Citizenship and Immigration Canada
Citoyenneté et Immigration Canada

PP 3

Pre-removal Risk Assessment (PRRA)

Canada

PP 3 – Pre-removal Risk Assessment (PRRA)

PP 3 – Pre-removal Risk Assessment (PRRA)

Updates to chapter

Listing by date:

Date: 2005-12-14

Changes were made to PP 3 in order to reflect the policy responsibility and service delivery transition from Citizenship and Immigration Canada (CIC) to the Canada Border Services Agency (CBSA). References to CIC and CBSA officers and the Minister of C&I (Citizenship and Immigration Canada) and the Minister of PSEP (Public Service and Emergency Preparedness) were made where appropriate, and other minor changes were made.

1. What this chapter is about

This chapter focuses on procedures and was developed to assist Pre-Removal Risk Assessment (PRRA) decision-makers by developing uniform procedures and processes for PRRA applications. The adherence to a standard procedure and process will assist in the delivery of timely and fair decisions.

The PRRA officer will be exposed to many issues too voluminous to include in this chapter.

To further assist the decision-maker, a reference guide has been developed. This reference guide will prove to be a useful tool and knowledge base for PRRA decision-makers. It is recommended that PRRA officers become familiar with its contents.

2. Program objectives

The *Immigration and Refugee Protection Act* (IRPA) provides that, with certain exceptions, persons in Canada may, in accordance with the Regulations, apply to the Minister of Citizenship and Immigration (C&I) for protection if they are subject to a removal order that is in force.

The mechanism provided for the evaluation of such applications is the PRRA. Any person awaiting removal from Canada who alleges risk will not be removed prior to a risk assessment. For most applicants, a positive determination results in the granting of refugee protection and, subsequently, in the granting of permanent residence. However, in the case of applicants determined ineligible for refugee determination because of inadmissibility based on grounds of security, violating human or international rights, serious criminality or organized criminality and individuals named in a certificate further to A77(1), a positive determination simply stays the execution of the removal order, a negative determination results in removal from Canada. The policy basis for assessing risk prior to removal is found in Canada's domestic and international commitments to the principle of *non-refoulement*. This principle holds that persons should not be removed from Canada to a country where they would be at risk of persecution, torture, risk to life or risk of cruel and unusual treatment or punishment. Such commitments require that risk be reviewed prior to removal.

PRRA has the same protection objectives as the IRB process. It is based on the same grounds and confers the same protection and status, except in cases described in A112(3). Therefore, PRRA is the government's response to Federal Court jurisprudence which has required that an assessment be made for persons who allege risk upon removal. It is also the government's response to Supreme Court jurisprudence which has suggested that everyone, including serious criminals and persons who pose a threat to national security, are entitled to a risk assessment. PRRA seeks to bring more efficiency to risk assessments by merging into one process for the majority of applicants what was done in the old process through the Post-Determination Refugee Claimants in Canada (PDRCC) Class and the risk element of H&C. The merger of procedures is achieved by ensuring that PRRA is undertaken immediately before removal. Persons remain free to make H&C applications, but the system is designed so that most persons will apply only once, shortly before removal.

3. The Act and Regulations

PRRA decision-makers are responsible for assessing the risk an applicant would face upon return to their country of origin. They should be familiar with the legislative and regulatory authorities contained within the *Immigration and Refugee Protection Act* and the Regulations. The following authorities should assist the decision-maker.

FOR INFORMATION ABOUT:	REFER TO:
Conferral of refugee protection Refugee protection is conferred on a person when	A95(1)

• the person has been determined to be a Convention refugee or a person in similar circumstances under a visa application and becomes a permanent resident under the visa or a temporary resident under a temporary resident permit for protection reasons; • the Board determines the person to be a Convention refugee or a person in need of protection; or • except in the case of a person described in A112(3), the C&I Minister allows an application for protection.	A95(1)(a) A95(1)(b) A95(1)(c)
Protected person A protected person is a person on whom refugee protection is conferred under A95(1), and whose claim or application has not subsequently been deemed to be rejected under A108(3), A109(3) or A114(4).	A95(2)
Convention refugee A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion, • is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or • not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	A96 A96(a) A96(b)
Person in need of protection A person in need of protection is a person in Canada 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 danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the *Convention Against Torture*; or • to a risk to their life or to a risk of cruel and unusual treatment or punishment if: ♦ the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country, ♦ the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country, ♦ the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standard, and ♦ the risk is not caused by the inability of that country to provide adequate health or medical care.	A97(1) A97(1)(a) A97(1)(b) A97(1)(b)(i) A97(1)(b)(ii) A97(1)(b)(iii) A97(1)(b)(iv)
Persons in need of protection A person in Canada who is a member of a class of persons prescribed by the Regulations as being in need of protection is also a person in need of protection.	A97(2)
Exclusion - Refugee Convention A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection.	A98
Application for protection A person in Canada, other than a person referred to in A115(1), may, in accordance with the Regulations, apply to the C&I Minister for protection if they are subject to a removal order that is in force or are named in a certificate described in A77(1).	A112(1)

PP 3 – Pre-removal Risk Assessment (PRRA)

Exception Despite A112(1), a person may not apply for protection if	A112(2)
• they are the subject of an authority to proceed issued under section 15 of the *Extradition Act*;	A112(2)(a)
• they have made a claim to refugee protection that has been determined under A101(1)(e) to be ineligible;	A112(2)(b)
• in the case of a person who has not left Canada since the application for protection was rejected, the prescribed period has not expired; or	A112(2)(c)
• in the case of a person who has left Canada since the removal order came into force, less than six months have passed since they left Canada after their claim to refugee protection was determined to be ineligible, abandoned, withdrawn or rejected, or their application for protection was rejected.	A112(2)(d)
Restriction Refugee protection may not result from an application for protection if the person	A112(3)
• is determined to be inadmissible on grounds of security, violating human or international rights or organized criminality;	A112(3)(a)
• is determined to be inadmissible on grounds of serious criminality with respect to a conviction in Canada punished by a term of imprisonment of at least two years or with respect to a conviction outside Canada for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years;	A112(3)(b)
• made a claim to refugee protection that was rejected on the basis of section F of Article 1 of the Refugee Convention; or	A112(3)(c)
• is named in a certificate referred to in A77(1).	A112(3)(d)
Consideration of application Consideration of an application for protection shall be as follows:	A113
• an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;	A113(a)
• a hearing may be held if the C&I Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;	A113(b)
• in the case of an applicant not described in subsection A112(3), consideration shall be on the basis of sections A96 to A98;	A113(c)
• in the case of an applicant described in subsection A112(3), consideration shall be on the basis of the factors set out in section A97 and	A113(d)
♦ in the case of an applicant for protection who is inadmissible on grounds of serious criminality, whether they are a danger to the public in Canada, or	A113(d)(i)
♦ in the case of any other applicant, whether the application should be refused because of the nature and severity of acts committed by the applicant or because of the danger that the applicant constitutes to the security of Canada.	A113(d)(ii)
Effect of decision	A114(1)

A decision to allow the application for protection has • in the case of an applicant not described in A112(3), the effect of conferring refugee protection; and • in the case of an applicant described in A112(3), the effect of staying the removal order with respect to a country or place in respect of which the applicant was determined to be in need of protection.	A114(1)(a) A114(1)(b)
Cancellation of stay If the C&I Minister is of the opinion that the circumstances surrounding a stay of the enforcement of a removal order have changed, the C&I Minister may re-examine, in accordance with A113(d) and the Regulations, the grounds on which the application was allowed and may cancel the stay.	A114(2)
Vacation of determination If the C&I Minister is of the opinion that a decision to allow an application for protection was obtained as a result of directly or indirectly misrepresenting or withholding material facts on a relevant matter, the C&I Minister may vacate the decision.	A114(3)
Effect of vacation If a decision is vacated under A114(3), it is nullified and the application for protection is deemed to have been rejected.	A114(4)
Application for protection Subject to R160(2) and for the purposes of A112(1), a person may apply for protection after they are given notification to that effect by Citizenship and Immigration Canada (CIC).	R160(1)
Notification The notification shall be given • in the case of a person, other than a person referred to in subsections R160(2), who is subject to a removal order that is in force, before removal from Canada; and • in the case of a person named in a certificate described in A77(1), on the provision of a summary under paragraph A78(h).	R160(3) R160(3)(a) R160(3)(b)
When notification is given Notification is given • when the person is given the application for protection form by hand; or • if the application for protection form is sent by mail, seven days after the day on which it was sent to the person at the last address provided by them to CIC.	R160(4) R160(4)(a) R160(4)(b)
Subsequent applications A person who has remained in Canada after the notification is given may apply to the C&I Minister for protection after a period of 15 days has elapsed after the day on which notification is given. Written submissions, if any, must accompany the application that is made without the notification.	R165
Inadmissibility at entry On entry to Canada, a foreign national against whom a removal order is made at a port of entry as a result of a determination of inadmissibility may, if the order is in force, apply to the C&I Minister for protection without notification on the making of the removal order. Their submissions must accompany the application.	R166
Stay of removal In order for an applicant's removal order to be stayed under R232 an application	R162

for protection must be received by CIC within 15 days after the notification is given.	
Submissions A person applying for protection may make written submissions in support of their application and for that purpose may be assisted, at their own expense, by a barrister or solicitor or other counsel.	R161(1)
Decision The C&I Minister shall not make a decision on an application for protection received within 15 days after notification until 30 days after notification was given.	R162
Hearing - prescribed factors For the purposes of determining whether a hearing is required under paragraph A113(b), the factors are the following:	R167
• whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in A96 and A97;	R167(a)
• whether the evidence is central to the decision with respect to the application for protection; and	R167(b)
• whether the evidence, if accepted, would justify allowing the application for protection.	R167(c)
Hearing procedure A hearing is subject to the following provisions:	R168
• notice shall be provided to the applicant of the time and place of the hearing and the issues of fact that will be raised at the hearing;	R168(a)
• the hearing is restricted to matters relating to the issues of fact stated in the notice, unless the officer conducting the hearing considers that other issues of fact have been raised by statements made by the applicant during the hearing;	R168(b)
• the applicant shall respond to the questions posed by the officer and may be assisted for that purpose, at their own expense, by a barrister or solicitor or other counsel; and	R168(c)
• any evidence of a person other than the applicant must be in writing and the officer may question the person for the purpose of verifying the evidence provided.	R168(d)
Abandonment An application for protection is declared abandoned	R169
• in the case of an applicant who fails to appear at a hearing, if the applicant has been given notice of a subsequent hearing and fails to appear at that hearing; and	R169(a)
• in the case of an applicant who voluntarily departs Canada, when the applicant's removal order is enforced under R240 or the applicant otherwise departs Canada.	R169(b)
Withdrawal An application for protection may be withdrawn by the applicant at any time by notifying the C&I Minister in writing. The application is declared to be withdrawn on receipt of the notice.	R170
Effect of abandonment and withdrawal	R171

An application for protection is rejected when a decision is made not to allow the application or when the application is declared withdrawn or abandoned.	
Applicant described in A112(3) Before making a decision to allow or reject the application of an applicant described in A112(3), the C&I Minister shall consider the assessments referred to in R172(2) and any written response of the applicant to the assessments that is received within 15 days after the applicant is given the assessments.	R172(1)
Assessments The following assessments shall be given to the applicant: • a written assessment on the basis of the factors set out in A97; and • a written assessment on the basis of the factors set out in A113(d)(i) or A113(d)(ii), as the case may be.	R172(2) R172(2)(a) R172(2)(b)
When assessments given The assessments are given to an applicant when they are given by hand to the applicant or, if sent by mail, are deemed to be given to the applicant seven days after the day on which they are sent to the last address that the applicant provided to CIC.	R172(3)
Applicant not described in A97 Despite R172(1) to R172(3), if the C&I Minister decides on the basis of the factors set out in A97 that the applicant is not described in that section: • no written assessment on the basis of the factors set out in A113(d)(i) or (ii) need be made; and • the application is rejected.	R172(4) R172(4)(a) R172(4)(b)
Re-examination of stay - procedure A person in respect of whom a stay of removal, with respect to a country or place, is being re-examined under A114(2) shall be given • a notice of re-examination; • a written assessment on the basis of the factors set out in A97; and • a written assessment on the basis of the factors set out in A113(d)(i) or (ii), as the case may be.	R173(1) R173(1)(a) R173(1)(b) R173(1)(c)
Assessments and response Before making a decision to cancel or maintain the stay of removal order, the C&I Minister shall consider the assessments and any written response of the applicant that is received within 15 days after the assessments are given to the applicant.	R173(2)
When assessments given The assessments are given to an applicant when they are given by hand to the applicant or, if sent by mail, are deemed to be given to the applicant seven days after the day on which they are sent to the last address that the applicant provided to CIC.	R173(3)
Reasons for decision After making a decision to allow or reject an application for protection, the C&I Minister shall, on request, give the applicant a copy of the file notes that record the justification for allowing or rejecting the application.	R174

3.1. Forms required

Nil.

