Citizenship and Immigration Canada   Citoyenneté et Immigration Canada

PP 1

Processing Claims for Refugee Protection in Canada

Canada

PP 1 Processing claims for refugee protection in Canada

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Updates to chapter

Listing by date:

Date: 2006-06-20

Changes have been made throughout section 17 providing definitions for “Statelessness” and “Former Habitual Residence” in the context of the Safe Third Country Agreement. Changes also include procedures to be followed when assessing cases where the person claims to be stateless and declares the United States as the country of former habitual residence.

2005-11-23

Minor changes have been made throughout the chapter indicating differences between the Ministers, departments and offices of Citizenship & Immigration Canada (CIC) and Public Safety & Emergency Preparedness Canada (PSEPC).

2005-01-07

Due to the implementation of the *Agreement Between Canada and the United States for Cooperation in the Examination of Refugee Status Claims by Nationals of Third Countries* (Safe Third Country Agreement) on December 29, 2004, a substantial addition has been made to **PP1 - Processing Claims for Refugee protection in Canada**. Policy and procedures for the Safe Third Country Agreement now appear in Section 17 of the PP1 chapter. Any previous versions of this chapter should be discarded.

2004-11-01

Both minor and substantial changes have been made throughout this chapter. It is recommended that any former version of this chapter be discarded in favour of this version. Substantial changes include the following:

7.2 Holders of temporary visas

Paragraph deleted with respect to in-status claims.

Word change: A person who has a valid temporary resident visa who makes a claim for protection **may be** considered to be seeking to remain in Canada permanently

7.3 What does a person have to do to claim refugee protection: The person must not be subject to a removal order.

7.5. *(NEW)* Procedures for processing refugee protection claims from foreign representatives

8.3 Deemed referral of claims to the IRB

New paragraph inserted:

Once the three-day clock expires, an officer must enter this information in FOSS by completing the Eligibility Results (ER) screen and indicating that the Eligibility Decision is "Deemed." The officer then electronically refers the claim to the RPD ("Print Final" or "Send Referral" option in FOSS).

8.7 Assessing Admissibility - Section 44(1) Report: Removed following erroneous sentence: *All claimants should be identified as principal applicants*.

8.12 STEP 12 - Counsel claimant

Deleted to allow for dual intent: Your status in Canada is “refugee claimant.”

10.1 Procedures for suspending eligibility prior to referral to the RPD

Paragraph/wording change:

However, there will be criminality cases where the claimant has been convicted outside Canada of an offence that, if committed in Canada, would constitute an indictable offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years. The officer should review the facts of the conviction and if the facts do not support requesting a danger opinion, the officer should allow the claim to be deemed referred, with the concurrence of the supervisor. There is no need to suspend the claim if a danger opinion is not being requested as it simply slows down the process. By allowing the claim to be "deemed," the A44(1) report can be dealt with at the ID and the claim can be dealt with at the RPD.

10.2 Resumption of eligibility processing

Paragraph revision/addition:

Once the eligibility decision is made, it should be entered in the "Notification to RPD - Subsequent Eligibility/Redetermination of Eligibility" (SE) screen. The initial "suspended" Eligibility Results decision remains on FOSS as a historical record of the suspension.

11.1 & 11.2 Redetermination of eligibility - procedures now distinguish repeat claims from multiple claims.

14. *(NEW)* Procedure - Minor children

15.12 Counsel

This section now includes reference to new regulations for immigration consultants (CSIC).

15.19 Duration of work permits: Changed from 18 months to 24 months.

15.20 Holders of official passports can now be found in section 7.5, **Procedures for processing refugee protection claims from foreign representatives.**

16. *(NEW)* Role of the UNHCR—Protocol for field visits

Appendix I has been removed pending revision of procedures for the Safe Third Country Agreement.

2003-12-10

Minor changes have been made to PP 1 - Processing claims for refugee protection in Canada:

Section 11.1

Old version:

3) A claim that has been withdrawn to an immigration officer or to the RPD or declared abandoned by the RPD is considered to have been finalized and no further claims will be considered.

New version:

3) A claim that has been withdrawn to an immigration officer (prior to referral to the RPD) or to the RPD or declared abandoned by the RPD is considered to have been finalized and no further claims will be considered.

Section 11.2

Old version:

IRPA authorizes officers to redetermine eligibility. Officers must exercise good judgement in cases where identity is uncertain or where there is some doubt as to whether or not protection has been granted in another jurisdiction. In most cases, the claimant should be notified of an interview date that will allow the claimant an opportunity to respond to the evidence gathered prior to the officer making a decision. This procedure is encouraged to ensure procedural fairness.

New Version:

IRPA authorizes officers to redetermine eligibility. Officers must exercise good judgement in cases where identity is uncertain or where there is some doubt as to whether or not protection has been granted in another jurisdiction. In most cases, the claimant should be notified of an interview date that will allow the claimant an opportunity to respond to the evidence gathered prior to the officer making a decision (refer to Appendix N). This procedure is encouraged to ensure

procedural fairness.

Appendix N - *Immigration and Refugee Protection Act* - Redetermination of Eligibility Overview has been added.

2003-11-20

A minor change was made to PP 1 - Processing Claims for Refugee protection in Canada, Appendix J:

Old version:

Enclosed you will find a court document which details your conviction(s), a copy of the decision that was rendered by the Immigration Division and the subsequent Eligibility decision.

New version:

Enclosed you will find a court document which details your conviction(s), a copy of the report/ removal order and the subsequent Eligibility decision.

2003-10-24

A minor clarification was made to PP 1 - Processing Claims for Refugee protection in Canada as follows:

The fourth paragraph of Section 15.19 has been amended to read: “Applicants for protection are given medical instructions upon making a claim. A work permit may not be issued until the results of the medical are received for the claimant.”

2003-09-15

Minor clarifications were made to PP 1 - Processing Claims for Refugee protection in Canada, as follows (changes in bold):

Section 7.2

Canadian citizens already enjoy the protection of Canadian citizenship and the accompanying benefit of the unqualified right to **return to** Canada.

Section 8.7

If the person signed a statutory declaration conceding to the allegations, and the examining officer clearly explained the effect of the order, judicial review and when it comes into force, the **order** could be completed in the client’s absence. **Refer to ENF 6 for Review of Reports under A44(1)**.

Section 11.1

3) A claim that has **been withdrawn to an immigration officer or to the RPD or declared abandoned** by the RPD is considered to have been finalized and no further claims will be considered.

Section 11.2

- enter the Redetermination decision, date and reason in FOSS “Notification to RPD – Subsequent Eligibility Decision” (**SE**)

2003-09-09

Substantive changes have been made throughout PP 1 - Processing claims for refugee protection in Canada. It is recommended that any former version of this chapter be discarded in favour of the one now appearing in CIC Explore.

2003-08-26

Substantive changes have been made throughout PP 1 - Processing claims for refugee protection in Canada. It is recommended that any former version of this chapter be discarded in favour of the one now appearing in CIC Explore.

1. What this chapter is about

This chapter focuses on how officers determine who can make a claim for refugee protection both at ports of entry and at inland offices.

2. Program objectives

2.1. CIC objectives

The *Immigration and Refugee Protection Act* outlines the Canadian immigration policy objectives. These objectives as they relate to refugees are:

- to recognize that the refugee program is, in the first instance, about saving lives and offering protection to the displaced and persecuted;
- to fulfil Canada's international legal obligations with respect to refugees and affirm Canada's commitment to international efforts to provide assistance to those in need of resettlement;
- to grant, as a fundamental expression of Canada's humanitarian ideals, fair consideration to those who come to Canada claiming persecution;
- to offer safe haven to persons with a well-founded fear of persecution based on race, religion, nationality, political opinion or membership in a particular social group, as well as those at risk of torture or cruel and unusual treatment or punishment;
- to establish fair and efficient procedures that will maintain the integrity of the Canadian refugee protection system, while upholding Canada's respect for the human rights and fundamental freedoms of all human beings;
- to support the self-sufficiency and the social and economic well-being of refugees by facilitating reunification with their family members in Canada;
- to protect the health and safety of Canadians and to maintain the security of Canadian society; and
- to promote international justice and security by denying access to Canadian territory to foreign nationals, including refugee claimants who are security risks or on grounds of serious criminality.

2.2. Objectives of the refugee eligibility determination process

The objectives of the refugee eligibility determination process are:

- to make decisions about who is eligible to have a claim for refugee protection referred to the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB), taking into consideration Canada's international obligations as signatory to:
    - ♦ the 1951 United Nations *Convention Relating to the Status of Refugees* and the 1967 Protocol; and
    - ♦ the Convention against Torture (*Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*);

- to ensure that refugee claimants are afforded the constitutional guarantees available to all persons in Canada under the *Canadian Charter of Rights and Freedoms;*
- to treat people who make refugee claims with dignity and provide protection to those who need it, while preserving the integrity of the program by identifying persons who are inadmissible for reasons of security, of serious criminality, of violating international or human rights or of organized crime, and preventing them from accessing the refugee determination program; and
- to deal consistently and fairly with people who are not eligible to make a claim for refugee protection to the IRB, but who may still require protection.

