Citizenship and Immigration Canada
Citoyenneté et Immigration Canada

ENF 1

Inadmissibility

Canada

ENF 1 Inadmissibility

Updates to chapter

Listing by date:

Date: 2006-07-13

Changes were made to chapter ENF 1 to remove references to “omissions” in the context of criminal inadmissibility. The term, which was contained in the provisions of the former Act, is not contained in the IRPA.

2005-06-27

Changes were made to chapter ENF 1 in order to reflect the CIC and CBSA policy responsibility and service delivery roles.

Caselaw was added in Appendix A for cases involving A37(1)(a) and A40.

2003-11-25

Minor changes were made to chapter ENF 1, entitled Inadmissibility. Section 7.17 and Section 7.18 - Security Review changed to Organized Crime Directorate.

2003-07-16

Both minor and substantive changes and clarifications have been made throughout ENF 1 - Inadmissibility. It is recommended that any former version of this chapter be discarded in favour of the one now appearing in CIC Explore.

2003-03-04

Section 7.18 has been amended to reflect that the Minister’s representative does not have to prove that the organization is involved in criminal activity (A37(1)(b)).

1. What this chapter is about

This chapter:

- details the particular inadmissibility provisions of the *Immigration and Refugee Protection Act* (IRPA or the Act) (Division 4 of Part 1); and
- provides functional direction and guidance in applying the inadmissibility provisions by giving an analysis of each allegation's case elements, examples of recommended evidence and, in some cases, a summary of jurisprudence.

2. Program objectives

The objectives of the Canadian immigration legislation relative to the inadmissibility provisions are:

- to protect the health and safety of Canadians and to maintain the security of Canadian society;
- to promote international justice and security by fostering respect for human rights and by denying access to Canadian territory to persons who are criminals or security risks; and
- to ensure that decisions taken under the Act are consistent with the *Canadian Charter of Rights and Freedoms*, including its principles of equality and freedom from discrimination and of the equality of English and French as the official languages of Canada.

In dealings with persons who may be inadmissible to Canada, officers control the admission and/or allow for the presence of persons in Canada by referencing the various inadmissibility provisions of the IRPA.

Part 1, Division 4 of the Act makes distinctions based on categories of inadmissibility related to:

- criminality;
- organized criminality;
- security;
- human or international rights violations;
- health;
- financial reasons;
- misrepresentation;
- non-compliance;
- inadmissible family members.

3. The Act and Regulations

For information about	See
A permanent resident or a foreign national is inadmissible on security grounds for	
• engaging in an act of espionage or an act of subversion against a democratic government, institution or process as they are understood in Canada	A34(1)(a)
• engaging in or instigating the subversion by force of any government	A34(1)(b)
• engaging in terrorism	A34(1)(c)
• being a danger to the security of Canada	A34(1)(d)
• engaging in acts of violence that would or might endanger the lives or safety	A34(1)(e)

of persons in Canada	
• being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph *(*a), *(*b) or *(*c)	A34(1)(f)
A permanent resident or a foreign national is inadmissible on grounds of violating human or international rights for	
• committing an act outside Canada that constitutes an offence referred to in sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*	A35(1)(a)
• being a prescribed senior official in the service of a government that, in the opinion of the Minister, engages or has engaged in terrorism, systematic or gross human rights violations, or genocide, a war crime or a crime against humanity within the meaning of subsections 6(3) to (5) of the *Crimes Against Humanity and War Crimes Act*	A35(1)(b)
• being a person, other than a permanent resident, whose entry into or stay in Canada is restricted pursuant to a decision, resolution or measure of an international organization of states or association of states, of which Canada is a member, that imposes sanctions on a country against which Canada has imposed or has agreed to impose sanctions in concert with that organization or association	A35(1)(c)
A permanent resident or a foreign national is inadmissible on grounds of serious criminality for	
• having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed	A36(1)(a)
• having been convicted of an offence outside Canada 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	A36(1)(b)
• committing an act outside Canada that is an offence in the place where it was committed and 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	A36(1)(c)
A foreign national is inadmissible on grounds of criminality for	
• having been convicted in Canada of an offence under an Act of Parliament punishable by way of indictment, or of two offences under any Act of Parliament not arising out of a single occurrence	A36(2)(a)
• having been convicted outside Canada of an offence that, if committed in Canada, would constitute an indictable offence under an Act of Parliament, or of two offences not arising out of a single occurrence that, if committed in Canada, would constitute offences under an Act of Parliament	A36(2)(b)
• committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an indictable offence under an Act of Parliament	A36(2)(c)
• committing, on entering Canada, an offence under an Act of Parliament prescribed by regulations	A36(2)(d)
A permanent resident or a foreign national is inadmissible on grounds of organized criminality for	
• being a member of an organization that is believed on reasonable grounds to	A37(1)(a)

be or to have been engaged in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of an offence punishable under an Act of Parliament by way of indictment, or in furtherance of the commission of an offence outside Canada that, if committed in Canada, would constitute such an offence, or engaging in activity that is part of such a pattern	
• engaging, in the context of transnational crime, in activities such as people smuggling, trafficking in persons or money laundering	A37(1)(b)
A foreign national is inadmissible on health grounds if their health condition	
• is likely to be a danger to public health • is likely to be a danger to public safety • might reasonably be expected to cause excessive demand on health or social services	A38(1)(a) A38(1)(b) A38(1)(c)
A foreign national is inadmissible for financial reasons if they are or will be unable or unwilling to support themselves or any other person who is dependent on them, and have not satisfied an officer that adequate arrangements for care and support, other than those that involve social assistance, have been made	A39
A permanent resident or a foreign national is inadmissible for misrepresentation	
• for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of the Act	A40(1)(a)
• for being or having been sponsored by a person who is determined to be inadmissible for misrepresentation	A40(1)(b)
• on a final determination to vacate a decision to allow the claim for refugee protection by the permanent resident or the foreign national	A40(1)(c)
• on ceasing to be a citizen under paragraph 10(1)(a) of the *Citizenship Act*, in the circumstances set out in subsection 10(2) of that Act	A40(1)(d)
A person is inadmissible for failing to comply with the Act	
• in the case of a foreign national, through an act or omission which contravenes, directly or indirectly, a provision the Act	A41(a)
• in the case of a permanent resident, through failing to comply with A27(2) or A28	A41(b)
A foreign national, other than a protected person, is inadmissible on grounds of an inadmissible family member if	
• their accompanying family member or, in prescribed circumstances, their non-accompanying family member is inadmissible	A42(a)
• they are an accompanying family member of an inadmissible person	A42(b)

CBSA has the policy responsibility with respect to security [A34].

A34(1)(a)

34. (1) A permanent resident or a foreign national is inadmissible on security grounds for

a) engaging in an act of espionage or an act of subversion against a democratic government, institution or process as they are understood in Canada.

Exception

A34(2): Subsection A34(1) does not apply in respect of a permanent resident or a foreign national who satisfies the Minister of PSEP that their presence in Canada would not be detrimental to the national interest.

Case elements:

reasonable grounds

permanent resident or foreign national

in or outside Canada

have or are or will engage(d)(ing) in acts of espionage or subversion against a democratic government or democratic institution or democratic process

as understood in Canada

For information about recommended evidence and how to obtain it, see Obtaining evidence for A34(1)(a), Section 7.1, below.

Notes

"reasonable grounds" means more than mere suspicion but less than the civil test of balance of probabilities. It is a lower threshold than the criminal standard of "beyond a reasonable doubt." It is a *bona fide* belief in a serious possibility based on credible evidence.

"espionage" is the practice of spying; that is, the gathering of information in a surreptitious manner; secretly seeking out information usually from a hostile country to benefit one's own country.

"subversion" is accomplishing change by illicit means or for improper purposes related to an organization; overturning or overthrowing.

"democratic" is relating to government by the people, especially where the people hold the supreme political power.

It could be argued that it is only "subversion" that has to be against "democratic government, institutions or processes as they are understood in Canada."

Subversion need not be by force under this section.

A81: If an A77(1) certificate is determined to be reasonable under A80(1), it is conclusive proof that the permanent resident or the foreign national named in it is inadmissible; it is a removal order that may not be appealed against and that is in force without the necessity of holding or continuing an examination or an admissibility hearing; and the person named in it may not apply for protection under A112(1).

A101(1): A claim is ineligible to be referred to the Refugee Protection Division (RPD) if:

(f) the claimant has been determined to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality, except for persons who are inadmissible solely on the grounds of A35(1)(c).

Jurisprudence:

See applicable subsection in Appendix A.

A34(1)(b)

34. (1) A permanent resident or a foreign national is inadmissible on security grounds for

(b) engaging in or instigating the subversion by force of any government.

Exception

A34(2): A34(1) does not apply in respect of a permanent resident or a foreign national who satisfies the Minister of PSEP that their presence in Canada would not be detrimental to the national interest.

Case elements:

reasonable grounds

permanent resident or foreign national

in or outside Canada

have or are or will engage(d)(ing) in or instigate(d)(ing) the subversion by force of any government

For information about recommended evidence and how to obtain it, see Obtaining evidence for A34(1)(b), Section 7.2, below.

Notes

"reasonable grounds" means more than mere suspicion but less than the civil test of balance of probabilities. It is a much lower threshold than the criminal standard of "beyond a reasonable doubt." It is a *bona fide* belief in a serious possibility based on credible evidence.

"subversion" is accomplishing change by illicit means or for improper purposes related to an organization; overturning or overthrowing by force.

A81: If an A77(1) certificate is determined to be reasonable under A80(1), it is conclusive proof that the permanent resident or the foreign national named in it is inadmissible; it is a removal order that may not be appealed against and that is in force without the necessity of holding or continuing an examination or an admissibility hearing; and the person named in it may not apply for protection under A112(1).

A101(1): A claim is ineligible to be referred to the Refugee Protection Division (RPD) if:

(f) the claimant has been determined to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality, except for persons who are inadmissible solely on the grounds of A35(1)(c).

Jurisprudence:

See applicable subsection in Appendix A.

A34(1)(c)

34. (1) A permanent resident or a foreign national is inadmissible on security grounds for

(c) engaging in terrorism.

Exception

A34(2): A34(1) does not apply in respect of a permanent resident or a foreign national who satisfies the Minister of PSEP that their presence in Canada would not be detrimental to the national interest.

Case elements:

reasonable grounds

permanent resident or foreign national

in or outside Canada

have or are or will engage(d)(ing) in terrorism

For information about recommended evidence and how to obtain it, see Obtaining evidence for A34(1)(c), Section 7.3, below.

Notes

"reasonable grounds" means more than mere suspicion but less than the civil test of balance of probabilities. It is a much lower threshold than the criminal standard of "beyond a reasonable doubt." It is a *bona fide* belief in a serious possibility based on credible evidence.

"terrorism" relates to activities directed toward or in support of the threat or use of acts of violence against persons or property for the purposes of achieving a political objective; an act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population or to compel a government or an international organization to do or to abstain from doing any act. (See jurisprudence relating to "*Baroud*" and "*Suresh*" in Appendix A).

A81: If an A77(1) certificate is determined to be reasonable under A80(1), it is conclusive proof that the permanent resident or the foreign national named in it is inadmissible; it is a removal order that may not be

appealed against and that is in force without the necessity of holding or continuing an examination or an admissibility hearing; and the person named in it may not apply for protection under A112(1).

A101(1): A claim is ineligible to be referred to the Refugee Protection Division (RPD) if:

(f) the claimant has been determined to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality, except for persons who are inadmissible solely on the grounds of A35(1)(c).

Jurisprudence:

See applicable subsection in Appendix A.

A34(1)(d)

34. (1) A permanent resident or a foreign national is inadmissible on security grounds for

(d) being a danger to the security of Canada.

Exception

A34(2): A34(1) does not apply in respect of a permanent resident or a foreign national who satisfies the Minister of PSEP that their presence in Canada would not be detrimental to the national interest.

Case elements:

reasonable grounds

permanent resident or foreign national

in or outside Canada

has been or is or will be a danger to the security of Canada

For information about recommended evidence and how to obtain it, see Obtaining evidence for A34(1)(d), Section 7.4, below.

Notes

"reasonable grounds" means more than mere suspicion but less than the civil test of balance of probabilities. It is a much lower threshold than the criminal standard of "beyond a reasonable doubt." It is a *bona fide* belief in a serious possibility based on credible evidence.

A81: If an A77(1) certificate is determined to be reasonable under A80(1), it is conclusive proof that the permanent resident or the foreign national named in it is inadmissible; it is a removal order that may not be appealed against and that is in force without the necessity of holding or continuing an examination or an admissibility hearing; and the person named in it may not apply for protection under A112(1).

A101(1): A claim is ineligible to be referred to the Refugee Protection Division (RPD) if:

(f) the claimant has been determined to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality, except for persons who are inadmissible solely on the grounds of A35(1)(c).

Jurisprudence:

See applicable subsection in Appendix A.

A34(1)(e)

34. (1) A permanent resident or a foreign national is inadmissible on security grounds for

(e) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada.

Exception

A34(2): A34(1) does not apply in respect of a permanent resident or a foreign national who satisfies the Minister of PSEP that their presence in Canada would not be detrimental to the national interest.

Case elements:

reasonable grounds

permanent resident or foreign national

in or outside Canada

have or are or will engage(d)(ing) in acts of violence that would or might endanger the lives or safety of persons in Canada

For information about recommended evidence and how to obtain it, see Obtaining evidence for A34(1)(e), Section 7.5, below.

Notes

"reasonable grounds" means more than mere suspicion but less than the civil test of balance of probabilities. It is a much lower threshold than the criminal standard of "beyond a

reasonable doubt." It is a *bona fide* belief in a serious possibility based on credible evidence.

A81: If an A77(1) certificate is determined to be reasonable under A80(1), it is conclusive proof that the permanent resident or the foreign national named in it is inadmissible; it is a removal order that may not be appealed against and that is in force without the necessity of holding or continuing an examination or an admissibility hearing; and the person named in it may not apply for protection under A112(1).

A101(1): A claim is ineligible to be referred to the Refugee Protection Division (RPD) if:

(f) the claimant has been determined to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality, except for persons who are inadmissible solely on the grounds of A35(1)(c).

Jurisprudence:

See applicable subsection in Appendix A.

A34(1)(f)

34. (1) A permanent resident or a foreign national is inadmissible on security grounds for

(f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b) or (c).

Exception

A34(2): A34(1) does not apply in respect of a permanent resident or a foreign national who satisfies the Minister of PSEP that their presence in Canada would not be detrimental to the national interest.

Case elements:

- reasonable grounds
- permanent resident or foreign national
- in or outside Canada
- were or are or will be a member of an organization that there are reasonable grounds to believe engages or has engaged or will engage in acts of espionage or subversion or subversion by force or terrorism (see A34(1)(a), 34(1)(b) and 34(1)(c))

For information about recommended evidence and how to obtain it, see Obtaining evidence for A34(1)(f), Section 7.6, below.

Notes

"reasonable grounds" means more than mere suspicion but less than the civil test of balance of probabilities. It is a much lower threshold than the criminal standard of "beyond a reasonable doubt." It is a *bona fide* belief in a serious possibility based on credible evidence.

"espionage" is the practice of spying; that is, the gathering of information in a surreptitious manner; secretly seeking out information usually from a hostile country to benefit one's own.

"subversion" is accomplishing change by illicit means or for improper purposes related to an organization; overturning or overthrowing.

"democratic" is relating to government by the people, especially where the people hold the supreme political power.

"terrorism" relates to activities directed toward or in support of the threat or use of acts of violence against persons or property for the purposes of achieving a political objective; an act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population or to compel a government or an international organization to do or to abstain from doing any act.(See jurisprudence relating to "*Baroud*" and "*Suresh*" in Appendix A.

A81: If an A77(1) certificate is determined to be reasonable under A80(1), it is conclusive proof that the permanent resident or the foreign national named in it is inadmissible; it is a removal order that may not be appealed against and that is in force without the necessity of holding or continuing an examination or an admissibility hearing; and the person named in it may not apply for protection under A112(1).

A101(1): A claim is ineligible to be referred to the Refugee Protection Division (RPD) if:

(f) the claimant has been determined to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality, except for persons who are inadmissible solely on the grounds of A35(1)(c).