4. Instruments and delegations

Nil.

5. Departmental policy

5.1. General

PRRA is a codification of the current administrative pre-removal risk assessments done by CIC. PRRA forms part of the *Immigration and Refugee Protection Act* (IRPA), assisting in providing clear, modern legislation to ensure that Canada's immigration and refugee protection system meets its Charter and international obligations. PRRA is found in PART 2, Refugee Protection, Division 3 of the Act.

Canada is bound by the *Canadian Charter of Rights and Freedoms* and international obligations to assess risk prior to the removal of an individual to a country of alleged persecution. PRRA stems from these obligations.

An application under PRRA will be considered under the same protection grounds as the IRB and will result in the same protection and status, except in cases described in A112(3).

In the majority of cases, PRRA can be carried out through a paper review process. However, in order to ensure that PRRA decision-makers have all the tools necessary to ensure a fair and effective risk review, IRPA gives them the discretion to hold an oral hearing in certain exceptional cases based on a series of criteria identified in the Regulations.

Persons who are subject to a removal order that is in force are eligible to apply for PRRA. Potential candidates for PRRA may be divided into five overall categories:

- individuals whose claim for refugee protection has been denied, withdrawn or abandoned;
- individuals making repeat claims more than six months after their departure from Canada;
- individuals who are ineligible for refugee determination at the IRB;
- all other individuals who wish to apply for protection before removal from Canada and have never made a previous claim for refugee protection;
- repeat PRRA applicants.

In cases where the applicant had a refugee hearing before the Board or where the applicant is a repeat PRRA applicant who has had a PRRA application refused, the PRRA is restricted to **new evidence** that arose after the rejection or evidence that was not reasonably available at the time of the rejection. A PRRA application is not an appeal of a negative refugee decision or a review of a previous decision of the Board, but rather an assessment based on new facts or evidence which demonstrate that the person is now at risk of persecution, torture, risk to life or risk of cruel and unusual treatment or punishment.

In other cases where there has never been a previous risk determination, such as ineligible claimants, there would be no risk information on file and PRRA officers will base their determination of risk on any **written** evidence the applicant may wish to present for consideration.

5.2. Who can apply for PRRA?

All persons in Canada who are subject to a removal order that is in force or who are named in a security certificate described in A77(1) may apply [A112(1)].

For more information on who can apply for PRRA, see sections 5.3 to 5.7 below. For information on who cannot apply, see section 5.8:

5.3. All failed claimants

Failed refugee claimants will receive an **advance notice** regarding the availability of PRRA when their claim is unsuccessful, determined abandoned or withdrawn at the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB).

Many such applicants will have subsequent recourses available to them such as an appeal to the Refugee Appeal Division and an application to the Federal Court for leave to commence judicial review. Once these recourses have been exhausted and a removal order has come into force, efforts to prepare for removal will commence.

Once a client is removal ready, these clients will receive a **second personalized notice** advising them that they are eligible to apply for PRRA and have 15 days to apply for protection through PRRA if they feel that they are at risk in their country of return. The notice will also advise them that a further 15 days will be granted for the preparation of submissions in support of the application.

At this point in time, these applicants may submit new evidence for consideration by the PRRA decision-maker. Such evidence is limited to evidence that arose after the rejection of their claim by the IRB or evidence that was not reasonably available or that the applicant could not reasonably have been expected in the circumstances to have presented at the time of the rejection.

5.4. Repeat claimants

Repeat claimants (refugee claimants previously rejected by the IRB or who had abandoned or withdrawn their claim) who return to Canada more than six months after departure from Canada, after a previous failed refugee claim, will be notified that they do not have access to determination by the IRB and another refugee claim. However, they will be advised that they may be eligible for protection under PRRA. Advance notification will be provided at the time of the decision that they are ineligible for refugee determination and, in certain cases, that they are inadmissible.

Once a removal order is in force, removal arrangements may be initiated. These repeat claimants will receive a **second notice** advising them that they have 15 days after receipt of the second notice to apply for PRRA if they feel that they are at risk in their country of return. The notice will also advise them that a further 15 days will be granted for the preparation of submissions in support of their application.

At this time, these applicants may submit **new evidence** for consideration by the PRRA decision-maker. Such evidence is limited to evidence that arose after the rejection of their previous claim by the IRB or evidence that was not reasonably available or that the applicant could not reasonably have been expected in the circumstances to have presented at the time of the rejection or only new evidence that has arisen since the last PRRA decision.

Repeat claimants will be assessed on the same consolidated protection grounds considered by the IRB. These grounds consist of the grounds identified in the *Geneva Convention relating to the Status of Refugees* and the *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Convention against Torture) as well as risk to life or risk of cruel and unusual treatment or punishment.

In cases where the PRRA decision-maker arrives at a positive determination, these applicants will be provided refugee protection and an opportunity to apply for permanent residence. In cases where the PRRA decision-maker arrives at a negative determination, removal arrangements will proceed.

5.5. Repeat PRRA applicants

Applicants who had a previous application under PRRA rejected and less than six months has passed since they left Canada are ineligible to apply for another PRRA. They will be advised in a letter from the removals officer who reviews their eligibility or by the PRRA decision-maker assigned to the application that they are ineligible to apply for PRRA.

PRRA decision-makers and removals officers are reminded that an application for protection that is declared to have been withdrawn or abandoned under R163 is considered rejected. This would

require the repeat PRRA applicant who withdrew or abandoned their application to be out of Canada for six months or more. Repeat PRRA applicants who return after the six-month period and express a risk will only have their risk application assessed against risk factors that arose since the last PRRA assessment.

In cases where the PRRA decision-maker arrives at a positive determination, these applicants will be provided refugee protection and an opportunity to apply for permanent residence. In cases where the PRRA decision-maker arrives at a negative determination, removal arrangements will proceed.

5.6. Inadmissible applicants referred to in A112(3)

Individual applications determined to be ineligible for refugee determination because of inadmissibility based on grounds of security, violating human or international rights, serious criminality or organized criminality and individuals named in a certificate further to A77(1) will not be assessed against Geneva Convention grounds. This is in keeping with the principle that such individuals are excluded from refugee protection under the provisions of the Convention.

However, for these individuals, a risk assessment will be carried out with respect to grounds identified in the Convention against Torture*,* as well as risk to life or risk of cruel and unusual treatment or punishment and may result in a finding that the person is in need of protection.

In cases described in A112(3), the PRRA decision-maker will provide an opinion on risk to the C&I Minister's delegate. A separate opinion will take into account whether the applicant for protection who is inadmissible on grounds of serious criminality constitutes a danger to the public in Canada. In the case of any other applicant, whether the applications should be refused because of the nature and severity of acts committed by the applicant or the danger that the applicant constitutes to the security of Canada, the C&I Minister's delegate will balance the risk to the individual concerned against the danger to the Canadian public, the nature and severity of the acts committed or the danger to Canadian security. In doing so, the C&I Minister's delegate will also consider the applicant's written response to the opinions on risk and danger.

Although a positive decision by the C&I Minister would result in a stay of removal, such an applicant **would not** be granted refugee protection but may be found to be a person in need of protection. A decision by the C&I Minister to grant a stay of removal would be open to review for possible cancellation of the stay in situations involving a change in circumstances.

Non-Claimants

5.7. Persons subject to security certificates

Permanent residents and/or foreign nationals may be the subject of a certificate signed by the C&I Minister and the Minister of Public Safety and Emergency Preparedness (PSEP) stating that they are inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality [A77(1)]. The signed certificate is referred to the Federal Court which will make a determination under A80(1). Upon the referral of a certificate to the Federal Court, any proceedings under IRPA may not be commenced or, if commenced, must be adjourned. The exception to the adjournment requirement is a PRRA application under A112(1). The proceedings under A77(1) shall be suspended on the request of the C&I Minister, the permanent resident or the foreign national, until the C&I Minister decides on an application for protection made under PRRA [A112(1)].

Upon the making of a decision on the application for protection, the PRRA decision-maker will notify the permanent resident or foreign national and the judge of their decision and the judge shall resume the proceedings and review the lawfulness of the decision of the PRRA decision-maker.

If the judge is of the opinion that the certificate is not reasonable, the certificate shall be quashed. If the judge does not quash the certificate but determines that the decision on the application for protection was not lawfully made, the judge shall quash the decision and suspend the proceedings to allow the C&I Minister to make a decision on the application for protection.

5.8. Who cannot apply for PRRA?

There are exceptions as to who may apply for PRRA. Outlined below in sections 5.9 to 5.12 are the applicants who cannot apply for PRRA. The exceptions relate to persons who already have protection or have other means of seeking protection.

5.9. Protected persons

A protected person or a person who is recognized as a Convention refugee by another country to which the person may be returned shall not be removed from Canada to a country where they would be at risk of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion or at risk of torture or cruel and unusual treatment or punishment [A115(1)]. A protected person cannot apply for PRRA.

5.10. Persons subject to an authority to proceed under the *Extradition Act*

The Authority to Proceed (ATP) issued under section 15 of the *Extradition Act* is issued by the Department of Justice once they have sufficient documentation from the requesting country to proceed. A confirmation of the ATP is sent to Case Management Branch and Ell Lookout is placed in FOSS indicating that the ATP has been issued. A person against whom an ATP has been issued is not eligible to apply for PRRA under A112(2)(a).

5.11. Ineligible claimants coming from a safe third country

A person cannot apply for protection if their claim for refugee protection was determined to be ineligible because they came to Canada directly or indirectly from a country designated by the Regulations, other than a country of their nationality or their former habitual residence [A112(2)(b)].

5.12. Six-month rule

A person may not apply for PRRA if a previous refugee claim was determined to be ineligible, abandoned, withdrawn or rejected, or their application for protection was rejected, and less than six months has passed since their departure from Canada [A112(2)(d)].

5.13. Duty to disclose adverse information

It is a fundamental matter of procedural fairness that applicants know the case they have to establish. If the PRRA officer is in possession of information which would persuade the PRRA officer to decide against the applicant, and the applicant is unaware of that information, the applicant must be given an opportunity to respond to that evidence. In some cases, the information may be classified, or not directly releasable. The applicant still has to have an opportunity to rebut the evidence. In such situations, PRRA officers will provide applicants with a précis of the information. For instance, this situation will be applicable in cases where the applicant is the subject of a security certificate. The précis will have to provide sufficient information to enable the applicant to adequately prepare a rebuttal and, at the same time, protect the classification of the evidence.

Courts have made a distinction between extrinsic evidence and intrinsic evidence. Extrinsic evidence is evidence that is not publicly available and of which the applicant is unaware. Where the PRRA officer intends to rely on extrinsic evidence, fairness dictates that this information be disclosed to the applicant. Publicly available information is not extrinsic evidence, and need not be disclosed to the applicant: this is information that is found in public documentation, accessible on the Internet, such as human rights reports or information found at the IRB Documentation Centre. Evidence that was before the IRB at the time of the consideration of the claim and that forms part of the IRB file need not be disclosed to the applicant.

In situations where the PRRA officer is not authorized to disclose the documentation (e.g., the PRRA officer intends to rely on classified information) the PRRA officer may provide a synopsis of the information and provide the applicant adequate time to respond.

5.14. Decision in writing

All decision-makers will develop their own writing style; nevertheless, there are some general principles and techniques that will help in writing well-written and defendable decisions.

Good organization is indispensable to effective writing. No matter how thorough the research, how thoughtful the analysis, and how skilful the use of language, work will be wasted if it is not adequately organized. All decisions should begin with a brief background on the PRRA officer's authority and the decision to be made. The identified risk issues should be outlined at the beginning to highlight the most important aspects. This does not involve repeating the whole case, but simply highlighting the most important details as a framework for the analysis and decision.

It is important to show that PRRA officers have carefully analyzed the case, weighed all of the evidence, and balanced the treatment they have given to the evidence considered. The decision should be based on the evidence presented and researched, supported by the factual weight of the evidence itself. The decision should not be based on any preconceived bias or information. The research should be fresh and show that the PRRA officer has addressed the individual case. Each applicant in the PRRA process is entitled to a fully independent assessment of the facts.

