removals Unit then refers files with positive decisions back to the H&C Unit for finalization of processing, while files with negative decisions remain with the Removals Unit for eventual archiving.

For further information see **section 14 – Procedure: The H&C Decision—Two possible outcomes.**

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### 13.7. Processing refugee applications for permanent residence after deadline

Some applicants, who were determined by the IRB or the Minister to be Convention refugees or persons in need of protection (protected persons), submit their in-Canada application for permanent residence after the expiry of the 180-day filing period under R175(1). In such cases, applicants must complete and submit an H&C application for consideration under A25(1). These applicants are not required to pay the Right of Permanent Residence Fee or the H&C processing fee.

Generally, these applications might warrant favourable consideration.

First of all, officers should verify that the applicant was determined to be a Convention refugee or protected person and that the 180-day filing period has expired.

Then, officers should examine the reason(s) why the application was not submitted within the 180-day filing period. Some examples could include:

- a delay due to language barrier;
- inability to pay cost recovery processing fees;
- the applicant's failure to recognize the importance of filing within 180 days; or
- a delay due to the applicant's return to the country of persecution as stated in the refugee claim which would warrant further examination.

#### **If the H&C decision is positive:**

Officers should commence processing of the application for permanent residence in the normal manner. However, because these persons retain their protected person status, they also retain all

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exemptions granted to protected persons. Therefore, the following inadmissibility provisions do not apply to protected persons applying through H&C:

- financial inadmissibility [A39];
- medical inadmissibility based on excessive demand [A38(1)(c)];
- criminality [A36(2)];
- inadmissibility based on prior misrepresentation [A40(1)(a)]; and
- inadmissibility on the basis of an inadmissible family member [A42]).

These applicants are also permitted to provide alternative identity documents as protected persons (i.e., statutory declarations), as provided for in R178.

Provincial approval is not required for persons residing in Quebec. This is because the applicants retain their Convention refugee status notwithstanding the processing of their application under H&C provisions.

If referral to the Immigration and Refugee Board for cessation or vacation of Convention refugee status is an appropriate course of action, the H&C decision should be postponed until the outcome of the Board's proceedings are known.

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### 13.8. *De facto* family members

An important consideration is to what extent the applicant would have difficulty in meeting financial or emotional needs without the support and assistance of the family unit in Canada. Separation of persons in such a genuine dependent relationship may be grounds for a positive decision.

Officers should consider the following factors:

- whether dependency is *bona fide* and not created for immigration purposes;
- the level of dependency;
- the stability of the relationship;
- the length of the relationship;
- ability and willingness of the family in Canada to provide support;
- applicant's other alternatives, such as family (spouse, children, parents, siblings, etc.) outside Canada able and willing to provide support;
- documentary evidence about the relationship (e.g., joint bank accounts or real estate holdings, other joint property ownership, wills, insurance policies, letters from friends and family);
- whether there is a significant degree of establishment in Canada? (See Section 11.2, Assessing the applicant's degree of establishment in Canada); and
- any other factors relevant to the H&C decision.

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### 13.9. Prolonged inability to leave Canada has led to establishment

There is no hard and fast rule relating to the period of time in Canada but it is expected that a significant degree of establishment would take several years to achieve.

These applicants may or may not be the subject of a removal order, or may or may not have had a negative refugee determination and/or a post-claim review.

Officers should consider the following factors:

- Are the circumstances that led to the applicant remaining in Canada of significant duration and beyond their control?
- Is there a significant degree of establishment in Canada? (See Section 11.2, Assessing the applicant's degree of establishment in Canada.)
- Is the applicant in Canada because of a temporary suspension of removals to their country and is there another viable destination option? (Contact the local removals unit for assistance with this information).
- To what degree has the applicant cooperated with the Department, particularly with regard to travel documents?
- Did the applicant wilfully lose or destroy travel documents? (When no valid travel or identity document has been provided, contact the local removals unit to determine whether this is due to an applicant's unwillingness to complete a passport application.)
- Any other factors relevant to the H&C decision.

See Section 10 for cases in Quebec.

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### 13.10. Family violence

Family members in Canada, particularly spouses, who are in abusive relationships and are not permanent residents or Canadian citizens, may feel compelled to stay in the relationship or abusive situation in order to remain in Canada; this could put them at risk.

Officers should be sensitive to situations where the spouse (or other family member) of a Canadian citizen or permanent resident leaves an abusive situation and, as a result, does not have an approved sponsorship.

Officers should consider the following factors:

- information indicating there was abuse such as police incident reports, charges or convictions, reports from shelters for abused women, medical reports, etc.;
- whether there is a significant degree of establishment in Canada (see Section 11.2, Assessing the applicant's degree of establishment in Canada);
- the hardship that would result if the applicant had to leave Canada;
- the customs and culture in the applicant's country of origin;
- support of relatives and friends in the applicant's home country;
- whether the applicant is pregnant;
- whether the applicant has a child in Canada;

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- the length of time in Canada;
- whether the marriage or relationship was genuine;and
- any other factors relevant to the H&C decision.

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### **13.11. Former Canadian citizens**

Situations may arise where former Canadian citizens request permanent resident status on H&C grounds. As with all applications, cases involving former Canadian citizens must be considered on their individual merit. Although not exhaustive, the following guidelines may be helpful.

First of all, officers should ensure that:

- the applicant was a Canadian citizen and that loss of citizenship has occurred; and
- the applicant contact The Sydney Case Processing Centre to obtain written confirmation.

Officers should consider the following factors:

- why and how the applicant lost their Canadian citizenship and verify if they would have lost it under the present Act;
- the hardship that the applicant would experience if the application were refused;
- the closeness of family members in Canada;
- whether there are strong cultural and/or emotional ties to Canada;
- whether there are close family, friends and support in another country;
- whether there is a significant degree of establishment in Canada (see Section 11.2, Assessing the applicant's degree of establishment in Canada and Section 13.9, Prolonged inability to leave Canada has led to establishment); and
- any other factors that officers believe relevant to their H&C decision.

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### **13.12. Other cases**

As stated in the introduction to this section, the listing of general case types cannot answer all eventualities and they are not framed to do so. Reasons for granting a positive H&C decision will occur outside of the general case types described.

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## **14 Procedure: The H&C decision—Two possible outcomes**

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### **14.1 Process for a negative H&C decision**

The process for a negative H&C decision is as follows:

- the officer sends a refusal letter informing the applicant that the exemption will not be granted;
- the officer updates FOSS with the refusal information;
- the application is closed; no further action on the application is required; and

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- the inclusion of instructions for confirmation of departure is at the discretion of the decision-maker.

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### 14.2 Process for a positive H&C decision

The officer sends an approval letter (Appendix A - Annex 2) informing the applicant that:

- the selection criteria exemption has been granted; and
- the applicant must still meet admissibility requirements.

If these requirements are not met, the application for permanent residence will be refused.

The officer then:

- updates CPC system/ FOSS with the approval information; and
- begins processing the application for permanent residence.

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### 14.3 Process for reopening an H&C decision

Once the H&C decision is made, the ability to reopen or revisit this decision is generally limited by the doctrine of *functus officio* (i.e., once a decision is taken, the decision-maker has no more authority on the matter).

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**Note:** Exceptions to this doctrine do exist - the ones most commonly applicable to the H&C context involve situations where there is evidence of misrepresentation or fraud in relation to a material fact. In other words, an H&C decision should not be reconsidered due to a simple change of circumstances.

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### 14.4 Process if applicant leaves Canada after positive H&C decision

The positive H&C decision letter to applicants should include information about consequences of leaving Canada prior to examination. The text in the example below should be included in Appendix A - Annex 2 - Positive H&C decision - No known permanent residence barriers.

**Example:** “Your exemption was granted, in part, due to the hardship you would face if you had to leave Canada and apply from outside of the country as usually required. If you leave Canada, there is no guarantee that you will be re-admitted so that you can continue with this application.”

Guidelines for port of entry examining officers inform that there is no requirement to re-admit applicants who have received a positive H&C decision and are seeking to return to Canada to finalize the application. However, where such applicants are admissible, re-entry may be facilitated by the issuance of a temporary resident record until the anticipated date of granting permanent residence. (See Chapter ENF 4 for complete guidelines)

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### 14.5 Process for positive H&C decision after removal

Applicants receiving a positive H&C decision after removal and not otherwise inadmissible, will be allowed to return to Canada.

**When a positive H&C decision is made after removal of the applicant, CIC/CPC-V sends an e-mail to the appropriate visa office informing them that a positive H&C decision was made.**

The message will include the following details:

- client information including, name(s), sex, date and place of birth, CLPR, marital status, destination, occupation, client identification number and address;

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- a brief summary of the case including the removal date, H&C approval date, immigration category and sponsorship information, if applicable;
- security, criminal and medical results; and
- specific details on the payment of fees.

### **The visa office:**

- receives this message and verifies that identity, security, criminal and medical checks have been completed and are valid;
- does not re-evaluate the original H&C decision.

If the applicant is otherwise admissible but does not meet selection criteria (a CSQ must have been issued in Quebec cases), the visa office:

- may issue a Temporary Resident Permit and, if required, grant Minister's consent;
- notifies the CIC/CPC-V when a permit has been issued;
- advises the client to contact the CIC/CPC-V upon return to Canada so that processing can resume.

The applicant is responsible for any travel expenses, cost recovery fees and, if applicable, repayment of removal costs. Where feasible, fees are paid in Canada by a relative, friend or representative on behalf of the applicant. (See chapter IR 5 for cost recovery information.) If this is not possible, the visa office collects the fees.

If the applicant is found inadmissible or the visa office is reluctant to issue a Temporary Resident Permit, the visa office informs the CIC/CPC-V and together they come to a mutually agreed upon decision.

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## **15 Procedure: Interim documentation: Provided when an H&C decision is positive**

Applicants who have received a positive H&C decision are eligible for interim documentation pending the finalization of their application as indicated in the following sections.

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### **15.1 Temporary resident status**

Temporary resident status may be extended as long as there is no known inadmissibility. An extension of one year should be sufficient.

Applicants who are out of status may be reported under A44(1). Where loss of temporary resident status is described, a recommendation for restoration of their temporary resident status should be made (also see chapter IP 6, Processing Temporary Resident Extensions).

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### **15.2 Temporary resident permits**

Some applicants may have already been issued a Temporary Resident Permit (for example, persons who were reported at a port of entry or who entered Canada as crewmembers and failed to comply with the requirements).

If no permit was issued, recommendation for issuance of a permit may be appropriate. Permits and extensions should be issued for one year when there are no new or additional grounds of inadmissibility (also see chapter IP 1, Temporary Resident Permits).

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**Note:** Persons who are under a removal order are not eligible for a Temporary resident permit. They remain without status until a decision is made on their application for permanent residence (see Section 5.10, Applicants under a removal order).

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### 15.3 Work permits

Work permits are issued pursuant to R200(1). Applicants may request a work permits by completing an Application to Change Conditions or to Extend my Stay or Remain in Canada [Form IMM 1249E] and see also chapter IP 7, Entrepreneur Program.