3. The Act and Regulations

Officers responsible for assessing admissibility and eligibility should be familiar with the legislative and regulatory authorities contained within the *Immigration and Refugee Protection Act* and its accompanying Regulations. The following authorities relate to claiming refugee protection:

For information about:	Refer to:
Board Includes the Immigration and Refugee Board (IRB), which consists of the Refugee Protection Division (RPD), Immigration Division (ID) and the Immigration Appeal Division (IAD).	A(2)(1)
Foreign national A person who is not a Canadian citizen or a permanent resident and includes a stateless person.	A(2)(1)
Examination An officer is authorized to proceed with an examination where a person makes an application in accordance with the Act.	A15(1)
A person makes an application in accordance with the Act by: • submitting an application in writing; • seeking to enter Canada; • seeking to transit through Canada as provided for by R35; or • making a claim for refugee protection.	R28
Examination by officer 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.	A18(1)
Obligation to answer truthfully A person who makes an application must answer all questions truthfully and must produce a visa, relevant evidence and documents that are reasonably required.	A16(1)
Relevant evidence relating to identity (where a foreign national makes an application)	A16(2)

Relevant evidence includes photographic, fingerprint evidence and the submission to a medical examination upon request.	
Relevant evidence relating to identity (where a permanent resident or foreign national is arrested, detained or subject to a removal order) Relevant evidence includes photographic, fingerprint and other information that may be used to establish identity or compliance with the Act.	A16(3)
Minor children Every minor child in Canada, other than a child of a temporary resident not authorized to work or study, is authorized to study at the pre-school, primary or secondary level.	A30(2)
Human or international human rights violations A permanent resident or foreign national is inadmissible on grounds of violating human or international human rights for 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)
Conferral of refugee protection Refugee protection is conferred on a foreign national when: • the foreign national has been determined to be a Convention refugee or a person in similar circumstances under a visa application, and becomes a permanent resident under the visa or a temporary resident under a temporary resident permit for protection reasons; • the Board determines the foreign national to be a Convention refugee or a person in need of protection; or • except in the case of a foreign national described in A112(3), the Minister [of Citizenship and Immigration] allows an application for protection.	A95(1)
Protected person A protected person is a foreign national on whom refugee protection is conferred under A95(1), and whose claim or application has not subsequently been deemed to be rejected under A108(3), A109(3) or A114(4).	A95(2)
Convention refugee A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion: • is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or • not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.	A96
Person in need of protection A person in need of protection is a foreign national in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them	A97(1)

personally: • to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the *Convention Against Torture*; or • to a risk to their life or to a risk of cruel and unusual treatment or punishment if: ♦ the foreign national is unable or, because of that risk, unwilling to avail themselves of the protection of that country; ♦ the risk would be faced by the foreign national in every part of that country and is not faced generally by other individuals in or from that country; ♦ the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards; and ♦ the risk is not caused by the inability of that country to provide adequate health or medical care.	
Person in need of protection A person in Canada who is a member of a class of persons prescribed by the Regulations as being in need of protection is also a person in need of protection.	A97(2)
Exclusion Refugee Convention A person referred to in Section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection.	A98
Claim for refugee protection A claim for refugee protection may be made in or outside Canada.	A99(1)
Claim inside Canada A claim for refugee protection made by a foreign national inside Canada must be made to an officer and may not be made by a person who is subject to a removal order.	A99(3)
Referral to RPD An officer shall, within three working days after receipt of a claim referred to in A99(3), determine whether the claim is eligible to be referred to the RPD and, if it is eligible, shall refer the claim in accordance with the rules of the Board.	A100(1)
Suspension before referral to the RPD The officer shall suspend consideration of the eligibility of the foreign national's claim if: • a report has been referred for a determination, at an admissibility hearing, of whether the foreign national is inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality; or • the officer considers it necessary to wait for a decision of a court with respect to a claimant who is charged with an offence under an Act of Parliament that is punishable by a maximum term of imprisonment of at least 10 years.	A100(2)
Consideration of claim The RPD may not consider a claim until it is referred by the officer. If the claim is not referred within the three-day period referred to in A100(1), it is deemed to be	A100(3)

referred, unless there is a suspension or it is determined to be ineligible.	
Duty of claimant The burden of proving that a claim is eligible to be referred to the RPD rests on the claimant, who must answer truthfully all questions put to them. If the claim is referred, the claimant must produce all documents and information as required by the rules of the Board.	A100(4)
Ineligibility A claim is ineligible to be referred to the RPD if: • refugee protection has been conferred on the claimant under the Act; • a claim for refugee protection by the claimant has been rejected by the Board; • a prior claim by the claimant was determined to be ineligible to be referred to the RPD, or to have been withdrawn or abandoned; • the claimant has been recognized as a Convention refugee by a country other than Canada and can be sent or returned to that country; • the claimant came directly or indirectly to Canada from a country designated by the Regulations, other than a country of their nationality or their former habitual residence; or • the claimant has been determined to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality.	A101(1)
Serious criminality A claim is not ineligible by reason of serious criminality under A101(1)(f) unless: • in the case of inadmissibility by reason of a conviction in Canada, the conviction is for an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years and for which a sentence of at least two years was imposed; or • in the case of inadmissibility by reason of a conviction outside Canada, the Minister [of Citizenship and Immigration (C&I) or the Minister of Public Safety and Emergency Preparedness (PSEP)] is of the opinion that the foreign national is a danger to the public in Canada and the conviction is for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament that is punishable by a maximum term of imprisonment of at least 10 years.	A101(2)
Suspension after referral to the RPD Proceedings of the RPD and of the Refugee Appeal Division are suspended on notice by an officer that: • the matter has been referred to the Immigration Division to determine whether the claimant is inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality; or • an officer considers it necessary to wait for a decision of a court with respect to a claimant who is charged with an offence under an Act of Parliament that may be punished by a maximum term of imprisonment of at least 10 years. On notice by an officer that the suspended claim was determined to be eligible, proceedings of the RPD and of the Refugee Appeal Division shall continue.	A103(1) and (2)

Notice of ineligible claim (redetermination) An officer may, with respect to a claim that is before the RPD or, in the case of a claim that is not the first claim that was received by an officer, that is before or has been determined by the RPD or the Refugee Appeal Division, give notice that an officer has determined that: • the claim is ineligible under A101(1)(a) to (e); • the claim is ineligible under A101(1)(f); • the claim was referred as a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter and that the claim was not otherwise eligible to be referred to that Division; or • the claim is not the first claim that was received by an officer in respect of the claimant.	A104(1)
Termination and nullification A notice given under the following provisions has the following effects: • if given under any of A104(1)(a) to (c), it terminates pending proceedings in the RPD respecting the claim; and • if given under A104(1)(d), it terminates proceedings in and nullifies any decision of the RPD respecting a claim other than the first claim.	A104(2)
Working day For the purposes of A100(1) and (3), • a working day does not include Saturdays and holidays; • a day that is not a working day is not included in the calculation of the three-day period; and • the three-day period begins from the day on which the claim is received.	R159
Specified removal order If a claim for refugee protection is made and the claim has been determined to be eligible to be referred to the RPD or no determination has been made, a departure order is the applicable removal order in the circumstances set out in any of R228(1)(c)(i) and (iii) to (v).	R228(3)
If a claim for refugee protection is made and the claim has been determined to be eligible to be referred to the RPD or no determination has been made, a departure order is the applicable removal order in the circumstances set out in R229(1)(f), (g), (j), (m) or (n).	R229(2)

3.1. Forms required

The required forms are shown in the following table.

Form title	Form number
FOSS Full Document Entry - Generic	IMM 1442B IMM 5292B
Information on Individuals Seeking Refugee Protection	IMM 5500E

Background Information Document	IMM 5417B
Declaration	IMM 1392B
Medical Report – Section A Client identification and summary	IMM 1017E
Acknowledgement of Conditions	IMM 1262E
Interpreter Declaration	IMM 1265E
Entry for Further Examination or Admissibility Hearing	IMM 5396B
Notice of Seizure	IMM 5265B
Search	IMM 5242B
Personal Service Contract (Interpreters)	IMM 2048B
Schedule 1 - Background Information	IMM 5474E
Referral to Refugee Protection Division	IMM 5243B
Notification to the Person Concerned by an Immigration Officer	IMM 5363B
Use of a Representative/Release of Information	IMM 5476E
Withdrawal of a Claim for Refugee Protection prior to Referral to RPD	IMM 5317B
Return of Non-Resident Alien	IMM 5522B
Notification to RPD, RAD and Person Concerned - Suspension	IMM 5359B
Notification to the Person Concerned/RPD – Ineligibility A104(1)	IMM 5363B
Voluntary Departure – Confirmation	IMM 5021B
Security Deposit	IMM 0514B
Performance Bond	IMM 1230E
Solemn Declaration of Solvency by Guarantor	IMM 1416B
Order for Detention	IMM 0421B
Request for admissibility hearing / detention review pursuant to the Immigration Division rules	IMM 5245B
Notification of the Return of a Non-Resident Alien Under the Terms of the Agreement Between Canada and the United States for Cooperation in the Examination of Refugee Status Claims by National of Third Countries	IMM 5569E

The IMM 1442B is the generic document for all secure documents printed through Full Document Entry. Examples include A44(1) reports, study/work permits, and temporary resident permits. The IMM 5292B is for non-secure documents such as the Confirmation of Permanent Residence.