To a certain extent, the method of conveying the decision can be influenced by the submissions received. Whatever the personal style of the PRRA officer, thorough decisions will fully identify the issues and the relevant facts, will provide an analysis of facts and issues and will clearly and concisely rationalize the decision made. General rules of writing apply. The decision will be clear, concise, logical and factual. The source material should be identified in the decision. Photocopies of articles cited may be kept on file for future reference.

The reasons for the decision should be short and concise and address the issues raised. It is not necessary for a PRRA officer to write volumes to explain their decision. Brevity is advised and will assist the PRRA officer in focusing on case specific issues.

Decisions have to be written with a sense of the audience: the applicant, the counsel, and perhaps with a third party in mind. Consequently, the rationale or reason for the determination made should be fully transparent. The tone and language used in the decision should respond to the needs of the recipients. To the extent possible, language and tone should be impersonal and non-judgmental. Tone should remain consistently neutral, respectful, and impartial.

5.15. PRRA officers' notes

PRRA officers' notes, the analysis and reasons, form the rationale for a decision. It is important when making notes that they are clear and concise, that they address the risk issues alleged by the applicant as well as reflect the research that the PRRA officer has completed. When reading the notes, the reader should reach the same reasoned conclusion. Notes may be written in point form but they must capture the rationale of the issues and the research.

PRRA officers' notes will be provided to the applicant upon request. As the notes form the reasons for a decision, care should be taken to remain non-judgmental, to honestly and accurately reflect research. The notes should show that the PRRA officer made a fair and considered decision. The PRRA officer's consideration of the evidence and the weight afforded it should be apparent. In cases dealing with a positive risk pursuant to A112(3), the notes will be forwarded to the applicant as part of the rebuttal process.

5.16. *Functus officio*: After the PRRA decision is made

Once a PRRA officer has reached a final decision, that decision cannot be revisited. PRRA officers are considered to have performed the task for which they were empowered and consequently no longer have jurisdiction to reconsider or otherwise review their decision. In cases of criminals, the final decision is the one rendered after the *balancing*. The purpose is to impose finality to decision-making.

This doctrine is called *functus officio* and applies in particular to the following situations:

- change of mind;
- error within jurisdiction;

- unreasonableness;
- new evidence that was available;
- change of circumstances;
- consent.

However, the doctrine *functus officio* has some exceptions which render the PRRA officer's decision void or voidable, thus providing the authority for the decision-maker to reconsider the decision. Here are some exceptions applicable in the PRRA context:

- a clerical error;
- an accidental slip or omission;
- fraud;
- the decision is not made yet;
- failure of the decision to address the issue;
- decision void because of jurisdictional error (including errors such as breach of natural justice, making a decision without evidence, etc.).

It should be noted that a change in the country conditions does not justify a review of a PRRA decision. PRRA officers should never revisit their decision without guidance from Legal Services via the Refugee Branch further to a thorough review of the circumstances of the case. PRRA decisions are subject to judicial review and must comply with the general principles of fairness and administrative law.

5.17. Abandonment

An application for protection may be declared abandoned. R169 provides the conditions when an application will be declared abandoned. Abandonment applies in the context of lack of attendance at hearings and where the applicant voluntarily departs Canada. Those two scenarios provide an efficient means to bring closure to a file where applicants, by their actions, show that they do not wish to pursue the application. At the same time, in the case of lack of attendance at a hearing, fairness dictates that the applicant should be afforded a second opportunity to attend a hearing with prior notice; should the applicant fail to appear at the subsequent hearing, the application would be declared abandoned.

If an applicant voluntarily departs Canada, the application under PRRA is declared abandoned once the PRRA officer is informed of the departure.

The Regulations provide that the stay of removal, where applicable, will no longer apply once an application for protection is rejected. R171 states that an application for protection is rejected when the application is declared abandoned.

5.18. Withdrawal

R170 provides a legal basis for applicants to withdraw an application for protection. Notice of withdrawal will have been made in writing and the application is declared rejected on receipt of the notice.

The Regulations provide that the stay of removal, where applicable, will no longer apply once an application for protection is rejected. R171 clarifies that the application for protection is rejected when the application is declared to be withdrawn.

5.19. Vacation

The C&I Minister has the authority to annul or set aside a decision to allow an application for protection that was obtained as a result of directly or indirectly misrepresenting or withholding material facts on a relevant matter. The authority to vacate a decision is contained in A114(3). If

the decision is vacated, the decision is nullified and the application for protection is deemed to have been rejected at the time of the decision to vacate.

5.20. Duration of regulatory and ministerial stays

R232 states that a stay is effective until the earliest of the following events occurs:

- Citizenship and Immigration Canada receives confirmation in writing from the person that they do not intend to make an application;
- the person does not make an application within the period provided under R162 (15 days after notification);
- the application for protection is rejected;
- if a decision to allow the application for protection is made under A114(1)(a) and the person has not made an application within the period provided under A175(1) to remain in Canada as a permanent resident, the expiry of that period (180 days);
- if a decision to allow the application for protection is made under A114(1)(a), the decision with respect to the person's application to remain in Canada as a temporary resident is made; and
- in the case of a person to whom A112(3) applies, the stay is cancelled under A114(2).

5.21. Positive PRRA decisions

A decision to allow an application for protection under the provisions of PRRA may result in the protected person obtaining permanent residence. The applicant will be called into the office by the removals officer who will hand deliver the decision to the applicant or the decision will be mailed to the applicant, depending on local office procedures.

5.22. Country of removal

The country to which the applicant will be removed is in accordance with R241 which states:

> R241. (1) If a removal order is enforced under section 239, the foreign national shall be removed to
>
> (a) the country from which they came to Canada;
>
> (b) the country in which they last permanently resided before coming to Canada;
>
> (c) a country of which they are a national or citizen; or
>
> (d) the country of their birth.
>
> (2) If none of the countries referred to in subsection (1) is willing to authorize the foreign national to enter, the PSEP Minister shall select any country that will authorize entry within a reasonable time and shall remove the foreign national to that country.
>
> (3) Despite section 238 and subsection (1), the PSEP Minister shall remove a person who is subject to a removal order on the grounds of inadmissibility referred to in paragraph 35(1)(a) of the Act to a country that the PSEP Minister determines will authorize the person to enter.

5.23. Humanitarian and compassionate considerations and risk

Applications for humanitarian and compassionate consideration where a risk of return has been raised will be referred to a PRRA decision-maker as a departmental expert in matters of risk. The steps to be considered by the H&C decision-maker are outlined in IP 5, Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds, and are listed below in section 18.

The authority for officers to consider humanitarian and compassionate applications is stated in A25(1) and A25(2). If the C&I Minister is of the opinion that it is justified by humanitarian and compassionate considerations and upon the request of a foreign national, the C&I Minister can grant the foreign national permanent resident status or an exemption from any applicable criteria or obligation of the Act. A25 states:

> A25. (1) The C&I Minister shall, upon request of a foreign national who is inadmissible or who does not meet the requirements of this Act, and may, on the C&I Minister's own initiative, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligation of this Act if the C&I Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to them, taking into account the best interests of a child directly affected, or by public policy considerations.
>
> (2) The C&I Minister may not grant permanent resident status to a foreign national referred to in subsection 9(1) if the foreign national does not meet the province's selection criteria applicable to that foreign national.

Subsection A25(2) as stated specifically relates to the *Canada-Quebec Accord* and Quebec's right to select foreign nationals.

The process to be followed when the risk opinion of a third party (a PRRA officer) is sought prior to the decision-maker (an H&C officer) rendering a decision has been established by the Federal Court in *Haghighi v. M.C.I*. A copy of the *Haghighi* decision is provided for review in the reference guide.

5.24. Case inventory control

Case inventory control will be the responsibility of the individual PRRA offices. The priority assigned to each case will be the responsibility of the PRRA manager or co-ordinator. Requests from removals officers or CICs to expedite processing of cases should be on a manager to manager basis or manager/coordinator basis. To insure the independence of the PRRA decision-maker and avoid any apprehension of bias, there should be no direct contact with H&C or removals officers.

To maintain consistency and the integrity of the PRRA, inventory cases involving families are to be entered for each family member. Although only one decision is taken, it must be entered for each family member in NCMS and FOSS.

Example:	Five family members, one decision as a family unit, the decision is entered five times.

The only exception to this rule is if a spouse or older child makes an independent application and presents separate risks from that of the family.

The new PRRA process is designed in consideration of an applicant being removal ready.

The inventory of removal ready case files will require careful management to ensure that the number of case files forwarded for risk assessments do not overwhelm the capacity of the PRRA Unit.

This is a delicate balance and, without the assistance of all the various players, maintaining a steady and reasonable turnaround for applicants is not viable. It is unfair to an applicant to have to wait a protracted period of time, living a life of uncertainty and not knowing their fate. Working in harmony will hopefully prevent a huge and insurmountable inventory.

5.25. Notifications and letters

Under the PDRCC program, offices have seen fit to alter the forms and letters to meet local needs. This resulted in the lack of a uniform process affecting the integrity of the program and difficulty in meeting court challenges. Any changes to the approved letters provided must be made through National Headquarters.

5.26. NCMS

With the implementation of PRRA, the first noticeable change users will find in NCMS is that the PDRCC process will no longer be generated after June 28, 2002. PRRA will be a new process that will appear on the Case Tracing tree. A new tab called PRRA will be implemented. There will be a complete new set of Business Rules created for PRRA, as well as updates to the Risk Review business rules. It is mandatory that PRRA officers complete the case tracing in NCMS to ensure an up-to-date computer reference. One of the important aspects of PRRA in NCMS is the linking of the PRRA process to other processes in the system, particularly the removals process. These important links will be clearly identified in the new PRRA business rules. The A114 (H&C) process in NCMS will no longer be generated after June 28, 2002. Like PDRCC, those cases that have an H&C process generated before June 28, 2002 will still appear on the tree.

5.27. FOSS

Field Operational Support System (FOSS) remains operational in all offices. Until NCMS is available in all offices, officers or support staff will be required to make entries into both systems. This will enable all offices without NCMS to follow the history of a PRRA application and determine what the decision of the PRRA officer was regarding an application for protection. It is vital that these systems are updated immediately.

5.28. Quality assurance

The PRRA managers or co-ordinators will review the decisions of PRRA decision-makers on a regular basis. The purpose of this review is to ensure the integrity of the written decisions. The review is not meant to influence or change the decision of the PRRA officer but only to determine if the PRRA decision-maker has met the guidelines on decision writing and notes suggested in this chapter in sections 5.14 and 5.15 above. The review will confirm that:

- the applicant is eligible for PRRA;
- the time frames for applications and submissions were honoured;
- all of the risks stated by the applicant or counsel were given full consideration;
- the decision is supported by objective evidence available on the file;
- although not submitted, applicable risks were considered;
- the language of the decision is non-judgmental and respectful;
- the decision was not taken in a capricious manner;
- the decision of the PRRA decision-maker has been recorded in both FOSS and NCMS correctly and in a timely manner, and a copy remains on file;
- files are promptly forwarded to the Removals Unit or sent for landing;
- if an oral hearing was held, the three criteria required for an oral hearing were present.

6. Definitions

6.1. Agent of torture

An important element of the definition of torture is that the pain or suffering amounting to torture must be inflicted by or at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity. However, the risk of torture need not be from the State government itself, and may arise, for instance, from an errant police force or the military.

6.2. Cruel and unusual treatment or punishment

The concept of “cruel and unusual treatment or punishment” is found in section 12 of the *Canadian Charter of Rights and Freedoms*. Therefore, jurisprudence interpreting section12 is

applicable, but officers must apply that jurisprudence in light of the context of removal to another country, not whether the treatment or punishment would be unacceptable if imposed in Canada. Notions familiar to section12 of the Charter are also present in international conventions that Canada has signed, such as the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, known as the Convention against Torture (CAT) and the *International Covenant on Civil and Political Rights* (ICCPR). Thus, international jurisprudence, while not binding, can provide helpful guidance.

The following propositions, taken from Charter jurisprudence, are applicable:

- the treatment or punishment is of such character or duration that it would outrage the conscience of Canadians or be degrading to human dignity to remove someone to face such treatment or punishment;
- the treatment or punishment is disproportionate to the achievement of a valid social aim, is arbitrarily imposed or is excessive as to not be compatible with human dignity.

These risks include actions that would constitute violations of fundamental human rights, such as—but not limited to—serious affronts the physical and psychological integrity of the individual.