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### 15.4 Study permits

Study permits are issued pursuant to R216(1). Applicants may request a study permit by completing an Application to Change Conditions or to Extend my Stay or Remain in Canada, Form

IMM 1249E.

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## 16 Procedure: Step two: Assessing admissibility procedures

After a positive H&C decision, processing of the application for permanent residence begins. This determines whether the applicant is admissible and meets all requirements of the Act and Regulations.

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### 16.1 Known inadmissibility

Other than inadmissibility for A39 or A41, when there is a known inadmissibility at the time of the positive H&C decision, **the application for permanent residence must be refused. In this situation, officers should:**

- complete an A44(1) report and forward it to the Deputy Minister's delegate with a disposition recommendation. (For guidelines on A44(1) reports and recommending dispositions, see chapter ENF 5); or
- refer to chapter IP 1, Temporary Resident Permits, if a temporary resident permit is under consideration.

When the inadmissibility is A39:

- officers should confirm the positive H&C decision and outline the consequence of relying on social assistance; and
  - the final determination of A39 is made at the end of the application process to allow the applicant to take advantage of employment opportunities that come with the positive H&C decision and an employment authorization.
- 

### 16.2 Admissibility of overseas family members

The admissibility of overseas family members must be considered when assessing the admissibility of applicants in Canada who have received a positive H&C decision.

Except in a few limited situations, an inadmissible family member, whether accompanying or not, inside or outside of Canada, renders the principal applicant inadmissible. For instances in which non-accompanying family members might not render an applicant inadmissible to Canada, please see OP 2, Section 5.11 – Exceptions to need for examination of family members.

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## **IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds**

Overseas family members are required to undergo medical, background or criminal checks as a prerequisite to approving the principal applicant for permanent residence in Canada.

Officers are delegated the authority to waive the requirement that non-accompanying family members be examined in order for a foreign national to become a permanent resident in A25(1) cases when appropriate.

This authority is not meant to be used to overcome the known or suspected inadmissibility of the family member abroad. An exemption from this requirement should only be granted in exceptional circumstances when the officer is satisfied:

- that the family member is unavailable to be examined; or
- where it would be unreasonable in light of the circumstances of the case.

An example of when it could be appropriate to waive this requirement might be: the H&C applicant has shared custody of his non-accompanying dependent child, but his ex-spouse, who has physical custody, refuses to let the child be medically examined. In such situations, where there is little risk that the applicant would be inadmissible due to the non-accompanying child, the officer could consider waiving the examination of the child.

It is important to note that in this type of situation, when the applicant has declared their family members and the decision has been made by the CIC officer to waive the examination, if the family member later becomes available for examination, a family class sponsorship would be possible since that family member was declared and is therefore not excluded from the family class. The officer should keep this fact in mind when making the decision to waive this requirement.

Nevertheless, it remains the applicant's responsibility to disclose all family members on the application for permanent residence:

- whether accompanying or not; and
- whether available for examination or not.

In cases where the principal applicant knowingly concealed the existence of non-accompanying family members in the application for permanent residence, the applicant would not be able to sponsor these family members in the future as the family members are excluded from the family class as a result of the applicant's non-declaration.

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### **16.3 Medical, background and criminal checks**

After a positive H&C decision is made and no inadmissibility is apparent, applicants and their family members listed on the application for permanent residence [IMM 5001E] undergo medical, background and criminal checks as part of the admissibility assessment.

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### **16.4 Medical assessment**

If a medical examination has not already been completed, officers should provide the applicant and any family members in Canada with a letter informing them to report to a DMP for a medical examination.

Medical officers interpret the results and enter their assessment directly into FOSS. The exemption under A38(2) for excessive demand is specific to members of the family class and Convention refugees. Applicants and their family members who apply for permanent residence under H&C are not members of the family class and cannot, therefore, benefit from this exemption. However, the exemption for excessive demand does apply to applicants who have been determined to be protected persons.

## IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds

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### 16.5 Validity of medical assessments

Cross reference to medical chapters OP 15 and IR 3.

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### 16.6 Background and security checks

The Canadian Security Intelligence Service (CSIS) performs security screening and the Royal Canadian Mounted Police (RCMP) conducts screening for criminal records on behalf of Citizenship and Immigration Canada. The IMM 0703B (Request for Screening Action) is the form used to initiate both of these screening procedures. Instructions for submission of the IMM 0703 are found in chapter IC 1 and include addresses where applicants may write to obtain police certificates.

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### 16.7 Information suggesting inadmissibility

Information on inadmissibility may come from the applicant (intrinsic information) or from some other source (extrinsic information). When relying on information from someone other than the applicant, procedural fairness requires that officers inform the applicant, providing an opportunity to respond before making a decision. For more information about extrinsic and intrinsic information see Definitions, Sections 6.3 and 6.4. Submissions required on extrinsic information indicating an inadmissibility can be used when it appears that the admissibility decision will be negative due to such evidence.

The medical officers' opinions are considered extrinsic information [also see Section 16.5, Validity of medical assessments]. When an applicant or any family member is the subject of a medically inadmissible opinion, inform the applicant and give them an opportunity to make submissions [see Medical Procedures OP 15, Section 13].

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### 16.8 Applicant and any accompanying family members appear to be admissible

After the results of medical examination, background and security checks have been received and no inadmissibility is apparent, an invitation for examination letter is sent. (See Appendix C – Annex 5, Invitation to examination interview.)

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### 16.9 Concurrent processing

With the technical revisions to the Regulations of August 11, 2004, amendments to R69 clarify that family members who are in Canada may become permanent residents concurrently with the principal applicant in Canada. **They also clarify that family members who are outside Canada cannot be processed for permanent resident visas concurrently with the principal applicant in Canada.** This maintains the original policy intent of limiting exceptional provisions to foreign nationals and their family members who are in Canada. Family members outside Canada do not require an exception from applying outside Canada. They can be processed as members of the family class supported by a sponsorship.

Transitional guidelines clarify that applicants in Canada can still benefit from the ability to concurrently process family members overseas if their H&C application was received at a CIC office prior to the implementation date of the amendments to the Regulations. This benefit applies whether or not assessment of the H&C application has yet started. Applications received at a CIC office on or after August 11, 2004, will not be able to benefit from concurrent processing.

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### 16.10 Principal applicant (or accompanying family member) is inadmissible

Where the principal applicant (or accompanying family member) is inadmissible for reasons other than being out of status under A41:

- the application for permanent residence for the applicant and all family members must be refused;

## IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds

- an A44(1) report must be completed and forwarded to the Deputy Minister's delegate with a recommendation for its disposition;
- if the granting of temporary resident permit is under consideration, the officer refers to the guidelines in chapter IP 1, Temporary Resident Permits;
- the coding entered on the permit must be the code for "refused" and not the code for "under application"; and
- if an officer has reason to believe that the applicant provided false information in response to the health, criminality or security questions asked in section L of the application IMM 5001E;
- the H&C decision should be revisited. See Section 14.3, Process for reopening of positive H&C decision.

For further information, see:

Appendix C Annex 3	Submissions on new information regarding inadmissibility reviewed: Application to remain in Canada as a permanent resident refused
Appendix C Annex 7	Request for further information
Appendix C Annex 8	Application to remain in Canada as a permanent resident refused based on file information (after "No response" to Annex 7)
Chapter ENF 5	Writing section 44(1) Reports

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### 16.11 Criminal charges formally laid and still outstanding

Where criminal charges against the applicant are outstanding and the case is otherwise complete, officers should delay scheduling an appointment for confirmation of permanent residence until there is a final disposition of the criminal charges.

Where information regarding outstanding criminal charges comes to light at the interview, officers should note the information and postpone or reschedule the interview until there is a final disposition of the criminal charges. This is so that an informed and appropriate decision can be made. Such delays are justifiable and prudent as a conviction may make the applicant criminally inadmissible and ineligible for permanent residence.

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### 16.12 Applicants under a removal order

After a favourable H&C decision, a removal order is stayed by regulation [R233] until a decision is made to grant or not grant permanent residence. The stayed removal order is not a barrier to the applicant becoming a permanent resident unless it is related to inadmissibility.

There is **no need to effect the removal order** and allow the applicant to return to Canada with a temporary resident permit. As long as the **applicant is admissible**, the applicant **can become a permanent resident**. Once the foreign national becomes a permanent resident, the removal order has no effect.

**If, however, an applicant under a removal order leaves Canada** while their application is being processed, they **have no guarantee of being re-admitted** to Canada.

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**Note:** In such cases, add the following paragraph to Appendix A - Annex 2: "As you are the subject of a deportation/exclusion order, if you leave Canada you may not return to Canada (in the case of exclusion order: for a period of one year from the date you left Canada) without first obtaining the consent of the Minister."

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## IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds

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### 16.13 Waiver of passport requirement [R72(1)(e)(ii)]

R72(1)(e)(ii) requires all foreign nationals to be in possession of a valid passport in order to become permanent residents. A valid and subsisting passport is a relatively good confirmation of identity. Most countries carefully verify an applicant's identity before issuing a passport that grants a person the right to enter that country. Issuing governments are often in a better position to verify identity documents than Canadian officers.

It is expected that all foreign nationals will be **in possession of a valid passport** and exemptions from this requirement should occur infrequently. Applicants who are unable to obtain a passport should provide evidence that they have applied for one and have been refused. To facilitate this, officers should give applicants a letter to send to their Embassy that requests written reason(s) for refusing to issue a passport.

Applicants should have the letter double registered to ensure it is received. This may discourage persons seeking a passport waiver because they are wanted in their country for criminal or other activities. However, some embassies refuse to provide reasons for not issuing a passport. All of the individual facts of the case should be considered:

- Is the officer satisfied that there is a valid reason for not having a valid passport?
- Is the applicant in possession of another identity document that pre-dates their arrival in Canada? If so, an officer may waive the passport requirement when applicants cannot obtain a passport from their government and the officer is satisfied of their identity.

Before deciding that the applicant cannot obtain a passport, officers should consult with the local removals unit or with the Investigations and Removals section at NHQ. They will give an opinion concerning whether it is possible for a person in the applicant's situation to obtain a passport.

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**Note:** If an exemption from the passport requirement is warranted, officers should insert the following remarks in FOSS/CPS and send a letter to the applicant containing the following statement: *"I hereby grant an exemption from subparagraph 72(1)(e)(ii) of the Immigration and Refugee Protection Regulations on behalf of [name of person(s)]."*

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### 16.14 Inadmissibility for A39 – Social assistance

There may be occasions when an applicant receives a positive H&C decision notwithstanding reliance on social assistance or becomes dependent upon social assistance after the H&C decision.

Unlike other grounds of inadmissibility, **officers should not refuse the application immediately**. The dependency on social assistance could be a temporary situation or a result of not having been authorized to work in Canada. By the time the application is processed and otherwise ready for examination, the applicant may have become self-sufficient and, therefore, eligible for examination.

Sample letters at the end of this chapter advise applicants at every opportunity that receipt of social assistance will result in refusal of the application for permanent residence.

When all other admissibility criteria are met, officers should verify A39 inadmissibility either by scheduling an examination interview and making a final determination in person or by asking the applicant to provide evidence that they are no longer in receipt of social assistance. (See Appendix C - Annex 11- Appears permanent residence will be refused for A39).

