Citizenship and Immigration Canada
Citoyenneté et Immigration Canada

CP 5

Residence

Canada

1. PERIODS COUNTED TOWARDS RESIDENCE

1.1 This section is about

determining if an applicant for a grant of citizenship meets the residence requirement of the Citizenship Act

Related topics --prohibitions, clearances

1.2 Authorities

Citizenship Act	Citizenship Regulations
Section 5(1)	Section 28
Section 5(1.1)	
Section 11(1)	
Section 14(5)	
Section 24	
Section 22	
Section 28	

1.3 Three conditions for residence

Paragraph 5(1)(c) sets out three conditions for citizenship applicants. They are:

- admission to Canada as a permanent resident;
- retain permanent resident status; and
- accumulate a specified period of residence in Canada.

1.4 Background

An applicant for citizenship under subsection 5(1) must have resided in Canada for at least three years within the four year period immediately before the date of application. The calculation of residence is subject to the provisions of Section 21 of the Citizenship Act.

1.5 Permanent residence

Most citizenship applicants acquire permanent resident status in Canada at the time of original admission. Others acquire it after their initial entry; these are few.

1.6 How Residence is calculated

Each day of residence in Canada after lawful admission *for permanent residence* counts as one day. Each day before lawful admission counts as one-half day. The calculation of residence cannot go beyond the four-year period before the date of application. For instance, a citizenship applicant entered Canada April 12, 1990; was lawfully admitted to Canada for permanent residence April 12, 1994 and made the application April 12, 1996. The four year period begins April 12 1992; no period before that date is applicable to the calculation of residence. Here, the applicant has accumulated one year before lawful admission (two years at half time) and two years after lawful admission (two years at full time). This gives the person three years within the four year period before the date of application.

When a case is referred for decision, a completed residence calculation is on file.

1.6.1 Basic residence not met

Applicants must meet the residence requirement the day BEFORE filing for citizenship. Applications which are signed or submitted by clients in error, before they have accumulated the minimum amount of time as a Permanent Resident, are returned to the client by CPC-Sydney. CPC-S returns the application with the complete fee and a letter

advising the client he or she has not submitted satisfactory evidence that they have been a Permanent Resident for the required amount of time.

In cases where a client insists on filing an application without evidence of meeting the requirement under 5(1)(c), the fee must be collected and the application is referred to a judge for a personal interview. There is no refund of the processing fee where an application is processed through to the hearing stage.

1.7 Spouse of Canadian living abroad

Sub-section 5(1.1) was proclaimed in 1988. It treats residence for an applicant, as described in that provision, as if the person were in Canada.

1.7.1 Specific periods count as residence

The Citizenship Act was amended in 1988 to allow the spouse of a Canadian citizen residing outside Canada with that person to count certain specific periods as residence in Canada. "Spouse" refers to a married person.

Section 5(1.1) applies only where the Canadian citizen spouse is working with the public service of Canada or a province or for the Canadian armed forces.

Any day of residence outside Canada, before lawful admission to Canada, is equivalent to one-half day of residence in Canada.

Any day of residence outside Canada, after lawful admission to Canada, is equivalent to one day of residence in Canada.

Any residence outside Canada before the marriage that is within the four year period before the date of application cannot be counted towards the residence requirement.

1.8 Retaining permanent resident status

Paragraph 5(1)(c) of the Citizenship Act stipulates that, pursuant to section 24 of the Immigration Act, an applicant must not lose permanent resident status at any time before being granted citizenship. For the greater part, the Immigration clearance check confirms whether the applicant is subject to an immigration inquiry or has lost permanent resident status. This check, however, is only valid to a specific date. **See Chapter 6-Prohibitions and Clearances**

Questions have been raised concerning whether citizenship staff have the authority to determine whether an applicant has lost permanent resident status, even where there has been no previous concern raised by an immigration official. This can arise where it is discovered that a citizenship applicant has permanent residence in another country, and immigration has permitted the individual to return to Canada as a permanent resident. The onus is on the applicant to prove to CIC that permanent resident status was maintained and that the applicant maintained an actual residence in Canada during periods away from Canada. Where applicants cannot prove residence in Canada, the matter should be referred to immigration for re-examination and a decision. The better position is to rely upon the decision of Immigration colleagues, in the absence of evidence that the person's re-entry to Canada was fraudulent.

Where the officer suspects fraud in the citizenship process, the application is referred to Case Management Branch.