4. Instruments and delegations

The Ministers of Citizenship and Immigration and Public Safety and Emergency Preparedness designate persons or classes of persons to carry out any purpose or provision cited in IRPA. These designated authorities are known as delegations and they stem from A6(1) and A6(2). They are further described by the Instruments and are housed in IL 3, Designation of Officers and

Delegation of Authority Document. Peace officers are thus empowered to carry out any provisions, legislative or regulatory, on behalf of the Minister.

The Instruments specify authorities geographically and are to be read regionally, nationally or internationally in accordance with the physical location of the officer.

To identify specific delegations and designations, see IL 3.

5. Departmental policy

Departmental policy ensures that:

- all applications for refugee protection must be made in person to an officer designated to receive claims for protection (no application for protection will be accepted by mail);
- all claimants for refugee protection must undergo front-end security screening before being allowed into Canada;
- all claimants for protection must have an in-person examination by an officer.

5.1. Front-end processing of refugee protection claims

CIC and the CBSA have developed mandatory procedures for front-end processing of refugee protection claims at all airports, land borders, and inland offices to ensure national consistency.

All refugee claimants must undergo front-end processing which includes:

- in-person examination;
- security screening; and
- criminality checks.

All three of these steps must be satisfied before the claimant is allowed to enter Canada.

Under special circumstances at ports of entry, due to a sudden surge in claims and/or because of unavailability of officers or interpreters, it may become challenging to complete the full front-end processing for all claims. There are two tools that can be used in these circumstances: the direct back option and the use of detention. They are not to be used indiscriminately, but rather selectively and responsibly as tools to manage unusual flows and/or unavailability of critical resources when the full front-end processing cannot be completed.

For more details on direct back guidelines and use of detention see section 8.7 below.

In-person examination

All refugee claimants must be interviewed so that decisions on admissibility, security and criminality can be made. It is not necessary to spend an equal amount of time with every claimant. One interview may take one hour while another may take three hours; the length of time depends on whether the officer is satisfied that a decision can be made regarding the claimant’s identity, admissibility and detention. Should there be an indication of serious criminality or concerns related to security, organized crime or violations of human or international rights, more focused questioning should ensue. The screening decision must be based on knowledge rather than on a simple database screening. The interview becomes a critical tool to acquire the knowledge necessary to render a good screening decision.

Security screening and criminality checks

For front-end screening, the minimum standards outlined below must be completed before a refugee claimant is allowed into Canada:

- photograph and fingerprints;
- joint examination with CSIS, if required;
- database check (FOSS, CPIC, NCIC, CAIPS);
- forms IMM 5500E and IMM 5417B completed (if the person does not have proper travel documents);
- all information entered into electronic systems (FOSS, SSI);

Note: At airports, information must be entered into SSI immediately. At land border ports of entry, information must be entered into SSI within two days, and at inland offices, it must be entered within one week.

- admissibility determination and, if negative, A44(1) report;
- detention decision;
- creation of Record of Refugee Claim (RR) screen in FOSS;
- if releasing, completion of IMM 1262E (Acknowledgement of Conditions).

The following tasks may be completed after the claimant has been allowed to enter Canada:

- decision on the eligibility of the claim;
- issuance of eligibility or ineligibility documents;
- issuance of removal order, if applicable;
- issuance of medical documents;
- issuance of IFH coverage, if applicable;
- issuance of PIF to claimant, if applicable;
- creation of a file;
- completion of Schedule 1 (IMM 5474E).

Note: Schedule 1 does not have to be completed for claimants who are ineligible because of the Safe Third Country Agreement (refer to Appendices B and C).

The only exception to the above policy may occur at some inland offices. A claimant may be scheduled to return for examination within 14 days. Front-end processing takes place at the time of the appointment when the person submits a claim.

Points to remember

Officers should remember that:

- all claimants must be seen in person (no claim for refugee protection will be accepted by mail);
- officers are under a duty to act impartially;
- some claimants will have travelled long distances and may have a strong fear of government officials;
- claimants who have been tortured or persecuted will be hesitant or even unable to discuss the basis of their claim;
- in cases where an admissibility hearing is to be held or where a person has been detained, claimants must be informed that they may retain and instruct counsel.

See section 15.12 for more information on right to counsel.

Copies of any documents used in decision-making will be provided to the claimant on request, especially at ports of entry where claimants will not have had an opportunity to make copies themselves. At inland offices, however, claimants may be reasonably expected to have made their own copies.

Claimants have access to the information they provided to CIC during the course of their claim. However, protected documents cannot be released to the claimant and should not be used in the decision-making process.

6. Definitions

Claimant	A person who claims refugee protection in Canada
Counsel	Any person, including a person who is not a lawyer, who represents a party in a proceeding whether they are paid or not
Claimant Identification Number (CID)	A number assigned through FOSS (Field Operational Support System) when the officer creates a file for the claimant
Convention Against Torture	Means the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, signed at New York on December, 1984 within the meaning of Article 1 of the Convention Against Torture
Country of last permanent residence (CLPR)	The refugee's last country of permanent residence, which may or may not be the country against which the refugee claim is made
Division	The Refugee Protection Division
Foreign national	A person who is neither a Canadian citizen nor a permanent resident; includes a stateless person
Field Operational Support System (FOSS)	A CIC data base
Minor children	The *Convention on the Rights of the Child* provides in Article 1 that “for the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier”
Refugee Convention	The United Nations *Convention Relating to the Status of Refugees*, signed at Geneva on July 28, 1951, and the Protocol to the Convention, signed at New York on January 1, 1967,

	within the meaning of sections E and F of Article 1 of the Refugee Convention
Principal applicant (PA)	The main refugee applicant cited on the undertaking/application
Refugee protection officer	An employee of the Refugee Protection Division who helps the Division with a proceeding
Separated child	A child not accompanied by a person who has a legal right to that child
United Nations High Commissioner for Refugees (UNHCR)	Mandated to lead and coordinate international action for the world-wide protection of refugees and the resolution of refugee problems. UNHCR's primary purpose is to safeguard the rights and well-being of refugees. Also mandated to act on behalf of stateless persons.

Note: For Definitions pertaining to the Safe Third Country Agreement, see Section 17.1 below.

Note: "Refugee Protection" may be conferred in three different ways:

—A95(1)(a) - through **overseas** selection processes;

—A95(1)(b) - determination of a refugee claim by the **IRB**;

—A95(1)(c) - as a result of a Pre-Removal Risk Assessment (PRRA) [except for persons described in A112(3)]. A claim for refugee protection under A99(3) is determined by the Refugee Protection Division of the IRB.

An application for protection to the C&I Minister under A112(1) is considered by a PRRA officer. "Protected persons" are persons on whom "refugee protection" has been conferred. Such persons may include "Convention refugees" [A96] and "persons in need of protection" [A97]. Because "refugee protection" cannot be conferred on a person described in A112(3), such a person may not become a "protected person". While protected persons may apply for permanent residence, those persons described under A112(3) whose PRRA is approved will only be granted a reviewable stay of execution of their removal order.

7. Procedure - Claims for refugee protection

7.1. When can a claim for refugee protection be made?

A claim may be made in Canada at ports of entry or at inland offices at any time throughout the administrative or admissibility hearing process until a removal order is made. As per A99(3), once the removal order has been issued, access to refugee determination is no longer available. However, claimants may be eligible for PRRA.

See section 9 below for more information on referral to PRRA.

7.2. Who can make a claim for refugee protection?

Foreign nationals and permanent residents can make claims for protection. As a matter of policy, Canadian citizens cannot. Canadian citizens already enjoy the protection of Canadian citizenship and the accompanying benefit of the unqualified right to return to Canada.

Permanent residents

Permanent residents may make claims for protection at an admissibility hearing if a claim is made prior to the issuance of a removal order.

Holders of Temporary Resident Visas

A person who has a valid temporary resident visa who makes a claim for protection may be considered to be seeking to remain in Canada permanently and may be reported under A41(a) coupled with A20(1)(a), unless the officer is satisfied that the claimant meets the requirements of A20(1)(b). Therefore, the officer must believe that the claimant will leave Canada by the end of the period authorized for their stay.

A removal order can be issued against the claimant as per A44(1), A41(a), A20(1)(a), and R6, and the C&I or PSEP Minister can issue that removal order as per R228(1)(c)(iii).

7.3. What does a person have to do to claim refugee protection?

For the purposes of A99(1), a claim for refugee protection made inside Canada or abroad must be made to an officer. If claimants do not have the language capability to state this in English or French, the officer may have to question such claimants carefully to determine their intent. The person must not be subject to a removal order.

At ports of entry, claims will generally be made orally, but at inland offices claims may be made orally or in writing.

7.4. Procedures regarding processing a claim for refugee protection when such claim is made as a result of another process at an inland office or during such a process

Where an individual makes a claim for refugee protection while their case is being dealt with as part of another immigration matter, the matter should be adjourned, and the claimant should be referred to an officer responsible for processing claims for refugee protection.

Example: If a claimant, as part of or as a result of a refusal for a humanitarian and compassionate grounds request (before an officer issues a removal order), expresses an intention to make a claim for refugee protection, the officer will adjourn the process and refer the claimant to an officer designated to receive claims for refugee protection. Officers should also contact the nearest inland office that accepts refugee protection claims and arrange an appointment within three working days. This is essential since the three-working-day period before the claim is deemed referred will start, in these circumstances, when the claimant expresses the need for protection.