Jurisprudence:

See applicable subsection in Appendix A.

The CBSA has the policy responsibility with respect to human and international rights violations [A35].

A35(1)(a)

35. (1) A permanent resident or a foreign national is inadmissible on grounds of violating human or international rights for

(a) committing an act outside Canada that constitutes an offence referred to in sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act.*

Exception

None.

Case elements:

reasonable grounds

permanent resident or foreign national

outside Canada

have committed an act that constitutes an offence referred to in sections 4-7 of the *Crimes Against Humanity and War Crimes Act*

For information about recommended evidence and how to obtain it, see Obtaining evidence for A35(1)(a), Section 7.7, below.

Notes

"reasonable grounds" means more than mere suspicion but less than the civil test of balance of probabilities. It is a much lower threshold than the criminal standard of "beyond a reasonable doubt." It is a *bona fide* belief in a serious possibility based on credible evidence.

A81: If an A77(1) certificate is determined to be reasonable under A80(1), it is conclusive proof that the permanent resident or the foreign national named in it is inadmissible; it is a removal order that may not be appealed against and that is in force without the necessity of holding or continuing an examination or an admissibility hearing; and the person named in it may not apply for protection under A112(1).

A101(1): A claim is ineligible to be referred to the Refugee Protection Division (RPD) if:

(f) the claimant has been determined to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality, except for persons who are inadmissible solely on the grounds of A35(1)(c).

S.6(1) of Crimes Against Humanity and War Crimes Act:

Every person who, either before or after the coming into force of this section, commits, conspires or attempts to commit, is an accessory after the fact in relation to, or counsels in relation to, outside Canada (a) genocide, (b) a crime against humanity, or (c) a war crime, is guilty of an indictable offence.

"crime against humanity" means murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group and that, at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

"genocide" means an act or omission committed with intent to destroy, in whole or in part, an identifiable group of persons, as such, that, at the time and in the place of its commission, constitutes genocide according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

"war crime" means an act or omission committed during an armed conflict that, at the time and in the place of its commission, constitutes a war crime according to customary international law or conventional international law applicable to armed conflicts, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

See also, chapter ENF 18, War Crimes and Crimes Against Humanity.

Jurisprudence:

See applicable subsection in Appendix A.

A35(1)(b)

35. (1) A permanent resident or a foreign national is inadmissible on grounds of violating human or international rights for

(b) being a prescribed senior official in the service of a government that, in the opinion of the Minister, engages or has engaged in terrorism, systematic or gross human rights violations, or genocide, a war crime or a crime against humanity within the meaning of subsections 6(3) to (5) of the *Crimes Against Humanity and War Crimes Act.*

Exception

A35(2): A35(1)(b) and (c) do not apply in the case of a permanent resident or a foreign national who satisfies the Minister of PSEP that their presence in Canada would not be detrimental to the national interest.

Case elements:

reasonable grounds

permanent resident or foreign national

outside Canada

was or is a prescribed senior official in the service of a government that in the opinion of the Minister engages or has engaged in terrorism or systematic human rights violations or gross human rights violations or genocide, or a war crime or a crime against humanity within the meaning of A6(3) to (5) of the *Crimes Against Humanity and War Crimes Act*.

For more information about recommended evidence and how to obtain it, see Obtaining evidence for A35(1)(b), Section 7.8, below.

Notes

“reasonable grounds” means more than mere suspicion but less than the civil test of balance of probabilities. It is a much lower threshold than the criminal standard of “beyond a reasonable doubt.” It is a *bona fide* belief in a serious possibility based on credible evidence.

Governments or regimes that, in the opinion of the Minister of PSEP, are or were engaged in systematic or gross human rights violations or war crimes or crimes against humanity are listed in ENF 18, War Crimes and Crimes against Humanity.

“terrorism” relates to activities directed toward or in support of the threat or use of acts of violence against persons or property for the purposes of achieving a political objective; an act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population or to compel a government or an international organization to do or to abstain from doing any act. (See jurisprudence relating to "*Baroud*" and “*Suresh*” in Appendix A).

There is no rebuttable presumption for those positions listed in the Regulations. All other senior government positions carry a rebuttable presumption such that the applicant is deemed inadmissible unless they can satisfy the Minister of PSEP that their presence is not detrimental to national interest.

A81: If an A77(1) certificate is determined to be reasonable under A80(1), it is conclusive proof that the permanent resident or the foreign national named in it is inadmissible; it is a removal order that may not be appealed against and that is in force without the necessity of holding or continuing an examination or an admissibility hearing; and the person named in it may not apply for protection under A112(1).

A101(1): A claim is ineligible to be referred to the Refugee Protection Division (RPD) if:

(f) the claimant has been determined to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality, except for persons who are inadmissible solely on the grounds of A35(1)(c).

A64(1): No appeal may be made to the Immigration Appeal Division (IAD) by a foreign national or their sponsor or by a permanent resident if the foreign national or permanent resident has been found to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality.

S.6(3) to (5) of *Crimes Against Humanity and War Crimes Act*:

"crime against humanity" means murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group and that, at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

"genocide" means an act or omission committed with intent to destroy, in whole or in part, an identifiable group of persons, as such, that, at the time and in the place of its commission, constitutes genocide according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

"war crime" means an act or omission committed during an armed conflict that, at the time and in the place of its commission, constitutes a war crime according to customary international law or conventional international law applicable to armed conflicts, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

See also, manual chapter (ENF 18) War Crimes and Crimes Against Humanity.

Jurisprudence:

See applicable subsection in (Appendix A).

A35(1)(c)

35. (1) A permanent resident or a foreign national is inadmissible on grounds of violating human or international rights for

(c) being a person, other than a permanent resident, whose entry into or stay in Canada is restricted pursuant to a decision, resolution or measure of an international organization of states or association of states, of which Canada is a member, that imposes sanctions on a country against which Canada has imposed or has agreed to impose sanctions in concert with that organization or association.

Exception

A35(2): A35(1)(b) and (c) do not apply in the case of a permanent resident or a foreign national who satisfies the Minister of PSEP that their presence in Canada would not be detrimental to the national interest A35(2).

Case elements:

reasonable grounds

foreign national

entry into or stay in Canada is restricted pursuant to a decision or resolution or measure

of an international organization or an association of states,

of which Canada is a member,

that imposes sanctions on a country against which Canada has imposed or has agreed to impose sanctions in concert with that organization or association

For more information about recommended evidence and how to obtain it, see Obtaining evidence for A35(1)(c), Section 7.9, below.

Notes

"reasonable grounds" means more than mere suspicion but less than the civil test of balance of probabilities. It is a much lower threshold than the criminal standard of "beyond a reasonable doubt." It is a *bona fide* belief in a serious possibility based on credible evidence.

For more information on countries against which Canada has imposed or has agreed to impose sanctions and for a listing and website information, see ENF 2, Appendix C, Evaluating Inadmissibility.

Jurisprudence:

See applicable subsection in Appendix A.

CIC has the policy responsibility with respect to criminality [A36]

A36(1)(a)

36. (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for

(a) having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed.

Exception

The exception only applies to persons who have been granted a pardon that has not ceased to have effect or been revoked under the *Criminal Records Act* or where there has been a final determination of acquittal [A36(3)(b)].

Inadmissibility may not be based on an offence designated as a contravention under the *Contraventions Act* or an offence under the *Young Offenders Act* [A36(3)(e)].

Note: The Regulations are currently being amended to reflect the repeal of the *Young Offenders Act* and the coming into force of the *Youth Criminal Justice Act*.

Case elements:

convicted

permanent resident or foreign national

in Canada

offence under an Act of Parliament

punishable by a maximum term of imprisonment of at least 10 years or for which a term of imprisonment of more than six months has been imposed

For information about recommended evidence and how to obtain it, see Obtaining evidence for A36(1)(a), Section 7.10, below.

Notes

A36(3)(a): An offence that may be prosecuted either summarily or by way of indictment is deemed to be an indictable offence, even if it has been prosecuted summarily.

Referral of a report to the Immigration Division; Removal Order - See R228(1)(a):

For the purposes of A44(2), if a report in respect of a foreign national does not include any grounds of inadmissibility other than those set out in the circumstances described under R228(1) (Note: includes A36(1)(a)), then the Minister's delegate shall not refer the report to the Immigration Division;

and if the Minister's delegate makes a removal order against the foreign national, the removal order shall be a deportation order.

Jurisprudence:

See applicable subsection in Appendix A.

A36(1)(b)

36. (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for

(b) having been convicted of an offence outside Canada 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.

Exception

Persons who, after the prescribed period, have satisfied the Minister of C&I of their rehabilitation; or, persons who are members of a prescribed class that is deemed to have been rehabilitated or have been granted a pardon that has not ceased to have effect or been revoked under the *Criminal Records Act* or where there has been a final determination of acquittal are excepted (A36(3)(b),(c)).

Inadmissibility may not be based on an offence designated as a contravention under the *Contraventions Act* or an offence under the *Young Offenders Act* (A36(3)(e)).

Note: The Regulations are currently being amended to reflect the repeal of the *Young Offenders Act* and the coming into force of the *Youth Criminal Justice Act*.

Case elements:

convicted

permanent resident or foreign national

outside Canada

an offence

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

reasonable grounds

For information about recommended evidence and how to obtain it, see Obtaining evidence and determining equivalency for A36(1)(b), Section 7.11, below.

Notes

A36(3)(a): An offence that may be prosecuted either summarily or by way of indictment is deemed to be an indictable offence, even if it has been prosecuted summarily.

Sections A36(1)(b) and (c) and A36(2)(b) and (c) do not constitute inadmissibility if, after the prescribed period, they have satisfied the Minister of C&I that the persons are rehabilitated. The Minister of C&I has delegated to others the authority to find persons to be rehabilitated pursuant to the Instruments of Delegation. Please refer to the Designation of Officers and Delegation of Authority documents in IL3 for more details.

Jurisprudence:

See applicable subsection in Appendix A.

A36(1)(c)

36. (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for

(c) committing an act outside Canada that is an offence in the place where it was committed and 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.

Exception

Persons who, after the prescribed period, have satisfied the Minister of C&I of their rehabilitation; or, who are members of a prescribed class that is deemed to have been rehabilitated or have been granted a pardon that has not ceased to have effect or been revoked under the *Criminal Records Act* or where there has been a final determination of acquittal are excepted (A36(3)(b),(c)).

Inadmissibility may not be based on an offence designated as a contravention under the *Contraventions Act* or an offence under the *Young Offenders Act* (A36(3)(e)).

Note: The Regulations are currently being amended to reflect the repeal of the *Young Offenders Act* and the coming into force of the *Youth Criminal Justice Act*.

Case elements:

balance of probabilities (if permanent resident) or reasonable grounds (if foreign national)

permanent resident or foreign national

outside Canada

committed an act

an offence in the place where it was committed

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

For information about recommended evidence, how to obtain it, and determining equivalency, see Obtaining evidence and determining equivalency for A36(1)(c), Section 7.12, below.

Notes

"reasonable grounds" means more than mere suspicion but less than the civil test of balance of probabilities. It is a much lower threshold than the criminal standard of "beyond a reasonable doubt." It is a *bona fide* belief in a serious possibility based on credible evidence.

A36(3)(d): A determination of whether a permanent resident has committed an act described in A36(1)(c) must be based on a balance of probabilities.

A36(3)(a): An offence that may be prosecuted either summarily or by way of indictment is deemed to be an indictable offence, even if it has been prosecuted summarily.

A81: If an A77(1) certificate is determined to be reasonable under A80(1), it is conclusive proof that the permanent resident or the foreign national named in it is inadmissible; it is a removal order that may not be appealed against and that is in force without the necessity of holding or continuing an examination or an admissibility hearing; and the person named in it may not apply for protection under A112(1).

A101(1): A claim is ineligible to be referred to the Refugee Protection Division (RPD) if:

(f) the claimant has been determined to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality, except for persons who are inadmissible solely on the grounds of A35(1)(c).

Paragraphs A36(1)(b) and (c) and A36(2)(b) and (c) do not constitute inadmissibility if, after the prescribed period, the persons have satisfied the Minister of C&I that they are rehabilitated. The Minister of C&I has delegated to others the authority to find persons to be rehabilitated pursuant to the Instruments of Delegation. Please refer to the Designation of Officers and Delegation of Authority documents in IL3 for more details.

Jurisprudence:

See applicable subsection in Appendix A.

A36(2)(a)

36. (2) A foreign national is inadmissible on grounds of criminality for

(a) having been convicted in Canada of an offence under an Act of Parliament punishable by way of indictment, or of two offences under any Act of Parliament not arising out of a single occurrence.

Exception

The exception only applies to persons who have been granted a pardon that has not ceased to have effect or been revoked under the *Criminal Records Act* or where there has been a final determination of acquittal (A36(3)(b)).

Inadmissibility may not be based on an offence designated as a contravention under the *Contraventions Act* or an offence under the *Young Offenders Act* (A36(3)(e)).

Note: The Regulations are currently being amended to reflect the repeal of the *Young Offenders Act* and the coming into force of the *Youth Criminal Justice Act*.

Case elements:

convicted

foreign national

in Canada

under an Act of Parliament

one offence punishable by way of indictment or two offences not arising out of a single occurrence.

For information about recommended evidence and how to obtain it, see Obtaining evidence for A36(2)(a), Section 7.13, below.

Notes

A36(3)(a): An offence that may be prosecuted either summarily or by way of indictment is deemed to be an indictable offence, even if it has been prosecuted summarily.

Although, if a person is convicted summarily of a hybrid offence, the conviction may be classified as a summary conviction.

Referral of a report to the Immigration Division; Removal Order - See R228(1)(a):

For the purposes of A44(2), if a report in respect of a foreign national does not include any grounds of inadmissibility other than those set out in the circumstances described under R228(1) (Note: includes A36(2)(a)), then the Minister's delegate shall not refer the report to the Immigration Division;

and if the Minister's delegate makes a removal order against the foreign national, the removal order shall be a deportation order.

Jurisprudence:

See applicable subsection in Appendix A.

A36(2)(b)

36. (2) A foreign national is inadmissible on grounds of criminality for

(b) having been convicted outside Canada of an offence that, if committed in Canada, would constitute an indictable offence under an Act of Parliament, or of two offences not arising out of a single occurrence that, if committed in Canada, would constitute offences under an Act of Parliament.

Exception

Persons who, after the prescribed period, have satisfied the Minister of C&I of their rehabilitation; or, who are members of a prescribed class that is deemed to have been rehabilitated or have been granted a pardon that has not ceased to have effect or been revoked under the *Criminal Records Act* or where there has been a final determination of acquittal are excepted (A36(3)(b)).

Inadmissibility may not be based on an offence designated as a contravention under the *Contraventions Act* or an offence under the *Young Offenders Act* (A36(3)(e).

Note: The Regulations are currently being amended to reflect the repeal of the *Young Offenders Act* and the coming into force of the *Youth Criminal Justice Act*.

Case elements:

Convicted

foreign national

outside Canada

offence(s)

if committed in Canada would constitute offence(s) under an Act of Parliament

one indictable or any two not arising out of a single occurrence

reasonable grounds

For information about recommended evidence, how to obtain it and determining equivalency, see Obtaining evidence and determining equivalency for A36(2)(b), Section 7.14, below.

Notes

A36(3)(a): An offence that may be prosecuted either summarily or by way of indictment is deemed to be an indictable offence, even if it has been prosecuted summarily.

Jurisprudence:

See applicable subsection in Appendix A.

A36(2)(c)

36. (2) A foreign national is inadmissible on grounds of criminality for

(c) committing an act outside Canada that is an offence in the place where it was committed and that, if committed in Canada, would constitute an indictable offence under an Act of Parliament.

Exception

Persons who, after the prescribed period, have satisfied the Minister of C&I of their rehabilitation; or, who are members of a prescribed class that is deemed to have been rehabilitated or have been granted a pardon that has not ceased to have effect or been revoked under the *Criminal Records Act* or where there has been a final determination of acquittal are excepted (A36(3)(b)).

Inadmissibility may not be based on an offence designated as a contravention under the *Contraventions Act* or an offence under the *Young Offenders Act* (A36(3)(e)).