In *Cruz v. Sweden,* the European Court of Human Rights explained the minimum threshold of what constitutes inhuman treatment in the following words:

> "It is recalled that ill-treatment must attain a minimum level of severity…The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the nature and context of the treatment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age, and state of health of the victim."

6.3. Inadmissibility

Applicants who are referred to in A112(3) are those determined to be inadmissible based on grounds of security, violating human or international rights, serious criminality or organized criminality. This latter group includes any person found inadmissible on these grounds, including claimants found ineligible by the Immigration Division or by the C&I Minister or by the PSEP Minister, in cases of serious criminality. The Act also includes in this group claimants whose claim for refugee protection was rejected on the basis of Article 1F of the Refugee Convention.

6.4. Persecution

The courts have defined persecution by relying on the dictionary definitions: "To harass or afflict with repeated acts of cruelty or annoyance." It will be necessary to determine whether or not the harassment or sanctions that the applicant fears are sufficiently serious to constitute persecution. Threats to a person's life and freedom for one of the reasons in the definition will constitute persecution and so would be violations of other fundamental human rights. Other sanctions against the individual may or may not be persecution. In some cases, the cumulative effect of a series of incidents constitutes persecution. The sanctions need not be against the individual, but can also encompass acts committed against the individual's family. Minor forms of harassment, such as in employment, may not be sufficiently serious to constitute persecution. The jurisprudence illustrates situations where harassment does not amount to persecution.

6.5. Torture

The protection against torture is restricted in its scope. Article 1 of the *Convention Against Torture,* which has been incorporated into IRPA, defines torture as follows:

> .any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting

in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

It is difficult to provide a rigorous definition of what conduct would amount to torture. Some international decisions provide examples:

- The following techniques used by the Greek military junta: mock executions, death threats, electric shock, the use of insulting language, being compelled to be present at the torture or cruel, inhuman or degrading treatment of relatives or friends [*Denmark et al. v. Greece* (3321-3/67; 3344/67 Report: YB 12 bis)].
- The following techniques when used in combination by British Security Forces in Northern Ireland against detainees: being forced to stand for long periods of time, hooding, subjection to noise, deprivation of sleep, food and drink [*Ireland v. United Kingdom*].
- The infliction of mental suffering through the creation of a state of anguish and stress by means other than bodily assault (e.g., threatening to kill or hurt family members) [*Ireland v. United Kingdom, supra].*
- Beatings in police custody. The requirements of the investigation and the undeniable difficulties inherent in the fight against crime, particularly with regard to terrorism do not change the nature of torture [*Tomasi v. France*, judgment of 27 August 1992 (Series A, no. 241)].

There is no need to demonstrate that the applicant would face torture for one of the five enumerated grounds set forth in the refugee definition. The 1951 Refugee Convention requires that the fear of persecution be based on specified grounds (i.e., race, religion, nationality, membership of a particular social group or political opinion). Under the CAT, however, the sole question is whether there is a substantial risk of torture, regardless of whether it is based on any of the grounds specified in the definition of refugee.

7. Procedure: Roles and responsibilities

The PRRA office is structured in such a way to ensure that the independence of the PRRA decision-maker is safeguarded. For more information, see the following table.

Table: Roles and responsibilities

Role	Responsible for:
PRRA manager	• The overall operation of the office ensuring that it is adequately resourced to maintain the timely and effective flow of applications and removal needs. • Directly or through the coordinators identifying the needs, concerns and issues of the PRRA Unit, addressing any concerns or issues involving removals with the removals manager. • Interacting with National Headquarters to resolve major issues that may affect the integrity of the PRRA program nationally. Upon resolution the changes are adopted to maintain the consistency of PRRA program.
PRRA coordinator	• In the major centres, assisting the manager in the day to day operation of the PRRA Unit. • Being the contact for the Removals Unit supervisors. By maintaining this level of interaction the establishment of case priorities and a viable inventory flow can be attained. • The coordinator or manager will assign the cases and

	communicate with the removals manager or supervisor if issues arise, preserving the independence of the PRRA decision-maker.
PRRA decision-maker	• Speaking with the PRRA manager or coordinator, if faults are discovered in applications assigned to them. • It is inappropriate for the PRRA decision-maker to have direct contact with a removals officer and all communication must take place through the established lines of communications.

8. Procedure: Applying for protection

The program officer must be able to make sure that the process for applying for protection is followed.

8.1. Applications made within 15-day period after PRRA notification

Applications for protection must be made within 15 days from receipt of the PRRA notification to be afforded the regulatory stay under PRRA. If an individual does not submit a PRRA application within 15 days after receipt of the notice, removal arrangements will resume. In most instances, the PRRA notification will be hand delivered to the applicant. However, if the PRRA notification is mailed, an additional seven days is provided for mailing (7+ 15 = 22 days). If the application is received but it is late, the submissions must accompany any late application. A risk assessment will be completed but the applicant does not benefit from the stay provisions available under the PRRA regulation.

Applicants who feel that they are at risk in their country should apply and mail their application within the 15-day time frame. The applicant has a further 15 days, once the 15 days to apply has lapsed, to provide written submissions. If no submissions are received, the PRRA officer can make a decision based on the risk identified in the application and the information on file.

If applicants do not wish to present an application for protection under PRRA, the advance notice and the second notice include a declaration of intent that they may complete and return to the removals office. The completion of this declaration or waiver will indicate that no risk exists and removal arrangements should proceed.

8.2. Applications made after expiration of the 15-day period

PRRA applicants have 15 days to apply from notification. The 15-day submission period begins once the application period ends (7 days if mailed + 15 days = 22 days).

Failed claimants and repeat claimants may present only new evidence that arose after the last negative PRRA decision or after the rejection of a claim for refugee protection. Evidence that was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented at the time of the rejection of their refugee claim can also be considered.

Non-claimants are covered by the same 15-day time frame but they may submit any documentary evidence in support of their risk assessment and are ***not*** limited by the new evidence provision.

If an application is made but no submissions are received within the prescribed time frame for submissions (15 days), the PRRA decision-maker will base the risk decision upon information already on file.

For late application or **multiple applications,** the written submissions must accompany the application.

The applicant should make it clear in submissions what risk would be faced in the country of return. The applicant is expected to explain how the alleged risk might lead to a risk to their life or to a risk of cruel and unusual treatment or punishment, the danger of torture, and what convention grounds are applicable. The submissions should address:

- why the applicant is unable or unwilling to avail themselves of the protection of the country of return;
- that the risk would be faced in every part of that country and is not faced generally by other individuals in or from that country;
- that the risk faced is not inherent or incidental to lawful sanctions unless imposed in disregard of accepted international standards; and
- that the risk is not caused by the inability of the country to provide adequate health or medical care.

While there is a prescribed time frame to submit an application under the PRRA, there is no specific cut-off date for *additional submissions* or restrictions on their number. The only requirement is that they be received before the decision is made. Therefore, PRRA officers should consider any submissions received prior to making a decision.

PRRA officers are often sent voluminous submissions. The sheer volume of the submissions can be overwhelming. PRRA officers are strongly urged to ask applicants and/or their counsel to identify the specific information relating to the applicant and the identified risk.

Any submission received in relation to an applicant who is not eligible for a PRRA review should be returned to the individual. The appropriate letter outlining the reasons for the applicant's ineligibility should accompany the submissions. If submissions are received after a decision has been made, and the submissions are clearly late, they should be returned to the applicant or counsel, once again providing the reasons in the appropriate letter.

8.3. Applications made at a port of entry (POE)

PRRA officers will be asked to assess risks presented by a person seeking protection at a port of entry. During the examination of a foreign national seeking authorization to enter Canada, the foreign national may state that they are seeking protection As this statement has been made before any removal order was issued, the person would be considered to be making a claim for refugee protection. However, once a removal order has been made, a foreign national who states they are at risk is not eligible to make a claim for protection as a refugee.

Should a foreign national state that they are at risk or in fear of returning to their country after the making of a removal order, they would be eligible to apply for protection under PRRA [A112(1)].

R166 states:

> 166. An application for protection by a foreign national against whom a removal order is made at a port of entry as a result of a determination of inadmissibility on entry to Canada must, if the order is in force, be received as soon as the removal order is made. Written submissions, if any, must accompany the application. For greater certainty, the application does not result in a stay of the removal order.

As the application at the port of entry does not require notification, **no stay of removal** is associated with it.

8.4. Applications made by persons subject to security certificates

A PRRA applicant named in a certificate [A77(1)] may apply for protection under the Pre-Removal Risk Assessment. An applicant named in a security certificate has restricted assess to PRRA as outlined in A112(3). Applicants determined inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality and individuals named in a certificate further to A77(1) will not be assessed against Refugee Convention grounds and refugee protection will not result. Instead, an applicant considered personally at risk within these grounds may be found a "person in need of protection" under A97. The process for obtaining a security certificate and PRRA decision-makers' involvement is outlined below.

A77(1) states:

> 77.(1) The C&I Minister and the PSEP Minister shall sign a certificate stating that a permanent resident or a foreign national is inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality and refer it to the Federal Court—Trail Division, which shall make a determination under section 80.

Upon the referral of a certificate to the Federal Court, a proceeding under IRPA may not be started and, if started, must be adjourned until the judge makes the determination. The one exception to this provision is an application under PRRA [A112(1), A77(2)].

The proceedings with respect to a security certificate shall be suspended on the request of the C&I Minister, the permanent resident or the foreign national until the application for protection under A112(1) is decided [A79(2].

PRRA decision-makers must assess the risk to these applicants as expeditiously as possible. The PRRA decision, risk assessment, will form part of the summary of the information and evidence provided by the judge to the applicant so that the applicant is aware of the circumstances that caused the certificate to be issued. The PRRA decision-maker will undertake a risk assessment and follow the procedures outlined in section 15.2 for the balancing of risk of A112(3) cases. The PRRA decision will be forwarded to the judge.

Upon receipt of the PRRA risk assessment, the judge will resume the security proceedings, determine whether the certificate is reasonable, and review the lawfulness of the PRRA risk assessment and decision of the C&I Minister [A80(1)]. If a certificate is determined not reasonable in the opinion of the judge, the certificate shall be quashed. If the judge does not quash the certificate but determines that the decision (risk assessment) on the application for protection was not lawfully made, the judge shall quash the decision and suspend the proceeding to allow the C&I Minister to make a decision on the application for protection [A80(2)]. The determination of the judge is final and may not be appealed or judicially reviewed [A80(3)].

If a certificate is determined reasonable, it is conclusive proof that the applicant is inadmissible, and it is a removal order that may not be appealed against and is in force without the necessity of holding or continuing an examination or an admissibility hearing. The person named in the security certificate may not apply for protection under A112(1) as the certificate has been determined reasonable and lawful [A81(c)].

These cases will be expedited given their nature and the involvement of the Federal Court.

8.5. Application for a pre-removal risk assessment (PRRA) during the security certificate process

The procedure is as follows:

- C&I Minister (Case Management Branch analyst) informs the Department of Justice that a PRRA application has been filed;
- the security certificate process continues while the C&I Minister reviews the PRRA application in accordance with PRRA procedures and provides the PRRA determination;
- C&I Minister forwards PRRA file to the Department of Justice representative and informs them of the PRRA determination;
- the Federal Court judge must review and render a decision upon notification by the C&I Minister as to whether the PRRA determination was lawfully made;
- if the judge finds that the PRRA determination **was** lawfully made, the determination stands;
- if the judge finds that the PRRA determination **was not** lawfully made, the determination is returned to the C&I Minister for re-determination.

9. Procedure: Assessing applications

9.1. Accepting new evidence only

A113(a) provides that persons whose claim to refugee protection has been rejected may only present ***new evidence*** that arose after the rejection, evidence that was not reasonably available or that the applicant could not reasonably have been expected in the circumstances to have presented.

9.2. Establishing grounds of protection

To establish what protection grounds apply for applicants for protection under A112(1), a PRRA decision-maker must determine whether the applicant is admissible or inadmissible.

To make this determination, the decision-maker must examine the factors set out in A112(3).

For more details on grounds of protection, see Assessing an application for protection, section 10 below.

9.3. Applicant is not described in A112(3)

Applicants that are determined to be admissible, **or not described in** A112(3), will have the risk they expressed considered against the consolidated protection grounds. The basis to consider the consolidated grounds for admissible applicants is established in A113(c). The consolidated grounds are stated in A96 to A98 and include Convention refugee grounds, torture within the meaning of Article 1 of the Convention Against Torture, a risk to their life or risk of cruel and unusual treatment or punishment.