Example: If an individual wishes to make a claim for refugee protection during an admissibility hearing, (before a removal order is issued) the member will take note of the intention and proceed with the hearing, issuing the appropriate removal order as required. Following the hearing, the person is referred to an officer designated to receive claims for refugee protection. If the officer dealing with the other immigration matter is an officer delegated to receive refugee claims, and it is feasible to do so, the officer should proceed with the refugee determination examination. However, there will be situations where this will not be possible due to operational requirements.

All offices that could potentially receive claims for refugee protection should maintain a supply of applications (IMM 5500E) and Schedule 1 (IMM 5474E) to provide to claimants should the need arise.

When refugee eligibility cannot be immediately resolved, officers should proceed as follows:

- advise the claimant that the immigration matter that was being considered is adjourned pending the outcome of the refugee eligibility examination;
- contact the nearest inland office that accepts refugee protection claims and arrange an appointment within three working days. This is essential since the three-working-day period before the claim is deemed referred will start, in these circumstances, when the claimant expresses the need for protection;

- give the claimant an application form (IMM 5500E) and Schedule 1 (IMM 5474E) and advise the claimant that they will be required to appear at the inland office for a refugee eligibility examination and that the application and Schedule 1 forms and identity documents will be required;
- place an NCB in FOSS detailing all of the actions taken;
- advise the claimant that, if they fail to report for this interview, enforcement action will result.

7.5. Procedures for processing refugee protection claims from foreign representatives

Definition of foreign representative

The definition of a foreign representative includes the following:

- diplomatic agent (diplomat);
- (career) consular officer;
- international civil servant [representative of the United Nations, any of its agencies, an international or intergovernmental organization of which Canada is a member, or personnel of other offices accredited by the Department of Foreign Affairs (FAC)];
- member of the administrative and technical staff (representative or official of a country other than Canada);
- member of the service staff of an Embassy or Consulate;
- private servant (employee) of a foreign representative.

Foreign representatives are accredited by FAC, in the form of a counterfoil in the individual's passport or official travel document. This will show the letter J (official), C (consular), I (international organization) or D (diplomat).

Family members of foreign representatives have the same counterfoil as the head of the family. Note that under subsection 3(2) of the *Citizenship Act* children of foreign representatives under accreditation by the Protocol Office, even if born in Canada, are not entitled to Canadian citizenship.

See FW 1 for more information on who is, and who is not a foreign representative.

Starting the process

When someone who identifies themself as a foreign representative and expresses an interest in making a refugee claim, the following steps are to be followed:

- schedule an appointment according to office procedures;
- ask for the passport or other document with the counterfoil;
- ask if they possess any other passport or travel document (some countries issue separate diplomatic or government passports in additional to the personal passport);
- ask for the card which is used for identity and tax exemption purposes. These cards are the property of the Government of Canada;
- photocopy the documents, and return them to the person;

- tell them to bring the documents to the interview; if they say a document has been lost or stolen, request that they make a police report and bring it to the interview;

- advise the person to contact the Protocol Office, FAC, in person or by telephone, before reporting for the scheduled appointment

  - during working hours contact:
    Immigration Liaison Officer
    Protocol Office
    Department of Foreign Affairs
    Lester B. Pearson Building
    125 Sussex Drive
    Ottawa K1A 0G2
    (613) 992-0889 (phone)
    (613) 943-1075 (fax)

  - after working hours, contact the FAC Watch Office at (613) 996-8885.

- inform FAC of the name of the claimant and the date of the appointment; FAC will confirm whether the person is a foreign representative accredited to Canada;

- if the claimant is not accredited (for example, in Canada as a visitor), process as as per the procedures outlined in section 8 below.

When the claim is taken

Article 31(1) of the *Vienna Convention on Diplomatic Relations* provides immunity from civil and administrative jurisdiction to a diplomatic agent. CIC and the CBSA do not have the authority to cancel this accreditation of the foreign representative. The accreditation can only be cancelled by the Protocol Office of FAC, at the request of the Embassy/High Commission/International Organization or the individual. FAC itself may also request the cancellation.

If the claimant has not already done so, officers should ask for permission and contact the Protocol Office by telephone. The Immigration Liaison Officer will cancel the foreign representative's status in the registry system. If the claimant refuses, officers should explain that they have no jurisdiction to take a claim.

Officers should seize all passports and the identity card. If the card has already been returned to the Protocol Office, the claimant should have a receipt, and the business card of the Protocol Officer.

If relevant, officers should inform the claimant that the passport(s) and identity card will be sent to the Protocol Office and make arrangements to send the documents by registered mail to the above address.

If a package is being prepared for FAC, officers should ask the claimant to complete a statutory declaration. This should include the identity of the person, their position and which government or agency they served, and the fact that they wish to relinquish accredited status. The declaration may include information about the claim, if the claimant wishes. The declaration must also be sent to the Protocol Office, for their records.

If the person does not show up for the appointment, officers will notify the Protocol Office.

Refugee *sur place*

FAC will not share the information given by CIC or the CBSA with the country of concern.

Further action

Officers will continue to process the claim according to the procedures outlined in section 8 below. Refer to ENF 24 regarding eligibility and admissibility.

8. Procedure - The front end process in 12 steps

8.1. Step 1—Determine claimant's language abilities

During the initial conversation with the claimant, it is necessary to observe the claimant's ability to understand and communicate in either of the official languages in which the examination is being held. See section 15.1 below for more information about official languages.

CIC or the CBSA will provide an interpreter to enable the person to understand and communicate fully.

The right to an interpreter is not absolute and an interpreter is provided on request only to those who need one. Procedures for obtaining interpreters will vary from site to site based on volume of claimants, availability of interpreters and the nature of the service contracts entered into with interpreters. For more information on assessing language ability and the right to an interpreter, see section 15.2 below.

If a suitable interpreter cannot be made available at an examination, there is no authority to proceed with the examination. The standards for ensuring that a claimant can communicate cannot be lowered simply because of difficulty in finding a qualified interpreter. When the services of an interpreter cannot be obtained, an officer may adjourn on grounds of operational necessity.

The officer should be satisfied that the interpretation is continuous, precise, impartial, competent and simultaneous.

Family members and friends of the claimant cannot act as interpreters at an examination, but may assist in setting up appointments.

Occasionally, claimants will indicate that they require an interpreter and then change their minds when they realize this could cause a delay or require them to return at a later date. The final decision as to whether or not an interpreter is required rests with the officer.

The interpreter must sign a statement (IMM 1265E) indicating that all the information was interpreted to the claimant and that the claimant told the interpreter that they completely understood the information. The signed statement must be attached to the file.

8.2. Step 2—Obtain information about claimant

Inland

Whenever possible, the entire front-end screening process should be completed as per section 5.1 above at the time of the claimant’s initial visit to the office. At inland offices where it is not feasible to examine the claimant right away, an appointment should be made within two weeks for the claimant's admissibility and eligibility examination with an officer designated to accept claims for refugee protection. The claimant should be given the following documents during the initial contact with the inland office:

- form IMM 5500E;
- Schedule 1 (IMM 5474E);
- medical forms with instructions to bring the results to the eligibility examination.

See section 15.3 below for more information on medical screening. Completion of a medical examination will not be a requirement before the eligibility examination, but will be strongly encouraged wherever possible.

Note: If it is necessary to have the claimant return at a later date, the appointment must be scheduled within two weeks (14 calendar days). Optimally, the appointment will be scheduled as soon as possible.

Note: The three-working-day period before a claim is automatically referred to the RPD does not commence until an officer has received the claim for refugee protection. It is very important to ensure that the claimant understands that they must return to the office to present their claim for refugee protection.

Officers should schedule an appointment for the claimant to return. An NCB should be created in FOSS stating that this has occurred. The creation of an NCB will generate a FOSS ID and this number can be used on the medical forms. Generating a FOSS ID, however, does not mean that a claim has been made.

At this point, it is imperative to obtain a minimum of:

- claimant's name;
- claimant's address;
- claimant's telephone number;
- language spoken by the claimant;
- claimant’s country of origin.

Officers will advise the claimant that, at the examination, they will be required to provide:

- the completed IMM 5500E and Schedule 1 (IMM 5474E);
- eight passport size photographs;
- identity documents; and
- proof that a medical examination has been done.

Claimants should be advised that they will be required to provide on Schedule 1 (IMM 5474E) a list of all of the addresses where they have lived for the last ten years as well as a list of former employers for the last ten years. Officers will ensure that the claimants know that a claim for refugee protection has not yet been made and that they will be required to appear in person at an immigration office with the requested information and documents.

If the claimant is to be seen the same day, it may be expedient to have the claimant complete the IMM 5500E and Schedule 1 (IMM 5474E) while waiting. The principal applicant (head of family) must complete the IMM 5500E. It is sufficient to place a copy of this document on the file for other family members. However, each claimant must complete the IMM 5474E, regardless of age. Certain sections of the IMM 5474E do not need to be completed by applicants who are under the age of 18, unless requested to do so by an officer.

Normally, the information on the IMM 5474E is not sent to CSIS via the FOSS link for claimants under the age of 18. However, in rare cases where the officer feels a security check should be done for a claimant under 18, the information should be sent to CSIS with a comment in the

comment box that, although the claimant is under the age of 18, a security check is still requested. Otherwise, CSIS will not process the request.

Port of entry

At a port of entry, the three-day time period before the claim is deemed referred to the RPD begins when the claimant indicates an intention to seek refugee protection to an officer. At a port of entry, front-end screening must be completed for all claimants at the initial interview. If the front-end processing cannot be completed as per section 5.1 above, officers must consider the direct back and detention options. If the claimant has no identity documents, and no RR screen can be completed due to lack of an interpreter or other resources to gather the required information, the officer should give serious consideration to detention.