If the applicant is still in receipt of social assistance after all other processing has been concluded, the application for permanent residence must be refused. (See Appendix C - Annex 3 Submissions on new information regarding inadmissibility reviewed and application to remain in Canada as permanent residence refused.)

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### 16.15 Delaying the inadmissibility decision

If it appears that the applicant may be self-supporting in the near future, the permanent residence decision may be delayed for a short period of time until evidence of self-sufficiency can be provided.

- The time allotted by officers should be sufficient to allow applicants to remedy their situation. It should not, result in an indefinite or unreasonable delay of a final decision on granting of permanent residence. If it is evident after a few months that an applicant is unlikely to become self-supporting in the near future, a final decision on the application should be made.

### 16.16 Identifying war criminals

- For further information on war crimes, genocide, and crimes against humanity, refer to ENF 18. Officers may consult, where appropriate, experts in War Crime Units within their regions.

## 17 Procedure: Process when the decision-maker requires further information

### 17.1 Obtaining further information for decision

#### Actions required to obtain further information prior to decision

Instance	Action required
Additional documents or information are requested in writing. See Appendix A - Annex 3: Request for further information prior to H&C decision Appendix B - Annex 1: Submission required on extrinsic information received after H&C decision that suggests misrepresentation of H&C factors Appendix C - Annex 2: Submissions required on extrinsic information indicating inadmissibility barrier	Send a letter which includes: a description of information or documents required the period of time allowed for response Note: This period should correspond to the length of time it will take for the applicant to obtain the information, or allow a shorter period of time and ask the applicant to provide evidence of having taken steps to obtain the requested information. information about the consequences of not providing requested information or responding within the specified period an opportunity for the applicant to request an extension of the specified period of time for response.
Applicant requests more time to respond.	Grant a reasonable extension period based on the reasons given by the applicant for the request.

### 17.2 Information received after specified response time has elapsed

#### Actions required when submission arrives late

Instance	Action required
Submission arrives late and refusal letter has already been sent to the applicant (decision has already been made on the basis of information on file)	Department has no authority to reopen a negative decision. Remind the applicant that a specified period of time had been provided for response, that, in fact, XX days elapsed with no submissions received and, as stated previously, a decision was made based on information on file.

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	Applicants wishing to have new information considered must submit a new application, including new fees.
Submission arrives late and no decision has yet been made (e.g., reply period was 30 days, submission arrives in 40 days, and file is being reviewed 50 days from date of letter requesting submissions)	Decision is made based on available information at that time, including the late submission; there is no "penalty" to the applicant.

### 17.3 Loss of contact with the applicant

#### Action required when contact with applicant is lost

Instance	Action required
Correspondence is returned due to an invalid address	Check that the most recent address on file was used and that there were no transposition errors for street or apartment numbers or the postal code.
An applicant does not respond to requests for information, fails to provide an updated address or fails to appear for interview (granting permanent residence).	There is no provision to "close" an application; the application must be processed through to a decision, that is, either approval or refusal.  A decision can be taken based on information on file as long as previous correspondence has informed the applicant of how and when to reply and included the consequences of failing to respond  See Appendix A - Annex 4: Negative decision based on file information (after "No response/ No show" to Appendix A - Annex 3).

**Note:** Officers should indicate in FOSS and on file any attempts to verify the applicant's current address such as looking in the local telephone directory, calling the most recent telephone number provided on the application form or calling other persons listed as contacts or representatives.

## 18 Procedure: Removal

For policy and procedures on removals, see chapter ENF 10.

## 19 Procedure: Granting permanent residence

### 19.1 Checklist prior to confirmation of permanent residence

Before preparing the confirmation of permanent residence document for applicant (and any accompanying family members), officers should verify:

#### Medical results

See Section 16.4 and Section 16.5 - Validity of medical assessments.

#### Security results

Security results are valid for 18 months from the date of the CSIS decision (see Section 16.6). Case- by-case extensions may be requested by returning the file copy of the Request for screening action IMM 0703B.

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(See also chapter IC 1).

### **Criminal checks**

Criminal checks have no specific validity date; officers should check FOSS for information about recent charges or convictions. If one year has elapsed from the time of the criminal check, or whenever warranted, a new CPIC check is recommended.

### **CSQ**

If required, officers should ensure there is one.

---

### **19.2 Non-payment of Right of Permanent Residence Fee (RPRF)**

When an applicant meets requirements but is unwilling or unable to pay the Right of Permanent Residence Fee, officers should delay the decision on the application (see Section 16.14) and inform the applicant in writing that the Application to Remain in Canada as a Permanent Resident will be held in abeyance until the Right of Permanent Residence Fee or loan approval is received. The letter should also advise the applicant of the time period for a response and the consequences of not responding within the specified period.

- The time allotted by officers should be sufficient to allow applicants to remedy their situation: It should not, however, result in an indefinite or unreasonable delay of a final decision on granting of permanent residence.

If it is evident after a few months that an applicant is unlikely to pay the RPRF in the near future, a final decision on the application should be made.

See Appendix C - Annex 12 - Ready for permanent residence but RPRF not paid.

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### **19.3 Monitoring H&C decisions**

NHQ, RHQ or the local office may monitor decisions to:

- identify the types of applications made;
- ensure that delegated authority is exercised in a fair and consistent manner; and
- identify training needs.

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### **19.4 Examination checklist**

Officers should:

- verify that the applicant's passport has not expired;
- verify identity documents, if this has not already been done;
- ask the applicant the required questions concerning criminality and war crimes;
- verify that applicant and any family members in Canada do not rely on social assistance [A39];
- determine if all family members of the applicant in Canada have been examined;
- have the applicant sign and date the visa; and
- sign and date the visa.

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If the applicant has a refugee claim, a judicial review application of a negative PRRA decision, or a judicial opinion of a negative PRRA decision pending, officers should:

- inform the Refugee Division of the IRB (in the case of a refugee claim) or the Department of Justice (in the case of a judicial review application) of the granting of permanent residence to the applicant.

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### 19.5 Applicant or an accompanying family member is inadmissible

If the applicant (or an accompanying family member) is inadmissible, prepare an A44(1) report and refer the case to the Minister's delegate with a recommendation on the disposition of the case. See Section 16.10, Principal applicant (or accompanying family member) is inadmissible.

---

### 19.6 No show for examination

When applicants do not attend their examination interview, the Department must, nonetheless, conclude these cases so that they do not remain outstanding and unconcluded indefinitely.

#### Action required for "No shows"

Instance	Action required
The letter scheduling granting of permanent residence is returned due to an invalid address	Follow the procedures in Section 17.3, Loss of contact with the applicant
There has been no response from the applicant	It may be appropriate to refuse the case; see Section 17.3, Loss of contact with the applicant: Sample letter - Appendix C - Annex 10 Application to remain in Canada as a permanent resident refused - No show for examination interview.

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## 20 Procedure: Feedback

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### 20.1 Keeping clients informed

The principal methods used to keep clients informed are:

- automated letters;
- phone calls; or
- in-person interviews and counselling.

Clients must be informed when:

- additional information is required;
- the Department has information material to the H&C or admissibility decision that did not come from the applicant; and
- a decision has been made.

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### 20.2 Representations and release of information

Privacy legislation requires that a client's information be released only to the client or the client's designated representative. Officers should give information over the phone only when the caller



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can be positively identified as either the client or their representative. For further information on representatives see chapter OP 1.

Representations or complaints about decisions should be dealt with either in person or by mail, according to Regional directives.

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### 21. Coding for H&C applications

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#### 21.1 Purpose

The purpose of this section is to identify the different category codes for cases processed in Canada under A25(1).

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#### 21.2 Report to Parliament

Pursuant to A94(2)(e), the Minister is required to report to Parliament each year on the number of persons granted permanent resident status under A25(1).

All H&C applications must be clearly identified for this purpose and to allow for quality assessment and control.

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#### 21.3 Immigration category codes

CODE	DESCRIPTION
HC1	H&C application (without a sponsorship)
HC2	Sponsored H&C application
PP1	Public policy cases

##### **H&C application (HC1)**

H&C applications processed within Canada pursuant to A25(1) will normally be coded as HC1. However, the category code HC2 will be used where a sponsorship has been submitted in support of the H&C application.

##### **Sponsored H&C application (HC2)**

As indicated in Sections 5.3 and 5.20 above, H&C applicants are not members of the family class. A sponsorship may however be submitted on a voluntary basis in support of an H&C application. Notwithstanding the existence of a sponsorship, only persons applying for a visa outside Canada as a member of the family class [R116] or persons applying to become permanent residents as members of the spouse or common-law partner in Canada class [R123] may be considered members of the family class.

The category code HC2 should be used for sponsored H&C applications.

Where a sponsorship has been submitted but is not approved, the H&C application should be coded as HC1.

##### **Public Policy (PP1)**

The category code PP1 should be used when an application pursuant to A25(1) based on public policy is processed in accordance with ministerial guidelines. A public policy in relation to resumption of citizenship can be found in Appendix F of this manual.

##### **Accompanying family members**

Accompanying family members should be coded in the same manner as the principal applicant.

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### 21.4 Special category codes

A special category code must be entered on the APR screen in FOSS and CPC system where the immigrant category is HC1 or HC2.

For HC1 Cases:

**Note:** Officers should choose the special category code that best describes the H&C application. **It is very important that the most appropriate special program code be entered for each application.** This data is used for reporting purposes and statistical analysis.

Code	Description
SNF	Spouse not sponsored as member of the family class
DNF	Dependent child not sponsored as a member of the family class
PNF	Parent/grandparent not sponsored as a member of the family class
SOF	Separation of parents and dependent children outside the family class
DFM	<i>De facto</i> family members
PIL	Prolonged inability to leave Canada has led to establishment
PZR	Personalized risk
RAL	Refugees who apply for permanent resident status too late
FMV	Family violence
FCC	Former Canadian Citizens
OCS	Other cases

For HC2 Cases:

**Note:** Where the immigrant category is HC2, the special category code will describe the family relationship between the applicant and the sponsor.

SPO	Spouse sponsored
CHI	Dependent child sponsored
PGP	Parent/grand parent sponsored

## 22 Table of appendices

Consult the table below for a listing of H&C form letters that includes information, when required, on when to use specific letters.

### Appendix A

Annex	Title	When to use:
1	Negative decision	
2	Positive H&C decision – No known permanent residence barriers	
3	Request for further information prior to	

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	H&C decision	
4	Negative decision based on file information	After "No response/No show" to Appendix A - Annex 3
5	Positive H&C decision	After written response is received or after interview is conducted in response to Appendix A - Annex 3:
6	Positive decision on H&C and submissions required concerning extrinsic admissibility barrier	<b>To simultaneously inform the applicant of a positive H&amp;C exemption decision and that extrinsic evidence indicates admissibility requirements will not be met.</b>
7	Positive H&C decision No known permanent residence barriers	For refugees who applied for permanent residence after the 180- day deadline
8	Negative Risk Opinion – submissions required on any errors or omissions	To allow applicants to review the risk opinion report before it is sent to the officer responsible for making the H&C decision.