9.4. Applicant is described in A112(3) or is subject to a security certificate

This section describes the factors that are considered for a person in need of protection. An applicant that is inadmissible, **described in** A112(3), will be considered on the basis of factors set out in section A113(d). The factors assessed are outlined in A97 as torture within the meaning of Article 1 of the Convention Against Torture, a risk to their life or a risk of cruel and unusual treatment or punishment.

Pursuant to A97(1)(b), the following provisions apply to a risk to life or cruel and unusual treatment or punishment:

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,
(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,
(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and
(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

Persons found inadmissible are not considered against the Convention refugee grounds.

10. Procedure: Assessing an application for protection

When assessing an application for protection, all applicable protection grounds must be considered and applied. Therefore, reasons must be given in respect of all applicable grounds in coming to a determination that the application be rejected. In the case of applicants referred to in A112(3), persons who are determined to be inadmissible on grounds of security, violating human rights or international rights or organized criminality, the grounds of protection are referred to in A97: danger of torture or risk to life or cruel and unusual treatment or punishment. Where the application is allowed on the basis of one of the grounds, it is not necessary to consider the application of other grounds.

10.1. Considerations applicable to all grounds

The considerations in sections 10.2 to 10.6 below are applicable to all three protection grounds as described in the sections.

10.2. The risk must not be faced generally – Generalized oppression

All grounds for protection involve a demonstration that the risk be characterized as personal and objectively identifiable. This is not restricted to a risk that is personalized to the individual; it includes risks faced by individuals that may be shared by others who are similarly situated. The Act does provide for protection in cases of generalized oppression: a stay of removal to particular countries may be decided upon by the C&I Minister where whole populations are at risk, according to factors set out in the Regulations. The application for protection, by contrast, is meant to deal with an allegation of personal risk.

10.3. State protection – Unable or unwilling to seek State protection

Where the applicant faces a risk, either of persecution, torture, to their life or cruel and unusual treatment or punishment, the issue to be determined in every case will be whether or not the applicant is able to obtain the protection of the State. A person is unable to seek protection of the State in circumstances where the State cannot provide protection. For example, this can arise in the context of threats directed against an individual by non-State agents in circumstances where State protection is ineffective. When a person is unwilling to avail themself of the State's protection, the person opts, because of the risks, to not seek the protection of the State; this can arise when the State has control over its territory and where the applicant has been persecuted by the State, or because the State has failed to or cannot protect the applicant from actions of third parties. The question of State ability to provide protection will be determined by an objective analysis of the evidence concerning the capacity of the State to protect its citizens. There is a presumption that the State is able to provide protection; therefore, there must be clear and convincing proof of the State's inability to provide protection. Where the applicant has failed to demonstrate that the State is unable to provide protection, the application should be rejected.

10.4. Internal Flight Alternative (IFA)

When considering an application for protection, the applicant, although in danger of persecution, torture, risk to life or cruel and unusual treatment or punishment in one part of the country of return, might reasonably be expected to obtain protection at some other locality within the country. In such a situation, the applicant can be denied protection because they could avail themself of the "Internal flight alternative". An IFA must be a realistic and attainable option, accessible without great physical danger or undue hardship. It must offer protection from the risk that is stable, rather than transitory, and there should be an established authority to which the individual can turn for recourse. The burden of establishing that an IFA does not exist, or that it would be unreasonable to require the individual to return to an IFA, rests with the applicant. When assessing the reasonableness of the IFA, the PRRA officer should consider the particular circumstances of the individual to establish whether it would be inhumane and unreasonable to require an individual to return to some part of the State. Elements such as convenience or preference of the applicant to live in a particular part of the country should not render an IFA unreasonable.

Humanitarian and compassionate considerations are not relevant when assessing the reasonableness of the IFA. For instance, hardship flowing from separation from relatives in the country of refuge are not considered relevant to the assessment of whether it would be unduly harsh to return to an IFA. These considerations are only relevant in the context of applications to the C&I Minister for humanitarian and compassionate considerations.

10.5. Factors that will lead to a rejection of the application

While all three protection grounds must be considered and applied, and reasons given in respect of all grounds in coming to a determination that the application be rejected, the absence of an essential ingredient in the application of one ground will often mean that the other two grounds are also inapplicable. The factors defined above and listed below will lead to a rejection of the

application, under all grounds of protection. For example, if the harm feared is not supported by reliable evidence on country conditions, or not severe enough, or generalized among the population of the country in question, all three grounds may well be inapplicable. Similarly, where State protection exists or there is an accessible and reasonable IFA, a discussion of one or two determinative issues may not be necessary in order to reject the application. The following factors will be determinative of the application:

- harm feared is not severe;
- harm feared is not generalized;
- harm feared is the law of general application, lawfully imposed, fitting international standards;
- harm feared is not objectively supported;
- there is effective State protection;
- there is IFA or multiple nationalities.

10.6. Country of nationality

The definitions of "refugee" and "person in need of protection" confine the protection to persons who are outside their country of origin. The definitions distinguish between persons who have a country of nationality and persons who do not. The application must be based with reference to a country of origin: the country of nationality and, for persons who do not have a country of nationality, the country of former habitual residence. In cases where the applicant has multiple nationalities, the PRRA officer must examine all countries of nationality. This principle is applicable even if the applicant has never entered or lived in one of the countries of nationality.

10.7. Convention refugee definition

This ground of protection is applicable only to persons who are not referred to in A112(3).

For more information, see sections 10.8 to 10.11 below.

10.8. Well-founded fear

At the core of the definition of "Convention refugee" is the requirement that the applicant demonstrate a well-founded fear of persecution in the country of origin. The phrase "well-founded fear" has been interpreted as having two components: a fear of persecution, felt subjectively, and the well-foundedness of the fear, tested objectively.

Objective and subjective fear

The subjective component relates to the existence of persecution in the mind of the refugee. However, focus should be put on the objective basis of the fear of persecution. Once it has been established that a person has an objective basis of fear of persecution, it is conceivable that the applicant also presents a subjective fear. However, if the applicant is lacking in credibility, then it could be held that there is no subjective basis for the application. The application could be rejected even if there is extensive evidence of human rights violations in the country of origin.

Standard of proof

The objective component requires that the refugee's fear be evaluated objectively to determine if there is a valid basis for that fear. The nature of the test for well-founded fear of persecution is described in terms of "reasonable chance": Is there a reasonable chance that persecution would take place were the applicant returned to the country of origin? An applicant need not show a probability of persecution but need only show a "reasonable chance" or "serious possibility". The officer must be satisfied on a balance of probabilities that the fear is well-founded. The test for well-foundedness is objective. Evidence about conditions in the country of origin, particularly the country's human rights record, is crucial to the determination of the objective basis of the claim.

Past and future persecution

Applicants need not show that they have been persecuted in the past in order to establish a well-founded fear of persecution. The issue for the PRRA officer should be whether past events related by the applicant, together with all the other evidence, including country conditions at the time of the decision, show that the applicant would be objectively at risk if returned. Thus, the test is forward looking, except where there are compelling reasons based on past persecution for granting protection. The *Convention Relating to the Status of Refugees* states in paragraph C (5) and (6) of Article 1:

> "Provided that this paragraph shall not apply to a refugee falling under A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence."

If the applicant is not in a position to lead evidence of past persecution, evidence of persecution visited upon persons in a similar situation to that of the applicant in the country of origin may serve to substantiate a fear of future persecution. Such persons may be family members, political associates, and members of the same social class, race, religion, or ethnic group.

10.9. Persecution

Persecution is one of the key elements of the definition of Convention refugee. In order to qualify for protection as a Convention refugee, the applicant must demonstrate a fear of persecution. The term "persecution" is not defined in the Refugee Convention or in the Act. Not all harm inflicted against an individual will justify protection. In some cases, the harm might be so trivial as to not justify granting protection. In others, the harm might be a product of security measures of a non-discriminatory nature directed at the entire population as the result of generalized oppression. The State itself need not be the direct perpetrator, and the only issue to be determined is whether or not the State is able to provide protection.

For more information, see the definition of persecution in section 6.4 above and sections 10.10 and 10.11 below.

10.10. Assessing persecution cases

In cases of prosecution, the particular circumstances must be assessed. The prosecution must be serious enough to qualify as persecution. If there is evidence that the prosecution is linked to the applicant's race, religion, nationality, membership in a social group or political opinion, the following must be assessed:

- the motivation of the applicant when the offence was committed;
- the motivation of the government in pursuing prosecution;
- whether the punishment for the offence is disproportionate to the offence itself;
- the human rights record of the prosecuting country;
- the status of the country's judicial system;
- the nature of the law which the applicant has violated (if compliance with a law results in a violation of an international legal norm, prosecution may be persecutory);
- the nature of the law under which the individual will be prosecuted (arbitrarily punishing acceptable behaviour may be persecutory).

10.11. Assessing the reason for persecution – Nexus

Under the Convention refugee definition, it is necessary to determine whether the harm is inflicted for one of the reasons set out in the definition: the injury feared must be linked to the applicant's race, religion, nationality, membership in a particular social group or political opinion. If there is no clear linkage, the applicant will not fit in the Convention refugee definition. In some cases involving situations of civil strife, the conclusion may be that the fear is merely a fear of generalized oppression and is not related to a Convention refugee reason. In such cases, it will

be necessary to determine whether the harm is merely a harm common to all persons living in a state of civil war, or in some way directed against the individual or group for reasons of race, religion, nationality, membership in a particular social group or political opinion.

To qualify for protection, the persecution of which the applicant has a well-founded fear must occur for reason of race, religion, nationality, membership in a particular social group or political opinion. The Supreme Court of Canada in *Canada* v. *Ward (Minister of Employment & Immigration)* [1993] 2 S.C.R. 689, has noted that the meaning of "particular social group" should take into account the general underlying themes of human rights and anti-discrimination that form the basis for the international refugee protection initiative. There are three possible categories:

- groups defined by an innate or unchangeable characteristic;
- groups whose members voluntarily associate for reasons fundamental to their human dignity that they should not be forced to forsake the association;
- groups associated by a former voluntary status, unalterable due to its historical permanence.

The first category would embrace individuals fearing persecution on such bases as gender, linguistic background and sexual orientation, while the second would encompass, for example human rights activists. The third category is included more because of historical intentions, although it is relevant to the anti-discriminatory influences, in that one's past is an immutable part of the person.

In *Ward (supra)*, the Supreme Court explicitly held that persecution based upon a person's gender could sustain a claim to refugee status. However, the Court did not say that gender in and of itself was sufficient to define a particular social group. The Court has held that particular subcategories of women such as abused women, women subject to domestic violence constitute a particular social group. The Court has also held that women who are subject to enforced sterilization do constitute a social group. Recognition of gender as a basis for refugee protection has not been confined to claims made by women. The IRB has developed gender guidelines; PRRA officers are invited to consult them for assistance in their decision making. The complete guideline is provided in the reference guide. The assessment of applications based on sexual orientation is also the subject of guidelines in the reference guide.

10.12. Danger of torture

The standard to be met by an applicant alleging danger of torture is defined in the legislation and is of belief on substantial grounds to exist. The standard is not the same as for the refugee definition: a serious possibility that an individual would be in danger of torture does not satisfy the legislative threshold test. However, the risk does not have to meet the test of being highly probable (see General Comment of CAT on the implementation of article 3 of the Convention in the context of article 22 : 21/11/97). Objective factual material must show a probability of danger to the claimant if returned to the country of origin.

For more information, see definition of "torture" in section 6.5 and definition of an "agent of torture" in section 6.1 above.

10.13. Making an objective assessment of the danger of torture

The assessment of whether there are substantial grounds to believe the applicant would be personally subjected to a danger of torture is to be made on an objective basis. There is no requirement to prove a subjective fear. However, the danger must be personalized to the individual. As in the Refugee Convention, the assessment may be based on past events but is forward looking: the issue to be determined is whether events related by the applicant, together with all the other evidence, including country conditions at the time of the decision, show that the applicant would be subjected to torture, if returned. For example, the European Court of Human Rights found that Sweden had legitimately returned a claimant to Chile, even though he was suffering from post-traumatic stress disorder as a consequence of having been tortured there. Due to a change in government, there was no longer any substantial basis for the applicant's fear of torture [*Cruz Varas and Others v. Sweden*, judgment of 20 March 1991 (Series A, no. 201)].