In some cases, the officer could be satisfied that identity has been established and detention is not necessary. In these circumstances, the officer must complete the following:

- photograph and fingerprints;
- joint examination with CSIS, if required;
- database check (FOSS, CPIC, NCIC, CAIPS);
- forms IMM 5500E and IMM 5417B completed (if undocumented);
- all information entered into electronic systems (FOSS, SSI);
- admissibility determination and, if negative, A44(1) report;
- detention decision;
- creation of Record of Refugee Claim (RR) screen in FOSS;
- if releasing, completion of IMM 1262E (conditions).

The following tasks may be completed after the claimant has been allowed to enter Canada:

- decision on the eligibility of the claim;
- issuance of eligibility or ineligibility documents;
- issuance of removal order, if applicable;
- issuance of medical documents;
- issuance of IFH coverage, if applicable;
- issuance of PIF to claimant, if applicable;
- creation of a file;
- completion of Schedule 1 (IMM 5474E).

At a POE, if the claimant cannot be seen the same day because of operational requirements or the need to schedule an interpreter, and if the claimant is not scheduled for an interview within 72 hours, the case will be deemed referred to the RPD. The officer must create the RR screen and

enter the date on which the claim will be referred to the RPD (three working days later). If an eligibility decision is not made before three working days, the officer will refer the case to the IRB and enter the "deemed" decision on the Eligibility Results screen in FOSS.

Note: Officers will not necessarily follow steps 3 to 10 in sections 8.3 to 8.10 below in the order described. Operational requirements may make a certain order more expedient. Also, certain procedures may not be applicable to all cases.

8.3. Step 3—Check FOSS and other data base

Performing a thorough name query

Performing a thorough name query is critical. Officers should conduct a name query in FOSS to determine if this is an existing claimant as follows:

- enter claimant's name in full in FOSS;
- perform Name Query (NQ) in FOSS using "All Immigration" function on FOSS to check name;
- if there are other FOSS IDs, they should be merged by an authorized employee if the file is not active; always keep the lowest number;
- if the name is incorrect, change the name in FOSS maintenance to the name as it appears in the passport, if it is a genuine passport;
- record other names as aliases;
- record scars, marks, tattoos or other distinguishing features in FOSS;
- if multiple refugee claims are indicated, cross-reference and put NCBs on both names in FOSS. If the claimant already has a FOSS ID, read all of the entries to determine all of the details of the claimant's previous dealings with CIC or the CBSA;
- verify if there was a previous refugee claim, outstanding warrant, previous enforcement action or application for any status;
- check to see if the claimant has had medical examinations in Canada;
- verify home address in the AD (address) screen;
- make a copy of the hit list and any claimant history screens to place on file.

For more information on FOSS, see section 15.4 below.

Creating a file in FOSS if no file and no FOSS ID exists

If no file and no FOSS ID exists, officers will create a file in FOSS as follows:

- enter Refugee Monitoring menu in FOSS (RM on main menu);
- enter New Client (NC) or Existing Client (EC);
- enter document option Record of Refugee Claim (RR);
- key in necessary information (name, client ID, type of case, date of birth, place of birth, sex, citizenship, date created).

The name entered in FOSS must be the same as it appears on the passport, if the claimant is in possession of a genuine passport. If the claimant is using a different name (e.g., a woman who was married after the passport was issued), officers will attach a copy of the marriage certificate (if available) to the paper file and indicate the married name as an alias.

If there is a mistake in the name on the passport, officers will:

- attach a copy of the birth certificate to the paper file to verify acknowledgment of the mistake;
- add the name indicated on the birth certificate as an alias.

Every name the claimant has ever used should be documented.

If the claimant does not have a passport, officers will ask them to verify what name would appear on a passport or birth certificate.

Note: Officers will calculate the date that the three-day processing period will end and enter this date in FOSS. This is the date that the claim will be deemed referred to the RPD.

Calculating the three-day period

When creating the RR screen, the officer will enter the date on which the claim will be referred to the RPD in the appropriate field. Ideally, the decision will be made before the three-working-day period is up and the date that the decision is made will be entered, thus avoiding a deemed referral. However, if a claim for refugee protection is not referred to the RPD within three working days, it is deemed to be referred, unless there is a suspension or it is determined to be ineligible.

R159 specifies that for the purposes of A100(1) and A100(3):

- a working day does not include Saturdays and holidays;
- a day that is not a working day is not included in the calculation of the three-day period; and
- the three-day period begins from the day on which the claim is received,

This provision must be read in conjunction with the *Interpretation Act* in which it is specified that Sunday is a holiday.

Example: If a claim is received on a Friday, it would be deemed referred the following Wednesday. The day on which a claim is received is not counted because it could be received very early in the morning or very late in the afternoon. Therefore, in this example, the three-day period begins at 00:00 on Monday morning. The three-day period ends at 24:00 on Wednesday night. The officer should complete the actions in FOSS to refer the claim to the RPD on Thursday morning.

Example: In the case of a claim received on Friday June 28, 2002, the first working day after receipt of the claim is Tuesday July 2. The three-working-day period ends on July 4. Therefore, the claim would be deemed referred on July 5, 2002.

Deemed referral of claims to the IRB

According to A100(3), if an officer does not make an eligibility decision within three working days, the claim will be deemed referred to the Board.

There will be circumstances where an eligibility decision cannot be made within the three-working-day time limit due to workloads or unavailability of interpreters. As well, there will be cases where the claimant does not cooperate and may refuse to provide the required information. Once the three-day clock expires, an officer must enter this information in FOSS by completing the Eligibility Results (ER) screen and indicating that the Eligibility Decision is "Deemed." The officer then electronically refers the claim to the RPD ("Print Final" or "Send Referral" option in FOSS).

CPIC and NCIC check

A criminal history check for the United States and Canada (CPIC/NCIC) may be initiated at this point. For more information on CPIC/NCIC see section 15.6 below.

Officers will use a "Protected B" stamp and black out user identification for any CPIC/NCIC printouts that are retained.

8.4. Step 4—Fingerprint and photograph claimant

For more information on fingerprinting and photographs, see Section 15.9 below and ENF 12, Search, Seizure, Fingerprinting and Photography. For offices that are not equipped with a Livescan machine, officers will follow the procedures outlined below:

- photograph all claimants regardless of age (photos must be placed on several of the required documents);
- ensure that the claimant signs the fingerprint form;
- RCMP fingerprint identification form C-216R (blue) is to be used for claimants for refugee protection;
- original fingerprints are required for search and classification on the RCMP, Automated Fingerprint Identification System (AFIS) database. The RCMP maintains the fingerprints on the database until the refugee claimant becomes a Canadian citizen;
- send all Convention refugee fingerprints on form C-216R to:

  RCMP
  Immigration and Federal Branch
  Refugee Identification Section
  1200 Vanier Parkway
  OTTAWA, Ontario
  K1A 0R2
- once the claimant is fingerprinted, photocopy the fingerprints and attach a copy to the file;
- fingerprint all claimants age 14 and over

Livescan procedures

Livescan will not impact on copies of fingerprints. Once the "original" transmission of fingerprints and client (photograph) are sent to RCMP/AFIS, the officer should print a copy or copies for the client file. The copy looks exactly the same as the "ink and roll" versions (i.e., the C-216 and/or the C-216R fingerprint form).

Officers should stamp the printed copy with a "certified true copy" stamp, sign the document, and have the client sign the document.

For more information on Livescan procedures, refer to ENF 12.

Note: There is no electronic signature on the Livescan transmission. The printed copy is placed on the client's file.

8.5. Step 5—Conduct search and seize documents (if required)

All passports and other significant documents such as travel documents, birth and baptismal certificates, and other identity documents **must** be seized. Officers will:

- make three copies of the documents and stamp "certified" and initial each page;
- place the seized documents in a document envelope and record the claimant's name and FOSS ID on the front;
- record what documents the envelope contains;
- retain the original documents and one certified copy on the CIC file;
- give one copy of the documents to the claimant and send the last one to the IRB;
- copies of false documents are not to be given to the claimant;
- complete Search form IMM 5242B and ensure the claimant signs it.

See ENF 12, Search, Seizure, Fingerprinting and Photography.

Note: Searches are not required at inland offices but documents must be seized both inland and at ports of entry.

8.6. Step 6—Create a paper file and complete electronic files

The FOSS identification number is created by completing the Record of Refugee Claim (RR screen) if it has not already been created by the input of an NCB as follows:

- enter Refugee Monitoring menu in FOSS (RM on main menu);
- enter New Client (NC) or Existing Client (EC);
- enter document option Record of Refugee Claim (RR);
- key in necessary information (name, client ID, type of case, date of birth, place of birth, sex, citizenship, date created). If the claimant states their date of birth in another calendar, state the date of birth in that calendar in the comment box;
- if there is more than one person in the family, include them all; each family member is entered under their own client ID, but is listed under Head of Family (HOF) ID;
- ensure the following information is on file:
    - ♦ application (if required);
    - ♦ two certified copies of identity documents;
    - ♦ passport-size photographs;
    - ♦ claimant signatures where required;
    - ♦ address of counsel (if applicable);
- if the claimant entered Canada with a temporary resident visa, send an e-mail to the visa offices and attach a copy of the e-mail to the file. For more information on liaising with visa offices see section 15.11 below;

- enter Schedule 1 (IMM 5474E) information in the FOSS/CSIS interface screen. For more information on FOSS/CSIS interface, see section 15.16 below.