### Appendix B

Annex	Title	When to use:
1	Submission required on extrinsic information received after H&C decision that suggests misrepresentation of H&C factors	If extrinsic information on misrepresentation of H&C factors is received after H&C decision is made
2	Resuming normal processing	After submission on extrinsic information is reviewed and result is insufficient information on misrepresentation of H&C factors
3	Negative decision on reopened application	After submission on extrinsic information is reviewed and result is sufficient information regarding misrepresentation of H&C factors
4	Negative decision based on file information	After "No response/No show" to letter in Appendix B Annex 1

### Appendix C

Annex	Title	When to use
1	Inadmissibility (intrinsic) known at outset	To simultaneously inform an applicant that application to remain in Canada as a permanent resident is refused although H&C is positive
2	Submissions required on extrinsic information indicating inadmissibility barrier	When extrinsic information is received indicating inadmissibility barrier
3	Submissions on new information regarding inadmissibility reviewed and application to remain in Canada as permanent resident refused	After submissions on new information regarding inadmissibility is reviewed and result continues to be a refusal of permanent residence status
4	Resuming normal processing after review of submissions and finding of no	After review of submissions and finding of no admissibility barrier

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	admissibility barrier	
5	Submissions received No admissibility barrier Invitation to examination interview	When interview is required to verify admissibility
6	Application to remain in Canada as a permanent resident refused based on file information	After "No Response/No Show" to Letter in Appendix A - Annex 6
7	Request for further information	
8	Application to remain in Canada as a permanent resident refused based on file information	After "No response" to letter in Appendix C - Annex 7
9	Invitation to examination interview	
10	Application to remain in Canada as a permanent resident refused	After "No shown for examination interview
11	Appears permanent residence will be refused for A39	
12	Ready for permanent residence but RPRF not paid	

### Appendix D

Annex	Title	When to use:
1	Request to withdraw sponsorship refused	
2	Request to withdraw sponsorship approved	

### Appendix E

Annex	Title	When to use:
1	Ineligible for H&C request	Client is permanent resident or Canadian citizen
2	Ineligible for H&C request Client may be a permanent resident	Client is currently in Canada with temporary resident status

### Appendix F - Applications under A25(1) from persons who lost their Canadian citizenship as minors

## IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds

### Appendix A

#### Annex 1

##### Negative decision

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds.

Humanitarian and compassionate factors are assessed to determine whether an exemption from certain legislative requirements to allow your application for permanent residence to be processed from within Canada will be granted.

On (date), a representative of the Minister of Citizenship and Immigration reviewed the circumstances of your request and decided that an exemption will not be granted for your application.

##### Closing for in-status cases:

Your temporary resident status expires on (date). If you do not leave Canada on or before this date or if you do not apply for and receive an extension of your temporary resident status, you will be in Canada without legal status. Enforcement action to remove you from Canada may result.

##### Closing for out-of-status cases:

You are presently in Canada without status. (Include instructions concerning departure and/or confirmation of departure, direction to inquiry, reporting for A44 report, etc.)

If you require clarification or additional information, visit the CIC web site at <http://www.cic.gc.ca> or telephone the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

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**Note: No appeal rights**

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#### Annex 2

##### Positive H & C decision - no known permanent residence barriers

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. This is a two-step decision-making process.

First, humanitarian and compassionate factors are assessed to decide whether to grant an exemption from certain legislative requirements to allow your application for permanent residence to be processed from within Canada. On (date), a representative of the Minister of Citizenship and Immigration **approved** your request for an exemption from these requirements for the purpose of processing this application.

Second, **you must meet all other statutory requirements of the *Immigration and Refugee Protection Act***, for example, medical, security and passport considerations and arrangements for your care and support. As your application is processed, separate decisions will be made about whether you meet these other requirements. If more information is required, you will be sent a letter and asked to provide a reply within 30 days from the date the letter is sent to you.

Please note your application for permanent residence could be refused if:

- you and your family members do not meet all statutory requirements of the *Immigration and Refugee Protection Act*.

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- you receive a letter asking for a reply within 30 days and do not respond.
- you fail to advise this office of any changes to your address. You may do so by writing to this office at the address shown at the top of this letter, by telephoning the CIC Call Centre or on-line at <http://www.cic.gc.ca>.
- you are not self-supporting. Persons in receipt of social assistance or welfare benefits, either directly or indirectly, are defined in the *Immigration and Refugee Protection Act* as inadmissible persons.

If preliminary information indicates that you probably meet all statutory requirements of the *Immigration and Refugee Protection Act*, you will receive a letter asking that you attend an interview at the Canada Immigration Centre in your area. A final determination on your application for permanent residence will be made at this interview. This usually occurs about nine months after the date your exemption was approved (see paragraph two of this letter). **If you do not attend this interview, it could be interpreted as a lack of interest in permanent residence and your application could be refused.**

If you wish to work or study in Canada while awaiting finalization of your application for permanent residence, you must request and receive an employment or student authorization. You will need the application kit titled "*Application to Change Conditions or Extend My Stay in Canada*" which can be obtained by telephoning the CIC Call Centre or visiting our Web site at <http://www.cic.gc.ca>.

If your marital status or personal situation changes, please write to this office immediately or telephone the CIC Call Centre.

Your exemption was granted, in part, due to the hardship you would face if you had to leave Canada and apply from outside of the country as usually required.

Please note if you leave Canada, there is no guarantee that you will be re-admitted so that you can continue with this application.

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address at the top of this letter, visit the CIC Web site at <http://www.cic.gc.ca> or telephone the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

### Annex 3

#### Request for further information prior to H & C decision

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. This is a two-step decision-making process.

First, humanitarian and compassionate factors are assessed to decide whether to grant an exemption from certain legislative requirements to allow your application for permanent residence to be processed from within Canada. Second, you must meet all other statutory requirements of the *Immigration and Refugee Protection Act*, for example, medical, security and passport considerations and arrangements for your care and support. The second decision is made only if you have received an exemption.

#### When information to be sent in:

## **IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds**

Before a decision can be made about exempting you from the requirements of the *Immigration and Refugee Protection Act*, further information is required, specifically: (explain)

Please send the requested information/documents to this office **within thirty (30) days of the date of this letter**. If you do not, the decision about your exemption will be made based upon the information on your file. **If you do not reply within 30 days and the decision is to refuse your request for an exemption, there is no authority to re-examine or reopen this decision. If you wished any new information to be considered, you would have to submit a new application, including new fees.**

If you need more than 30 days to provide the information/documents requested, please write to this office and explain why and how much more time you require.

### **When information to be provided at interview:**

An interview with you (and your sponsor) is required to assess humanitarian and compassionate factors and determine whether an exemption is warranted. Please come to the Canada Immigration Centre located at (address) on (date and time).

If you do not attend this interview, the decision about your exemption will be made based upon the information on your file. If the decision is to refuse your request for an exemption, there is no authority to re-examine or reopen this decision. If you wished any new information to be considered, you would have to submit a new application, including new fees.

If you cannot attend this interview, please write to this office immediately explaining why.

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address at the top of this letter, visit the CIC Web site at <http://www.cic.gc.ca> or telephone the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

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### **Annex 4**

#### **Negative decision based on file information**

Via double registered mail

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds and our recent letter to you dated (date) . . .

#### **When information was to be sent in:**

. . . asking you to send information/documents to this office within thirty (30) days from the date of that letter.

No response was received from you.

#### **When information was to be provided at interview:**

. . . asking you to attend an interview at this office on (date and time).

You did not appear for this interview.

As indicated in our previous letter, a decision about exempting you from certain legislative requirements has been made based upon information on your file. On (date), a representative of the Minister of Citizenship and Immigration reviewed the circumstances of your request and decided that an exemption will not be granted for your application.

#### **Closing for in-status cases:**

## IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds

Your temporary resident status expires on (date). If you do not leave Canada on or before this date OR if you do not apply for and receive an extension of your temporary resident status, you will be in Canada without legal status. Enforcement action to remove you from Canada may result.

### **Closing for out-of-status cases:**

You are presently in Canada without status. (Include instructions concerning departure and/or confirmation of departure, direction to inquiry, reporting for A44 report, etc.)

If you require clarification or more information, visit the CIC Web site at <http://www.cic.gc.ca> or telephone the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

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### **Note: No appeal rights**

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#### **Annex 5**

Positive H&C Decision

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds and our recent letter to you dated (date) . . .

#### **When information was to be sent in:**

. . . asking you to send information/documents to this office within thirty (30) days of the date of that letter.

#### **When information was to be provided at interview:**

. . . asking you to attend an interview at this office on (date and time).

As previously indicated, your application involves a two-step decision-making process. First, humanitarian and compassionate factors are assessed to decide whether to grant an exemption from certain legislative requirements to allow processing of your application from within Canada. On (date), a representative of the Minister of Citizenship and Immigration approved your request for an exemption from certain legislative requirements for the purpose of processing this application.

Second, **you must meet all other statutory requirements of the Immigration and Refugee Protection Act**, for example, medical, security and passport considerations and arrangements for your care and support. As your application is processed, separate decisions will be made about whether you meet these other requirements. If more information is required, you will be sent a letter and asked to provide a reply within 30 days from the date the letter is sent to you.

#### **Please note, your application for permanent residence could be refused if:**

- you and your family members do not meet all statutory requirements of the *Immigration and Refugee Protection Act*.
- you receive a letter asking for a reply within 30 days and do not respond.
- you fail advise this office of any changes to your address. You may do so by writing to this office at the address shown at the top of this letter, by telephoning the CIC Call Centre or on-line at <http://www.cic.gc.ca>.



## IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds

- you are not self-supporting. Persons in receipt of social assistance or welfare benefits, either directly or indirectly, are defined in the *Immigration and Refugee Protection Act* as inadmissible persons.

If preliminary information indicates that you probably meet all statutory requirements of the *Immigration and Refugee Protection Act*, you will receive a letter asking you to attend an interview at the Canada Immigration Centre in your area. A final determination on your application for permanent residence will be made at this interview. This usually occurs about nine months after the date your exemption was approved (see paragraph two of this letter). **If you do not attend this interview, it could be interpreted as a lack of interest in permanent residence and your application could be refused.**

If you wish to work or study in Canada while awaiting finalization of your application, you must request and receive an employment or student authorization. You will need the application kit titled "Application to Change Conditions or Extend My Stay in Canada" which can be obtained by telephoning the CIC Call Centre or visiting our Web site at <http://www.cic.gc.ca>

If your marital status or personal situation changes, please write to this office immediately or telephone the CIC Call Centre.

Your exemption was granted, in part, due to the hardship you would face if you had to leave Canada and apply from outside of the country as usually required. **If you leave Canada, there is no guarantee that you will be re-admitted so that you can continue with this application.**

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address at the top of this letter, visit the CIC Web site at <http://www.cic.gc.ca> or telephone the CIC Call Centre:

Anywhere in Canada (toll-free)                      1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

### Annex 6

#### **Positive decision on H & C and submissions required concerning extrinsic admissibility barrier**

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. This is a two-step decision-making process.