Note: The Regulations are currently being amended to reflect the repeal of the *Young Offenders Act* and the coming into force of the *Youth Criminal Justice Act*.

Case elements:

reasonable grounds

foreign national

outside Canada

committed an act

an offence in the place where it was committed

if committed in Canada would constitute an indictable offence under an Act of Parliament

For information about recommended evidence, how to obtain it and determining equivalency, see Obtaining evidence and determining equivalency for A36(2)(c), Section 7.15, below.

Notes

"reasonable grounds" means more than mere suspicion but less than the civil test of balance of probabilities. It is a much lower threshold than the criminal standard of "beyond a reasonable doubt." It is a *bona fide* belief in a serious possibility based on credible evidence.

A36(3)(a): An offence that may be prosecuted either summarily or by way of indictment is deemed to be an indictable offence, even if it has been prosecuted summarily.

A81: If an A77(1) certificate is determined to be reasonable under A80(1), it is conclusive proof that the permanent resident or the foreign national named in it is inadmissible; it is a removal order that may not be appealed against and that is in force without the necessity of holding or continuing an examination or an admissibility hearing; and the person named in it may not apply for protection under A112(1).

A101(1): A claim is ineligible to be referred to the Refugee Protection Division (RPD) if:

(f) the claimant has been determined to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality, except for persons who are inadmissible solely on the grounds of A35(1)(c).

Sections A36(1)(b) and (c) and A36(2)(b) and (c) do not constitute inadmissibility if, after the prescribed period, the persons have satisfied the Minister of C&I that they are rehabilitated. The Minister of C&I has delegated to others the authority to find persons to be rehabilitated pursuant to the Instruments of Delegation. Please refer to the Designation of Officers and Delegation of Authority documents in IL 3 for more details.

Jurisprudence:

See applicable subsection in Appendix A.

A36(2)(d)

36. (2) A foreign national is inadmissible on grounds of criminality for

(d) committing, on entering Canada, an offence under an Act of Parliament prescribed by regulations.

Exception

The exception only applies to persons who have been granted a pardon that has not ceased to have effect or been revoked under the *Criminal Records Act* or where there has been a final determination of acquittal (A36(3)(b)).

Inadmissibility may not be based on an offence designated as a contravention under the *Contraventions Act* or an offence under the *Young Offenders Act* (A36(3)(e)).

Note: The Regulations are currently being amended to reflect the repeal of the *Young Offenders Act* and the coming into force of the *Youth Criminal Justice Act*.

Case elements:

reasonable grounds

foreign national

entering Canada

offence under an Act of Parliament

prescribed by regulations

For information about recommended evidence and how to obtain it, see Obtaining evidence for A36(2)(d), Section 7.16, below.

Notes

"reasonable grounds" means more than mere suspicion but less than the civil test of balance of probabilities. It is a much lower threshold than the criminal standard of "beyond a reasonable doubt." It is a *bona fide* belief in a serious possibility based on credible evidence.

A36(3)(a): An offence that may be prosecuted either summarily or by way of indictment is deemed to be an indictable offence, even if it has been prosecuted summarily.

R19: Transborder Crime:

For the purposes of paragraph A36(2)(d), indictable offences under the following Acts of Parliament are prescribed:

the *Criminal Code*;

the *Immigration and Refugee Protection Act;*

the *Firearms Act*;

the *Customs Act;* and

the *Controlled Drugs and Substances Act*.

Jurisprudence:

See applicable subsection in Appendix A.

CBSA has the policy responsibility with respect to organized crime [A37].

A37(1)(a)

37. (1) A permanent resident or a foreign national is inadmissible on grounds of organized criminality for

(a) being a member of an organization that is believed on reasonable grounds to be or to have been engaged in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of an offence punishable under an Act of Parliament by way of indictment, or in furtherance of the commission of an offence outside Canada that, if committed in Canada, would constitute such an offence, or engaging in activity that is part of such a pattern.

Exception

Subsection A37(1) does not apply in respect of a permanent resident or a foreign national who satisfies the Minister of PSEP that their presence in Canada would not be detrimental to the national interest [A37(2)(a)].

A37(1)(a) does not apply in respect of a permanent resident or foreign national if their involvement with organized criminal activity is only that they entered Canada with the assistance of a person involved in organized criminal activity [A37(2)(b)].

Case elements:

reasonable grounds

permanent resident or foreign national

in or outside Canada

was or is

a member of

an organization that is believed

on reasonable grounds

to be or to have been

engaged in activity that is part of a pattern of criminal activity

planned and organized by a number of persons acting in concert in furtherance of the commission of

an offence or pattern of offences

punishable under an Act of Parliament by way of indictment or an equivalent (if committed outside Canada)

For information about recommended evidence and how to obtain it, see Obtaining evidence for A37(1)(a), Section 7.17, below.

Notes

"reasonable grounds" means more than mere suspicion but less than the civil test of balance of probabilities. It is a much lower threshold than the criminal standard of "beyond a reasonable doubt." It is a *bona fide* belief in a serious possibility based on credible evidence.

A81: If an A77(1) certificate is determined to be reasonable under A80(1), it is conclusive proof that the permanent resident or the foreign national named in it is inadmissible; it is a removal order that may not be appealed against and that is in force without the necessity of holding or continuing an examination or an admissibility hearing; and the person named in it may not apply for protection under A112(1).

A101(1): A claim is ineligible to be referred to the Refugee Protection Division (RPD) if:

(f) the claimant has been determined to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality, except for persons who are inadmissible solely on the grounds of A35(1)(c).

Jurisprudence:

See applicable subsection in Appendix A.

A37(1)(b)

37. (1) A permanent resident or a foreign national is inadmissible on grounds of organized criminality for

(b) engaging, in the context of transnational crime, in activities such as people smuggling, trafficking in persons or money laundering.

Exception

Subsection A37(1) does not apply in respect of a permanent resident or a foreign national who satisfies the Minister of PSEP that their presence in Canada would not be detrimental to the national interest [A37(2)(a)].

Case elements:

reasonable grounds

permanent resident or foreign national

in or outside Canada

engaged or is engaging or will engage

in activities such as (Note: this list is not to be considered exhaustive)

people smuggling or trafficking in persons or money laundering

in the context of transnational crime

For information about recommended evidence and how to obtain it, see Obtaining evidence for A37(1)(b), Section 7.18, below.

Notes

"reasonable grounds" means more than mere suspicion but less than the civil test of balance of probabilities. It is a much lower threshold than the criminal standard of "beyond a reasonable doubt." It is a *bona fide* belief in a serious possibility based on credible evidence.

"transnational crime" is crime that extends or operates across national boundaries.

A81: If an A77(1) certificate is determined to be reasonable under A80(1), it is conclusive proof that the permanent resident or the foreign national named in it is inadmissible; it is a removal order that may not be appealed against and that is in force without the necessity of holding or continuing an examination or an admissibility hearing; and the person named in it may not apply for protection under A112(1).

A101(1): A claim is ineligible to be referred to the Refugee Protection Division (RPD) if:

(f) the claimant has been determined to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality, except for persons who are inadmissible solely on the grounds of A35(1)(c).

Jurisprudence:

See applicable subsection in Appendix A.

CIC has the policy responsibility with respect to inadmissibility on health grounds [A38].

A38(1)

38. (1) A foreign national is inadmissible on health grounds if their health condition

(a) is likely to be a danger to public health;

(b) is likely to be a danger to public safety; or

(c) might reasonably be expected to cause excessive demand on health or social services.

Exception

None for A38(1)(a) and (b).

A38(1)(c) does not apply to a foreign national who:

has been determined to be a member of the family class and to be the spouse, common- law partner or child of a sponsor within the meaning of the regulations;

has applied for a permanent resident visa as a Convention refugee or a person in similar circumstances.

is a "protected person" (within the meaning of subsection A95(2)); or,

is, where prescribed by the regulations, the spouse, common-law partner, child or other family member of a foreign national referred to in any of the aforementioned (A38(2)).

Case elements:

balance of probabilities

foreign national

to be a danger to public health (because of health related reasons)

might be expected to cause excessive demand on health or social services

For information about recommended evidence and how to obtain it, see Obtaining evidence for A38(1)(a), Section 7.19, below.

Notes

"balance of probabilities" is the civil standard of proof used in administrative tribunals, unless otherwise specified. It means that the evidence presented must show that the facts as alleged are more probable than not. Accordingly, a party having the burden of proof by a "balance of probabilities" must be able to persuade, by the evidence, that a claim or a fact is more probably true than not true. The evidence presented favours or outweighs opposing evidence. It is a higher standard of proof than "reasonable grounds to believe," but is lower than the criminal standard of "beyond a reasonable doubt" used in criminal proceedings.

R29: For the purposes of A16(2)(b), a medical examination may include any or all of the following: a physical examination, a mental examination, a review of past medical history, laboratory tests, diagnostic tests and a medical assessment of records respecting a person.

This allegation requires a medical examination to be done; and the results assessed by an officer who is responsible for the application of R27 through R34.

Jurisprudence:

See applicable subsection in Appendix A.

CIC has the policy responsibility with respect to inadmissibility for financial reasons [A39].

A39

39. A foreign national is inadmissible for financial reasons if they are or will be unable or unwilling to support themselves or any other person who is dependent on them, and have not satisfied an officer that adequate arrangements for care and support, other than those that involve social assistance, have been made.

Please refer to Designation of Officers and Delegation of Authority documents in IL 3 for more details.

Exception

R133(4) stipulates that R133(1)(j) (which requires a "minimum necessary income") does not apply if the sponsor is sponsoring only one or more or the following persons:

their spouse or common-law partner, unless they have a dependent child who is a spouse or common-law partner or has dependent children; and

a child of the sponsor or of their spouse or common-law partner, if the child is less than 22 years of age, is not a spouse or common-law partner and has no dependent children.

A foreign national who is a member of the refugee class, and meets the applicable requirements of Part 8, Division 1 (Refugee Class), is exempted from the application of A39 (R139(3)).

Protected persons within the meaning of A95(2) are exempted from the application of A39 (R21).

Case elements:

balance of probabilities

foreign national

are or will

be unable or unwilling

to support themselves or dependants have not satisfied an officer that adequate arrangements for care and support, other than those that involve social assistance, have been made.

For information about recommended evidence and how to obtain it, see Obtaining evidence for A39, Section 7.20, below.

Notes

"balance of probabilities" is the civil standard of proof used in administrative tribunals, unless otherwise specified. It means that the evidence presented must show that the facts as alleged are more probable than not. Accordingly, a party having the burden of proof by a "balance of probabilities" must be able to persuade, by the evidence, that a claim or a fact is more probably true than not true. The evidence presented favours or outweighs opposing evidence. It is a higher standard of proof than "reasonable grounds to believe," but is lower than the criminal standard of "beyond a reasonable doubt" used in criminal proceedings.

A39 applies to persons who presently, or who may in the future, become indigent. The allegation will also apply to those persons who refuse to support themselves or any other person who is dependent upon them. It is designed to exclude persons intending to live or who are living on social assistance and to prevent the abuse of Canada's social services systems.

Jurisprudence:

See applicable subsection in Appendix A.

CIC has the policy responsibility with respect to misrepresentation [A40].

A40(1)(a)

40. (1) A permanent resident or a foreign national is inadmissible for misrepresentation

(a) for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of this Act.

Exception

Protected persons within the meaning of A95(2), other than those whose status has been vacated; and persons who have made refugee claims in Canada and whose claim is still being determined (R22).

Case elements:

balance of probabilities

permanent resident or foreign national

directly or indirectly

misrepresented or withheld

material facts relating to a relevant matter that

induces or could induce

an error in the administration of this Act

For information about recommended evidence and how to obtain it, see Obtaining evidence for A40(1)(a), Section 7.21, below.

Notes

"balance of probabilities" is the civil standard of proof used in administrative tribunals, unless otherwise specified. It means that the evidence presented must show that the facts as alleged are more probable than not. Accordingly, a party having the burden of proof by a "balance of probabilities" must be able to persuade, by the evidence, that a claim or a fact is more probably true than not true. The evidence presented favours or outweighs opposing evidence. It is a higher standard of proof than "reasonable grounds to believe," but is lower than the criminal standard of "beyond a reasonable doubt" used in criminal proceedings.

A40(2)(a): The permanent resident or the foreign national continues to be inadmissible for misrepresentation for a period of two years following, in the case of a determination outside Canada, a final determination of inadmissibility under subsection A40(1) or, in the case of a determination in Canada, the date the removal order is enforced.

A64(3): Sponsor's right to appeal:

No appeal may be made under A63(1) in respect of a decision that was based on a finding of inadmissibility on the ground of misrepresentation, unless the foreign national in question is the sponsor's spouse, common-law partner or child.

This is due to the greater humanitarian and compassionate factors that apply in such cases.

Jurisprudence:

See applicable subsection in Appendix A.

A40(1)(b)

40. (1) A permanent resident or a foreign national is inadmissible for misrepresentation

(b) for being or having been sponsored by a person who is determined to be inadmissible for misrepresentation.

Exception

This allegation may not be used unless the Minister of C&I is satisfied that the facts of the case justify the inadmissibility (A40(2)(b)).

Case elements:

balance of probabilities

permanent resident or foreign national

being or having been

sponsored by a person who is determined to be inadmissible for misrepresentation

For information about recommended evidence and how to obtain it, see Obtaining evidence for A40(1)(b), Section 7.22, below.

Notes

"balance of probabilities" is the civil standard of proof used in administrative tribunals, unless otherwise specified. It means that the evidence presented must show that the facts as alleged are more probable than not. Accordingly, a party having the burden of proof by a "balance of probabilities" must be able to persuade, by the evidence, that a claim or a fact is more probably true than not true. The evidence presented favours or outweighs opposing evidence. It is a higher standard of proof than "reasonable grounds to believe," but is lower than the criminal standard of "beyond a reasonable doubt" used in criminal proceedings.

A40(2)(a): The permanent resident or the foreign national continues to be inadmissible for misrepresentation for a period of two years following, in the case of a determination outside Canada, a final determination of inadmissibility under subsection A40(1) or, in the case of a determination in Canada, the date the removal order is enforced.

A64(3): Sponsor's right to appeal:

No appeal may be made under A63(1) in respect of a decision that was based on a finding of inadmissibility on the ground of misrepresentation, unless the foreign national in question is the sponsor's spouse, common-law partner or child.

This is due to the greater humanitarian and compassionate factors that apply in such cases.

Jurisprudence:

See applicable subsection in Appendix A.

A40(1)(c)

40. (1) A permanent resident or a foreign national is inadmissible for misrepresentation

(c) on a final determination to vacate a decision to allow the claim for refugee protection by the permanent resident or the foreign national.

Exception

None

Case elements:

balance of probabilities

permanent resident or foreign national

final determination

to vacate refugee protection claim

For information about recommended evidence and how to obtain it, see Obtaining evidence for A40(1)(c), Section 7.23, below.

Notes

"balance of probabilities" is the civil standard of proof used in administrative tribunals, unless otherwise specified. It means that the evidence presented must show that the facts as alleged are more probable than

not. Accordingly, a party having the burden of proof by a "balance of probabilities" must be able to persuade, by the evidence, that a claim or a fact is more probably true than not true. The evidence presented favours or outweighs opposing evidence. It is a higher standard of proof than "reasonable grounds to believe," but is lower than the criminal standard of "beyond a reasonable doubt" used in criminal proceedings.

Persons who are deemed inadmissible under the Act for misrepresentation, based on a decision by the Immigration and Refugee Board to vacate refugee status, will also be issued a removal order by the Minister's delegate without the need to re-establish the grounds of misrepresentation at an inadmissibility hearing (R228(1)(b)).

Referral of a report to the Immigration Division; Removal Order – (R228(1)(b)):

For the purposes of subsection A44(2) of the Act, if a report in respect of a foreign national does not include any grounds of inadmissibility other than those set out in the circumstances described under R228(1) (Note: includes paragraph A40(1)(c)), then the Minister's delegate shall not refer the report to the Immigration Division; and if the Minister's delegate makes a removal order against the foreign national, the Minister's delegate shall make the removal order a deportation order.