1.9 Exceptions to the residence calculation

Section 21 of the Act stipulates that no period where the applicant has been:

- under a probation order,
- a paroled inmate or

- confined in or been an inmate of a penitentiary, jail, reformatory or prison

may be counted as residence.

1.10 Section 16 of Criminal Code of Canada

Where a person has been found not guilty by reason of insanity under section 16 of the Criminal Code and the individual was detained by a Lieutenant Governor's order, the person is deemed to be under a probation order even though the Criminal Code does not refer to the disposition as a probation order.

The person is considered to have been confined in or been an inmate in a penitentiary, jail, reformatory, or prison. Such a period may not be counted as residence under the Act.

1.11 Subtract prohibited period from time in Canada

The time spent on parole, in prison or on probation during the relevant 4 year period, is subtracted from the total credit of permanent resident status. For example, if a person has 1,460 days credit as a landed immigrant, but was on probation for 18 months, the 18 months is subtracted from the 4 year period. The applicant would then, be 6 months short of the basic residence requirement.

1.12 Conditional Discharge

A person who is the subject of a conditional discharge in combination with a period of probation may count that period for residence purposes if all the conditions of the order have been satisfied.

Similarly, a conviction under section 259 of the Criminal Code prohibiting a person from driving is not considered a probation order.

1.13 Pre-Trial Custody time counts as Probation time

Pre-Trial Custody is the period of time a person is kept in jail until and during a trial. This period of time, even if the person is acquitted, is to be counted as probation time (when calculating residence).

1.14 Community Sentence time counts as Jail time

A Community Sentence is time served in the community in-lieu of jail, and is considered jail time, not probation time. Three (3) months of community sentence time is counted as three (3) months of jail time.

2. REMOVED AUGUST 2002

3. DOCUMENTING, VERIFYING PERMANENT RESIDENT STATUS

3.1 This section is about

- verifying proof of landing with Immigration
- Immigration documents substantiating permanent resident status
- verifying permanent resident status

Related topics--Establishing applicant's identity, documents

3.2 Authorities

Citizenship Act	Citizenship Regulations
Section 5(1)	Section 28
Section 5(2)(a)	
Section 11(1)	

3.3 Verifying status

All applications for a grant of citizenship are electronically checked against Immigration records to verify landed immigrant status.

3.4 If there is no record of permanent residence

In some cases, a record of the applicant's landing in Canada cannot be located in Immigration's electronic records. It is possible that these people are permanent residents even though the cannot be located.

If a record of the person's admission to Canada for permanent residence cannot be located, CPC Sydney should send the application to the local citizenship office for resolution:

3.5 Request client to verify status

A letter is sent to the applicant asking the applicant to submit the immigration document (again if was submitted with mailed in application). **See sample letter at end of this section.** The client has 60 days to respond to the request for documentation. **See abandonment**

3.6 Proof of landing comes from Immigration

Applicants requiring proof of permanent resident status for citizenship must deal directly with Immigration.

There is usually a fee for a replacement of proof of permanent resident status.

3.7 No fee for Citizenship

The fee for verification of landing records does not apply when citizenship officials require the records for internal administration purposes. Always ask for these verifications in writing. Send the form to your immigration colleagues in your area or to the:

Query Response Centre
Citizenship and Immigration Canada
2nd Floor, 300 Slater Street
Ottawa, Ontario,
K1A 1L1.

3.8 Accept only IMM 1000 or E&I 2740 for permanent residence

Only IMM 1000 or Form E&I 2740 issued by Immigration can be accepted as official documents to establish permanent resident status.

Form E&I 2740 confirms the permanent resident status of a person who arrived in Canada before 1952 when the IMM 1000 replaced the E&I 2740. Please see Chapter 12, section 1.4 for more extensive documentation.

In rare circumstances, other documentation can be used to verify permanent residence status. Information can also be obtained through FOSS.

When a citizenship official has seen the document and is satisfied that it is genuine, continue processing the file.

3.9 Fraudulent documents

If a client submits documentation which may be fraudulent, contact the local RCMP, Immigration and Passport section. **See Chapter 12 -- Documents**

Urgent cases--see urgent policy and chapter on Prohibitions and Clearances.

Use of section 2(2)(b) to deem landing--see Section 2, this chapter

3.10 Sample of letter used to request immigration document from applicant

The following letter should be sent to the applicant asking him or her to re-submit his or her immigration document, or the applicant can be asked to appear in person. Do not change this letter.