First, humanitarian and compassionate factors are assessed to decide whether to grant an exemption from legislative requirements to allow processing of your application for permanent residence from within Canada. On (date), a representative of the Minister of Citizenship and Immigration **approved** your request for these exemptions for the purpose of processing this application.

Second, **you must meet all other statutory requirements of the *Immigration and Refugee Protection Act***, for example, medical, security and passport considerations and arrangements for your care and support. As your application is processed, separate decisions will be made about whether you meet these other requirements.

**Please note, your application for permanent residence could be refused if:**

- you and your family members do not meet all statutory requirements of the *Immigration and Refugee Protection Act*.
- you receive a letter asking for a reply within 30 days and do not respond.

## IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds

- you fail to advise this office of any changes to your address. You may do so by writing to this office at the address shown at the top of this letter, by telephoning the CIC Call Centre or on-line at <http://www.cic.gc.ca>.
- you are not self-supporting. Persons in receipt of social assistance or welfare benefits, either directly or indirectly, are defined in the *Immigration and Refugee Protection Act* as inadmissible persons.

A review of your Application to Remain in Canada as a Permanent Resident indicates that it may have to be refused as it appears that [you are a person described in (indicate section of Act and provide details) or (you cannot comply with (indicate section of Act and provide details)].

### **When information is to be sent in:**

Before a decision is made on this matter, you have the opportunity to provide any information you would like to be considered. Please write to this office **within thirty (30) days of the date of this letter**. If you do not, the decision about your application for permanent residence will be made based upon the information on your file. If you do not reply within 30 days and the decision is to refuse your application, there is no authority to re-examine or reopen this decision. **If you wished any new information to be considered, you would have to submit a new application, including new fees.**

If you need more than 30 days to provide the information/documents requested, please write to this office and explain why and how much more time you require.

### **When information is to be provided at interview:**

Before a decision is made on this matter, you have the opportunity to provide any information you would like to be considered at an interview with you (and your sponsor). Please come to the Canada Immigration Centre located at (address) on (date and time).

If you do not attend this interview, the decision about your application for permanent residence will be made based upon the information on your file. If the decision is to refuse your application, there is no authority to re-examine or reopen this decision. If you wished any new information to be considered, you would have to submit a new application, including new fees.

### **If you cannot attend this interview, please write to this office immediately, explaining why.**

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address at the top of this letter, visit the CIC Web site at <http://www.cic.gc.ca> or telephone the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

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### **Annex 7**

#### **Positive H&C decision - no known permanent residence barriers (refugee who applied for permanent residence after 180 day deadline)**

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. This is a two-step decision-making process.

First, humanitarian and compassionate factors are assessed to decide whether to grant an exemption from certain legislative requirements to allow processing of your application for permanent residence from within Canada. On (date), a representative of the Minister of Citizenship and Immigration approved your request for an exemption from these requirements for the purpose of processing this application.

## IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds

Second, **you must meet all other statutory requirements of the *Immigration and Refugee Protection Act***, for example, medical, security and passport considerations and arrangements for your care and support. As your application is processed, separate decisions will be made about whether you meet these other requirements. If more information is required, you will be sent a letter and asked to provide a reply within 30 days from the date the letter is sent to you.

**Please note, your application for permanent residence could be refused if:**

- you and/or your family members do not meet all statutory requirements of the *Immigration and Refugee Protection Act*;
- you receive a letter asking for a reply within 30 days and do not respond;
- you fail to advise this office of any changes to your address. You may do so by writing to this office at the address shown at the top of this letter, by telephoning the CIC Call Centre or on-line at <http://www.cic.gc.ca>; and
- you are not self-supporting. Persons in receipt of social assistance or welfare benefits, either directly or indirectly, are defined in the *Immigration and Refugee Protection Act* as inadmissible persons.

If preliminary information indicates that you probably meet all statutory requirements of the *Immigration and Refugee Protection Act*, you will receive a letter asking you to attend an interview at the Canada Immigration Centre in your area. A final determination on your application for permanent residence will be made at this interview. This usually occurs about nine months after the date your exemption was approved (see paragraph two of this letter). If you **do not attend this interview, it could be interpreted as a lack of interest in permanent residence and your application could be refused.**

If you wish to work or study in Canada while awaiting finalization of your application, you must request and receive an employment or student authorization. You will need the application kit titled "Application to Change Conditions or Extend My Stay in Canada" which can be obtained by telephoning the CIC Call Centre or visiting our Web site at <http://www.cic.gc.ca>.

If your marital status or personal situation changes, please write to this office immediately or telephone the CIC Call Centre.

Your exemption was granted, in part, due to the hardship you would face if you had to leave Canada and apply from outside of the country as usually required. **If you leave Canada, there is no guarantee that you will be re-admitted so that you can continue with this application.**

**PLEASE NOTE:** You are a person who was determined to be a Convention refugee by the Refugee Division of the Immigration Refugee Board on (date). Because you did not submit your application for permanent residence as a Convention refugee within 180 days of (date), your application must be processed under the guidelines for humanitarian and compassionate cases. Although you are still recognized as a Convention refugee, for the purpose of your application for permanent residence, usual requirements must be met. These include:

- providing a passport, travel document or other satisfactory identity document;
- being found medical admissible; and
- you must be in a position to support any and all of your family members included in your application.

You are not, however, required to pay the Right of Permanent Residence Fee.

## IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address at the top of this letter, visit the CIC Web site at <http://www.cic.gc.ca> or telephone the CIC Call Centre:

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### Appendix B

#### Annex 1

#### **Submissions required on extrinsic information received after H&C decision that suggests misrepresentation of H&C Factors**

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. A letter dated (date) informed you that on (date) a representative of the Minister of Citizenship and Immigration approved your request for an exemption from certain legislative requirements. The exemption decision was made based upon information you provided in your application (and at an interview on . . .), specifically, (provide details).

New information has been received that could be material to the exemption decision made previously. This means, if this information is correct and had it been known at the time the exemption decision was being made, it is possible that an exemption would not have been granted in your application. **As a result, the original decision to exempt you from the requirement may have to be reopened and all factors may have to be re-examined taking into account the new information received.**

Specifically, it has come to light that (describe new information). This differs from the information you provided to the extent that it could be considered to be misrepresentation or fraud related to a material fact.

#### **When information is to be sent in:**

Before a decision is made on this matter, you have the opportunity to provide any information you would like to be considered. Please write to this office **within thirty (30) days of the date of this letter**. If you do not, a decision will be made based upon the information on your file. **If you do not reply within 30 days and the decision is to refuse your request for an exemption, there is no authority to re-examine or reopen this decision. If you wished any new information to be considered, you would have to submit a new application, including new fees.**

If you need more than 30 days to provide the information/documents requested, please write to this office and explain why and how much more time you require.

#### **When information is to be provided at interview:**

Before a decision is made on this matter, you have the opportunity to provide any information you would like to be considered at an interview with you (and your sponsor). Please come to the Canada Immigration Centre located at (address) on (date and time).

If you do not attend this interview, a decision will be made based upon the information on your file. If the decision is to refuse your request for an exemption, there is no authority to re-examine or reopen this decision. If you wished any new information to be considered, you would have to submit a new application, including new fees.

**If you cannot attend this interview, please write to this office immediately, explaining why.**

## IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address at the top of this letter, visit the CIC Web site at <http://www.cic.gc.ca> or telephone the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

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### Annex 2

#### **Resuming normal processing submissions on extrinsic information reviewed and result is insufficient information regarding misrepresentation of H&C factors**

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. A recent letter indicated that new information, different from the information you previously provided, had been received and that this could result in reopening the decision to approve your exemption.

The information you provided (**When information was to be sent in:** in your letter of (date) **or when information was to be provided at interview:** . . . at the interview on (date)) has been carefully reviewed together with all other information in your application. It has been determined that there is insufficient information regarding misrepresentation or fraud related to a material fact. **As a result, the exemption previously granted remains in effect and normal processing of your application has resumed.**

Your application for permanent residence will continue to be processed to determine whether you meet all other statutory requirements of the *Immigration and Refugee Protection Act*, for example, medical, security and passport considerations and arrangements for your care and support. If more information is required, you will be sent a letter and asked to provide a reply within 30 days from the date the letter is sent to you.

#### **Please note, your application for permanent residence could be refused if:**

- you and your family members do not meet all statutory requirements of the *Immigration and Refugee Protection Act*.
- you receive a letter asking for a reply within 30 days and do not respond.
- you fail to advise this office of any changes to your address. You may do so by writing to this office at the address shown at the top of this letter, by telephoning the CIC Call Centre or on-line at <http://www.cic.gc.ca>.
- you are not self-supporting. Persons in receipt of social assistance or welfare benefits, either directly or indirectly, are defined in the *Immigration and Refugee Protection Act* as inadmissible persons.

If preliminary information indicates that you probably meet all statutory requirements of the *Immigration and Refugee Protection Act*, you will receive a letter asking you to attend an interview at the Canada Immigration Centre in your area. A final determination on your application for permanent residence will be made at this interview. This usually occurs about nine months after the date your exemption was approved (see paragraph three above). **If you do not attend this interview, it could be interpreted as a lack of interest in permanent residence and your application could be refused.**

If you wish to work or study in Canada while awaiting finalization of your application, you must request and receive an employment or student authorization. You will need the application kit titled "Application to Change Conditions or Extend My Stay in Canada" which can be obtained by

## IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds

telephoning the CIC Call Centre or visiting our Web site at <http://www.cic.gc.ca>.

If your marital status or personal situation changes, please write to this office immediately or telephone the CIC Call Centre.

Your exemption was granted, in part, due to the hardship you would face if you had to leave Canada and apply from outside of the country as usually required. **If you leave Canada, there is no guarantee that you will be re-admitted so that you can continue with this application.**

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address at the top of this letter, visit the CIC Web site at <http://www.cic.gc.ca> or telephone the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

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### Annex 3

#### **Negative decision on reopened application submission on extrinsic information reviewed and result is misrepresentation on H&C factors**

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. A recent letter indicated that new information, different from the information you previously provided, had been received and that this could result in reopening the decision to approve your exemption.

The information you provided. **(When information was to be sent in: . . . in your letter of (date) or when information was to be provided at interview: . . . at the interview on (date))** has been carefully reviewed together with all other information in your application. On (date), a representative of the Minister of Citizenship and Immigration decided that there is evidence suggesting misrepresentation or fraud related to a material fact and, had this information been known at the time of the original decision, an exemption would not have been granted in your case. **As a result, the exemption previously granted has no further effect and processing of your application will not continue.**

#### **Closing for in status cases:**

- Your temporary resident status expires on (date). If you do not leave Canada on or before this date or if you do not apply for and receive an extension of your temporary resident status, you will be in Canada without legal status. Enforcement action to remove you from Canada may result.
- You are/will be the subject of a report pursuant to section A44(1) as a person who has remained in Canada by reason of fraudulent or improper means or misrepresentation of a material fact. (Include additional instructions if required.)

#### **Closing for out-of-status cases:**

- You are presently in Canada without status. (Include instructions re departure and/or confirmation of departure, direction to inquiry, reporting for an A44(1) report, etc.)

If you require clarification or more information, visit the CIC Web site at <http://www.cic.gc.ca> or telephone the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

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## IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds

person to use this number.