Jurisprudence:

See applicable subsection in Appendix A.

A40(1)(d)

40. (1) A permanent resident or a foreign national is inadmissible for misrepresentation

(d) on ceasing to be a citizen under paragraph 10(1)(a) of the Citizenship Act, in the circumstances set out in subsection 10(2) of that Act.

Exception

Protected persons within the meaning of subsection A95(2), other than those whose status has been vacated; and persons who have made refugee claims in Canada and whose claim is still being determined (R22).

Case elements:

balance of probabilities

permanent resident or foreign national

no longer a citizen under paragraph 10(1)(a) of the *Citizenship Act*

in the circumstances set out in subsection 10(2) of that *Act*

For information about recommended evidence and how to obtain it, see Obtaining evidence for A41(1)(d), Section 7.24, below.

Notes

"balance of probabilities" is the civil standard of proof used in administrative tribunals, unless otherwise specified. It means that the evidence presented must show that the facts as alleged are more probable than not. Accordingly, a party having the burden of proof by a "balance of probabilities" must be able to persuade, by the evidence, that a claim or a fact is more probably true than not true. The evidence presented favours or outweighs opposing evidence. It is a higher standard of proof than "reasonable grounds to believe," but is lower than the criminal standard of "beyond a reasonable doubt" used in criminal proceedings.

A40(2): The permanent resident or the foreign national continues to be inadmissible for misrepresentation for a period of two years following, in the case of a determination outside Canada, a final determination of inadmissibility under subsection A40(1) or, in the case of a determination in Canada, the date the removal order is enforced.

Paragraph 10(1)(a) and subsection 10(2) of the *Citizenship Act* read as follows:

10(1): Subject to section 18 but notwithstanding any other section of this Act, where the Governor in Council, on a report from the Minister, is satisfied that any person has obtained, retained, renounced or resumed citizenship under this Act by false representation or fraud or by knowingly concealing material circumstances,

(a) the person ceases to be a citizen,

as of such date as may be fixed by order of the Governor in Council with respect thereto.

10(2): A person shall be deemed to have obtained citizenship by false representation or fraud or by knowingly concealing material circumstances if the person was lawfully admitted to Canada for permanent residence by false representation or fraud or by knowingly concealing material circumstances and, because of that admission, the person subsequently obtained citizenship.

Jurisprudence:

See applicable subsection in Appendix A.

CIC has the policy responsibility with respect to non-compliance [A41].

A41(a)

41. A person is inadmissible for failing to comply with this Act

(a) in the case of a foreign national, through an act or omission which contravenes, directly or indirectly, a provision of this Act.

Exception

None.

Case elements:

balance of probabilities

foreign national

act or omission

directly or indirectly

contravenes a provision in the Act

For information about recommended evidence and how to obtain it, see Obtaining evidence for A41(a), Section 7.25, below.

Notes

"balance of probabilities" is the civil standard of proof used in administrative tribunals, unless otherwise specified. It means that the evidence presented must show that the facts as alleged are more probable than not. Accordingly, a party having the burden of proof by a "balance of probabilities" must be able to persuade, by the evidence, that a claim or a fact is more probably true than not true. The evidence presented favours or outweighs opposing evidence. It is a higher standard of proof than "reasonable grounds to believe," but is lower than the criminal standard of "beyond a reasonable doubt" used in criminal proceedings.

Referral of a report to the Immigration Division; Removal Order - See R228(1)(c):

For the purposes of A44(2), and subject to R228(3), if a report in respect of a foreign national does not include any grounds of inadmissibility other than those set out in the circumstances described under R228(1) (Note: includes only specific A41 allegations), then the Minister's delegate shall not refer the report to the Immigration Division; and

provided the allegation is specified under R228(1)(c) and if the Minister's delegate makes a removal order against the foreign national, then the removal order made by the Minister's delegate shall be as indicated after each of the following:

(i) for failing to appear for further examination or an admissibility hearing under Part 1 of the Act, an exclusion order.

(ii) for failing to obtain the authorization of an officer required by A52(1), a deportation order.

(iii) for failing to establish that they hold the visa or other document as required under A20, an exclusion order.

(iv) for failing to leave Canada by the end of the period authorized for their stay as required by subsection A29(2), an exclusion order.

(v) for failing to comply with A29(2) to comply with any condition set out in R184, an exclusion order.

R228(3): If a claim for refugee protection is referred to the Refugee Protection Division (RPD), a departure order is the applicable removal order in the circumstances set out in any of subparagraphs R228(1)(*c*)(i) and (iii) to (v).

Relevant Provisions of the Act:

A11(1): A foreign national must, before entering Canada, apply to an officer for a visa or for any other document required by the regulations.

A16(1): A person who makes an application must answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.

A16(2)(b): The foreign national must submit to a medical examination on request.

A18(1): Every person seeking to enter Canada must appear for an examination to determine whether that person has a right to enter Canada or is or may become authorized to enter and remain in Canada.

A20(1)(a): Every foreign national, other than a foreign national referred to in A19, who seeks to enter or remain in Canada must establish, to become a permanent resident, that they hold the visa or other document required under the regulations and have come to Canada in order to establish permanent residence.

A20(1)(b): Every foreign national, other than a foreign national referred to in A19, who seeks to enter or remain in Canada must establish, to become a temporary resident, that they hold the visa or other document required under the regulations and will leave Canada by the end of the period authorized for their stay.

A29(2): A temporary resident must comply with any conditions imposed under the regulations and with any requirements under this Act, must leave Canada by the end of the period authorized for their stay and may re- enter Canada only if their authorization provides for re-entry.

A30(1): A foreign national may not work or study in Canada unless authorized to do so under this Act.

A44(3): An officer or the Immigration Division may impose any conditions, including the payment of a deposit or the posting of a guarantee for compliance with the conditions that the officer or the Division considers necessary on a permanent resident or a foreign national who is the subject of a report, an admissibility hearing or, being in Canada, a removal order.

A52(1): If a removal order has been enforced, a foreign national shall not return to Canada unless authorized by an officer or in other prescribed circumstances.

Jurisprudence:

See applicable subsection in Appendix A.

A41(b)

41. A person is inadmissible for failing to comply with this Act

(b) in the case of a permanent resident, through failing to comply with subsection 27(2) or section 28.

Exception

None.

Case elements:

balance of probabilities

permanent resident

through failing to comply with

subsection A27(2) or section A28 of this Act

For information about recommended evidence and how to obtain it, see Obtaining evidence for A41(b), Section 7.26, below.

Notes

"balance of probabilities" is the civil standard of proof used in administrative tribunals, unless otherwise specified. It means that the evidence presented must show that the facts as alleged are more probable than not. Accordingly, a party having the burden of proof by a "balance of probabilities" must be able to persuade, by the evidence, that a claim or a fact is more probably true than not true. The evidence presented favours or outweighs opposing evidence. It is a higher standard of proof than "reasonable grounds to believe," but is lower than the criminal standard of "beyond a reasonable doubt" used in criminal proceedings.

The residency obligation in the Act is based on a period of physical presence in Canada with provisions for prolonged absences from Canada (three years out of every five-year period for any reason). In certain circumstances, permanent residents including accompanying family members, are allowed even longer absences when they are employed abroad. Humanitarian and compassionate considerations, including the best interests of a child, will be taken into account in all residency obligation status determinations and, when justified, will overcome any breach of those obligations that may have occurred prior to the determination (A28(2)(c)).

R228(2): For the purposes of subsection A44(2), if the Minister's delegate makes a removal order against a permanent resident who fails to comply with the residency obligation under A28, the order shall be a departure order.

Relevant Provisions of the Act:

A44(3): An officer or the Immigration Division may impose any conditions, including the payment of a deposit or the posting of a guarantee for compliance with the conditions that the officer or the Division considers necessary on a permanent resident or a foreign national who is the subject of a report, an admissibility hearing or, being in Canada, a removal order.

A27(2): A permanent resident must comply with any conditions imposed under the regulations.

A28(1): A permanent resident must comply with a residency obligation with respect to every five- year period.

A28(2): The following provisions govern the residency obligation under subsection A28(1):

(a) a permanent resident complies with the residency obligation with respect to a five-year period if, on each of a total or at least 730 days in that five-year period, they are:

(i) physically present in Canada,
(ii) outside Canada accompanying a Canadian citizen who is their spouse or common-law partner or, in the case of a child, their parent,
(iii) outside Canada employed on a full-time basis by a Canadian business or in the public service of Canada or of a province
(iv) outside Canada accompanying a permanent resident who is their spouse or common-law partner or, in the case of a child, their parent and who is employed on a full-time basis by a Canadian business or in the public service of Canada or of a province, or
(v) referred to in regulations providing for other means of compliance

(b) it is sufficient for a permanent resident to demonstrate at examination:

(i) if they have been a permanent resident for less than five years, that they will be able to meet the residency obligation in respect of the five-year period immediately after they became a permanent resident;
(ii) if they have been a permanent resident for five years or more, that they have met the residency obligation in respect of the five- year period immediately before the examination; and

(c) a determination by an officer that humanitarian and compassionate considerations relating to a permanent resident, taking into account the best interests of a child directly affected by the determination, justify the retention of permanent resident status overcomes any breach of the residency obligation prior to the determination.

Jurisprudence:

See applicable subsection in Appendix A.

CIC has the policy responsibility with respect to inadmissible family members [A42].

A42(a)

42. A foreign national, other than a protected person, is inadmissible on grounds of an inadmissible family member if

(a) their accompanying family member or, in prescribed circumstances, their non- accompanying family member is inadmissible.

Exception

A protected person within the meaning of subsection A95(2).

Case elements:

balance of probabilities

foreign national (other than a protected person)

entering Canada

their accompanying family member or non-accompanying family member (in prescribed circumstances) is inadmissible

For information about recommended evidence and how to obtain it, see Obtaining evidence for A42(a), Section 7.27, below.

Notes

"balance of probabilities" is the civil standard of proof used in administrative tribunals, unless otherwise specified. It means that the evidence presented must show that the facts as alleged are more probable than not. Accordingly, a party having the burden of proof by a "balance of probabilities" must be able to persuade, by the evidence, that a claim or a fact is more probably true than not true. The evidence presented favours or outweighs opposing evidence. It is a higher standard of proof than "reasonable grounds to believe," but is lower than the criminal standard of "beyond a reasonable doubt" used in criminal proceedings.

Under the provisions of A42, foreign nationals may be found inadmissible if their accompanying family member or, in circumstances prescribed by Regulations, a family member who does not accompany them is inadmissible. Further, they may be found to be inadmissible themselves if they accompany an inadmissible family member.

The person concerned must be "of the family" or "a family member"; in the absence of this, the allegation is unsupportable.

Referral of a report to the Immigration Division; Removal Order - See R228(1)(d):

For the purposes of subsection A44(2), and subject to R228(3), if a report in respect of a foreign national does not include any grounds of inadmissibility other than those set out in the circumstances described under R228(1) (Note: includes section A42), then the Minister's delegate shall not refer the report to the Immigration Division;

and

if the Minister's delegate makes a removal order against the foreign national, the Minister's delegate shall make the same removal order as was made in respect of the inadmissible family member.

R228(3): If a claim for refugee protection is referred to the Refugee Protection Division (RPD), a departure order is the applicable removal order in the circumstances set out in any of subparagraphs R228(1)(*c*)(i) and (iii) to (v).

Jurisprudence:

See applicable subsection in Appendix A.

A42(b)

42. A foreign national, other than a protected person, is inadmissible on grounds of an inadmissible family member if

(b) they are an accompanying family member of an inadmissible person.

Exception

A protected person within the meaning of subsection A95(2).

Case elements:

balance of probabilities

foreign national (other than a protected person)

entering Canada

they are an accompanying family member of an inadmissible person

For information about recommended evidence and how to obtain it, see Obtaining evidence for A42(b), Section 7.28, below.

Notes

"balance of probabilities" is the civil standard of proof used in administrative tribunals, unless otherwise specified. It means that the evidence presented must show that the facts as alleged are more probable than not. Accordingly, a party having the burden of proof by a "balance of probabilities" must be able to persuade, by the evidence, that a claim or a fact is more probably true than not true. The evidence presented favours or outweighs opposing evidence. It is a higher standard of proof than "reasonable grounds to believe," but is lower than the criminal standard of "beyond a reasonable doubt" used in criminal proceedings.

Under the provisions of section A42, foreign nationals may be found inadmissible if their accompanying family member or, in circumstances prescribed by the Regulations, a family member who does not accompany them is inadmissible. Further, the person concerned may be found to be inadmissible themselves if they accompany an inadmissible family member.

The person concerned must be "of the family" or "a family member"; in the absence of this, the allegation is unsupportable.

Referral of a report to the Immigration Division; Removal Order - See R228(1)(d):

For the purposes of subsection A44(2), and subject to R228(3), if a report in respect of a foreign national does not include any grounds of inadmissibility other than those set out in the circumstances described under R228(1) (Note: includes section A42), then the Minister's delegate shall not refer the report to the Immigration Division;

and

if the Minister's delegate makes a removal order against the foreign national, the Minister's delegate shall make the same removal order as was made in respect of the inadmissible family member.

R228(3): If a claim for refugee protection is referred to the Refugee Protection Division (RPD), a departure order is the applicable removal order in the circumstances set out in any of subparagraphs R228(1)(*c*)(i) and (iii) to (v).

Jurisprudence:

See applicable subsection in Appendix A.

4. Instruments and delegations

The Designation of Officers and Delegation of Authority documents for the various admissibility sections of the Act have been described in more detail in ENF2/OP18.

Please refer to the Designation of Officers and Delegation of Authority documents in IL3 for more details.

5. Departmental policy

Division 4 of Part 1 of the IRPA contains the core provisions relating to inadmissibility; that is to say, most provisions relating to inadmissibility are contained in the Act.

The Minister of Citizenship and Immigration (C&I) is responsible for the administration of IRPA, with the exception of the areas for which the Minister of Public Safety and Emergency Preparedness (PSEP) has responsibility as described below.

The Minister of PSEP is responsible for the administration of the IRPA as it relates to:

- the examination at ports of entry;
- the enforcement of the Act, including arrest, detention and removal;
- the establishment of policies respecting the enforcement of the Act and inadmissibility on grounds of security, organized criminality or violating human or international rights; or
- determinations under any of subsections A34(2), A35(2) and A37(2).

Section A43 authorizes the making of regulations to provide for matters relating to inadmissibility and to define circumstances in which a class of permanent residents or foreign nationals is exempted from any of the inadmissibility provisions.

The use of regulations allows the government to introduce a greater degree of transparency. In most cases, persons not covered by the regulations may still be considered described or eligible for a specific relief provision after an assessment of the individual evidence. In this way, the regulations and schedules are not exhaustive but will address the most straightforward cases.

The purpose of regulations is to more objectively define criteria for specified allegations. The aim is to increase the objective factor and reduce the subjective factor in the decision-making process through greater codification in the regulations where possible. With improved definition, greater transparency is introduced and outcomes or decisions become more predictable for some cases.

Reliance on regulations and schedules provides maximum flexibility and retains the government's capacity to respond quickly to environmental or policy shifts.

The Act groups regulation-making authority with the sections of the Act to which the regulations will be applicable. This makes it clearer, when reading the Act, where regulatory authority comes from, as well as its scope, limits and application.

The Act requires the Ministers to table any proposed regulations respecting examinations, rights and obligations of permanent and temporary residents, loss of status and removal, detention and release, refugee eligibility, the pre-removal risk assessment, transportation companies and information-sharing before each House of Parliament for referral to the appropriate Committee of that House. This will allow the Standing Committees to provide input into regulations and will strengthen citizens' capacity to play an active role in shaping regulations through an open and transparent regulatory process.

(See also Chapter ENF 2, Evaluating Inadmissibility.)

For information on writing and reviewing A44 reports, please refer to ENF 5 and ENF 6.

6. Definitions

Nil.

7. Procedure: For obtaining evidence and determining equivalency

7.1. Obtaining evidence for A34(1)(a)

The officer may obtain evidence for A34(1)(a) by collecting:

- police or intelligence reports;
- statutory declaration supported by evidence of statements made to an officer;
- other documentary evidence including, but not limited to, media articles, scholarly journals, expert evidence (i.e., evidence from a person who is a specialist in a subject and who may present an "expert" opinion).