8.7. Step 7—Assess admissibility

The purpose of assessing admissibility is to screen claimants who are inadmissible to Canada for any of the reasons specified in the Act. This assessment is conducted as part of the immigration examination after the claim is received by an officer.

Inadmissibility criteria have been created to ensure that serious criminals, terrorists, human rights violators and security risks will be barred from access to the refugee determination system and promptly removed from Canada.

The refugee protection decision for persons convicted of criminal offences overseas is made by the RPD, unless the individual is also determined to be a danger to the public [see A101(2)(b) – IMM 5367B Danger to the Public - Ministerial Opinion Report]. Officers assessing admissibility should try to get as much information as possible to determine whether a danger opinion will be warranted.

Officers should ask all relevant questions within the framework of determining eligibility and admissibility.

For more information on assessing admissibility see ENF 1.

Appropriate questions

The officer should ask the claimant the standard questions on the refugee claim and the answers must be recorded. Claimants must explain how they entered Canada. The officer should not ask the claimant to elaborate on the basis of the claim unless the information relates to admissibility and eligibility. It is not the officer's responsibility to determine the credibility of the claim for refugee protection.

Officers are encouraged to use the interview template created by NHQ (see Appendix A),

Determining admissibility

To determine admissibility, officers will:

- review the IMM 5474E (Schedule 1) and the IMM 5500E (Information on Individuals Seeking Refugee Protection) with the claimant to ensure that all questions have been answered and the forms are signed;

- prepare an inadmissibility report [A44(1)] if the claimant is inadmissible, unless the officer does not have the delegated authority to do so under A34,35 & 37. In such a case, referral to a CBSA officer will be required for further investigation/report writing, and possible suspension procedures (for suspension procedures, see PP1, section 10).

- if CAIPS is available, check for CAIPS notes; copy and keep on file.

Most claimants for refugee protection are inadmissible by virtue of the fact that they came to Canada for the purpose of remaining in Canada without a permanent resident visa.

Section A44(1) report

For detailed instructions on how to complete an A44(1) report, see ENF 5, Writing Section 44(1) Reports.

If determined inadmissible, an A44(1) report must be created for each claimant, **including children.**

The A44(1) report should be prepared after the client has been examined in conjunction with information from Schedule 1 (IMM 5474E). A report may be prepared at the same time as the eligibility is determined. After the report and eligibility determination are completed, the claim can have an administrative review by a different officer. This may require another interview by a second officer. If the person signed a statutory declaration conceding to the allegations, and the examining officer clearly explained the effect of the order, judicial review and when it comes into force, the order could be completed in the client's absence. Refer to ENF 6, Review of Reports under A44(1).

FOSS coding

No permanent resident visa, will remain in Canada:

- A36 - A41(a) that…balance of probabilities…failing to comply with this Act.
- A50 - A20(1)(a) that a foreign national hold the documentation required…
- R01 - R6…must first obtain a Permanent Resident Visa

No passport provided:

- A42 - A11(1) for any other document required by the Regulations.

Remarks for the A44(1) report

Examples of remarks that could be included in the A44(1) report:

- Is seeking to remain in Canada permanently, although he/she did not apply for or obtain a permanent resident visa prior to entering Canada, contrary to section 20(1)(a) of the *Immigration and Refugee Protection Act* and section 6 of the *Immigration and Refugee Protection Regulations*.
- Is not in possession of a valid and subsisting passport, travel document or identity document issued to him/her by the country of which he/she states that he/she is a national, namely xxxxx.

Any other inadmissibility such as criminal convictions should be included.

After the A44(1) report is completed, the Record of Refugee Claim (RR) screen should automatically appear since the officer has indicated on the report that an application for protection has been received. Officers will complete this screen. If the screen does not automatically appear, officers can go to the Refugee Module screen of FOSS and then enter the information on the RR screen. Once completed, select Main menu.

Disposition of the A44(1) report

Copies 1 to 4 of the A44(1) report are to be distributed according to local procedures. Photos are not to be attached to the report.

The C&I or PSEP Minister's delegate (MD) should:

- update FOSS to indicate that the inadmissibility report has been completed;
- review the A44(1) report and compare it to the IMM 5474E and the IMM 5500E;
- if eligibility can be determined, proceed to step 8 (section 8.8 below);

- if eligibility cannot be determined because the claimant is inadmissible due to serious criminality, suspected involvement in terrorism, war crimes or any other matter that must be determined by a member of the Immigration Division, suspend the decision on eligibility as per A100(2);

- make certified copies of all documents that the claimant provided that were not seized;

- ensure certified copies are made for the claimant (certified copies are provided to the claimant from a claimant service perspective to prevent the claimant from having to request this information at a later date);

- if CAIPS is available, check for CAIPS notes; copy and keep notes on file.

Tools to be used in special circumstances

When there are sudden surges in the number of claimants and/or unavailability of critical resources at a point of entry, and it is not possible to do the full front-end processing described above, officers may resort to direct back and/or use of detention. These tools should be used judiciously and only after all other efforts have been made to deploy staff from other offices.

Direct back policy

Claimants arriving at a land border port of entry may be directed to return to the United States. This policy is not intended to usurp Canada's commitment to the protection of persons seeking refuge in Canada. It is one of two tools to be applied only in circumstances where, in the view of the responsible manager, pressures are so great that it is either impossible or impracticable to process refugee claimants on arrival.

Direct back procedures for persons seeking protection

The procedures for directing refugee claimants to return to the United States pursuant to R41 are as follows:

- direct back procedures can be used only at POEs to return claimants to the U.S.;

- direct back procedures must not be used in the case of an unaccompanied minor;

- advise claimant to return to the POE at a scheduled date and time;

- no confirmation from the USCBP confirming future availability of the claimant is required;

- consult with a supervisor before initiating direct back;

- photograph and fingerprint all claimants and check against FOSS prior to the direct back option being used;

- copy travel and identity documents and retain copies;

- complete the RR screen in FOSS immediately and direct the claimant to return within three working days to avoid deemed referrals;

- in cases where the claimant returns after a case is deemed referred, re-determine eligibility;

- issue a “direct-back” document to the claimant stating the date, time, and location of the proposed examination;

- determine need for an interpreter;
- strongly counsel claimants to bring all of their travel and identity documents to the examination; failure to satisfy an officer of their identity may result in detention;
- give claimants a blank IMM 5474E and ask them to complete and return it at the examination;
- create an NCB indicating the date the claimant is scheduled to return.

Detention for further examination

See ENF 20 for complete guidelines.

In some cases, the direct back option may not be feasible and officers should consider detention to ensure that the core elements of the front-end process are completed.

According to A55(3) officers may detain an individual on entry to Canada if:

- the officer considers it necessary to do so in order for the examination to be completed; or
- the officer has reasonable grounds to suspect that the permanent resident or foreign national is inadmissible on grounds of security or for violating human or international rights.

Officers should consider detaining individuals if they are unable to complete the essential components of the front-end process. The information obtained during front-end processing is critical to an officer's admissibility decision; without this information, an informed decision cannot be made. If an officer concludes that the information cannot be obtained from the individual at the time of the examination, or that further information or documents are required to determine admissibility, detention should be considered to ensure that the individual is available to complete the examination.

According to R245, officers must consider various criteria in determining whether to detain an individual such as:

- whether the person is a fugitive from justice in a foreign jurisdiction in relation to an offence that, if committed in Canada, would constitute an offence under an Act of Parliament;
- whether the person has voluntarily complied with any previous departure order;
- whether the person has voluntarily complied with any previously required appearance at an immigration or criminal proceeding;
- whether the person has had previous compliance with any conditions imposed in respect of entry, their release or a stay of their removal;
- any previous avoidance of examination or escape from custody, or any previous attempt to do so;
- involvement with a people smuggling or trafficking in persons operation that would likely lead the person to not appear for a measure referred to in R244(a) or to be vulnerable to being influenced or coerced by an organization involved in such operations to not appear for such a measure; and
- the existence of strong ties to a community in Canada.

ENF 20 provides the following additional factors that may be considered:

- no fixed place of residence or attachment in Canada;
- removal is imminent;
- credibility of the behaviour the person has demonstrated during the examination;
- availability of alternatives to detention and whether sufficient to mitigate the flight risk;
- presence of responsible relatives or friends in Canada who are prepared to provide a guarantee or surety.

Officers must also consider other factors before making a determination to detain an individual [R248] which include the following:

- reason for detention;
- length of detention;
- whether there are any elements that can assist in determining the length of time that detention is likely to continue and, if so, that length of time;
- any unexplained delays or unexplained lack of diligence caused by the CBSA or the person concerned; and
- the existence of alternatives to detention.

If detention is to be used in these cases, it is imperative that officers must conclude the pending examination process as soon as possible.

Officers who detain individuals in order to complete an examination must complete an Order for Detention (IMM 0421B). As per the usual procedures, the original detention order must be given to the authority responsible for detaining the person and a second copy should be placed on file.

Detention reviews

Another officer who is independent of the initial assessment of the case must review detention decisions. The second officer may consider any new information, including whether the examination has been completed and, subsequently, may authorize the person's release under A56.