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**Note: No appeal rights**

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### Annex 4

#### Negative decision based on file information

Via double registered mail

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds.

A recent letter indicated that new information, different from the information you previously provided, had been received and that this could result in reopening the decision to approve your exemption. (**When information was to be sent in:** You were invited to send any information that you wished to be considered to this office within thirty (30) days from the date of that letter. No response was received from you.) (**When information was to be provided at interview:** You were asked to attend an interview at this office on (date and time). You did not appear for this interview.)

As indicated in our previous letter, a determination about reopening the decision to approve your exemption has been made based upon information on your file. On (date), a representative of the Minister of Citizenship and Immigration decided that there is evidence suggesting misrepresentation or fraud related to a material fact and, had this information been known at the time of the original decision, an exemption would not have been granted in your case. As a result, the exemption previously granted has no further effect and processing of your application will not continue.

#### Closing for in-status cases:

- Your temporary resident status expires on (date). If you do not leave Canada on or before this date or if you do not apply for and receive an extension of your temporary resident status, you will be in Canada without legal status. Enforcement action to remove you from Canada may result.
- You are/will be the subject of a report pursuant to section A44(1) as a person who has remained in Canada by reason of fraudulent or improper means or misrepresentation of a material fact. (Include additional instructions if required.)

#### Closing for out-of-status cases:

- You are presently in Canada without status. (Include instructions re departure and/or confirmation of departure, direction to inquiry, reporting for an A44(1) report, etc.)

If you require clarification or more information, visit the CIC Web site at <http://www.cic.gc.ca> or telephone the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

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**Note: No appeal rights**

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# IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds

## Appendix C

### Annex 1

#### Inadmissibility (intrinsic) known at outset

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. This is a two-step decision-making process.

First, humanitarian and compassionate factors are assessed to decide whether to grant an exemption from certain legislative requirements to allow processing of your application for permanent residence from within Canada. On (date), a representative of the Minister of Citizenship and Immigration approved your request for an exemption from these requirements for the purpose of processing this application. **This decision, however, does not exempt you from the second step of the process, that is, meeting all other statutory requirements of the Immigration and Refugee Protection Act**, such as, medical, security and passport considerations and arrangements for your care and support.

A separate decision has been made regarding your ability to meet other statutory requirements and it appears that you are inadmissible to Canada. Specifically, (provide details). **As a result, your application for permanent residence is refused and the exemption previously granted has no further effect.**

#### Closing for in-status cases:

- Your temporary resident status expires on (date). If you do not leave Canada on or before this date or if you do not apply for and receive an extension of your temporary resident status, you will be in Canada without legal status. Enforcement action to remove you from Canada may result.
- You are/will be the subject of a report as a person described in subsection (Act reference).

#### Closing for out-of-status cases:

- You are presently in Canada without status. (Include instructions re departure and/or confirmation of departure, direction to inquiry, reporting for an A44(1) report, etc.)

If you require clarification or more information, visit the CIC Web site at <http://www.cic.gc.ca> or telephone the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

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**Note: No appeal rights**

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### Annex 2

Submissions required on extrinsic information indicating inadmissibility barrier

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. In previous correspondence, you were informed that an exemption had been granted and that your application for permanent residence would continue to be processed to determine whether you met all other statutory requirements of the *Immigration and Refugee Protection Act*, for example, medical, security, passport, etc.



## IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds

New information suggests that your Application to Remain in Canada as a Permanent Resident may have to be refused as it appears you are a person described in subsection (Act reference) of *the Immigration and Refugee Protection Act*. Persons described in this subsection are inadmissible to Canada. Specifically, (provide details). (Suggested wording for medically inadmissible cases: Specifically, a medical notification has been received stating that you are (your dependent, (dependent's name) is) suffering from (disease/condition and diagnosis from IMM 1014). This leads me to believe that you/your family member (may be a danger to public health/will cause excessive demands on health or social services in Canada) which is cause for refusal of your application for permanent residence.)

### **When information is to be sent in:**

Before a decision is made on this matter, you have the opportunity to provide any information you would like to be considered. Please write to this office **within thirty (30) days of the date of this letter**. If you do not, a decision will be made based upon information on your file. **If you do not reply within 30 days and the decision is to refuse your Application to Remain in Canada as a Permanent Resident, there is no authority to re-examine or reopen this decision. If you wished any new information to be considered, you would have to submit a new application, including new fees.**

If you need more than 30 days to provide the information/documents requested, please write to this office and explain why and how much more time you require.

### **When information is to be provided at interview:**

Before a decision is made on this matter, you have the opportunity to provide any information you would like to be considered at an interview with you (and your sponsor). Please come to the Canada Immigration Centre located at (address) on (date and time).

If you do not attend this interview, a decision will be made based upon information on your file. If the decision is to refuse your Application to Remain in Canada as a Permanent Resident, there is no authority to re-examine or reopen this decision. If you wished any new information to be considered, you would have to submit a new application, including new fees.

If you cannot attend this interview, please write to this office immediately, explaining why.

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address at the top of this letter, visit the CIC Web site at <http://www.cic.gc.ca> or telephone the CIC Call Centre:

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### **Annex 3**

#### **Submissions on new information regarding inadmissibility reviewed application to remain in Canada as a permanent resident refused**

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. A recent letter invited you to respond to new information that had been received suggesting that you were a person described in an inadmissible category.

The information you provided (**When information was to be sent in:** in your letter of (date) **or when information was to be provided at interview:** . . . at the interview on (date)) has been carefully reviewed together with all other information in your application. It appears that you are a person described in subsection (Act reference), that is, a person who (provide details). As a result, your application for permanent residence is refused and the exemption previously granted has no further effect.

## IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds

### Closing for in-status cases:

- Your temporary resident status expires on (date). If you do not leave Canada on or before this date or if you do not apply for and receive an extension of your temporary resident status, you will be in Canada without legal status. Enforcement action to remove you from Canada may result.
- You are/will be the subject of a report as a person described in subsection (Act reference).

### Closing for out-of-status cases

- You are presently in Canada without status. (Include instructions re departure and/or confirmation of departure, direction to inquiry, reporting for an A44(1) report, etc.)

If you require clarification or additional information, visit the CIC Web site at <http://www.cic.gc.ca> or telephone the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

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### Note: No appeal rights

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#### Annex 4

#### Resuming normal processing after review of submissions and finding of no admissibility barrier

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. A recent letter invited you to respond to new information that had been received suggesting that you were a person described in an inadmissible category.

The information you provided (**When information was to be sent in:** in your letter of (date) **or when information was to be provided at interview:** at the interview on (date)) has been carefully reviewed together with all other information in your application.

It has been determined that you are not a person described in subsection (Act reference). Your application for permanent residence will continue to be processed to determine whether you meet all other statutory requirements of the *Immigration and Refugee Protection Act*. If more information is required, you will be sent a letter and asked to provide a reply within 30 days from the date the letter is sent to you.

Please note your application for permanent residence could be refused if:

- you and your family members do not meet all statutory requirements of the *Immigration and Refugee Protection Act*.
- you receive a letter asking for a reply within 30 days and do not respond.
- you fail to advise this office of any changes to your address. You may do so by writing to this office at the address shown at the top of this letter, by telephoning the CIC Call Centre or on-line at <http://www.cic.gc.ca>.
- you are not self-supporting. Persons in receipt of social assistance or welfare benefits, either directly or indirectly, are defined in the *Immigration and Refugee Protection Act* as inadmissible persons.

If preliminary information indicates that you probably meet all statutory requirements of *the*

## IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds

*Immigration and Refugee Protection Act*, you will receive a letter asking you to attend an interview at the Canada Immigration Centre in your area. A final determination on your application for permanent residence will be made at this interview. This usually occurs about nine months after the date your exemption was approved (see paragraph three above). If you do not attend this interview, it could be interpreted as a lack of interest in permanent residence and your application could be refused.

If you wish to work or study in Canada while awaiting finalization of your application, you must request and receive an employment or student authorization. You will need the application kit titled "Application to Change Conditions or Extend My Stay in Canada" which can be obtained by telephoning the CIC Call Centre or visiting our Web site at <http://www.cic.gc.ca>.

If your marital status or personal situation changes, write to this office immediately or telephone the CIC Call Centre.

Your exemption was granted, in part, due to the hardship you would face if you had to leave Canada and apply from outside of the country as usually required. If you leave Canada, there is no guarantee that you will be re-admitted so that you can continue with this application.

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address at the top of this letter, visit the CIC Web site at <http://www.cic.gc.ca> or telephone the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

### Annex 5

#### Submissions received - no admissibility barrier

Invitation to examination interview

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. A recent letter invited you to respond to new information that had been received suggesting that you were a person described in an inadmissible category.

The information you provided (**When information was to be sent in:** in your letter of (date) or **When information was to be provided at interview:** at the interview on (date)) has been carefully reviewed together with all other information in your application.

It appears that you are not a person described in subsection (Act reference).

Previous correspondence informed that you had been granted an exemption from certain legislative requirements of the *Immigration and Refugee Protection Act* and that you must meet all other statutory requirements of the Act. A final determination on whether you meet statutory requirements can only be made at an examination interview.

An examination interview has been scheduled for you on (date and time) at the Canada Immigration Centre, (address).

#### Please note:

- If you are currently in receipt of welfare or social services benefits, please write to this office as soon as possible explaining your situation.
- If you are currently employed but were receiving welfare or social services benefits when you submitted your application for permanent residence, please bring proof of employment and income and termination of benefits with you to the above noted interview.

## **IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds**

- If you have received welfare or social services benefits at any time since applying for permanent residence, please bring proof of employment and income and termination of benefits with you to the above noted interview.
- If you cannot attend this interview, please write to this office immediately, explaining why.
- Failure to appear for this interview may be perceived as lack of interest in permanent residence and your application could be refused.
- If you believe that you will require the services of an interpreter, you are responsible for hiring/ finding an interpreter and ensuring that they attend the interview with you.
- Please ensure that your sponsor attends the interview with you as there may be a requirement to question them.

Please bring with you:

- a valid passport, identity or travel document;
- if you were previously advised that you are exempt from a travel document, other documents establishing your identity;
- the Right of Permanent Residence Fee (RPRF);
- a photograph meeting the following specifications:
  - ◆ shows a full front-view of your head and shoulders showing full face centred in the middle of the photograph
  - ◆ has a plain white background
  - ◆ has a view of your head that is at least 25mm (one inch) and at most 35mm (1.375 inches) in length
  - ◆ shows your face un-obscured by sunglasses or any other object
  - ◆ is between 25 mm and 35 mm (1" and 1 3/8") from the chin to the top of the head and have an overall size of 35 mm x 45 mm (1 3/8" x 1 3/4")
- one photograph is required for each person in your family that is being processed for permanent residence in Canada.

You may wish to bring these instructions to the photographer.

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address at the top of this letter, visit the CIC Web site at <http://www.cic.gc.ca> or telephone the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

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### **Annex 6**

## IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds

### Application to remain in Canada as a permanent resident refused based on a file information

Via double registered mail

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. A recent letter invited you to respond to new information that had been received suggesting that you were a person described in an inadmissible category . . .