7.2. Obtaining evidence for A34(1)(b)

The officer may obtain evidence for A34(1)(b) by collecting:

- police or intelligence reports;
- statutory declaration supported by evidence of statements made to an officer;
- other documentary evidence including, but not limited to, media articles, scholarly journals, expert evidence (i.e., evidence from a person who is a specialist in a subject and who may present an “expert” opinion).

7.3. Obtaining evidence for A34(1)(c)

The officer may obtain evidence for A34(1)(c) by collecting:

- police or intelligence reports;
- statutory declaration supported by evidence of statements made to an officer;
- other documentary evidence including, but not limited to, media articles, scholarly journals, expert evidence (i.e., evidence from a person who is a specialist in a subject and who may present an “expert” opinion).

7.4. Obtaining evidence for A34(1)(d)

The officer may obtain evidence for A34(1)(d) by collecting:

- police or intelligence reports;
- statutory declaration supported by evidence of statements made to an officer;
- other documentary evidence including, but not limited to, media articles, scholarly journals, expert evidence (i.e., evidence from a person who is a specialist in a subject and who may present an “expert” opinion).

7.5. Obtaining evidence for A34(1)(e)

The officer may obtain evidence for A34(1)(e) by collecting:

- police or intelligence reports;
- statutory declaration supported by evidence of statements made to an officer;
- weapon(s) or documentation that may be in the person’s possession that indicate planned violence;
- available public writings that establish the propensity for violent acts by the individual (e.g., newspaper articles about individuals such as hijackers or terrorists);
- other documentary evidence including, but not limited to, media articles, scholarly journals, expert evidence (i.e., evidence from a person who is a specialist in a subject and who may present an “expert” opinion).

7.6. Obtaining evidence for A34(1)(f)

The officer may obtain evidence for A34(1)(f) by collecting:

- police or intelligence reports;
- statutory declaration supported by evidence of statements made to an officer;
- other documentary evidence including, but not limited to, media articles, scholarly journals, expert evidence (i.e., evidence from a person who is a specialist in a subject and who may present an “expert” opinion).

7.7. Obtaining evidence for A35(1)(a)

In all paragraph A35(1)(a) human or international rights violation cases, officers are advised to contact their Regional War Crimes Unit or the Modern War Crimes Unit, National Security Division, CBSA, NHQ, for assistance with case file preparation. Experience has shown that there is considerable effort required before these types of cases may go forward.

The officer may obtain evidence for A35(1)(a) by collecting:

- statutory declaration including documentary evidence, testimony from witnesses, or an admission by the person him/herself establishing that the person concerned has committed an act that constitutes a war crime or a crime against humanity as defined in the *Crimes Against Humanity and War Crimes Act*;
- evidence that the act committed is a contravention of international law or convention by securing the text of the applicable international law or convention;
- other documentary evidence including, but not limited to, media articles, scholarly journals, expert evidence (i.e., evidence from a person who is a specialist in a subject and who may present an “expert” opinion).

7.8. Obtaining evidence for A35(1)(b)

In all paragraph A35(1)(b) human or international rights violation cases, officers are advised to contact their Regional War Crimes Unit or the Modern War Crimes Unit, National Security Division, CBSA, NHQ, for assistance with case file preparation. Experience has shown that there is considerable effort required before these cases may go forward.

The officer may obtain evidence for A35(1)(b) by collecting:

- statutory declaration including documentary evidence, testimony from witnesses, or an admission by the person him/herself establishing that they held one of the named positions set out in R16;
- documentary evidence, testimony from witnesses, or an admission by the person him/herself establishing that the person was able, by virtue of the position they held in the regime (see ENF 18, Appendix E), to exert significant influence on that regime’s exercise of its powers even if the person concerned did not hold one of the positions listed in R16 but nonetheless held a senior position in the listed regime;
- other documentary evidence including, but not limited to, media articles, scholarly journals, expert evidence (i.e., evidence from a person who is a specialist in a subject and who may present an “expert” opinion).

7.9. Obtaining evidence for A35(1)(c)

The officer may obtain evidence for A35(1)(c) by collecting:

- proof that the person concerned is a citizen of a country against which Canada has imposed or has agreed to impose sanctions;
- proof of the international organization of states of association of states valid decision, resolution or measure (see also ENF 2, Evaluating Inadmissibility);
- other documentary evidence including, but not limited to, media articles; scholarly journals; expert evidence (i.e., evidence from a person who is a specialist in a subject and who may present an “expert” opinion).

7.10. Obtaining evidence for A36(1)(a)

The officer may obtain evidence for A36(1)(a) by collecting:

- proof of conviction: This is preferable and should be introduced into evidence at an admissibility hearing so that it forms part of the record, even if the person concerned

concedes the allegation. Such proof consists of a certified copy of the Conviction Certificate or the Warrant of Committal. A certified copy of the court information containing the accusations against the person concerned and indicating a conviction may also be used;

- text of the Canadian statute to prove that the offence is punishable by a term of imprisonment of at least ten years or proof that a term of imprisonment of at least six months was imposed, whichever is applicable;
- statutory declaration - evidence of statements made to an officer;
- statutory declaration including documentary evidence, testimony from witnesses, or an admission by the person him/herself establishing that the person concerned has been convicted of an offence in Canada. If a person is not contesting a criminality allegation, then the person's admission of such criminality, which may take the form of a statutory declaration, can also constitute sufficient evidence. In-Canada convictions may be confirmed through the Canadian Police Information Centre (CPIC). See AD 13, CPIC and Interpol Procedures for CIC.

Note: Testimony and/or declarations of the person concerned or witnesses: This method of establishing inadmissibility, when used in the absence of documentary evidence, is the least desirable as the person concerned may be unable to recite the details of the conviction.

7.11. Obtaining evidence and determining equivalency for A36(1)(b)

The officer may obtain evidence for A36(1)(b) by collecting:

- proof of conviction: This is preferable and should be introduced into evidence at the admissibility hearing even if the person concerned concedes the allegation. Such proof includes conviction certificates, warrants of committal, appropriately noted information or indictment (bill of indictment), or a telexed, e-mailed or telephoned statement from the appropriate foreign authorities confirming that the relevant records indicate a conviction. If confirmation of conviction is received by telephone, the receiving officer should complete a statutory declaration attesting to that fact;
- factual background that led to the conviction(s). This evidence may be obtained from the courts, the police authorities in the foreign country, or the person concerned;
- statutory declaration - evidence of statements made to an officer;
- statutory declaration including documentary evidence, testimony from witnesses, or an admission by the person him/herself establishing that the person concerned has been convicted of an offence outside Canada. If a person is not contesting a criminality allegation, then the person's admission of such criminality which may take the form of a statutory declaration can also constitute sufficient evidence. Convictions in the United States of America may be confirmed through the Canadian Police Information Centre (CPIC). See AD 13, CPIC and Interpol Procedures for CIC;

Note: Testimony and/or declarations of the person concerned or witnesses: This method of establishing inadmissibility, when used in the absence of documentary evidence, is the least desirable as the person concerned may be unable to recite the details of the conviction.

- the text of the foreign offence and the text of the equivalent Canadian offence. This evidence is required to establish equivalence. With respect to the foreign offence, a photocopy of the relevant provision of the foreign law is sufficient. This may be obtained from law libraries, embassies, or consulates. The texts must be introduced into evidence at the admissibility hearing so that they will form part of the official record. It is recognized that not all countries codify their criminal laws in a text of statutes as is done in Canada. In such cases, officers should use their best efforts to obtain a legal description of the foreign offence. Such descriptions may be obtained from foreign jurisprudence in law libraries or from embassies or

consulates. In the absence of such a description, evidence of the facts that led to the conviction may be sufficient to support a finding that the person is described;

- in preparation for the admissibility hearing, evidence should be obtained showing that the person concerned has not satisfied the Minister of C&I that they have rehabilitated themselves. Although the person concerned has the onus of proving that the Minister of C&I has approved of their rehabilitation, the officer should nevertheless confirm whether such approval has been issued in order to ascertain whether the referral for a hearing should be withdrawn or to counter possible testimony by the person him/herself that rehabilitation approval was issued;
- other documentary evidence including, but not limited to, media articles, scholarly journals, expert evidence (i.e., evidence from a person who is a specialist in a subject and who may present an "expert" opinion).

Equivalency can be determined three ways:

- by comparison of the precise wording in each statute both through documents and, if available, through the evidence of an expert or experts in the foreign law with a view to determining the essential ingredients of the respective offences;
- by examining the evidence adduced before the member of the Immigration Division, both oral and documentary, to ascertain whether or not that evidence was sufficient to establish that the essential ingredients of the offence in Canada had been proven in the foreign proceedings, whether precisely described in the initiating documents or in the statutory provisions in the same words or not; or
- by a combination of the two.

7.12. Obtaining evidence and determining equivalency for A36(1)(c)

The officer may obtain evidence for A36(1)(c) by collecting:

- statutory declaration - evidence of statements made to an officer;
- statutory declaration including documentary evidence, testimony from witnesses, or an admission by the person him/herself establishing that the person concerned has committed an act outside Canada that is an offence in the place where it was committed. If a person is not contesting a criminality allegation, then the person's admission of such criminality, which may take the form of a statutory declaration, can also constitute sufficient evidence;

Note: Testimony and/or declarations of the person concerned or witnesses: This method of establishing inadmissibility, when used in the absence of documentary evidence, is the least desirable as the person concerned may be unable to recite the details of the offence.

- evidence that constitutes "a balance of probabilities" that the person concerned committed a prohibited act outside Canada. Evidence may consist of security or police reports, court records, newspaper clippings, or statutory declarations from foreign authorities that demonstrate that an offence has been committed; that an arrest warrant is outstanding; that charges are pending; and/or that the person has been indicted;
- the text of the foreign legislation and the text of the Canadian legislation to establish equivalence and to prove that the offence is punishable under an Act of Parliament by way of indictment for a maximum term of imprisonment of at least ten years. With respect to the foreign offence, a photocopy of the relevant provision of the foreign law is sufficient. This may be obtained from law libraries, embassies, or consulates. The texts must be introduced into evidence at the admissibility hearing so that they will form part of the official record. It is recognized that not all countries codify their criminal laws in a text of statutes as is done in Canada. In such cases, officers should use their best efforts to obtain a legal description of the foreign offence. Such descriptions may be obtained from foreign jurisprudence in law libraries or from embassies or consulates. In the absence of such a description, evidence of

the facts that led to the conviction may be sufficient to support a finding that the person is described;

- in preparation for the admissibility hearing, evidence should be obtained showing that the person concerned has not satisfied the Minister of C&I that they have rehabilitated themselves. Although the person concerned has the onus of proving that the Minister of C&I has approved of their rehabilitation, the officer should nevertheless confirm whether such approval has been issued in order to ascertain whether the referral for a hearing should be withdrawn or to counter possible testimony by the person him/herself that rehabilitation approval was issued;
- other documentary evidence including, but not limited to, media articles, scholarly journals, expert evidence (i.e., evidence from a person who is a specialist in a subject and who may present an “expert” opinion).

Equivalency can be determined three ways:

- by comparison of the precise wording in each statute both through documents and, if available, through the evidence of an expert or experts in the foreign law with a view to determining the essential ingredients of the respective offences;
- by examining the evidence adduced before the member of the Immigration Division, both oral and documentary, to ascertain whether or not that evidence was sufficient to establish that the essential ingredients of the offence in Canada had been proven in the foreign proceedings, whether precisely described in the initiating documents or in the statutory provisions in the same words or not; or
- by a combination of the two.

7.13. Obtaining evidence for A36(2)(a)

The officer may obtain evidence for A36(2)(a) by collecting:

- proof of conviction: This is preferable and should be introduced into evidence so that it forms part of the record even if the person concerned concedes the allegation. Such proof consists of a certified copy of the conviction certificate or the warrant of committal. A certified copy of the court information containing the accusations against the person concerned and indicating a conviction may also be used;
- text of the Canadian statute setting out the indictable offence or summary convictions of which the person concerned has been convicted;
- statutory declaration - evidence of statements made to an officer;
- statutory declaration including documentary evidence, testimony from witnesses, or an admission by the person him/herself establishing that the person concerned has been convicted of an offence or offences in Canada. If a person is not contesting a criminality allegation, then the person's admission of such criminality which may take the form of a statutory declaration can also constitute sufficient evidence. In-Canada convictions may be confirmed through the Canadian Police Information Centre (CPIC). See AD 13 CPIC and Interpol Procedures for CIC;

Note: Testimony and/or declarations of the person concerned or witnesses: This method of establishing inadmissibility, when used in the absence of documentary evidence, is the least desirable as the person concerned may be unable to recite the details of the conviction.

- evidence that the convictions did not arise from the same occurrence (if applicable). This evidence can usually be found in court or police documents setting out the factual background of the offence, such as the court information or the police reports;
- evidence, where relevant, that the person concerned is not a Canadian citizen or a permanent resident. To establish that the person concerned is not a Canadian citizen, an admission by

the person directly or documented through a statutory declaration is considered sufficient evidence. A letter from CPC Sydney stating that there is no record that the person concerned is a citizen of Canada is also sufficient. To establish that the person concerned is not a permanent resident of Canada, an admission by the person directly or documented through a statutory declaration is considered sufficient evidence. A Query Response Centre (QRC), CIC, document indicating no confirmation of permanent residence is also sufficient.

7.14. Obtaining evidence and determining equivalency for A36(2)(b)

The officer may obtain evidence for A36(2)(b) by collecting:

- proof of conviction: This is preferable and should be introduced into evidence at the admissibility hearing even if the person concerned concedes the allegation. Such proof includes conviction certificates, warrants of committal, appropriately noted information or indictment (bill of indictment), or a telexed, e-mailed or telephoned statement from the appropriate foreign authorities confirming that the relevant records indicate a conviction. If confirmation of conviction is received by telephone, the receiving officer should complete a statutory declaration attesting to that fact;
- factual background that led to the conviction(s). This evidence may be obtained from the courts, the police authorities in the foreign country, or the person concerned;
- statutory declaration - evidence of statements made to an officer;
- statutory declaration including documentary evidence, testimony from witnesses, or an admission by the person him/herself establishing that the person concerned has been convicted of an offence or offences outside Canada. If a person is not contesting a criminality allegation, then the person's admission of such criminality which may take the form of a statutory declaration can also constitute sufficient evidence. Convictions in the United States of America may be confirmed through the Canadian Police Information Centre (CPIC). See AD 13, CPIC and Interpol Procedures for CIC;

Note: Testimony and/or declarations of the person concerned or witnesses: This method of establishing inadmissibility, when used in the absence of documentary evidence, is the least desirable as the person concerned may be unable to recite the details of the conviction.

- the text of the foreign legislation and the text of the Canadian legislation to establish equivalence. With respect to the foreign offence, a photocopy of the relevant provision of the foreign law is sufficient. This may be obtained from law libraries, embassies, or consulates. The texts must be introduced into evidence at the admissibility hearing so that they will form part of the official record. It is recognized that not all countries codify their criminal laws in a text of statutes as is done in Canada. In such cases, officers should use their best efforts to obtain a legal description of the foreign offence. Such descriptions may be obtained from foreign jurisprudence in law libraries or from embassies or consulates. In the absence of such a description, evidence of the facts that led to the conviction may be sufficient to support a finding that the person is described;
- evidence that the convictions did not arise from the same occurrence (if applicable). This evidence can usually be found in court or police documents setting out the factual background of the offence, such as the court information or the police reports;
- evidence, where relevant, that the person concerned is not a Canadian citizen or a permanent resident. To establish that the person concerned is not a Canadian citizen, an admission by the person directly or documented through a statutory declaration is considered sufficient evidence. A letter from CPC Sydney stating that there is no record that the person concerned is a citizen of Canada is also sufficient. To establish that the person concerned is not a permanent resident of Canada, an admission by the person directly or documented through a statutory declaration is considered sufficient evidence. A Query Response Centre (QRC), CIC, document indicating no confirmation of permanent residence is also sufficient;

- other documentary evidence including, but not limited to, media articles, scholarly journals, expert evidence (i.e., evidence from a person who is a specialist in a subject and who may present an “expert” opinion).