The review of the initial grounds for detaining a person may lead the officer to conclude that the situation no longer requires that the person be detained. In the event that the grounds for detention cease to exist before the Immigration Division has conducted a detention review, the officer may release the person.
When the officer is conducting a detention review under A56, the Request for admissibility hearing / detention review pursuant to the Immigration Division rules (IMM 5245B) must be completed, summarizing the facts that warrant continuing detention or alternatives to detention. The release authorization must be served on the authorities of the detention centre holding the individual.

If the officer is of the opinion that release is the best alternative, the claimant may be released on conditions deemed necessary and appropriate, such as a security deposit, to ensure that the claimant will be present for further proceedings. Those conditions must be included on the Acknowledgement of Conditions (IMM 1262E) if the officer releases an individual, and a copy must be given to the person concerned with their signature.

Officers may request that a security deposit, a guarantee or both be posted by the guarantor. Both

the subject of the bond and the guarantor should understand the conditions of the bond and the repercussions of violating conditions. Officers must provide both the guarantor and the person being released with copies of forms Security Deposit (IMM 0514B), Performance Bond (IMM 1230E) and Solemn Declaration of Solvency by Guarantor (IMM 1416B).

Adjournments

Adjournment of a determination will rarely be necessary. In exceptional circumstances, an officer may have to consider a request for adjournment to ensure persons have a reasonable opportunity to provide more evidence. An officer may have to initiate adjournment for operational reasons, such as the lack of an interpreter. However, adjournments must not be used as a tool of administrative convenience.

An officer should not consider a request for adjournment to furnish additional information unless the following conditions are met:

- there are strong indications that the claimant can easily produce additional documents relevant to the report or eligibility determination; and
- the claimant's intentions appear to be credible, and the claimant has not yet been given a reasonable chance to present such documents.

If an adjournment is deemed necessary, officers should keep in mind the authority to detain, release and impose conditions, including the payment of a deposit or the posting of a guarantee.

A Notice of Adjournment or Deferral of Examination letter will be issued to all claimants.

Note: Officers should also keep in mind that adjournments do not defer the time limit of three working days, therefore, the examination must be re-scheduled before the end of the three-day period.

8.8. Step 8—Screen examination to assess eligibility to be referred to RPD

The purpose of the eligibility criteria is to promptly disqualify persons who, according to the Act, are ineligible to be referred to the RPD. Those who are not referred to the RPD will then be assessed to determine if they are eligible for PRRA. See section 9 below.

The burden of proving that a claim for refugee protection is eligible to be referred to the RPD rests on the claimant who must answer all questions truthfully and produce all documents and information as required by the RPD Rules.

In the absence of evidence that the person is ineligible, an officer should resolve eligibility in favour of the claimant.

The purpose of this portion of the examination is to determine if a claim is eligible to be referred to the RPD. However, the purpose is not to delve deeply into the basis for the refugee claim.

There are questions on the application form that pertain to the reasons why an individual is claiming refugee protection. The officer should ensure that those questions are answered and should ask all questions that are relevant to admissibility and eligibility.

Important points to remember:

- all claimants for refugee protection will be seen in person at some point in the process;
- all eligibility decisions must be delivered in writing to the claimant. If the claimant is directed back and the claim is deemed referred to the IRB because the eligibility interview takes place more than three days after direct back, when the claimant returns for the interview they will be given a "deemed referred document";

- the eligibility decision document is created in FOSS.

A claim is ineligible to be referred to the Refugee Protection Division for the following reasons:

101.(1)(a) refugee protection has been conferred on the claimant under this Act

Persons who have already been determined to be refugees in Canada are not eligible because a person can only be deemed to be a Convention refugee one time.

This includes persons accorded Convention refugee protection by Canadian officers abroad in accordance with the Regulations, as well as persons previously found to be Convention refugees in Canada in accordance with the Act.

101.(1)(b) a claim for refugee protection by the claimant has been rejected by the Board

A person whose claim to be a Convention refugee has been previously rejected is not eligible for another determination by the RPD.

101.(1)(c) a prior claim by the claimant was determined to be ineligible to be referred to the Refugee Protection Division, or to have been withdrawn or abandoned

Previous claimants are barred from a subsequent IRB refugee protection determination but may, if they return to Canada after six months, apply to the C&I Minister for protection in the context of a pre-removal risk assessment. For more information on eligibility for PRRA, see PP 3.

Evidence such as fingerprint matches provided by the RCMP or statutory declarations signed by claimants can indicate that the claimant has previously claimed refugee protection.

The officer will advise the claimant of the determination that the claimant has made a previous claim for refugee protection.

101.(1)(d) the claimant has been recognized as a Convention refugee by a country other than Canada and can be sent or returned to that country

A person who has been recognized as a Convention refugee by any country other than Canada, and can be returned to that country, is not eligible for determination by the RPD.

A person may be in possession of an identity or travel document stating that the person has been granted refugee protection in the issuing country. The officer must be satisfied that the person was granted refugee protection under the Convention. Some countries grant refugee status or asylum that does not necessarily comply with the requirements of the Convention. If the country that granted the refugee status has not signed the Convention, the claimant cannot be returned there.

If a person has been recognized as a Convention refugee and the person claims that they cannot be returned to the recognizing country, the officer must make an assessment. This may require liaison with Consulates. If a person has two nationalities, they must make a claim for protection against both countries. However, case law confirms that A101(d) can be applied to a Convention refugee of another country even if they now claim persecution from the country that granted them protection [*Jekula v. Canada* (2000) FCA]. The words "can be returned to that country" simply refer to whether that jurisdiction will readmit the person.

If a person has been recognized as a Convention refugee, an officer should determine that the person is ineligible pursuant to A101(1)(d), issue a removal order, seize documents and impose conditions and then refer the file to the appropriate enforcement office. As per A112(1), a person in Canada other than a person referred to in A115(1) (a protected person or a person who is recognized as a Convention refugee by another country to which the person may be returned) may apply to the C&I Minister for protection. Therefore, claimants who are ineligible because they have been deemed Convention refugees in another country and can be returned there are not

eligible for PRRA. However, they are eligible for a risk-assessment under A115(1) (principle of non-refoulement).

For list of Convention countries, see http://www.unhcr.ch/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=PROTECTION&page=PROTECT&id=3b73b0d63

101.(1)(e) the claimant came directly or indirectly to Canada from a country designated by the regulations, other than a country of their nationality or their former habitual residence

In order for a country to be designated a "safe third country" pursuant to the Regulations, it must comply with Article 33 of the Refugee Convention and Article 3 of the Convention Against Torture. The United States is the only country that has been designated to date. The *Agreement between Canada and the United States for Cooperation in the Examination of Refugee Status Claims by Nationals of Third Countries*, commonly known as the Safe Third Country Agreement outlines the application of the Agreement. For more information to the agreement: http://www.cic.gc.ca/english/policy/safe%2Dthird.html

101.(1)(f) the claimant has been determined to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality…

The Act provides an objective test for rendering persons with serious convictions in Canada ineligible for refugee determination. Persons convicted in Canada of a serious crime as defined in the inadmissibility provisions (an offence punishable by a sentence of 10 years or more) will be ineligible to have their claim referred to the RPD if they were sentenced to at least two years of imprisonment.

This provision takes into account that the judicial system would already have evaluated that the circumstances of the offences were serious enough to warrant a significant term of imprisonment.

Persons found inadmissible on grounds of organized crime are ineligible. However, the provisions defining organized crime ensure that refugee claimants who have merely used the services of such organizations to come to Canada continue to have access to a refugee determination by the RPD. It is recognized that such persons may have a valid fear of persecution if returned to the country of origin.

A person referred to in Section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection. When an officer receives a report containing any of the allegations in these sections, or if the officer believes on reasonable grounds that a person could be described under those allegations, the officer must cause an admissibility determination before a member of the Immigration Division as soon as possible. The officer cannot determine eligibility until a member of the Immigration Division decides on the allegation.

An officer must find the person not eligible if the member of the Immigration Division finds:

- in the case of inadmissibility by reason of a conviction in Canada, the conviction is for an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years and for which a sentence of at least two years was imposed; or

- in the case of inadmissibility by reason of a conviction outside Canada, the person is a danger to the public in Canada and the conviction is for an offence that, if committed in Canada, would constitute an offence that is punishable by a term of imprisonment of at least 10 years.

If the claim is not eligible for referral to the RPD, the procedures are as follows (applicability may vary depending on case):

- explain in detail the rationale for the decision;

- issue a negative eligibility document in FOSS;

- review the A44(1) report to ensure that:
  - ♦ the report is in writing;
  - ♦ the date and place of issuance are indicated;
  - ♦ the report is addressed to an officer, issued and signed by the officer who conducted the examination that initiated the report;
  - ♦ the report cites the correct sections of the Act and Regulations;the name of the person who is the subject of the report is complete and correctly spelled;
  - ♦ there are no abbreviations such as “aka” or “s/o” ;
  - ♦ the report contains the grounds to support any allegation (for example: a person has been convicted in Canada of an offence, namely [the specific offence] at [place], on [date] for which a maximum imprisonment of 10 years or more may be imposed);
- prepare a removal order [R228, R229];
- inform claimant about PRRA;
- complete PRRA application and fax to PRRA unit;
- cause an admissibility hearing/determination, if required;
- have the claimant make a detailed declaration about the circumstances of the granting of refugee status in the asylum country and the reasons for the alleged fear of persecution in that country;
- use a standard statutory declaration form (if necessary, have the declaration translated for the claimant);
- ensure the declaration is signed by the officer and the claimant;
- if an interpreter is present, ensure that the interpreter declaration is completed;
- consider whether the person should be released or detained;
- if released, impose conditions that include requiring the person to report, according to regional guidelines, at a specific time and place, where the claimant will be told whether or not entitlement to consideration of protection exists;
- refer the file for enforcement action;
- allow persons requesting an opportunity to provide an amended declaration to do so;
- retain the original declaration.