#### When information was to be sent in:

. . . by writing to this office within thirty (30) days from the date of that letter.

No response was received from you.

#### When information was to be provided at interview:

. . . by attending an interview at this office on (date and time).

You did not appear for this interview nor did you contact this office to explain why.

As indicated in the previous letter, a decision about your application for permanent residence has been made based upon information on your file. On (date), a representative of the Minister of Citizenship and Immigration reviewed the information on your file and it appears that you are a person described in subsection (Act reference), that is, a person who (provide details). **As a result, your application for permanent residence is refused and the exemption previously granted has no further effect.**

#### Closing for in-status cases:

- Your temporary resident status expires on (date). If you do not leave Canada on or before this date or if you do not apply for and receive an extension of your temporary resident status, you will be in Canada without legal status. Enforcement action to remove you from Canada may result.
- You are/will be the subject of a report as a person described in subsection (Act reference).

#### Closing for out-of-status cases:

- You are presently in Canada without status. (Include instructions re departure and/or confirmation of departure, direction to inquiry, reporting for an A44(1) report, etc.)

If you require clarification or more information, visit the CIC Web site at <http://www.cic.gc.ca> or telephone the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

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**Note: No appeal rights**

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### Annex 7

#### Request for further information

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. A letter dated (date) informed you that on (date) a representative of the Minister of Citizenship and Immigration approved your request for an exemption from certain legislative requirements to allow processing of your application for permanent residence from within Canada.

## **IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds**

This letter also informed you that you were required to meet all other statutory requirements of the *Immigration and Refugee Protection Act*, for example, medical, security, passport considerations and arrangements for your care and support.

### **When information is to be sent in:**

Before a decision can be made about whether you meet the admissibility requirements of the *Immigration and Refugee Protection Act* (provide details), further information is required, specifically: (explain)

Please send the requested information/documents to this office within thirty (30) days of the date of this letter. If you do not, the decision about whether you meet statutory requirements will be made based upon the information on your file. If you do not reply within 30 days and the decision is to refuse your application for permanent residence, there is no authority to re-examine or reopen this decision. If you wished any new information to be considered, you would have to submit a new application, including new fees.

If you need more than 30 days to provide the information/documents requested, please write to this office and explain why and how much more time you require.

### **When information is to be provided at interview:**

An interview with you (and your sponsor) is required to assess whether you meet the requirement (provide details). Please come to the Canada Immigration Centre located at (address) on (date and time). If you do not attend this interview, the decision about whether you meet statutory requirements will be made based upon the information on your file. If the decision is that there is insufficient information to make this decision, your application may be refused. If refused, there is no authority to re-examine or reopen this decision. If you wished any new information to be considered, you would have to submit a new application, including new fees.

If you cannot attend this interview, please write to this office immediately explaining why.

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address at the top of this letter, visit the CIC Web site at <http://www.cic.gc.ca> or telephone the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

## **Annex 8**

### **Application to remain in Canada as a permanent resident refused based on file information**

Via double registered mail:

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds and our recent letter to you dated (date) . . .

#### **When information was to be sent in:**

. . . asking you to send information/documents to this office within thirty (30) days from the date of that letter.

No response was received from you.

#### **When information was to be provided at interview:**

. . . asking you to attend an interview at this office on (date and time).

You did not appear for this interview.

## IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds

As indicated in our previous letter, a decision about whether you meet all requirements of the *Immigration and Refugee Protection Act* has been made based upon information on your file. On (date), a representative of the Minister of Citizenship and Immigration reviewed your file and decided to refuse your Application to Remain in Canada as a Permanent Resident. This refusal was based upon insufficient information to make a proper decision about whether you met all the admissibility requirements of the *Immigration and Refugee Protection Act* due to your lack of response for more information on this matter.

### Closing for in-status cases:

- Your temporary resident status expires on (date). If you do not leave Canada on or before this date or if you do not apply for and receive an extension of your temporary resident status, you will be in Canada without legal status. Enforcement action to remove you from Canada may result.
- You are/will be the subject of a report as a person described in subsection (Act reference).

### Closing for out-of-status cases:

- You are presently in Canada without status. (Include instructions re departure and/or confirmation of departure, direction to inquiry, reporting for an A44(1) report, etc.)

If you require clarification or more information, visit the CIC Web site at <http://www.cic.gc.ca> or telephone the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

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### Note: No appeal rights

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#### Annex 9

#### Invitation to examination interview

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds.

In previous correspondence, you were informed that you had been granted an exemption from certain legislative requirements and that you must meet all other statutory requirements of the *Immigration and Refugee Protection Act*. A final determination on whether you meet statutory requirements can only be made at an examination interview.

#### For CPC-V:

Your application has been referred to the Canada Immigration Centre in (city/town). You will receive a letter from this office when they have scheduled your examination interview.

#### For CICs:

An examination interview has been scheduled for you on (date and time) at the Canada Immigration Centre, (address).

- If you cannot attend this interview, please write to this office immediately, explaining why.
- Failure to appear for this interview may be perceived as lack of interest in permanent residence and your application could be refused.
- If you are currently in receipt of welfare or social services benefits, please write to this office as soon as possible explaining your situation.

## **IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds**

Please note:

- If you are currently employed but were receiving welfare or social services benefits when you submitted your application for permanent residence, please bring proof of employment and income and termination of benefits with you to the above-noted interview.
- If you have received welfare or social services benefits at any time since applying for permanent residence, please bring proof of employment and income and termination of benefits with you to the above-noted interview.
- If you believe that you will require the services of an interpreter, you are responsible for hiring/ finding an interpreter and ensuring that they attend the interview with you.
- Please ensure that your sponsor attends the interview with you as there may be a requirement to question them.

Please bring with you:

- a valid passport, identity or travel document;
- if you were previously advised that you are exempt from a travel document, other documents establishing your identity;
- the Right of Permanent Residence Fee (RPRF);
- a photograph meeting the following specifications:
  - ◆ shows a full front-view of your head and shoulders showing full face centred in the middle of the photograph
  - ◆ has a plain white background
  - ◆ has a view of your head that is at least 25mm (one inch) and at most 35mm (1.375 inches) in length
  - ◆ shows your face un-obscured by sunglasses or any other object
  - ◆ is between 25 mm and 35 mm (1" and 1 3/8") from the chin to the top of the head and have an overall size of 35 mm x 45 mm (1 3/8" x 1 3/4")
- one photograph is required for each person in your family that is being processed for permanent residence in Canada.

You may wish to bring these instructions to the photographer.

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address at the top of this letter, visit the CIC Web site at <http://www.cic.gc.ca> or telephone the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

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### **Annex 10**



## IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds

### Application to remain in Canada as a permanent resident refused

No show for examination interview

Via double registered mail:

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. In previous correspondence, you were informed that you had been granted an exemption and that processing of your application would continue to determine whether you met all other statutory requirements.

A recent letter invited you to attend an examination interview at this office for that purpose. You did not appear for this interview nor did you contact this office to explain why. The letter scheduling your examination interview informed you that failure to appear for this interview could be perceived as lack of interest in permanent residence and your application could be refused.

Failure to appear for your examination interview scheduled on (date and time), has been interpreted as lack of interest in concluding your application for permanent residence. As a result, your application for permanent residence is refused and the exemption previously granted has no further effect.

#### Closing for in-status cases:

- Your temporary resident status expires on (date). If you do not leave Canada on or before this date or if you do not apply for and receive an extension of your temporary resident status, you will be in Canada without legal status. Enforcement action to remove you from Canada may result.
- You are/will be the subject of a report as a person described in subsection (Act reference).

#### Closing for out-of-status cases:

- You are presently in Canada without status. (Include instructions re departure and/or confirmation of departure, direction to inquiry, reporting for an A44(1) report, etc.)

If you require clarification or more information, visit the CIC Web site at <http://www.cic.gc.ca> or telephone the CIC Call Centre:

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**Note: No appeal rights**

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### Annex 11

#### Appears permanent residence will be refused for A39

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. In previous correspondence, you were informed that an exemption had been granted and that your application for permanent residence would continue to be processed to determine whether you met all other statutory requirements of the *Immigration and Refugee Protection Act*, for example, medical, security, passport considerations, etc.

You were also advised that your application for permanent residence could be refused if you are not self-supporting, that is, in receipt of social assistance or welfare benefits, either directly or indirectly. If so, this means that you are a person described in section 39 of the *Immigration and Refugee Protection Act* and persons described in this subsection are inadmissible to Canada. Specifically, (provide details - e.g., you are currently in receipt of welfare benefits which you have

## IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds

been receiving since (date)).

### **When information is to be sent in:**

Before a final decision is made on this matter, you have the opportunity to provide any information you would like considered. Please write to this office **within thirty (30) days of the date of this letter**. If you do not, a decision will be made based upon information on your file. **If you do not reply within 30 days and the decision is to refuse your Application to Remain in Canada as a Permanent Resident, there is no authority to re-examine or reopen this decision. If you wished any new information to be considered, you would have to submit a new application, including new fees.**

If you need more than 30 days to provide the information/documents requested, please write to this office and explain why and how much more time you require.

### **When information is to be provided at interview:**

Before a final decision is made on this matter, you have the opportunity to provide any information you would like considered at an interview with you (and your sponsor). Please come to the Canada Immigration Centre located at (address) on (date and time).

If you do not attend this interview, a decision will be made based upon information on your file. If the decision is to refuse your Application to Remain in Canada as a Permanent Resident, there is no authority to re-examine or reopen this decision. If you wished any new information to be considered, you would have to submit a new application, including new fees.

If you cannot attend this interview, please write to this office immediately, explaining why.

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address at the top of this letter, visit the CIC Web site at <http://www.cic.gc.ca> or telephone the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

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### **Annex 12**

Ready for permanent residence but RPRF not paid

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds.

You attended an examination interview at this office on (date). At that time, you did not pay for the Right of Permanent Residence Fee (RPRF) nor did you show proof of a loan approval for this fee. As indicated at the interview, your application will be held open until such time as you make arrangements for a loan or payment of the fee.

Because you are not a permanent resident of Canada, please ensure that you apply for extensions of your temporary resident, student or employment authorizations. If you require an application kit to extend your status in Canada or wish to apply for a Right of Permanent Residence Fee loan, please call the CIC Call Centre or visit our Web site at <http://www.cic.gc.ca>.

If you require clarification, more information, wish to provide a change of address or arrange another examination interview when you are able to pay the Right of Permanent Residence Fee or have obtained loan approval, please write to us at the address at the top of this letter, visit the CIC Web site at <http://www.cic.gc.ca> or telephone the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and

## **IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds**

it provides access to information on your file. For your own protection, do not allow any other person to use this number.

# IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds

## Appendix D

### Annex 1

#### Request to withdraw sponsorship refused (Letter to sponsor)

This refers to the Undertaking of Assistance you submitted in support of the application for permanent residence from within Canada on humanitarian and compassionate grounds made by (name of principal applicant).

We have received your correspondence of (date) indicating your desire to withdraw or cancel this Undertaking.