10.14. Following Committee against Torture guidelines

The Committee against Torture has issued the following for guidelines:

(a) Is the country concerned one in which there is evidence of a consistent pattern of gross, flagrant or mass violations of human rights?
(b) Has the applicant been tortured or maltreated by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity in the past? If so, was this the recent past?
(c) Is there medical or other independent evidence to support a claim by the author that he/she has been tortured or maltreated in the past? Has the torture had after-effects?
(d) Has the situation referred to in (a) above changed? Has the internal situation in respect of human rights altered?
(e) Has the applicant engaged in political or other activity within or outside the country concerned which would appear to make him/her particularly vulnerable to the risk of being placed in danger of torture were he/she to be expelled, returned or extradited to the country concerned?
(f) Are there factual inconsistencies in the claim of the claimant? If so, are they relevant?

10.15. Asking key questions to determine if torture has taken place

A PRRA officer can ask the following questions to determine if torture has taken place:

1. Who is the applicant?
2. Does the applicant face severe physical or mental pain, intentionally inflicted?
3. Is the pain/suffering for a specific purpose such as to get information, to punish or to intimidate?
4. Is the pain/suffering inflicted by the State? Does the State know or ought to know about the pain/suffering but does not try to prevent it?
5. Is there an IFA?
6. Does the pain/suffering arise from, is inherent in or is incidental to lawful sanctions?

10.16. Assessing risk to life or risk of cruel and unusual treatment or punishment

The PRRA officer can assess if there is risk to life or cruel and unusual treatment or punishment. For more information, see definition of cruel and unusual treatment or punishment in section 6.2 above and sections 10.17 to 10.23 below.

10.17. Applying the standard of proof

As the legislation is silent on the standard of proof applicable to this ground of protection, the standard to be applied is the “balance of probabilities”, the usual standard in civil proceedings. This is also the standard applicable to s.12 of the Charter. The standard is not the same as for the refugee definition: a serious possibility that an individual would be subjected to a risk to life or of cruel and unusual treatment or punishment does not satisfy the legislative threshold test. Objective factual material must show a probability of risk to the claimant if returned to the country of origin.

10.18. Assessing protection of the State (State agent and non-State agent)

Although international jurisprudence stems generally from cases *that do* involve directly the State as the agent of inhuman treatment, the notion of cruel and unusual treatment as defined in IRPA does not contain such a limitation. The cruel and unusual treatment or punishment does not necessitate the State as an accomplice. In all cases, the issue of protection of the State will have to be addressed.

10.19. No nexus

There is no need to demonstrate that the applicant would face a risk to life or cruel and unusual treatment or punishment for one of the five enumerated grounds set forth in the refugee definition. The sole question is whether there is a substantial and objective risk to life or of cruel and unusual treatment or punishment, regardless of whether it is based on any of the grounds specified in the definition of refugee.

10.20. Assessing the objective risk to life or of cruel and unusual treatment or punishment

The assessment of whether there are substantial grounds to believe the applicant would be personally subjected to a risk to life or of cruel and unusual treatment or punishment is evaluated on an objective basis. The risk must be personalized to the individual. The assessment may be based on past events but is forward looking: the issue to be determined is whether events related by the applicant, together with all the other evidence, including country conditions at the time of the decision, show that the applicant, if returned, would be subjected to a risk to life or of cruel and unusual treatment or punishment. For example, the European Court of Human Rights found that Sweden had legitimately returned a claimant to Chile, even though he was suffering from post-traumatic stress disorder as a consequence of having been tortured there. Due to a change in government, there was no longer any substantial basis for the applicant's fear of torture [*Cruz Varas and Others v. Sweden*, 20 March 1991 (Series A, no. 201)].

All relevant considerations include the general situation in a country and, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

10.21. Assessing lawful sanctions

In some situations, persons who have committed or have been convicted of serious crimes face a possible risk of a legally sanctioned death penalty or other severe punishment through the judicial system in their country of origin. While these penalties are legally sanctioned, these cases have to be examined in light of internationally recognized human rights instruments to which Canada is a party. IRPA provides there is a risk to life or of cruel and unusual treatment or punishment if the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards. This reference to the notion of lawful sanctions is also contained in the definition of torture in the *Convention Against Torture*.

On the international front, the death penalty is a legitimate sanction but subject to certain conditions.

The following considerations are pertinent:

- whether the penalty is disproportionate to the offence committed;
- the nature of the justice system in the country to which the applicant would be removed (where the criminal justice system is generally fair, the imposition of the death penalty will generally be considered lawful);
- the safeguards and guarantees afforded by the country to which the applicant would be removed;
- the method of execution; certain methods such as gas asphyxiation, are in violation of article 7 of *International Covenant on Civil and Political Rights* (ICCPR) according to the UN Human Rights Committee.

10.22. Assessing the inability of the country of return to provide medical care

The legislation provides that the risk to life must not be caused by the inability of the country of return to provide adequate heath or medical care. PRRA officers will use this exception with great caution; it is only when the sole basis of the risk is the inability to provide heath or medical care, that this exception will apply. (CAT – Mr. Suppiah Vivekanathan et al., Communication No. 49/1996).

10.23. Asking key questions

The PRRA officer can ask the following questions to determine if there is risk to life or the possibility of cruel and unusual treatment or punishment:

1. Who is the applicant?
2. Where is the applicant from?
3. Does the applicant face a risk to life or a risk to treatment or punishment that is cruel and unusual?
4. Is the risk faced by the applicant personally or is it faced generally by other persons in or from that country?
5. Is there adequate State protection? Is there IFA or is risk faced in every part of the country?
6. Is there a serious possibility of risk in every part of the country or is the risk severely marginalized? If not, is that part of the country reasonably accessible?
7. Are there compelling reasons arising out of previous treatment or punishment to grant protection?
8. Is treatment or punishment inherent in or incidental to lawful sanctions?
9. Are sanctions imposed in disregard of accepted international standards?
10. Is risk caused by country's inability to provide adequate health or medical care?

11. Procedure: Guidelines for assessing applicants

11.1. Identifying the issues

Identifying the issues is of prime importance in analysis and decision making. The research done turns on the issues identified in the case. PRRA decisions depend upon the research conducted if the decision is to be informed and accurate. The interdependency of the decision analysis steps becomes quite evident. Care should be taken to progress in a logical manner through these steps, affording them equal importance.

11.2. Conducting research

The PRRA officer will undertake independent research of the identified issues. The research sources consulted by the PRRA officer will vary with each individual case. A number of research sources exist and may include but are not limited by the following: Internet, Human Rights Package, Contextual Package, Indexed Media Review, "Weekly Media Review" covering the country or countries to which the applicant could be removed. The decision-maker may also use other annually published material such as the U.S. Department of State Country Report on Human Rights Practices, the Lawyers Committee for Human Rights Critique, Amnesty International Reports, Reporters without Borders, *L'État du monde*, Europa World and Human Rights Watch World Report.

Although submissions may dictate the method of response a PRRA officer uses when conveying a decision, they should not limit the amount of research the PRRA officer does.

How much research is enough? One of the implicit assumptions about PRRA is that the PRRA decision-maker will become, over time and through experience, very knowledgeable on many countries. The knowledge accumulated should, in a straightforward case, enable PRRA officers to make judgements without the need for extensive additional research. If the PRRA decision-maker has addressed all the issues identified or presented, the research should be complete. The gravity of the decision being made and its impact on the individual, to their life and future and that of their family, should be taken into consideration when the PRRA decision-maker answers the question, how much is enough.

11.3. Links to frequently-presented risk issues

The following hyper-links to some of the most frequently presented risk issues will assist PRRA decision-makers with their research:

- Gender;
- Sexual orientation;
- Post traumatic stress disorder.

11.4. Weighing the evidence

Having obtained information on the facts of the case, the PRRA decision-maker has to weigh any conflicting evidence. The decision-maker has to determine which facts have been more firmly established and which important facts are supported by the evidence. It is not a simple task to decide which fact or collection of facts is more reasonable or more likely, given the circumstances of the case. Furthermore, the PRRA officer then must decide whether the facts establish that the applicant is reasonably likely to face a risk within the definition of PRRA. PRRA decision-makers must be fair, sensitive and judicious in their approach to assessing the value of the evidence being considered.

For example, the fact that specific issues raised in submissions cannot be confirmed nor denied is not, in itself, grounds for a finding that a risk exists. Nor does the converse necessarily hold true. The facts related must be reasonable and logical given the existing country conditions. It is not appropriate to judge the credibility of an applicant who does not appear before the PRRA except in writing, but the significance given to any set of facts can be influenced by the conclusions of the RPD and the applicant's prior history with immigration.

In a few cases where the evidence raises a serious issue of the applicant's credibility and relates to the appropriate risk factors, and the evidence is central to the decision with respect to the application for protection, and the evidence, if accepted, would justify allowing the application for protection, an oral hearing may be needed. The weight given any factor in the case is an objective decision of the decision-maker.

The task is to weigh the facts in a fair and impartial manner, considering both positive and negative elements judiciously. PRRA decision-makers might ask themselves which facts are more important, which evidence more persuasive, which argument more compelling or convincing, and why is this so?

12. Procedure: Conducting oral hearings

12.1. Reason for conducting oral hearings

The legislation provides that a hearing may be held if the C&I Minister, on the basis of prescribed factors, is of the opinion that a hearing is required. A hearing will only be held in exceptional cases. The purpose of a hearing is to address the complicated issue of the credibility of the applicant, which is a distinct issue from that of the credible basis of the claim.

A hearing will normally not be held where the Board has already heard a claim for refugee protection and made a determination on the credibility of the applicant. The assessment of the objective well-foundedness of a fear of persecution does not require the conduct of a hearing. Similarly, the determination of whether there is objective evidence, such as country conditions, supporting a finding of a danger of torture or risk to life, cruel and unusual treatment or punishment, does not require an oral hearing. However, there will be some cases where a hearing will be necessary; the prescribed factors help to indicate when a hearing should be held.

12.2. Purpose of the oral hearing

The purpose of the hearing is to assess the credibility of the applicant. An applicant's credibility should be differentiated from the credible basis of the application. The latter is analyzed in light of the submissions and other documentary evidence. In most cases, PRRA officers will be able to

determine through documentary evidence what the true facts are and then assess what potential exists in a situation which indicates an applicant is or is not likely to be harmed as defined in the protection grounds. In addition, it is conceivable that, should the PRRA officer conclude that there exists an objective well-foundedness of the fear based on the documentary evidence, the subjective fear is also present. A hearing will not be necessary in such a case. The purpose of the hearing is not to collect information in a general way; this is done through submissions.

The conduct of a hearing will be contemplated where the PRRA officer is confronted with new evidence on an issue that is central to the decision, evidence that would lead to a positive decision were it not for the fact that the PRRA officer has doubts on the applicant's credibility. The PRRA officer will have to evaluate the application, assess the submissions and the evidence provided by the applicant, make a thorough research on country conditions and evaluate the application before assessing whether a hearing is necessary. Of course, where the application appears to be credible and should be allowed, a hearing need not be conducted. Where the applicant has had a claim for refugee protection that was considered by the Board and the Board has made a determination on the credibility of the applicant, the PRRA officer will not, in normal circumstances, need to conduct a separate hearing. However, a hearing may be contemplated where the Board has either determined that the applicant was credible or did not make any conclusion on the credibility of the applicant, but the PRRA officer is confronted with some evidence that leads the officer to believe the applicant is not credible, and that determination would be central to the decision.

The following factors set out in R167 are used as assistance in assessing whether a hearing is required. All factors must be present in order to indicate that a hearing is necessary. As stated above, the PRRA officer will first have to thoroughly examine the application and the submissions and evidence provided in support of it, before assessing whether a hearing is necessary.

> R167(a) whether there is evidence that raises a serious issue of the applicant's credibility and is related to the factors set out in A96 and A97 ;

PRRA officers should also take into consideration that the evidence must be new, in the sense that it must be evidence that arose after the rejection (of either the claim for refugee protection by the Board or of a previous PRRA application) or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented at the time of the rejection. This factor does not appear in the Regulations, but can be found in the Act [A113(a)].

> R167(b) whether the evidence is central to the decision with respect to the application for protection;

The evidence that raises a serious issue of the applicant's credibility and that necessitates an assessment of the applicant's credibility, before being accepted, must be determinative of, or central to, the application.

> R167(c) whether the evidence, if accepted, would justify allowing the application for protection.

This criterion is similar to the previous one. It provides that the evidence would, if accepted, justify allowing the application and necessitate, in order to determine whether to accept it or not, an assessment of the credibility of the applicant. The third factor is also determinative in the context of A112(3).