(Date)
(Address)

Dear:

Your citizenship application has been referred to this office by our processing centre in Sydney, Nova Scotia

In order to continue processing your application for citizenship, it is necessary that we re-examine the original or certified true copy of the immigration document you were given when you entered Canada. If it has been lost or stolen, form E&I 2740 or a certified copy of the original form IMM 1000 may be obtained from the Immigration authorities.

You may either send me the original or certified true copy of your immigration document or contact our office to make arrangements so that this document can be reviewed. Your immigration document will be returned to you as soon as our review is completed.

Thank you for your cooperation-operation. We regret any inconvenience this may cause.

Yours sincerely,

_____

Citizenship Officer

4. VOLUNTARY SURRENDER OF PERMANENT RESIDENCE STATUS

4.1 This section is about

procedures to follow when an applicant for citizenship has voluntarily surrendered permanent residence status.

4.2 Authorities

Section 5(1) c of the Citizenship Act

Section 24 of the Immigration Act

4.3 Context

There are situations where persons applying for citizenship voluntarily surrender their Immigration 1000 document (Record of Landing as a Permanent Resident). This surrender may be as a result of a request from the applicant's country of origin (ex. Korea requires that any person residing in Korea "give up" documents pertaining to residence in another country) or as a result of an interview with an immigration official at a port of entry (ex. applicant admits on re-entry to having been away from Canada for a considerable period of time).

4.4 Factors to Consider

When an applicant for citizenship has voluntarily surrendered permanent residence status, there are two distinct and separate factors that must be considered:

the applicant's immigration status, and

the affect of voluntary relinquishment of permanent residence status on the applicant's citizenship residence requirement.

4.4.1 Immigration Status

Section 5(1) of the Citizenship Act requires that a person not have "…ceased since…admission to be a permanent resident pursuant to Section 24 of the Immigration Act…"

A person can **only** cease to be a permanent resident, under Section 24 of the Immigration Act, if an adjudicator at an inquiry has removed permanent residence status. In other words, a Citizenship Judge cannot use this part of 5(1) (c) to non-approve a citizenship application unless the applicant had previously been taken to inquiry and ruled against by an adjudicator. The mere fact that an applicant voluntarily surrendered permanent residence status does not in itself cause Section 24 to come into play.

4.4.2 Residence Requirements

Section 5(1) of the Citizenship Act also requires "3 years of residence out of the 4 years immediately preceding the date of the application.

(Note - Residence does not necessarily mean physical presence in Canada.)

Once the issue of whether or not an applicant has ceased under Section 24 of the Immigration Act has been resolved, a judge must consider if the person has met the required 3 years of residence. The fact that an applicant is absent from Canada in the four years immediately preceding the date of the application **and** has voluntarily surrendered permanent residence status (even if status is not lost under Section 24 of the Immigration Act) is as a substantial indicator that ties and connection with Canada may have been severed. The judge must therefore make a determination as to whether the applicant can claim a "connection to Canada" after having voluntarily surrendered permanent residence status.

4.5 Procedures for Voluntary Surrender of Permanent Residence Status Cases

4.5.1 Step One - **Clarify Applicant's Immigration Status**

In most instances, Citizenship staff will become aware of voluntary surrender situations through an indication on CRS that the client is under an immigration investigation. In such cases, Citizenship staff are to follow the procedures outlined in CP-98-11 " Active Applications – Immigration Clearance Exceptions".

When the information comes to light after the person has already been cleared, the available details are to be provided to Immigration with a request that Citizenship be advised within 60 days if the applicant will be interviewed to determine if further action is warranted, or there is no interest in pursuing the matter.

If Immigration chooses to interview the applicant to determine if further action is warranted, the client may be asked to complete a "Re-determination of Status Kit". In this instance, the case will remain on hold (i.e., not cleared by CRS) until the person's status is resolved with Immigration. Where the person is reported and referred for inquiry, the application for citizenship remains on hold until such time as the final determination is made and all appeal routes are completed.

If Immigration decides to not pursue enforcement action against the client, the case will be cleared and citizenship processing should continue.

4.5.2 Step 2 – **Determine if Applicant Has Met Residence Requirement**

Even if Immigration decides not to pursue enforcement action against the client, voluntary relinquishment of the IMM 1000 may mean that the client does not meet residency requirements under the Citizenship Act. It is therefore very important that all information surrounding any relinquishment of the IMM 1000 be provided to the citizenship judge for a decision on residence. (These cases are treated as residence cases by judges.)