Equivalency can be determined three ways:

- by comparison of the precise wording in each statute both through documents and, if available, through the evidence of an expert or experts in the foreign law with a view to determining the essential ingredients of the respective offences;
- by examining the evidence adduced before the member of the Immigration Division, both oral and documentary, to ascertain whether or not that evidence was sufficient to establish that the essential ingredients of the offence in Canada had been proven in the foreign proceedings, whether precisely described in the initiating documents or in the statutory provisions in the same words or not; or
- by a combination of the two.

7.15. Obtaining evidence and determining equivalency for A36(2)(c)

The officer may obtain evidence for A36(2)(c) by collecting:

- statutory declaration - evidence of statements made to an officer;
- statutory declaration including documentary evidence, testimony from witnesses, or an admission by the person him/herself establishing that the person concerned has committed an act outside Canada that is an offence in the place where it was committed. If a person is not contesting a criminality allegation, then the person's admission of such criminality which may take the form of a statutory declaration can also constitute sufficient evidence;

Note: Testimony and/or declarations of the person concerned or witnesses: This method of establishing inadmissibility, when used in the absence of documentary evidence, is the least desirable as the person concerned may be unable to recite the details of the offence.

- evidence that constitutes “reasonable grounds” that the person concerned committed prohibited act(s) outside Canada. Evidence may consist of security or police reports, court records, newspaper clippings, or statutory declarations from foreign authorities that demonstrate that an offence has been committed, and that an arrest warrant is outstanding, that charges are pending and/or that the person has been indicted;
- the text of the foreign legislation and the text of the Canadian legislation to establish equivalence. With respect to the foreign offence, a photocopy of the relevant provision of the foreign law is sufficient. This may be obtained from law libraries, embassies, or consulates. The texts must be introduced into evidence at the admissibility hearing so that they will form part of the official record. It is recognized that not all countries codify their criminal laws in a text of statutes as is done in Canada. In such cases, officers should use their best efforts to obtain a legal description of the foreign offence. Such descriptions may be obtained from foreign jurisprudence in law libraries or from embassies or consulates. In the absence of such a description, evidence of the facts that led to the conviction may be sufficient to support a finding that the person is described;
- in preparation for the admissibility hearing, evidence should be obtained showing that the person concerned has not satisfied the Minister of C&I that they have rehabilitated themselves. Although the person concerned has the onus of proving that the Minister of C&I has approved of their rehabilitation, the officer should nevertheless confirm whether such approval has been issued in order to ascertain whether the referral for a hearing should be withdrawn or to counter possible testimony by the person him/herself that rehabilitation approval was issued;
- evidence, where relevant, that the person concerned is not a Canadian citizen or a permanent resident. To establish that the person concerned is not a Canadian citizen, an admission by

the person directly or documented through a statutory declaration is considered sufficient evidence. A letter from CPC Sydney stating that there is no record that the person concerned is a citizen of Canada is also sufficient. To establish that the person concerned is not a permanent resident of Canada, an admission by the person directly or documented through a statutory declaration is considered sufficient evidence. A Query Response Centre (QRC), CIC, document indicating no confirmation of permanent residence is also sufficient;

- other documentary evidence including, but not limited to, media articles, scholarly journals, expert evidence (i.e., evidence from a person who is a specialist in a subject and who may present an “expert” opinion).

Equivalency can be determined three ways:

- by comparison of the precise wording in each statute both through documents and, if available, through the evidence of an expert or experts in the foreign law with a view to determining the essential ingredients of the respective offences;
- by examining the evidence adduced before the member of the Immigration Division, both oral and documentary, to ascertain whether or not that evidence was sufficient to establish that the essential ingredients of the offence in Canada had been proven in the foreign proceedings, whether precisely described in the initiating documents or in the statutory provisions in the same words or not; or
- by a combination of the two.

7.16. Obtaining evidence for A36(2)(d)

The officer may obtain evidence for A36(2)(d) by collecting:

- statutory declaration, including evidence, indicating that the person concerned did commit, upon entering Canada, a prescribed offence. For example, a statutory declaration signed by the person concerned admitting having committed a prescribed offence or signed by an officer (be that a CBSA officer or a Police officer)—confirming, that the person did commit, upon entering Canada, a prescribed offence;
- other documentary evidence including, but not limited to, media articles, scholarly journals, expert evidence (i.e., evidence from a person who is a specialist in a subject and who may present an “expert” opinion);
- the text of the Act of Parliament that was violated;
- proof that the act is one prescribed by the Regulations;
- evidence, where relevant, that the person concerned is not a Canadian citizen or a permanent resident. To establish that the person concerned is not a Canadian citizen, an admission by the person directly or documented through a statutory declaration is considered sufficient evidence. A letter from CPC Sydney stating that there is no record that the person concerned is a citizen of Canada is also sufficient. To establish that the person concerned is not a permanent resident of Canada, an admission by the person directly or documented through a statutory declaration is considered sufficient evidence. A Query Response Centre (QRC), CIC, document indicating no confirmation of permanent residence is also sufficient.

7.17. Obtaining evidence for A37(1)(a)

The officer may obtain evidence for A37(1)(a) by collecting:

- police or intelligence reports;
- statutory declaration and/or confirming testimony of credible witnesses;
- proof that the organization is involved in criminal activity;
- text of the applicable Canadian offence that may be punishable by way of indictment;

- other documentary evidence including, but not limited to, media articles, scholarly journals, expert evidence (i.e., evidence from a person who is a specialist in a subject and who may present an “expert” opinion);

Where the evidence (establishing that the person concerned may be described in A37(1)(a)) consists of reliable, confidential, unreleasable documents, no action is to be taken until a confidential report is prepared on the case and submitted to the Director General Intelligence Directorate, National Security Division, CBSA, NHQ,in accordance with IC 1. The Director General will review the case and provide guidance on how to proceed.

7.18. Obtaining evidence for A37(1)(b)

The officer may obtain evidence for A37(1)(b) by collecting:

- police or intelligence reports;
- statutory declaration and/or confirming testimony of credible witnesses;
- text of the applicable Canadian offence that may be punishable by way of indictment;
- other documentary evidence including, but not limited to, media articles, scholarly journals, expert evidence (i.e., evidence from a person who is a specialist in a subject and who may present an “expert” opinion);

Where the evidence [establishing that the person concerned may be described A37(1)(b)] consists of reliable, confidential, unreleasable documents, no action is to be taken until a confidential report is prepared on the case and submitted to the Director General, Intelligence Directorate, National Security Division, CBSA, NHQ, in accordance with IC 1. The Director General will review the case and provide guidance on how to proceed.

7.19. Obtaining evidence for A38(1)(a)(b)(c)

The officer may obtain evidence for A38(1)(a), (b) and (c) by collecting:

- a medical certificate signed by an officer who is responsible for the application of sections R27 through R34;
- copies of any records reviewed by the officer who assessed the person’s health condition are not necessary but would be desirable. It is important that the assessing officer’s statement of opinion accurately and correctly identifies the person concerned. Factors that are to be considered by an officer who assesses a person’s health condition are described in the Regulations;
- other documentary evidence including, but not limited to, media articles, scholarly journals, expert evidence (i.e., evidence from a person who is a specialist in a subject and who may present an “expert” opinion);
- evidence, where relevant, that the person concerned is not a Canadian citizen or a permanent resident. To establish that the person concerned is not a Canadian citizen, an admission by the person directly or documented through a statutory declaration is considered sufficient evidence. A letter from CPC Sydney stating that there is no record that the person concerned is a citizen of Canada is also sufficient. To establish that the person concerned is not a permanent resident of Canada, an admission by the person directly or documented through a statutory declaration is considered sufficient evidence. A Query Response Centre (QRC), CIC, document indicating no confirmation of permanent residence is also sufficient.

7.20. Obtaining evidence for A39

The officer may obtain evidence for A39 by collecting:

- statutory declaration supported by evidence of statements made to an officer including evidence of the person’s current financial situation; the likelihood that they will have access to funds; and what arrangements, if any, have been made for their care and support. This

evidence may consist of bank statements, bank books, letters from employers, pay cheque stubs and testimony from friends or relatives;

- documentary evidence of an individual's dependence on social assistance or failure to provide for him/herself and/or any dependants. This evidence may consist of letters from the social services authorities (indicating that the individual is in receipt of social assistance), benefit payment cheque stubs, cancelled receipts, etc.;
- where relevant, the hearings officer must be prepared to establish that the person concerned is not a Canadian citizen or a permanent resident. To establish that the person concerned is not a Canadian citizen, an admission by the person directly or documented through a statutory declaration is considered sufficient evidence. A letter from CPC Sydney stating that there is no record that the person concerned is a citizen of Canada is also sufficient. To establish that the person concerned is not a permanent resident of Canada, an admission by the person directly or documented through a statutory declaration is considered sufficient evidence. A Query Response Centre (QRC), CIC, document indicating no confirmation of permanent residence is also sufficient.

7.21. Obtaining evidence for A40(1)(a)

The officer may obtain evidence for A40(1)(a) by collecting:

- proof of the misrepresentation (misrepresentation may also be referred to as "false pretences"). This may include a false document, forensic laboratory evidence certifying that a document is false, etc.;
- testimony from expert witnesses or an admission in the form of a statutory declaration from the person concerned or witnesses;
- proof that the fact misrepresented was material to the decision rendered or being contemplated; this is usually done in submissions, by reference to the relevant provisions of the Act and Regulations. What must be shown is that the misrepresentation was material to the question of determining admissibility, status or removal. A statutory declaration completed by the officer addressing the issue(s) may be considered as evidence;
- proof of the correct information and, if available, proof that the person concerned was subjectively aware of the incorrectness of the misrepresented fact.

7.22. Obtaining evidence for A40(1)(b)

The officer may obtain evidence for A40(1)(b) by collecting:

- proof of the correct information and, if available, proof that the person concerned was subjectively aware of the incorrectness of the misrepresented fact;
- proof of the misrepresentation (misrepresentation may also be referred to as "false pretences"). This may include a false document, forensic laboratory evidence certifying that a document is false;
- testimony from witnesses or an admission in the form of a statutory declaration from the person concerned or witnesses;
- proof that the fact misrepresented was material to the decision rendered or being contemplated; this is usually done in submissions, by reference to the relevant provisions of the Act and Regulations. What must be shown is that the misrepresentation was material to the question of determining admissibility, status or removal. A statutory declaration completed by the officer addressing this issue may be considered as evidence;

7.23. Obtaining evidence for A40(1)(c)

The officer may obtain evidence for A40(1)(c) by collecting:

- proof, from the Refugee Protection Division (RPD), that there has been a final determination to vacate a decision to allow a claim for refugee protection; and
- proof, from the Refugee Appeal Division (RAD), that there has been no appeal filed (pursuant to A110(1)) and that the period of time within which an appeal may be filed, has elapsed.

7.24. Obtaining evidence for A40(1)(d)

The officer may obtain evidence for A40(1)(d) by collecting:

- proof, in the form of a copy of the decision issued by the Governor-in-Council, that the person concerned ceased to be a citizen for reasons outlined in paragraph 10(1)(a) of the *Citizenship Act*;
- text of paragraph 10(1)(a) and subsection 10(2) of the *Citizenship Act*;
- evidence that establishes that the person concerned is no longer a Canadian citizen. To establish that a person is not a Canadian citizen, an admission by the person directly or documentation in the form of a statutory declaration is considered sufficient evidence. A letter from CPC Sydney, stating that there is no record that the person is a citizen of Canada, is also sufficient.

7.25. Obtaining evidence for A41(a)

The officer may obtain evidence for A41(a) by collecting:

- the direct testimony of the person concerned, evidenced by a statutory declaration signed by the person concerned. Other evidence may include a statutory declaration from an officer (or officers) detailing statements made by the person concerned (or others) to an officer. [Statutory declarations from other credible witnesses may also be used as evidence.] All evidence must attest to the fact that the person concerned did not comply with a provision of the Act and that the person concerned did so, either directly or indirectly, through an act or omission, or both;
- proof that may also include certified copies of documents available from the Query Response Centre (QRC), CIC, such as a “Temporary Resident Record” or a “Work Permit.” Further proof may include any relevant documentation that the person may have presented, produced or may have otherwise been found to be in possession of; or documentation that others might have in their possession.
- evidence, where relevant, that the person concerned is not a Canadian citizen or a permanent resident. To establish that the person concerned is not a Canadian citizen, an admission by the person directly or documented through a statutory declaration is considered sufficient evidence. A letter from CPC Sydney stating that there is no record that the person concerned is a citizen of Canada is also sufficient. To establish that the person concerned is not a permanent resident of Canada, an admission by the person directly or documented through a statutory declaration is considered sufficient evidence. A Query Response Centre (QRC), CIC, document indicating no confirmation of permanent residence is also sufficient.

7.26. Obtaining evidence for A41(b)

The officer may obtain evidence for A41(b) by collecting:

- the direct testimony of the person concerned, evidenced by a statutory declaration signed by the person concerned. Other evidence may include a statutory declaration from an officer (or officers) detailing statements made by the person concerned (or others) to an officer. Statutory declarations from other credible witnesses may also be used as evidence;
- proof that may also include certified copies of documents available from the Query Response Centre (QRC), CIC, provincial health authorities or established business, all to evidence that, despite conditions having been lawfully imposed, the person concerned did not comply with

those conditions. Examples may include, *inter alia*, non-compliance with medical surveillance requirements or business entrepreneurial requirements;

- proof that may include any relevant documentation that the person may have presented, produced or may have otherwise been found to be in possession of; or documentation that others may/might have in their possession;
- documentation to support the allegation of non-compliance with the residency obligation may include, *inter alia*, the original or a certified true copy of the person's application for a permanent resident card; employment verification letters concerning the person; copies of any residential mortgage documents, bank records or other such information pertaining to the person concerned; any landlord rental agreements and/or rental receipt copies; passports, travel papers, travel documents of any kind; driver's license and/or photo-identity card information and any records pertaining to each; certified true copies of the person's income tax returns or notices of assessment within the meaning of the *Income Tax Act*.

7.27. Obtaining evidence for A42(a)

The officer may obtain evidence for A42(a) by collecting:

- the direct testimony of the person concerned, evidenced by a statutory declaration signed by the person concerned. Other evidence may include a statutory declaration from an officer (or officers) detailing statements made by the person concerned (or others) to an officer. Statutory declarations from other credible witnesses may also be used as evidence;
- proof that a family member is inadmissible: this may include certified copies of documents available from the Query Response Centre (QRC), CIC, such as a copy of a "removal order" issued to a family member. Further proof may include any relevant documentation that the person concerned may have presented, produced or may have otherwise been found to be in possession of; or documentation that others may have in their possession that pertains to an inadmissible family member;
- copies of any visa refusal letter that may have been issued to a family member. A copy of an "Allowed to Leave", "Direction to Return" or "Rejection Order" issued to an inadmissible family member may also be used as evidence;
- evidence, where relevant, that the person concerned is not a Canadian citizen or a permanent resident. To establish that the person concerned is not a Canadian citizen, an admission by the person directly or documented through a statutory declaration is considered sufficient evidence. A letter from CPC Sydney stating that there is no record that the person concerned is a citizen of Canada is also sufficient. To establish that the person concerned is not a permanent resident of Canada, an admission by the person directly or documented through a statutory declaration is considered sufficient evidence. A Query Response Centre (QRC), CIC, document indicating no confirmation of permanent residence is also sufficient.