12.3. How the oral hearing is conducted

The hearing is informal and non-adversarial in nature. It is meant to deal with the proceedings fairly and expeditiously. Prior to the hearing, a notice will be sent by the PRRA officer to the applicant indicating the time and place of the hearing and the general issues of facts that will be raised. The hearing is restricted in scope and is meant to assess factual issues. The PRRA officer presides over the hearing and is responsible for its fair and expedient conduct. The PRRA officer should restrict the hearing to the issues raised in the notice but may consider other issues of fact if they are raised by the applicant's statements at the hearing. It is not appropriate for the applicant or counsel representing the applicant to raise new issues or submit new evidence that do not relate to those issues signaled in the notice. It is also not appropriate to use the hearing to make

legal representations or present arguments: the objective of the hearing is different from that of the Board. It is not a forum for the adjudication of the application, but rather an informal process to raise issues of facts with the applicant, affording the applicant an opportunity to answer questions raised by the PRRA officer with, if needed, the assistance of counsel who may explain the questions raised. It is through written submissions that the applicant makes their case, presents evidence, and makes legal representations. In most cases, the hearing will be held *with* the applicant, and, if assisted, his or her counsel. The applicant should not bring other witnesses to the hearing. However, PRRA officers may decide that they want to hear persons other that the applicant for the purpose of verifying the evidence provided. However, this will be done in exceptional circumstances as evidence from persons other that the applicant should be made in writing.

In many cases, the PRRA decision-maker will be required to arrange for the service of an interpreter for the oral hearing. At the outset of the hearing the decision-maker should note that the interpreter and the applicant understand each other. Prior to and during the oral hearing, the interpreter is under contract to CIC.

The applicant may decide to be represented by counsel, at their own expense. Counsel will help in such matters as presenting the application, preparing the submissions, and collecting the evidence. At the hearing, the role of counsel is not to make representations, present legal arguments or new evidence; it is to be supportive in assisting their client in the clarification of issues raised.

The procedures before and during the hearing are set out in R168 which states:

> 168. A hearing is subject to the following provisions:
> (a) notice shall be provided to the applicant of the time and place of the hearing and the issues of fact that will be raised at the hearing;
> (b) the hearing is restricted to matters relating to the issues of fact stated in the notice, unless the PRRA officer conducting the hearing considers that other issues of fact have been raised by statements made by the applicant during the hearing;
> (c) the applicant must respond to the questions posed by the PRRA officer and may be assisted for that purpose, at their own expense, by a barrister or solicitor or other counsel; and
> (d) any evidence of a person other than the applicant must be in writing and a PRRA officer may question the person for the purpose of verifying the evidence provided.

12.4. Taking notes at the oral hearing

The PRRA officer shall take notes during the hearing. These notes form the only record of the hearing and should fairly and accurately reflect the oral evidence provided by the applicant. In a large part, these notes will form the basis of the PRRA officer's decision. Caution is advised as these notes can or may be called into question if an appeal against the decision is launched. The notes should be limited to the facts in question with no speculation or inappropriate comments. As the notes are handwritten, legibility should be a consideration.

If one of the facts addressed becomes contentious, the notes should reflect the concerns raised and a notation that concerns of the applicant or his counsel have been noted and will be considered.

PRRA Officers are cautioned against indicating what their findings will be or making any decision at the oral hearing. The oral hearing is the means by which a PRRA officer tests the credibility of the evidence through the questioning of facts. Time is needed to give proper and full consideration to the evidence gathered. Further research may be required before any weight can be afforded to these clarifications.

13. Procedure: Vacation

The hearings officer must ensure that procedures for vacation are followed.

13.1. When vacation is initiated

Where hearings officers, through their own research or otherwise, have evidence or facts that lead to the opinion that the decision to allow the application may have been obtained as a result of direct or indirect misrepresentation or withholding of facts on a relevant matter, they will contact PRRA component at National Headquarters advising of such a case of misrepresentation or the withholding of material facts.

13.2. Adverse information should be disclosed

Where hearings officers are confronted with facts and evidence that lead them to believe that there may have been misrepresentation or withholding of facts on a relevant matter, they shall send the person concerned a notice detailing the evidence, with copies of any evidence that is extrinsic, and provide the person 15 days for submissions.

13.3. Decision

Once the hearings officer is in receipt of the submissions made within 15 days of the notice, the hearings officer shall, after careful review of the submissions:

- make a final decision on the matter;
- conclude as to whether there was or was not misrepresentation that leads to vacation of the previous decision;
- assess whether there was other sufficient evidence considered at the time of the first determination to justify refugee protection. However, it is not open to the person concerned to bring forth new evidence on risk. To do so, should the decision be to vacate the previous determination, the person must apply again for protection and submit this new evidence.

When the decision is to vacate the previous decision to allow an application for protection, this latter decision is nullified and the application for protection is deemed rejected. Refugee protection is no longer conferred and the applicant is not a protected person.

13.4. Vacation pending application for PR or where person is a permanent resident

Applicants who are not referred to in A112(3) and whose applications for protection are approved are conferred refugee protection and, by virtue of A95, are protected persons. A21 provides protected persons a right to become a permanent resident. When, as a result of a decision to vacate, the person is no longer a protected person, any pending application to become a permanent resident should be rejected. The decision to vacate may also be rendered after the person has become a permanent resident. Should this be the case as a result of an approved application to become a permanent resident made before the decision to vacate, A46 provides for the loss of the permanent resident status.

14. Procedure: Inadmissible persons and security certificates

Inadmissible persons, including persons whose claim for refugee protection has been determined to be ineligible for criminality or security reasons and claimants whose claims have been rejected by the Board as persons referred to in Article 1F of the Refugee Convention, may apply for protection. However, distinct procedures and grounds for protection apply to these applicants. Such applicants are subject to the same rules regarding time to apply and to make submissions. A risk assessment will be made by the PRRA officer. However, the risk assessment will not be based on the refugee definition. PRRA officers will assess danger of torture and risk to life or risk of cruel and unusual treatment or punishment.

The PRRA officer must follow the following process:

- Should the risk assessment be negative, the PRRA officer will make the final decision to reject the application for protection.

- Should the risk assessment be positive on the basis of the existence of danger of torture, risk to life or risk of cruel and unusual treatment or punishment, an opinion will be prepared by Case Management on whether the person is a danger to the public in Canada or, in security cases, whether the applicant should be removed because of the nature and severity of the acts committed or danger the applicant constitutes to the security of Canada. Once the danger opinion is completed, both risk and danger opinions are disclosed to the applicant for submissions. The final decision, to allow or reject the application for protection, is based on a balancing of the conflicting interests: the risk to the individual against the risk to society.

Sections 14.1 to 14.3 below do not map out the process applicable to the making of danger opinions, but will rather focus on the issue of the risk assessment.

For more information, see definition of inadmissibility in section 6.3.

14.1. Special rules for security certificates

For applicants who are referred to in a certificate made under A77(1), the application must be made 15 days after a notice is sent. The notice will be sent, in this case, on the provision of the summary sent to the Federal Court pursuant to A78(h). Upon receipt of the submissions of the applicant, a risk assessment will be made and, if positive, a danger opinion will be rendered. Once the decision to allow or reject the application is made, it will be filed with the Federal Court judge seized with the certificate. The judge will make a determination of the lawfulness of the decision on the application for protection and review the reasonableness of the certificate. If the application for protection is rejected and the certificate is determined to be reasonable, the person named in it will not be able to apply for PRRA a second time. If the application for protection is allowed, irrespective of whether the certificate is or determined to be reasonable, the removal of the person will be stayed pursuant to A114.

14.2. Balancing risk – Grounds of protection

A risk assessment will be carried out with respect to grounds identified in the Convention against Torture, as well as risk to life or risk of cruel and unusual treatment or punishment. There will not be an assessment of the application of the refugee definition.

If the PRRA officer concludes that there is no danger of torture or risk to life or of cruel and unusual treatment or punishment, the application may be rejected.

In cases where the PRRA officer is of the opinion that there is a danger of torture, or a risk to life or of cruel and unusual treatment or punishment, the PRRA officer will provide the opinion to the C & I Minister's delegate. A separate opinion will then be triggered which will take into account whether the applicant constitutes a danger to the public in Canada or whether the person should not remain in Canada on the basis of the nature and severity of acts committed by the applicant or whether the applicant represents a danger to the security of Canada. Once the opinions are completed, they will be disclosed to the applicant for submissions. The applicant will have 15 days to provide submissions. The C & I Minister's delegate will then consider the opinions and submissions, balance the risk to the individual against this risk to society (i.e., will make their own assessment of each risk and of their relative importance) and will decide whether to allow or reject the application.

Should the application be allowed, the decision would have the effect to stay the removal order with respect to the country from which the person was determined to be in need of protection. An application that is allowed does not confer refugee protection; the applicant may not make an application for permanent residence.

If the application is rejected the PRRA officer returns the file to the appropriate removals officer to proceed with removal arrangements.

To balance risk, PRRA officers must ensure that the following process is followed:

- applicant applies for PRRA, but it is determined that access is restricted under A112(3);
- PRRA officer sends risk assessment and all relevant information to Case Management Branch analyst;

- Case Management Branch analyst prepares a danger opinion;
- Case Management Branch analyst returns the file with the danger opinion to PRRA officer;
- PRRA officer sends all this reasonable information, the risk opinion and the danger opinion to the applicant;
- applicant may make a written response and provide any additional information to PRRA officer within 15 days;
- PRRA officer considers any response regarding the risk opinion and amends or confirms their decision;
- the written response of the applicant and any additional information is sent to Case Management Branch;
- Case Management Branch analyst reviews the new information and can make changes to their danger opinion, if necessary;
- the full package is forwarded to the Director General Case Management;
- the Director General makes a determination on the file (positive or negative PRRA) and sends the entire package back to the analyst;
- the package is forwarded to the PRRA officer who prepares a notification;
- the package is returned to Removals Unit who informs the applicant of the decision and proceeds with removal or monitors the stay for change.

Cases concerning A112(3) should be considered as a processing priority as they are high profile media cases. PRRA officer should alert the PRRA component of the Refugee Branch Asylum Division at National Headquarters of such cases.

14.3. Decision: Application allowed - stay

Should the application be allowed, the decision would have the effect to stay the removal order with respect to the country from which the person was determined to be in need of protection. An application that is allowed does not confer refugee protection; the applicant cannot make an application for permanent residence. The C & I Minister may cancel the stay when circumstances surrounding the stay have changed.

15. Procedure: Review of positive decision for inadmissible persons

When the application for protection made by an applicant who is referred to in A112(3) or an applicant that is named in a certificate described under A77(1) is allowed, the decision has the effect of staying the removal order concerning a country or place in respect of which the person is in need of protection. The stay is not applicable for an indefinite duration and must be reviewed periodically to assess change of circumstances and whether the person remains in need of protection.

15.1. When to review: change of circumstances

An assessment of the danger of torture, of risk to life or risk of cruel and unusual treatment or punishment will be made when there is information or evidence that there has been of change of circumstances, including changes to the country conditions or to the applicant. An assessment of the opinion of danger made under A113(d) will also be conducted in cases where the risk assessment is being re-examined in view of changes of circumstances, or in light of new facts and information related to the danger opinion.

15.2. Process

The PRRA officer must ensure that the following process is followed:

- A notice of re-examination will be sent to the applicant along with the assessment on risk and on danger. Any new extrinsic evidence that is related and central to the assessment should also be disclosed. The assessments are made as in the usual process applicable in the cases of persons referred to in A112(3). The applicant will be given 15 days to make submissions.
- The assessment is given to the applicant by hand or, if sent by mail, is deemed received seven days after the day it is sent to the last address provided by the applicant.
- Once in receipt of the submissions of the applicant, the C & I Minister shall consider the assessment and submissions and make a decision to cancel or maintain the stay. The stay will be maintained if the C & I Minister's delegate is of the opinion that, after balancing the risks to the individual against the risk to society, the individual, because of the risk that they would face upon removal, should be allowed to remain in Canada. However, should the C & I Minister decide that the applicant should be removed, the stay will be cancelled. The removal process could then be initiated.

16. Procedure: Review of negative decision for inadmissible persons

If the decision is negative for applicants referred to in A112(3) or an applicant that is named in a certificate described under A77(1), the following process must be followed:

- the PRRA manager reviews the negative risk opinion;
- if the manager decides that there is no risk of return, the file is forwarded to the Removals Unit to proceed with removal;
- if the manager determines that a risk does exist, the file is returned to the PRRA officer with the manager's decision and the process described in section 15 above for a positive decision for inadmissible persons is followed.