Citizenship officers are obliged to carefully review all such files before granting citizenship and should refer, for possible Ministerial appeal, approved applications where a person has surrendered an IMM 1000 and has had significant absences before or after the surrender of the document.

In rare instances a person who has physically resided in Canada for at least 1095 days before applying for citizenship, could have subsequently surrendered permanent residence status. In these cases, it is necessary to resolve, through Immigration, whether the person is still a permanent resident. Where immigration decides not to pursue the case, the file need not be treated as a

5. RESIDENCE- POLICY FOR PERSONS WHO HAVE ABSENCES FROM CANADA

5.1 This section is about

- absences from Canada and the residence requirement of the Citizenship Act;
- the case law of the Federal Court of Canada on the question of residence;
- reviewing the decision of the citizenship judge on the question of residence;
- assessing residence issues fairly and consistently to ensure the objectives of the legislation are met.

5.2 Authorities

Citizenship Act	Citizenship Regulations
Section 5(1)	Section 28
Section 5(1.1)	
Section 11(1)	
Section 14(5)	

5.3 Three conditions for residence

Paragraph 5(1)(c) sets out three conditions for citizenship applicants. They are:

- admission to Canada as a permanent resident;
- retain permanent resident status; and
- accumulate a specified period of residence in Canada.

5.4 Purpose of the residence requirement

The purpose of the residence requirement is to ensure that an applicant for citizenship can become familiar with Canada and become integrated into Canadian society.

5.5 Decision making

Citizenship judges have legislated authority to determine whether applicants meet the requirements for citizenship.

In doing so, the citizenship judges consider all the facts and documentation on file, in addition to the applicants' responses to the Residence Questionnaire. The onus is on the applicant to provide evidence in support of an application.

5.6 Definition of " residence "

While the Act stipulates the manner in which residence is to be calculated, it does not define what constitutes "residence" or "being a resident in Canada" for citizenship purposes. The Federal Court of Canada has made many decisions on this question but there has been little consistency in the interpretation

of the concept of residence. In the words of Madame Justice Reed, "There is no doubt that a review of the citizenship decisions of this Court, on that issue, demonstrates that the process of gaining citizenship in such circumstances is akin to a lottery."

The authority to decide whether an applicant meets the requirements of the Citizenship Act rests entirely with the citizenship judge. The judge renders his or her decision independently of the Minister.

Once the citizenship judge approves an application, however, the Minister's delegate (usually, the citizenship officer) must review the file to determine whether the decision could be subject to appeal. If that is the case, it is necessary to send the file to Headquarters for a decision on possible appeal.

For the administration of the Citizenship Act, a consistent and fair approach must be followed. To achieve this end, you must make sure you that you carefully follow the policy below in reviewing the decisions of the citizenship judge on the question of residence.

5.7 Policy

In reviewing the decision of a citizenship judge on the question of residence, the policy to be followed, in accordance with the Minister's direction, is as follows:

5.8 A - Physical presence

Other than exceptional circumstances, a citizenship applicant must have accumulated three years (1,095 days) of physical presence in Canada in the four years preceding the date of application. In other words, an applicant can be absent from Canada for up to one year, within the four year period.

5.9 B - Exceptional circumstances

In accordance with established case law, an applicant may be absent from Canada and still maintain residence for citizenship purposes in certain exceptional circumstances. To cite Mr Justice Pinard in the Mui case:

> I agree in principle with some decisions of this Court which, given special or exceptional circumstances, do not require physical presence in Canada for the entire 1095 days. However, it is my view, that an extended absence from Canada during the minimum period of time, albeit temporary, as in the present case, is contrary to the purpose of the residency requirements of the Act. Indeed, the Act already allows a person who has been lawfully admitted to Canada for permanent residence not to reside in Canada during one of the four years immediately preceding the date of that person's application for Canadian citizenship. [Emphasis added]

Even the early Federal Court decisions on residence recognized that absences from Canada should generally be for special and temporary purposes. The Associate Chief Justice Thurlow, in the much-cited Papadogiorgakis decision, seemed to view that actual presence in Canada was required, except for short vacations or other temporary absences such as pursuing a course of study abroad (and always returning home at school breaks).