On (date) a representative of the Minister of Citizenship and Immigration granted your relative's request for an exemption from certain legislative requirements of the *Immigration and Refugee Protection Act*. This exemption was granted, in part, on the basis of the Undertaking you submitted. The exemption decision is final and would only be revisited if there were evidence of fraud or misrepresentation which does not appear to be the case in this application. **As a result, your request to withdraw or cancel the Undertaking cannot be accepted and fees paid in relation to the application for permanent residence are not refundable.**

As a sponsor, you have signed a promise to provide for the lodging, care and support of your relative(s) as may be required. You must support your relative(s) for (x) years from the date (they) become permanent residents. Your obligations to provide adequately for your relative(s) during the entire sponsorship period, as required, are to provide the following:

- a place to live;
- food, clothing, other living expenses; and
- financial assistance to ensure that they do not require support from any federal or provincial assistance program, or welfare or social assistance from a municipal program.

If payments are made to your relative(s) from any federal, provincial or municipal assistance program, you will be in breach of the agreement made when you signed the Undertaking to support your relatives in Canada. You may have to repay any benefits received by your relatives and you will not be allowed to sponsor any other relatives to Canada.

If you require clarification, more information or wish to provide a change of address or other information, please write to us at the address at the top of this letter, visit the CIC Web site at <http://www.cic.gc.ca> or telephone the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

### Annex 2

#### Request to withdraw sponsorship approved (Letter to sponsor)

This refers to the Undertaking of Assistance you submitted in support of the application for permanent residence from within Canada on humanitarian and compassionate grounds made by (name of principal applicant).

We have received your correspondence of (date) indicating your desire to withdraw or cancel this Undertaking.

#### Application received - no decisions made on undertaking or H&C application

## **IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds**

Although the application and Undertaking were received, no decisions were made on either matter at the time you contacted this office. We are returning the Undertaking to you with the notation "not processed at request of sponsor" and have updated our records to reflect your wish to withdraw or cancel your sponsorship.

### **Application received - undertaking approved but no H&C decision made**

Your Undertaking in support of your relative's application was approved on (date). No decision, however, has been made on your relative's application for permanent residence.

**As a result, your request to withdraw or cancel the Undertaking of Assistance on behalf of (name of principal applicant) can be accepted, however, there is no entitlement to a refund of any fees paid in relation to the undertaking or application.** We will review your relative's application for permanent residence with the knowledge that it is not supported by a sponsorship undertaking. You may wish to keep this letter as confirmation that you do not have a sponsorship obligation to (name of principal applicant)

If you require clarification, more information or wish to provide a change of address or other information, please write to us at the address at the top of this letter, visit the CIC Web site at <http://www.cic.gc.ca> or telephone the CIC Call Centre:

Anywhere in Canada (toll-free)                      1-888-242-2100

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**Note: c.c. Applicant for permanent residence**

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## IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds

### Appendix E

#### Annex 1

##### **Ineligible for H&C request - Client is permanent resident or Canadian citizen**

We are returning your application for permanent residence from within Canada based on humanitarian and compassionate (H&C) factors, including cost recovery processing fees. As a (permanent resident/Canadian citizen), you are not eligible for consideration of an H&C application as you currently have permission to reside in Canada.

Specifically, I note that you are (describe client's situation/the process examining their loss of status). If it is ruled that you have not lost/should not lose your (permanent residence/Canadian citizenship), there is no need for an H&C application. If, however, the ruling concludes that there is a loss of status, you would then be eligible to submit an H&C application.

If you require clarification, please write to us at the address at the top of this letter, visit the CIC Web site at <http://www.cic.gc.ca> or telephone the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

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#### Annex 2

##### **Ineligible for H&C request – client may be a permanent resident (currently in Canada with temporary resident status)**

We are returning your application for permanent residence from within Canada based on humanitarian and compassionate (H&C) factors, including cost recovery processing fees. As a person who was a permanent resident and who has been re-admitted to Canada as a temporary resident, we cannot consider a request for permanent residence until you attend a **re-determination interview** at the Canada Immigration Centre closest to where you reside.

This re-determination interview will be conducted at the Canada Immigration Centre to examine the reasons and length of your absence from Canada and is for the purpose of determining whether you have, in fact, lost your permanent resident status in Canada. If it is decided that you have not lost or should not lose your permanent resident status, there is no need for an H&C application. If, however, the ruling concludes that there is a loss of status and you agree with this ruling, you would then be eligible to submit an H&C application. If you do not agree and you challenge this ruling, you will not be eligible to submit an H&C application until a final determination is made with respect to your permanent resident status.

Until there is a final determination on your permanent resident status, please ensure that you apply for extensions of your temporary resident status that expires on (date). If you require an application kit to extend your status in Canada, please contact the CIC Call Centre or visit our Web site at <http://www.cic.gc.ca>.

If you require clarification, please write to us at the address at the top of this letter, visit the CIC Web site at <http://www.cic.gc.ca> or telephone the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

By copy of this letter, we are notifying the Canada Immigration Centre in your area of the need for a re-determination interview.

You may wish to contact that office, quoting the client number in the upper right corner of this letter. This is your personal identification number and it provides access to information on your

## **IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds**

file. For your own protection, do not allow any other person to use this number.

c.c. Canada Immigration Centre - Attn: Manager

# IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds

## Appendix F

### Applications under subsection 25(1) of the IRPA from persons who lost their Canadian citizenship as minors

#### 1. Purpose

The Minister has established a public policy under subsection 25(1) of the *Immigration and Refugee Protection Act* (IRPA), setting the criteria under which former citizens will be assessed for permanent residence.

Specifically, this policy applies to persons who ceased to be citizens under subsection 20(1) of the *Canadian Citizenship Act*, in force from January 1, 1947 to February 14, 1977. This provision stipulated that when a responsible parent ceased to be a Canadian citizen under certain circumstances, the minor children also ceased to be citizens if they became citizens of another country at the same time as the parent or if they already had citizenship of another country at the time the parent ceased to be a Canadian citizen.

The objective of this policy is to facilitate the reintegration into Canadian society of people who ceased to be citizens as minors and as a result of actions taken by their responsible parents.

#### 2. Acts and Regulations

IRPA subsection 25(1)

*Canadian Citizenship Act*, subsection 11(1)

#### 3. Instruments and Delegations

Officers should consult the manual IL 3, Module 1, item 45 for information specific to their region concerning the delegation of authority to process an application pursuant to subsection 25(1) of the IRPA, based on public policy.

The authority to issue a permanent resident visa or grant permanent resident status to a person who is inadmissible has not been delegated to officers. In cases where the applicant or a family member is determined to be inadmissible on the ground of excessive demand on health or social services, officers should refer the case to the Director of Case Review, Case Management branch, with a request for a waiver.

#### 4. Policy

As is the case for any former citizen, people who fall within the scope of this policy may resume citizenship after meeting certain requirements, one of which is living in Canada for one year as a permanent resident. Resumption (subsection 11(1) of the *Canadian Citizenship Act*) is a grant of citizenship that is effective the date the applicant takes the oath of citizenship.

To facilitate the acquisition of permanent residence for those who ceased to be citizens as minors, the Minister has established a public policy to grant permanent resident status or issue a permanent resident visa pursuant to subsection 25(1) of the IRPA.

#### 5. Public interest

The Minister has determined that it is in the public interest to grant permanent resident status to a person who meets the following conditions:

- It is confirmed that the person ceased to be a citizen as a result of subsection 20(1) of the *Canadian Citizenship Act* (1947) as a minor and as a result of actions taken by a responsible parent.



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- This person is not inadmissible, with the exception of health grounds when there is a risk that their health condition will cause excessive demand on health or social services.

### 6. Definitions

Definitions under the <i>Canadian Citizenship Act</i> , in force January 1, 1947 to February 14, 1977	
Responsible Parent	Means the father, unless the father was dead or custody of the child had been awarded by court order to the mother or the child was born out of wedlock and resided with the mother
Minor	Before February 15, 1977, minor was defined as being under 21 years of age

### 7. Procedures

#### APPLICATIONS:

In order for an application to be processed under this public policy, the person must make an application pursuant to subsection 25(1) of the IRPA. Pursuant to section 66 of the Regulations, the application must be made in writing and accompanied by an application to remain in Canada as a permanent resident or, for those outside of Canada, an application for a permanent resident visa. Applicants outside of Canada will submit their application in the skilled worker class. Applicants in Canada will submit their application using the form IMM 5001. Applications made under this public policy must be processed as quickly as possible.

#### CONFIRMATION OF LOSS OF CITIZENSHIP:

When a person requests to be considered under this policy, it must first be determined if the applicant has ceased to be a citizen under subsection 20(1) of the *Canadian Citizenship Act* (1947). Program Support officers at CPC Sydney make the final determination of loss of citizenship. Sometimes, a person will already have received written confirmation of loss of citizenship from CPC Sydney. If not, the visa or immigration officer will work with CPC Sydney to ensure there is sufficient information and evidence to allow a definitive ruling.

If it is determined the person did not cease to be a citizen, an application for permanent resident visa or to remain in Canada as a permanent resident is not necessary, and any fees taken will be refunded. The officer should recommend to the person that he or she apply for a certificate of Canadian citizenship, to prevent any questions in the future.

If it is determined the person ceased to be a citizen under any other provision of former or current legislation, this public policy does not apply.

#### IMMIGRATION REQUIREMENTS:

Once CPC Sydney has confirmed loss of citizenship under 20(1) of the *Canadian Citizenship Act*, the officer will continue processing the application for a permanent resident visa or to remain in Canada as a permanent resident. The officer will then determine whether the applicant and any family members are inadmissible.

The Minister is waiving inadmissibility based on excessive demand on health and social services for the applicant and family members who qualify under this public policy. Where the applicant or a family member is determined to be inadmissible pursuant to paragraph 38(1)(c) of the IRPA, the officer will refer the case to Case Review, Case Management branch, with a request for a waiver.

Other inadmissibility grounds of the IRPA continue to apply. Criminal and security prohibitions are not waived under this public policy, nor is the public health risk assessment. The applicant must intend to reside in Canada and be able and willing to support themselves and any accompanying family members.

## **IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds**

If the applicant and any family members are determined not to be inadmissible, the application for a permanent resident visa or to remain in Canada as a permanent resident will be approved, subject to subsection 25(2) of IRPA.

Applicants who intend to reside in the province of Quebec must meet the province's applicable selection criteria pursuant to 25(2) of IRPA. If a "Certificat de sélection du Québec (CSQ)" has not already been issued, the officer should forward the file to the appropriate office within the Service d'immigration du Québec. The officer should continue processing the file once the province of Quebec has made a decision regarding the issuance of the CSQ.

Cost recovery fees are applicable.

### **8. Codes**

Applications processed under this public policy must be coded in FOSS and CAIPS as PP1.

### **9. Questions**

Questions on IRPA subsection 25(1) may be directed to Selection Branch.

Questions on loss of citizenship or subsection 11(1) of the *Canadian Citizenship Act* may be directed to the Integration Branch e-mail address: [Nat-Citizenship-Policy@cic.gc.ca](mailto:Nat-Citizenship-Policy@cic.gc.ca).