7.28. Obtaining evidence for A42(b)

The officer may obtain evidence for A42(b) by collecting:

- the direct testimony of the person concerned, evidenced by a statutory declaration signed by the person concerned. Other evidence may include a statutory declaration from an officer (or officers) detailing statements made by the person concerned (or others) to an officer. Statutory declarations from other credible witnesses may also be used as evidence;
- evidence that the person concerned is a family member and that the person whom they are accompanying is inadmissible. Proof of family relationship may take the form of birth certificate copies or other relevant documentation/correspondence;
- evidence that the inadmissible family member whom they are accompanying is in fact inadmissible. This evidence may take the form of, *inter alia*, a visa refusal letter; a copy of the

original “Removal Order” or “Allowed to Leave”, “Direction to Return” or “Rejection Order” that was issued to the inadmissible family member;

- evidence, where relevant, that the person concerned is not a Canadian citizen or a permanent resident. To establish that the person concerned is not a Canadian citizen, an admission by the person directly or documented through a statutory declaration is considered sufficient evidence. A letter from CPC Sydney stating that there is no record that the person concerned is a citizen of Canada is also sufficient. To establish that the person concerned is not a permanent resident of Canada, an admission by the person directly or documented through a statutory declaration is considered sufficient evidence. A Query Response Centre (QRC), CIC, document indicating no confirmation of permanent residence is also sufficient.

Appendix A Some notable inadmissibility jurisprudence

Department of Justice Regional Office or Departmental Legal Services counsel will be able to assist hearings officers regarding the provision of applicable and updated jurisprudence.

A34(1)(a), (b), (c), (d), (e) and (f)

Jurisprudence

Baroud, Re (1995), 98 F.T.R. 99 (Fed. T.D.)

- "Terrorism" must receive an unrestrictive interpretation in order to prevent the arrival of persons considered to be a danger to Canadian society.

Canada (Attorney General) v. *Jolly*, [1975] F.C. 216, 54 D.L.R. (3d) 277, 7 N.R. 271 (Fed.C.A.)

- The question is not will the applicant engage in espionage or subversion or terrorism, but whether there are reasonable grounds for believing that the person will so behave. Even if evidence is given negating this fact, it is only necessary for the Minister to show the existence of reasonable grounds for believing the fact. It is not necessary for the Minister to go further in establishing the subversive character of the persons subject to the proceeding.

Kashmiri v. *Canada (Minister of Citizenship and Immigration)* (1996), 37 C.R.R. (2d) 264, 116 F.T.R. 316 (Fed. T.D.)

- If found inadmissible on security grounds, the onus to satisfy the Minister that their presence in Canada would not be detrimental to the national interest lies on the applicant.

Qu v. *Canada (Minister of Citizenship and Immigration)* (2000), 5 Imm. L.R. (3d) 129 (Fed. T.D.)

- "Subversion" and "espionage" are defined and addressed.

Suresh v. *Canada (Minister of Citizenship and Immigration)* (2000), 5 Imm. L.R. (3d) 1, 183 D.L.R. (4th) 629, 18 Admin. L.R. (3d) 159, 252 N.R. 1 (Fed. C.A.), [2002] S.C.C. 1

- Denying entry to Convention refugees on security grounds is a violation of s. 7 of the *Charter*, BUT is saved by s. 1.
- Denying entry to Convention refugees on security grounds is not a violation of the *Convention Against Torture*, *Covenant on Civil and Political Rights* or the *Convention Relating to the Status of Refugees*.
- It is permissible for a state to rid itself of those who pose a security risk without being in breach of its international obligations.

Yamani v. *Canada (Minister of Citizenship and Immigration)* (March 14, 2000), Doc. IMM-1919-98 (Fed. T.D.)

- The term "subversion" was found to violate s. 7 of the Charter by being too vague constitutionally but the judge then found that s. 1 of the Charter could be used to save the provision so that, in the final analysis, this term was found to be constitutional.

Yamani v. *Canada (Solicitor General)* (1995), 31 Imm. L.R. (2d) 191, 129 D.L.R. (4th) 226, 32 C.R.R. (2d) 295, 103 F.T.R. 105, [1996] 1 F.C. 174 (Fed. T.D.)

- The Court declined to hear the argument that s. 19(1)(g) [now s.34(1)(e)] violates s. 15 of the Charter.

A35(1)(a), (b) and (c)

Jurisprudence

Adam v. Canada (Minister of Citizenship and Immigration) (1997), 137 F.T.R. 68 (Fed. T.D.)

- The Federal Court held in the case of Adam (F.C.T.D., IMM-3380-96, August 29, 1997; upheld on appeal by F.C.A., A-19-98, January 11, 2001) that there is no rebuttable presumption for those who held one of the government positions listed [in the Regulations], meaning that if a person is found to have occupied the position mentioned, that fact in itself will result in inadmissibility even if there is nothing to show that the person actually exercised influence on the regime in question.
- In matters where ministerial discretion may be exercised, reasons may be required where the decision on its face seems perverse.

Esse v. *Canada (Minister of Citizenship and Immigration)* (January 16, 1998), Doc. IMM-4523-96 (Fed. T.D.)

- The purpose of A35(1)(b) is to ensure that Canada does not become a haven for persons who have engaged in terrorism, systematic or gross human rights violations, war crimes or crimes against humanity.
- Persons holding specific positions within a government are deemed to be senior members of or senior officials in the service of a government for that purpose. To obtain a Minister's acceptance, one would have to demonstrate that, notwithstanding their position, there was no complicity in the objectionable acts of that government.

Hussein v. *Canada (Minister of Citizenship and Immigration)* (1997), 41 Imm. L.R. (2d) 42 (Can. Imm. & Ref. Bd. (App.Div.))

Rudolph v. *Canada (Minister of Employment and Immigration)* (1992), 73 C.C.C. (3d) 442, 91 D.L.R. (4th) 686 (Fed. C.A.)

- Double criminality—paragraph 19(1)(j) of the *Immigration Act, 1976*, in conjunction with subsection 7(3.6) of the *Criminal Code*, mandates the notional transfer to Canadian soil of the *actus reus* only and not of the entire surrounding circumstances so as to permit a plea of obedience to *de facto* foreign state authority. The fact that the German government ordered or condoned the applicant's conduct during WWII is no defence to a charge of doing the same thing in Canada.

A36(1)(a), (b) and (c)

Jurisprudence

Barnett v. *Canada (Minister of Citizenship and Immigration)* (1996), 33 Imm. L.R. (2d) 1, 109 F.T.R. 154 (Fed. T.D.)

- Where another country, whose legal system is based on similar foundation and values as our own, has enacted legislation which reflects goals and objectives analogous to those encompassed within our own system, then that law should be accorded respect and recognized for purposes of Canadian immigration law.
- The question is not whether Canada has identical legislation in place but whether the underlying rationale of the foreign legislation is consistent with some fundamental principle of justice esteemed within our society.
- A foreign pardon granted under a legal system that reflects goals and objectives analogous to those encompassed within our own should be followed for the purpose of Canadian immigration law.

Canada (Minister of Employment and Immigration) v. *Fenner* (December 11, 1981), Doc. V81-6126 (Imm. App. Bd.)

- A foreign legal procedure that is not equivalent to an absolute or conditional discharge will not be treated as such in Canada. The conviction remains for the purpose of A36(1).

Dayan v. *Canada (Minister of Employment and Immigration)* (1987), 78 N.R. 134 (Fed. C.A.)

- Test for equivalency.
- Reliance on the concept of offences as *malum in se* to prove equivalency with the provisions of the Canadian *Criminal Code* is a device that should be resorted to only when, for a very good reason, proof of foreign law has been difficult to make, and then only when the foreign law is that of a non-common law country.

Halm v. Canada (Minister of Employment and Immigration) (1995), 27 C.R.R. (2d) 23, 91 F.T.R. 106

- Equivalency is not met in the case where the Canadian statute is struck down for unconstitutionality.
- Equivalency is not required to be proven beyond a reasonable doubt. All that is required is that the adjudicator determine that the applicant is a person with respect to whom there are "reasonable grounds to believe" that they have been convicted outside of Canada of an equivalent offence.

Hill v. Canada (Minister of Employment and Immigration) (1987), 1 Imm. L.R. (2d) 1, 73 N.R. 315 (Fed. C.A.)

- Onus lies on [hearings officers] to present evidence of foreign law and necessary definitions.

Kiani v. Canada (Minister of Citizenship and Immigration) (1995), 96 F.T.R. 241, 31 Imm. L.R. (2d) 269

- Foreign police reports, oral admissions, and other circumstantial evidence may be enough to prove that there are reasonable grounds to believe that the applicant was convicted of a serious offence abroad.

Lavi v. Canada (Minister of Employment and Immigration) (April 24, 1985), Doc. T-83-9929 (Imm. App. Bd.)

- Although the Minister establishes equivalency with a section of the *Criminal Code*, the Immigration and Refugee Board (IRB) is not restricted to the provisions selected, but is able to explore various other provisions of Canadian law.

Legault v. *Canada (Secretary of State)* (1997), 42 Imm. L.R. (2d) 192, 133 F.T.R. 320 (note), 219 N.R. 376 (Fed. C.A.); leave to appeal to S.C.C. refused (1998), 227 N.R. (note) (S.C.C.)

- "Reasonable grounds" are enough to show that the applicant falls within A36(1)(b) and (c). In this case, a warrant and indictment were sufficient.

Lei v. *Canada (Solicitor General)* (1994), 74 F.T.R. 67

- If the Canadian statute is narrower than the foreign equivalent, the adjudicator must be presented with additional evidence surrounding the circumstances to establish that the person would have been convicted if the same offence were committed in Canada.

Leung v. Canada (Minister of Citizenship and Immigration) (May 3, 2000), Doc. A-283-98 (Fed. C.A.)

- It is not incumbent on the visa officer to question the reasonableness of the Minister's decision.

Lui v. Canada (Minister of Citizenship and Immigration) (1997), 39 Imm. L.R. (2d) 60, 134 F.T.R. 308 (Fed. T.D.)

- The following test must be used when determining equivalency (for convictions or pardons) between Canadian and foreign law:
  - the laws and legal system of the foreign jurisdiction must be similar to those of Canada;
  - the foreign law in question must be similar in (a) aim or purpose; (b) content; and (c) effect, but not necessarily identical to the Canadian law.

Masasi v. *Canada (Minister of Citizenship and Immigration)* (1997), 40 Imm. L.R. (2d) 133, 138 F.T.R. 121 (Fed. T.D.)

- When establishing equivalency between foreign and Canadian offences, it is necessary to establish the essential elements of the offences AND to actually examine them in order to determine whether they were equivalent or not.

Mohammad v. *Canada (Minister of Employment and Immigration)* (1989), 2 F.C. 363, 55 D.L.R. (4th) 321, 21 F.T.R. 240 (note) (Fed. C.A.)

- It is not a precondition that the Minister shall have considered the question of rehabilitation. The fact that a person described in A36 does not possess proof of satisfaction of the Minister is sufficient evidence for inadmissibility.
- The immigration officer is not required to give the person concerned an opportunity to answer allegations contained in that report.
- There are no problems of institutional independence because the adjudication division and the [hearings] officers are separate divisions that do not provide or take advice to/from the other.

R. v. Wardley (1978), 43 C.C.C. (2d) 345 (Ont. C.A.)

- If the person is charged with an indictable offence and pleads guilty to an included offence, then the plea constitutes a plea of guilty to the indictable offence and the maximum sentence for the conviction of the indictable offence governs with respect to penalty.

Robertson v. *Canada (Minister of Employment and Immigration)*, [1979] 1 F.C. 197, 43 C.C.C. (2d) 354, 91 D.L.R. (3d) 93 (Fed. C.A.)

- The person can be deported under A36 only if the maximum punishment is 10 years' imprisonment at the date of the deportation order. If it was 10 years (or more) but has since been reduced, then the person cannot be deported under A36.

Saini v. Canada (Minister of Citizenship and Immigration) (2000), 184 D.L.R. (4th) 568 (Fed. T.D.)

- An officer cannot ignore a valid pardon given in another country with a similar justice system.

Singleton v. Canada (Minister of Citizenship and Immigration) (November 7, 1983), Doc. A-813-83 (Fed. C.A.)

- Lack of a certificate of the applicant's conviction leaves something to be desired in the particularity of the evidence, however, it will not automatically result in the applicant's entry into Canada.

Smith v. *Canada (Minister of Citizenship and Immigration)* (1998), 44 Imm. L.R. (2d) 154, [1998] 3 F.C. 144, 152 F.T.R. 242 (Fed. T.D.)

- A valid deportation or exclusion order may not be enforced after a pardon has been granted for the offence in question: the conviction has been revoked under the *Criminal Records Act* or there has been a final determination of an acquittal.

Steward v. Canada (Minister of Employment and Immigration) (1988), 84 N.R. 236 (Fed. C.A.).

- Equivalency can be determined in three ways:
  - by comparison of the precise wording in each statute both through documents and, if available, through the evidence of an expert or experts in the foreign law with a view to determining the essential ingredients of the respective offences;
  - by examining the evidence adduced before the adjudicator, both oral and documentary, to ascertain whether or not that evidence was sufficient to establish that the essential ingredients of the offence in Canada had been proven in the foreign proceedings, whether

precisely described in the initiating documents or in the statutory provisions in the same words or not; or

- by a combination of the two.

Taei v. *Canada (Minister of Citizenship and Immigration)* (1993), 19 Imm. L.R. (2d) 187, 64 F.T.R. 311 (Fed. T.D.)

- A Convention refugee that is later accused of committing an act described in A36(1) may not be granted permanent resident status until the criminal charges are disposed of.

Taubler v. *Canada (Minister of Employment and Immigration)* [1981] 1 F.C. 620 (Fed. C.A.)

- In the absence of evidence to the contrary, it was presumed that the equivalent foreign law involved the element of *mens rea* and that a conviction indicates that a finding of guilty intent was made.

Tei v. *Canada (Minister of Citizenship and Immigration)* (1998), 48 Imm. L.R. (2d) 120, 161 F.T.R. 51 (Fed. T.D.)

- An applicant who falls under A36(1) and is denied entry into Canada may challenge the Minister's decision not to grant rehabilitation but they may not challenge the officer's decision.

A36(2)(a), (b), (c) and (d)

Jurisprudence

Alouache v. *Canada (Minister of Citizenship and Immigration)* (1995), 31 Imm. L.R. (2d) 68, 102 F.T.R. 1 (Fed. T.D.); affirmed (1996), 197 N.R. 305 (Fed. C.A.); reconsideration refused (June 26, 1996), Doc. A-681-95 (Fed. C.A.)

- The term "occurrence" is synonymous with the terms "event" and "incident" and not synonymous with "a course of events."

Lavi v. *Canada (Minister of Employment and Immigration)* (April 24, 1985), Doc. T-83-9929 (Imm. App. Bd.)

- Although the Minister establishes equivalency with a section of the *Criminal Code*, the Immigration and Refugee Board (IRB) is not restricted to the provisions selected, but is able to explore various other provisions of Canadian law.

Lei v. *Canada (Solicitor General)* (1994), 74 F.T.R. 67

- If the Canadian statute is narrower than the foreign equivalent, the adjudicator must be presented with additional evidence surrounding the circumstances to establish that the person would have been convicted if the same offence were committed in Canada.

Li v. *Canada (Minister of Citizenship and Immigration)* (1996), 34 Imm. L.R. (2d) 109, [1997] 1 F.C. 235, 37 C.R.R. (2d) 360, 138 D.L.R. (4^{th}) 275, 200 N.R. 307, 119 F.T.R. 130 (note) (Fed. C.A.)

- If the Canadian statute is narrower than the foreign equivalent, the adjudicator must be presented with additional evidence surrounding the circumstances to establish that the person would have been convicted if the same offence were committed in Canada.

Libby v. Canada (Minister of Employment and Immigration) (1988), 50 D.L.R. (4^{th}) 573 (Fed. C.A.)

- Two offences that do not happen concurrently yet have their source in the same event are considered to arise out of a single occurrence.

Lui v. *Canada (Minister of Citizenship and Immigration)* (1997), 39 Imm. L.R. (2d) 60, 134 F.T.R. 308 (Fed. T.D.)

- The following test must be used when determining equivalency (for convictions or pardons) between Canadian and foreign law:

- ♦ the laws and legal system of the foreign jurisdiction must be similar to those of Canada;
- ♦ the foreign law in question must be similar in (a) aim or purpose; (b) content; and (c) effect, but not necessarily identical to the Canadian law.

R. v. Wardley (1978), 43 C.C.C. (2d) 345 (Ont. C.A.)

- If the person is charged with an indictable offence and pleads guilty to an included offence, then the plea constitutes a plea of guilty to the indictable offence and the maximum sentence for the conviction of the indictable offence governs with respect to penalty.