16.1. Handling negative PRRA decisions

The PRRA decision-makers must advise the applicant of the results of their assessment. Upon completion of the pre-removal risk assessment, the PRRA officer will return the file to a removals officer. The removals officer will call in the applicant and deliver the decision to the applicant by hand. Some offices may deliver the decision by mail.

If requested, the removals officer will provide the applicant a copy of the decision, The removals officer will advise the applicant of their right of appeal and process the application toward removal.

17. Procedure: Stays under PRRA

PRRA officers must ensure that applicants are notified of the appropriate information.

17.1. Regulatory stay

A regulatory stay of a removal order [R232] allows for an application for protection to be received by CIC within 15 days after the notification. If the application is received within that 15 days, the enforceable removal order will be held in abeyance, stayed, until the risk to the applicant can be determined.

The stay begins when notification is given to the applicant in compliance with R160(3)(a) or (b). The term "given" is defined in R160(4)(a) and speaks of a person being notified by hand. "Given" is defined further in R160(4)(b) providing for an additional seven days after the day on which the application form was sent by mail to the potential applicant, at the last address provided by them to CIC.

A removals officer will provide the PRRA notification to eligible applicants. The PRRA notification includes the application. This automatic stay does not apply to applicants described in A112(3).

17.2. Ministerial stay

A Ministerial stay may result under A114(1)(b) if it is determined that a person described in A112(3) is in need of protection.

The C & I Minister's delegate must balance the need for protection of the individual and the safety and security of Canada. The method by which the C & I Minister makes these considerations is provided in R172(1) which stipulates that, before the C & I Minister makes a decision to allow or reject the application of an applicant referred to in A112(3), two assessments shall be considered. The assessments are outlined in R172(2). The C & I Minister is required to provide the PRRA applicant with these assessments and wait 15 days for any written response from the applicant.

The PRRA officer will:

- provide the C & I Minister with a risk assessment [R172(2)(a)];
- consider the risk to the applicant under the grounds provided in A97. As previously mentioned, the applicant is not considered under the consolidated grounds and is to be assessed against the provisions of the Convention Against Torture (CAT) and to a risk to their life or to a risk of cruel and unusual treatment or punishment only.

Case Management will:

- consider the danger assessment required under R172(2)(b);
- complete and write the assessment based on the factors set out in A113(d)(i) or (ii), as the case may be.

The Regulations state that an assessment is given to an applicant when it is given by hand to the applicant or, if sent by mail, seven days after the day on which it is sent to the last address that the applicant provided to CIC [R172(3)].

The C & I Minister's delegate may re-examine the circumstances surrounding a ministerial stay of the enforcement of a removal order. A114(2) is the authority for the re-examination of the stay.

The re-examination procedures contained in R173(1), (a), (b) and (c) require that the person being re-examined be given the following documents:

- a notice of re-examination;
- a written assessment on the basis of the factors set out in A97; and
- a written assessment on the basis of the factors set out in A113(d)(i) or (ii) , as the case may be.

17.3. Re-examination of grounds for a ministerial stay

The PRRA decision-maker will be responsible for providing this re-examination of the facts under A114(2). The factors under A97 to be considered are CAT and a risk to a person's life or a risk of cruel and unusual treatment or punishment. The PRRA officer shall give the applicant copies of the two assessments so that the applicant may respond. Written responses must be received within 15 days of being given the assessments as provided for in R172(2) and R172(3). The C & I Minister's delegate will make the decision to allow or reject the application based on these reports.

The process described in section 14.2 above, Balancing Risk – Grounds of protection, applies to re-examination of stays.

Cases involving applicants referred to in A112(3) will require a coordinated effort between Case Management and PRRA officers to ensure that the assessments reach the C & I Minister's delegate together and in a timely fashion.

18. Procedure: Assessing humanitarian and compassionate considerations and risk

18.1. Role of PRRA officer in assessing humanitarian and compassionate considerations and risk

The PRRA officer is CIC's expert in matters of risk. Upon receiving an H&C application with elements of risk, the PRRA officer will consider all aspects of risk as put forth by the applicant and take into account the standards set out in the Charter and international human rights treaties (e.g., *International Covenant on Civil and Political Rights*, the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, and the *American Declaration of the Rights and Duties of Man*). The PRRA officer may also consider, but is not limited to, reports from international organizations on country conditions, news clippings and evidence of cruel and unusual treatment or punishment such as medical reports.

18.2. How to assess humanitarian and compassionate considerations and risk

The PRRA officer will compare the applicant's submission with available information and prepare a risk opinion or assessment.

When this risk opinion or assessment is negative, that is, there is no risk identified, the PRRA officer will provide a copy of the report to the applicant asking for comments on any errors or omissions. It is very important to note that this is an opportunity for the applicant to draw attention to alleged errors or omission in the PRRA officer's report; it is not an invitation for applicants to re-argue their case.

After 15 calendar days (plus seven days to allow for mailing), the PRRA officer will retrieve the application and take into account any submissions received from the applicant.

Notes will be added to the original report commenting on whether submissions were received and, if so, whether they are such that the original negative opinion must be re-considered.

The PRRA officer will then send to the H&C decision-maker the original negative risk opinion, any submissions received from the applicant, and their comments on submissions received.

When the application is returned from the PRRA officer, the H&C decision-maker will:

- review and consider all information provided by the applicant;
- review and consider all information available regarding the applicant (previous immigration applications, refugee claims, PDRCC determinations, previous PRRA determinations, etc.);
- review the risk opinion from the PRRA officer along with any submissions received from the applicant.
- consider all the information, including other factors that the H&C decision-maker believes to be relevant to the H&C decision.

It should be remembered that a negative risk opinion does not necessarily result in a negative H&C decision. The PRRA officer's assessment is one factor to consider in light of all of the circumstances of the individual case. In all cases, the H&C decision must be a decision of the H&C decision-maker.

Note: If the H&C decision is positive and there are no A21(2) barriers, the applicant will be landed as an independent immigrant.

Appendix A

The following applies to cases where the applicant is eligible for consideration under PRRA as a protected person and the PRRA decision-maker allows the application for protection. Having been found to be a protected person the PRRA applicant may apply for permanent residence. The permanent residence provisions for PRRA are stated in A21(2) which states:

> 21. (2) Except in the case of a person described in subsection A112(3) or a person who is a member of a prescribed class of persons, a person whose application for protection has been finally determined by the Board to be a Convention refugee or to be a person in need of protection, or a person whose application for protection has been allowed by the C & I Minister, becomes, subject to any federal-provincial agreement referred to in subsection A9(1), a permanent resident if the officer is satisfied that they have made their application in accordance with the regulations and that they are not inadmissible on any ground referred to in section A34 or A35, subsection A36(1) or section A37 or A38.

and within R175, R176, R177 and R178 which state:

Application period

175. (1) For the purposes of subsection A21(2) of the Act, an application to remain in Canada as a permanent resident must be received by CIC within 180 days after the determination of the Board, or the decision of the C & I Minister, referred to in that subsection.

Judicial review

(2) A PRRA officer shall not be satisfied that an applicant meets the conditions of subsection 21(2) of the Act if the determination or decision is subject to judicial review or if the time limit for commencing judicial review has not elapsed.

Quebec

(3) For the purposes of subsection 21(2) of the Act, an applicant who makes an application to remain in Canada as a permanent resident - and the family members included in the application -who intend to reside in the Province of Quebec as permanent residents and who are not persons whom the Board has determined to be Convention refugees, may become permanent residents only if it is established that the competent authority of that Province is of the opinion that they meet the selection criteria of the Province.

Family members

176. (1) An applicant may include in their application to remain in Canada as a permanent resident any of their family members.

One-year time limit

(2) A family member who is included in an application to remain in Canada as a permanent resident and who is outside Canada at the time the application is made shall be issued a permanent resident visa if

(a) the family member makes an application outside Canada to an officer within one year after the day on which the applicant becomes a permanent resident; and
(b) the family member is not inadmissible under the grounds referred to in subsection (3).

Inadmissibility

(3) A family member who is inadmissible on any of the grounds referred to in subsection 21(2) of the Act shall not be issued a permanent resident visa and shall not become a permanent resident.

Prescribed classes

177. For the purposes of subsection 21(2) of the Act, the following are prescribed as classes of persons who cannot become permanent residents:

(a) the class of persons who have been the subject of a decision under section 108 or 109 or subsection 114(3) of the Act resulting in the loss of refugee protection or nullification of the determination that led to conferral of refugee protection;

(b) the class of persons who are permanent residents at the time of their application to remain in Canada as a permanent resident;

(c) the class of persons who have been recognized by any country, other than Canada, as a Convention refugees and who, if removed from Canada, would be allowed to return to that country;

(d) the class of nationals or citizens of a country, other than the country that the person left, or outside of which the person remains, by reason of fear of persecution; and

(e) the class of persons who have permanently resided in a country, other than the country that the person left, or outside of which the person remains, by reason of fear of persecution, and who, if removed from Canada, would be allowed to return to that country.

Identity documents

178. (1) An applicant who does not hold a document described in any of paragraphs 50(1)(a) to (h) may submit with their application

(a) any identity document issued outside Canada before the person's entry into Canada;

(b) if there is a reasonable and objectively verifiable explanation related to circumstances in the applicant's country of nationality or former habitual residence for the applicant's inability to obtain any identity documents, a statutory declaration made by the applicant attesting to their identity, accompanied by

(i) a statutory declaration attesting to the applicant's identity made by a person who knew the applicant, a family member of the applicant, or the applicant's father, mother, brother, sister, grandfather or grandmother prior to the applicant's entry into Canada, or

(ii) the statutory declaration of an official of an organization representing nationals of the applicant's country of nationality or former habitual residence attesting to the applicant's identity.

Alternative documents

(2) A document submitted under subsection (1) shall be accepted in lieu of a document described in any of paragraphs R50(1)(a) to (h) if

(a) in the case of an identity document, the identity document

(i) is genuine,

(ii) identifies the applicant, and

(iii) constitutes credible evidence of the applicant's identity; and

(b) in the case of a statutory declaration, the declaration

(i) is consistent with information previously provided by the applicant to CIC and the Board, and

(ii) constitutes credible evidence of the applicant's identity.

Appendix B Transitional provisions

The transitional provisions establish the framework for the transition from processes under the *Immigration Act* (former Act) to corresponding process under *Immigration and Refugee Protection Act* (IRPA).

Part 5 of IRPA includes a series of provisions with respect to the transition from the former Convention refugee determination process to the refugee protection process established by the (IRPA).

Old to new Act

Section A190 of the *Immigration and Refugee Protection Act* (IRPA) provides that every application, proceeding, or matter under the former Act that was pending or in progress immediately before the coming into force of the IRPA shall be governed by the provisions of the new Act. Section A201 of the IRPA authorizes the making of regulations that provide for measures regarding the transition between the former Act and the new Act.

Redetermination

A199 provides that sections A112 to A114 apply to the redetermination of a decision set aside by the Federal Court with respect to an application for landing as a member of the post-determination refugee claimants in Canada class within the meaning of the *Immigration Regulations, 1978.*

Regulations

Regulations are required in order to provide clarification for matters outstanding from the former Act. The transitional regulations that apply to Post- Determination Refugee Claimants in Canada class are provided for in R346(1), (2), (3), (4), R347(1) and R347(3) of the Transitional Regulations which read:

> **Post-determination refugee claimants in Canada class**
>
> 346.(1) An application for landing as a member of the post-determination refugee claimants in Canada class in respect of which no determination of whether the applicant is a member of that class was made before the coming into force of this section is an application for protection under sections 112 to 114 of the *Immigration and Refugee Protection Act* and those sections apply to the application.
>
> **Notification re additional submissions**
>
> (2) Before a decision is made on the application, the applicant shall be notified that they may make additional submissions in support of their application.
>
> **Decision**

(3) A decision on the application shall not be made until 30 days after notification is given to the applicant.

Giving notification

(4) Notification is given
(a) when it is given by hand to the applicant; or
(b) if it is sent by mail, seven days after the day on which it was sent to the applicant at the last address provided by them to CIC.

Application for landing: Convention refugees

347. (1) If landing was not granted before the coming into force of this section, an application for landing submitted under section 46.04 of the former Act is an application to remain in Canada as a permanent resident under subsection 21(2) of the *Immigration and Refugee Protection Act*.

Application for landing: post-determination refugee claimants in Canada class

347.(3) If landing was not granted before the coming into force of this section, an application for landing submitted by a person pursuant to a determination that the person is a member of the post-determination refugee claimants in Canada class is an application to remain in Canada as a permanent resident under subsection 21(2) of the *Immigration and Refugee Protection Act*.