In assessing whether the absences of an applicant fall within the allowable exceptions, use the following six questions as the determinative test. These questions are those set out by Madame Justice Reed in the Koo decision. For each question, an example is given of a circumstance that may allow the applicant to meet the residence requirement.

1. Was the individual physically present in Canada for a long period prior to recent absences which occurred immediately before the application for citizenship?

   Example of an allowable exception: an applicant lived here for 3 years before leaving Canada for a period of several months. The applicant then returns here to permanently live in Canada and files a citizenship application at that time.

2. Where are the applicant's immediate family and dependents (and extended family) resident?

   Example of an allowable exception: an applicant leaves Canada for several days each month, but her mother-in-law, her husband and her children all continue to live in Canada while she is outside of the country.

3. Does the pattern of physical presence in Canada indicate a returning home or merely visiting the country?

Example of an allowable exception: an applicant leaves Canada each month for 7 or 10 days, but stays abroad at hotels where the applicant conducts business or at the home of someone the applicant is visiting. The applicant always returns to Canada at a home owned or rented by the applicant.

4. What is the extent of the physical absences - if an applicant is only a few days short of the 1,095 total it is easier to find deemed residence than if those absences are extensive.

   Example of an allowable exception: an applicant was physically present in Canada the vast majority of the time, despite repeated absences.

5. Is the physical absence caused by a clearly temporary situation such as employment as a missionary abroad, following a course of study abroad as a student, accepting temporary employment abroad, accompanying a spouse who has accepted temporary employment abroad?

   Example of an allowable exception: the applicant obtains permanent residence in Canada and is offered a job here. After beginning his employment here, she is asked by her employer to serve abroad for one year to help manage an important business venture. The applicant then returns here after the assignment is completed to resume her work in Canada.

6. What is the quality of the connection with Canada: is it more substantial than that which exists with any other country?

   Example of an allowable exception: an applicant has been spending a few months abroad, each year, to look after his elderly parents. When in Canada, however, the applicant is involved in his work and business ventures. He also is involved with community organizations and the vast majority of his personal contacts (professional and social) are people who live here in Canada. Finally, the applicant pays income tax in Canada and in no other country.

   In applying this test to an application, you must decide whether the absences of the applicant fall within the types of exceptional circumstances. If the absences do not fall within these exceptional circumstances, you must refer the citizenship judge’s complete file on the applicant to Case Management Branch for possible appeal by the Minister. Include your analysis of why the applicant does not appear to meet the residence requirement. Keep in mind that the delay within which an appeal can be filed is 60 days.Cases must therefore be referred on a timely basis, or the Minister will lose the right of appeal (see Chapter 8, "Appeals", for the procedure to follow).

5.10 C - Extensive absences - majority rule

If you determine that all the absences of the applicant fall within the allowable exceptions, you must then assess if the applicant was outside of Canada, in total, for a longer period of time than he or she was in Canada.

Given that the purpose of the residence requirement is to ensure that the applicant for citizenship can become familiar with Canada and become integrated into Canadian society, it follows that the longer the absences of the applicant, the more difficult it will be for the Minister to be convinced that the applicant meets the residence requirement. This is true even if the reasons for the absences seem to fall entirely within the exceptional circumstances described above.

Another way to consider the "majority rule" is to keep in mind that, for citizenship purposes, a person can only have one residence at any given time. Therefore, if a person is spending a lot of time in another country (in effect, residing there), that person cannot, at the same time, "maintain residence in Canada".

If the citizenship judge approves an application where the applicant has been outside Canada the majority of the time (in other words, has been outside Canada for more

time than in Canada), the citizenship judge's complete file on the applicant must then be referred to Case Management Branch for possible appeal by the Minister. Include your analysis of why the applicant does not appear to meet the residence requirement. Keep in mind that the delay within which an appeal can be filed is 60 days. Cases must therefore be referred on a timely basis, or the Minister will lose the right of appeal (see Chapter 8, "Appeals", for the procedure to follow).

5.11 D - Appeal

The Minister has delegated the authority to file an appeal of a decision of the citizenship judge to staff at Headquarters. All cases referred by local officials will be reviewed in light of the above policy and in light of legal advice and current Federal Court case law. A decision will then be made on whether to appeal, and this decision is submitted to the Minister for approval. The local office will be advised of the decision.

As the Minister can only appeal a judge's decision within 60 days of the date of the decision, clearly identify the case as URGENT. Clearly indicate the date the appeal period expires.

Do not grant citizenship.

See Chapter 8, Appeals