Saini v. Canada (Minister of Citizenship and Immigration) (2000), 184 D.L.R. (4th) 568 (Fed. T.D.)

- An officer cannot ignore a valid pardon given in another country with a similar justice system.

Singleton v. *Canada (Minister of Citizenship and Immigration)* (November 7, 1983), Doc. A-813-83 (Fed. C.A.)

- Lack of a certificate of the applicant's conviction leaves something to be desired in the particularity of the evidence, however, it will not automatically result in the applicant's entry into Canada.

Steward v. *Canada (Minister of Employment and Immigration)* (1988), 84 N.R. 236 (Fed. C.A.)

- Equivalency can be determined in three ways:
  - ♦ by comparison of the precise wording in each statute both through documents and, if available, through the evidence of an expert or experts in the foreign law with a view to determining the essential ingredients of the respective offences;
  - ♦ by examining the evidence adduced before the adjudicator, both oral and documentary, to ascertain whether or not that evidence was sufficient to establish that the essential ingredients of the offence in Canada had been proven in the foreign proceedings, whether precisely described in the initiating documents or in the statutory provisions in the same words or not; or
  - ♦ by a combination of the two.

Taubler v. *Canada (Minister of Employment and Immigration)* [1981] 1 F.C. 620 (Fed. C.A.)

- In the absence of evidence to the contrary, it was presumed that the equivalent foreign law involved the element of *mens rea* and that a conviction indicates that a finding of guilty intent was made.

Tei v. *Canada (Minister of Citizenship and Immigration)* (1998), 48 Imm. L.R. (2d) 120, 161 F.T.R. 51 (Fed. T.D.)

- An applicant who falls under A36(1) and is denied entry into Canada may challenge the Minister's decision not to grant rehabilitation but they may not challenge the officer's decision.

W. (Y.Y.) v. *Canada (Minister of Citizenship and Immigration)* (February 22, 2000), Doc. IMM-4464- 98 (Fed. T.D.)

- Inadmissibility under A36 may not be based on an offence committed while the person would qualify under the Canadian *Young Offenders Act* regardless of the foreign law.

A37(1)(a) and (b)

Jurisprudence

MCI v. Thanaratnam, [2005] FCA 122

- Confirmed that "being a member" is not required to be described of A37(1)(a) inadmissibility. Decision-makers have a duty to consider evidence of a person's involvement in gang-related events in order to establish if a person was "engaging in activity that is part of such a pattern."

Chiau v. *Canada (Minister of Citizenship and Immigration)* (1997), 141 F.T.R. 81, [1998] 2 F.C. 642 (Fed. T.D.), [2001] S.C.C.A. No. 71

- The immigration officer is under no obligation to provide the person concerned with a summary of any confidential information relied upon by the visa officer.

Yuen v. *Canada (Minister of Citizenship and Immigration)* (1999), 48 Imm. L.R. (2d) 24, 63 C.R.R. (2d) 333, 162 F.T.R. 282 (Fed. T.D.)

- A37 does not violate s.2(d) of the Charter. That right does not extend beyond the boundaries of Canada to protect the right of a foreign national to be a member of a foreign criminal organization.

Moreno v. Canada (Minister of Employment & Immigration) (1994), 1 F.C. 298 (FCA); and *Ramirez v. Canada (Minister of Employment & Immigration)* (1992), 2 F.C. 306 (FCA)

- Jurisprudence regarding "membership" and "organization."

A38(1)(a), (b) and (c)

Jurisprudence

Ahir v. *Canada (Minister of Employment and Immigration)* (1983), 49 N.R. 185, 2 D.L.R. (4th) 163 (Fed. C.A.)

Ajanee v. *Canada (Minister of Citizenship and Immigration)* (1996), 33 Imm. L.R. (2d) 165, 110 F.T.R. 172 (Fed. T.D.)

Anvari v. *Canada (Employment and Immigration Commission)* (1988), 10 C.H.R.R. D/5816, 152 N.R. 241 (Human Rights Trib.); varied (1993), 14 C.H.R.R. D/292 (Human Rights Review Trib.); reversed (1993), 19 Imm. L.R. (2d) 192 (Fed. C.A.)

Badwal v. *Canada (Minister of Employment and Immigration)* (1989), 9 Imm. L.R. (2d) 85, 64 D.L.R. (4th) 561 (Fed. C.A.)

Bola v. *Canada (Minister of Employment and Immigration)* (1990), 11 Imm. L.R. (2d) 14, 107 N.R. 311 (Fed. C.A.)

Cabaldon v. *Canada (Minister of Citizenship and Immigration)* (1998), 42 Imm. L.R. (2d) 12, 140 F.T.R. 296 (Fed. T.D.)

Canada (Minister of Employment and Immigration) v. Sihota (1989), 8 Imm. L.R. (2d) 1 (Fed. C.A.)

Choi v. *Canada (Minister of Citizenship and Immigration)* (1995), 29 Imm. L.R. (2d) 85, 98 F.T.R. 308

Deol v. *Canada (Minister of Employment and Immigration)* (1992), 18 Imm. L.R. (2d) 1 (Fed. C.A.)

Fei v. *Canada (Minister of Citizenship and Immigration)* (1997), 131 F.T.R. 81, 39 Imm. L.R. (2d) 266, [1998] 1 F.C. 274 (Fed. T.D.))

Fung v. *Canada (Minister of Employment and Immigration)* (1986), 18 Admin. L.R. 260, 4 F.T.R. 118 (Fed. T.D.)

Hiramen v. *Canada (Minister of Employment and Immigration)* (1986), 65 N.R. 67 (Fed. C.A.)

Ismaili v. *Canada (Minister of Citizenship and Immigration)* (1995), 29 Imm. L.R. (2d) 1, 100 F.T.R. 139 (Fed. T.D.)

Jiwanpuri v. *Canada (Minister of Employment and Immigration)* (1990), 10 Imm. L.R. (2d) 241, 109 N.R. 293 (Fed. C.A.)

Kaila v. *Canada (Minister of Citizenship and Immigration)* (1997), 42 Imm. L.R. (2d) 316 (Imm. & Ref. Bd. (App. Div.))

King v. *Canada (Minister of Citizenship and Immigration)* (1996), 115 F.T.R. 306 (Fed. T.D.)

Lau v. *Canada (Minister of Citizenship and Immigration)* (1998), 43 Imm. L.R. (2d) 8, 146 F.T.R. 116 (Fed. T.D.)

Law v. *Canada (Minister of Citizenship and Immigration)* (1998), 140 F.T.R. 307 (Fed. T.D.)

Litt v. *Canada (Minister of Citizenship and Immigration)* (1995), 26 Imm. L.R. (2d) 253 (Fed. T.D.)

Ludwig v. *Canada (Minister of Citizenship and Immigration)* (1996), 33 Imm. L.R. (2d) 213, 111 F.T.R. 271 (Fed. T.D.)

Mangat v. *Canada (Minister of Employment and Immigration)* (February 25, 1985), Doc. T-153-85 (Fed. T.D.)

Mohamed v. *Canada (Minister of Employment and Immigration)*, [1986] 3 F.C. 90, 68 N.R. 220 (Fed. C.A.)

Ng v. *Canada (Minister of Citizenship and Immigration)* (1996), 106 F.T.R. 140 (Fed. T.D.)

Pattar v. *Canada (Minister of Employment and Immigration)* (1988), 8 Imm. L.R. (2d) 79, 98 N.R. 98 (Fed. C.A.)

Poste v. *Canada (Minister of Citizenship and Immigration)* (1997), 140 F.T.R. 126, 42 Imm. L.R. (2d) 84, 5 Admin. L.R. (3d) 69 (Fed. T.D.)

Rabang v. *Canada (Minister of Citizenship and Immigration)* (November 29, 1999), Doc. IMM-4576- 98 (Fed. T.D.)

Rudrakumar v. *Canada (Minister of Citizenship and Immigration)* (1996), 38 Imm. L.R. (2d) 82 (Imm. & Ref. Bd. (App. Div.))

Sabater v. *Canada (Minister of Citizenship and Immigration)* (1995), 31 Imm. L.R. (2d) 59, 102 F.T.R. 268 (Fed. T.D.)

Sall v. *Canada (Minister of Employment and Immigration)* (1989), 9 Imm. L.R. (2d) 179, 29 F.T.R. 176 (Fed. T.D.)

Seyoum v. *Canada (Minister of Employment and Immigration)* (1990), 134 N.R. 233 (Fed. C.A.)

Shan v. *Canada (Minister of Citizenship and Immigration)* (1998), 153 F.T.R. 238 (Fed. T.D.)

Shanker v. *Canada (Minister of Employment and Immigration)* (June 25, 1987), Doc. A-535-86 (Fed. C.A.)

Sooknanan v. *Canada (Minister of Citizenship and Immigration)* (1998), 142 F.T.R. 155 (Fed. T.D.)

Tam v. *Canada (Minister of Citizenship and Immigration)* (1996), 35 Imm. L.R. (2d) 201 (Fed. T.D.)

Tan v. *Canada (Minister of Citizenship and Immigration)* (1997), 40 Imm. L.R. (2d) 113 (Imm. & Ref. Bd. (App. Div.))

Thangarajan v. *Canada (Minister of Citizenship and Immigration)* 1 Imm. L.R. (3d) 118, [1999] 4 F.C. 167, 242 N.R. 183, 176 D.L.R. (4^{th}) 125 (Fed. C.A.)

Tong v. *Canada (Minister of Citizenship and Immigration)* (1998), 45 Imm. L.R. (2d) 27, 153 F.T.R. 115 (Fed. T.D.)

Tong v. *Canada (Minister of Citizenship and Immigration)* (October 31, 1997), Doc. IMM-2565-96 (Fed. T.D.)

Tsang v. *Canada (Minister of Employment and Immigration)* (April 1, 1981), Doc. T80-9437 (Imm. App. Bd.)

Uppal v. *Canada (Minister of Employment and Immigration)* (1987), 2 imm. L.R. (2d) 143, 78 N.R. 152 (Fed. C.A.)

Wong v. *Canada (Minister of Citizenship and Immigration)* (1996), 34 Imm. L.R. (2d) 18 (Fed. T.D.)

Wong v. *Canada (Minister of Citizenship and Immigration)* (1998), 42 Imm. L.R. (2d) 17, 141 F.T.R. 62 (Fed. T.D.); additional reasons at (1998), 43 Imm. L.R. (2d) 24, 145 F.T.R. 119 (Fed. T.D.)

Wong v. *Canada (Minister of Employment and Immigration)*, 42 F.T.R. 209, [1991] 2 F.C. 186; affirmed (1992), 146 N.R. 319 (Fed. C.A.)

Yogeswaran v. *Canada (Minister of Citizenship and Immigration)* (1999), 1 Imm. L.R. (3d) 177, 247 N.R. 221 (Fed. C.A.)

A39

Jurisprudence

Khakoo v. *Canada (Minister of Citizenship and Immigration)* (1995), 103 F.T.R. 284 (Fed. T.D.)

- The existence of the undertaking of support must be considered proof of support and not proof of the sponsor's history of providing support.

Nicolau v. *Canada (Minister of Employment and Immigration)* (1994), 74 F.T.R. 38

- Regardless of the applicant's willingness to work, if they are unable to work in Canada, there must be proof of adequate arrangements for support.

Orantes v. *Canada (Minister of Citizenship and Immigration)* (1990), 34 F.T.R. 184

- Cabinet cannot exempt anyone from any provision of the Act itself; this can only be done by regulation, if permitted. This is necessary to preserve the rule of law.

Xu v. *Canada (Minister of Citizenship and Immigration)* (April 13, 2000), Doc. IMM-6396-98 (Fed. T.D.)

- The existence of the undertaking of support must be considered proof of support and not proof of an ability of the sponsor to fulfill the undertaking.

A40(1)(a), (b), (c) and (d)

Jurisprudence

Bellido v. *MCI*. [2005] FC 452

Canada (Attorney General) v. *Chanoine* (1987), 4 Imm. L.R. (2d) 136, 15 F.T.R. 143 (Fed. T.D.).

- A permanent resident has been defined as a person who has been granted landing and who has not ceased to be a permanent resident pursuant to A46.
- This case should be read in conjunction with *Canada (Minister of Employment and Immigration) v. Selby*, [1981] 1 F.C. 273, 110 D.L.R. (3d) 126 (Fed. C.A.).

Canada (Minister of Citizenship and Immigration) v. *Nemsila* (1996), 35 Imm. L.R. (2d) 56, [1997] 1 F.C. 260, 118 F.T.R. 310 (Fed. T.D.), affirmed (1997), 38 Imm. L.R. (2d) 242, 3 Admin. L.R. (3d) 83, 214 N.R. 383 (Fed. C.A.)

- Due to the fact that the applicant's entry into Canada was based upon deception and misrepresentation, they were not lawfully admitted to Canada and therefore could not have gained "landing" within the meaning of the Act. Due to the fact the respondent was never landed, he was held to never have acquired Canadian domicile.

Canada (Minister of Employment and Immigration) v. *Gudino* (1981), [1982] 2 F.C. 40, 124 D.L.R. (3d) 748, 38 N.R. 361 (Fed. C.A.)

- An applicant who obtains a visa under material circumstances that change (e.g., loss of employer as sponsor) must report the change in circumstances to an Immigration officer.

Canada (Minister of Employment and Immigration) v. *Mercier* (September 16, 1980), Doc. 79-1243 (Imm. App. Bd.)

- A visa is no more than a stamp on a piece of paper issued outside Canada which may give the holder a colour of right to come into Canada, but no more. Immigration status is acquired at the port-of-entry. A change in marital status (from single to married) is a material fact that must be disclosed.

Coombs v. *Canada (Minister of Employment and Immigration)*, [1982] 1 F.C. 113 (Fed. C.A.)

- The question "Are you a resident of Canada?" does not necessarily mean "permanent resident".

D'Souza v. *Canada (Minister of Employment and Immigration)*, [1983] 1 F.C. 343 (Fed. C.A.)

- An applicant need not be aware of a misrepresentation made on his behalf by another in order to qualify under A40.

Devrim v. *Canada (Minister of Employment and Immigration)* (April 24, 1979), Doc. 78-6192 (Imm. App. Bd.)

- A40(1)(a) imposes an obligation of absolute liability and thus the defence of due diligence is not available.

Jaber v. *Canada (Minister of Citizenship and Immigration)* (1999), 3 Imm. L.R. (3d) 30, [2000] 1 F.C. 603, 250 N.R. 235, 180 D.L.R. (4th) 683 (Fed. C.A.)

- A person who obtains permanent residency via misrepresentation may appeal to the Appeal Division of the IRB according to A63.

Khamsei v. *Canada (Minister of Manpower & Immigration)*, [1981] 1 F.C. 222 (Fed. C.A.)

- Whether a misrepresentation was of a material fact is a question of fact. There does not need to be direct evidence that a visa would not have been granted had there been no misrepresentation.
- An adjudicator will decide whether failure to disclose results in misrepresentation.

Medel v. *Canada (Minister of Employment and Immigration)* 10 Imm. L.R. (2d) 274, [1990] 2 F.C. 345, 113 N.R. 1 (Fed. C.A.)

- The applicant must subjectively know that they are withholding information.

Mohammed v. *Canada (Minister of Citizenship and Immigration)*, [1997] 3 F.C. 299, 130 F.T.R. 294 (Fed. T.D.)

- The Court rejected the argument that in order for there to be "misrepresentation" there must be an act of concealment. One can misrepresent as easily and effectively by silence as one can by actively stating a lie.
- The Court rejected the argument that a misrepresentation must be knowingly or willfully made.

Moore v. *Canada (Minister of Employment and Immigration)* (December 6, 1978), Doc. 78-3016 (Imm. App. Bd.)

- The Board held that *mens rea* is not an element of A27(2)(g), at least insofar as the disclosure of the existence of dependants is concerned.

A42(a) and (b)

Jurisprudence

Saini v. *Canada (Minister of Manpower & Immigration)* (1978), 22 N.R. 22, 86 D.L.R. (3d) 492 (Fed. C.A.)

- The Court, with the consent of counsel for the Crown, set aside a deportation order against the wife of the applicant because she was not herself the subject of an A44 report.