Administrative tasks when claim is ineligible for referral to RPD

Officers will ensure the Record of Refugee Claim (RR) was entered in FOSS, use the FOSS remarks section to add further details, if available, and complete the FOSS Eligibility Results (ER)

screen. The FOSS-generated determination form will indicate the basis for the ineligibility decision.

Officers should:

- issue ineligibility document and provide to claimant;
- complete checklist for Administrative Removal Orders and prepare the removal order (e.g., date and file reference of a previous negative credible-basis decision, the country prescribed by the Regulations from which a person came to Canada and made a claim to be a Convention refugee or a protected person);
- generate and print removal order (if applicable);
- advise the claimant of the reason for the ineligibility decision;
- make copies of all documents for the claimant and the immigration file;
- forward the file to an enforcement office.

Administrative tasks when claim is eligible for referral to RPD

If the claim is eligible for referral to RPD, the procedures are as follows:

- using FOSS, create the combined Eligibility/Referral/IFH and Notice to Appear and attach claimant photo to three copies of the Eligibility document;
- prepare Reciprocal Arrangement Letter (IMM 5522B) if claimant entered from the U.S. (not applicable inland);
- ensure the IMM 5500 is signed;
- complete ER screen in FOSS;
- indicate eligibility for IFH, if applicable;
- generate eligibility document;
- attach claimant’s photo to document;
- generate notice to appear;
- complete A44(1) report;
- prepare and print removal order;
- prepare Acknowledgement of Conditions IMM 1262E;
- prepare Background Information Document IMM 5417B (provided where a claimant is not in possession of a valid travel document);
- provide Reciprocal Arrangement with U.S. (IMM 5522B), if applicable;
- sign documents as follows where required:

- Determination of Eligibility (eligibility results);
- Removal order;
- Acknowledgment of Conditions;

- Prepare document package for RPD to include:
  - copy of Schedule 1 (IMM 5474E);
  - copy of eligibility results;
  - copy of the removal order;
  - copy of identity and travel documents, including those seized;
  - copy of eligibility letter;
  - copy of IMM 5500E (application), if applicable;
  - photocopy of visa office response to e-mail, if available;
  - photocopy of officer's notes;
  - photocopy of any written declaration by the claimant;
- send an e-mail to the visa offices where a temporary resident record has been issued to the claimant;
- keep a copy of the e-mail on file;
- delete any reference to information that does not relate to the claimant or that is covered under privacy legislation (e.g., CSIS officer’s name);
- transfer on NCMS (if applicable);
- enter the Schedule 1 (IMM 5474E) information in the FOSS Front End Screening module;
- complete SSI for all claimants (Intelligence system that is used to track trends and patterns);
- complete IDA and Transportation Violation Report in AFS/SSI using details from admissibility form and notes and passport information;
- complete arrival information; enter arrival information in Canada and flight details, if identified;
- send IRB package by courier to appropriate IRB office;
- transfer physical file to records repository**.**

Note: IFH and eligibility are combined in the eligibility determination screen. Notice to Appear is generated automatically by FOSS once ER is complete.

8.9. STEP 9 —Impose conditions

Conditions will be placed on all claimants for refugee protection [IMM 1262E].

Most claimants entered Canada illegally and it is the first time that they will meet with an officer. It is very important to counsel claimants of their obligations by imposing conditions as part of counselling. If, at some time in the future, enforcement action is needed, reference to the fact that the claimant was counselled could be important to the outcome of the adjudication. If is helpful to have evidence in writing.

The following conditions should be imposed on claimants:

- within 48 hours, provide an address in Canada and inform the CBSA **and** the IRB in advance of any change to that address;
- keep the peace and maintain good conduct;
- report to the CBSA and to the IRB in writing any criminal charges and convictions forthwith;
- surrender passport or travel document;
- abide by all conditions imposed by an officer or the Immigration Division;
- report in person to an officer at a port of entry if an application is withdrawn;
- complete a medical examination with 30 days (if not already done);
- comply with the instructions of the Notice to Appear of the IRB.

8. 10. STEP 10 - Provide claimant with all relevant documents

Refugee claimants will require several documents to gain access to health care and welfare (if eligible) as well as documents to continue the refugee determination process.

The package prepared for the claimant should include:

- copy of the A44(1) report;
- copy of the removal order;
- copy of the eligibility document;
- IFH documents;
- letter of explanation of referral to claimant;
- Notice to Appear for a hearing at the RPD;
- Medical Report Form and Instructions;
- seizure receipt form, if applicable;
- Personal Information Form (to be completed by claimant and sent to the RPD);
- copy of the Background Information Document (if applicable);

- NGO List (where available);
- certified true copies of identity documents (if applicable);
- copy of conditions;
- copy of interview notes.

The officer is required to provide the claimant with the Personal Information Form (PIF) and inform the applicant that this document must be forwarded to the RPD within 28 calendar days. If the claimant does not return the PIF to the RPD within 28 calendar days, the RPD may commence abandonment proceedings. Rule 58(1)(a) of the Refugee Protection Division (RPD) Rules indicates that the RPD may declare a claim abandoned if the Division has not received the claimant's PIF within 28 days after an officer gives a copy of the PIF to the claimant.

The RPD counts the 28-day period as commencing on the date of the eligibility decision or the date that the officer gave the form to the client, if this is a different date.

Therefore, it is imperative that the PIF be provided to the claimant on a timely basis. When the officer anticipates that an eligibility decision will not be made within three working days, the officer should provide a copy of the PIF to the claimant at the immigration examination, explaining the significance of the 28-day time limit. The date of handing the PIF to the claimant should be recorded in FOSS. If there is a significant discrepancy between the date of the eligibility decision and the date the claimant was provided with a PIF, the RPD must be notified by fax.

Even though the claim has been deemed referred to the RPD because the three-working-day time limit was exceeded, if the officer feels that a subsequent interview might be useful, the officer will ask the claimant to return to provide the required information. If the claimant provides information at a subsequent examination that makes the claimant ineligible for consideration by the RPD, the officer will proceed with a re-determination of eligibility.

8.11. Step 11—Finalize the processing of file and electronic entries

To finalize the processing of file and electronic entries, officers will:

- create and print labels for the file;
- enter Schedule 1 (IMM 5474E) information in FOSS for CSIS link;
- place documents in file jacket;
- download information from FOSS into the ETS/NCMS system (if available);
- enter date received in FOSS Registry;
- calculate and enter the date that the claim will be deemed referred to the RPD if no decision is made within the three-working-day period;
- check CPIC, if it has not been done at any other point in the process;
- enter Support System for Intelligence (SSI) information;
- confirm fax transmission of Airline Liability Notice to airline (if applicable).

8.12. STEP 12 - Counsel claimant

Each claimant will be counselled on the following information and requirements.

Type of information	Details of counselling to claimants
Eligibility document	The eligibility document should be kept in your possession as proof that your case has been forwarded to the RPD. With this document, you are entitled to health care benefits (there will be a note at the bottom of this document indicating whether or not you are entitled to Interim Federal Health benefits) social service benefits and English/French as a second language classes.
Medical examination	As per R30(1)(e), all persons claiming refugee protection are required to undergo a complete medical examination to establish that you are in good physical and mental health. You are being provided with a list of designated medical practitioners who are authorized to perform this examination. Please give the medical report to the doctor and present your eligibility document. The doctor will forward the information to CIC's Medical Services Branch who will then forward the results to the CBSA or the CIC Inland office .
Work permits	You are required to submit your personal information form (PIF) to the Refugee Protection Division of the IRB and your medical examination has to be completed for you and your family members before you can receive a work permit. You can obtain an application by calling the Call Centre. You can also obtain applications from the web site www.cic.gc.ca There is no processing fee for refugee claimants.
Study permits	Minor children of refugee claimants may study in Canada at the pre-school, elementary and secondary school levels without study permits. For other study permits, the same application procedures apply as for work permits.
Personal Information Form	You must complete and forward the PIF to the RPD within 28 days. If your form is not received within 28 days, the RPD may, after giving you a reasonable opportunity to be heard, declare your claim to be abandoned. Please file the original and two copies of the PIF with the IRB office indicated at the bottom of your "Notice to Appear."
Departure order	A departure order was issued to you because you were determined to have contravened the *Immigration and Refugee Protection Act.* This order will not be effective until: (a) you withdraw your claim for refugee protection; (b) the RPD determines you have abandoned your claim for refugee protection;

	(c) you are determined not to be a Convention refugee by the RPD; (d) you are determined not to have a right to remain in Canada; (e) you receive a negative pre-removal risk assessment. When the order becomes effective, you have 37 days or 30 days if the notice is given in-person, to leave Canada and verify your departure with an officer. You must present yourself to a land border crossing or to an immigration officer at the airport when you leave. If you are departing by air, please arrive at least two hours in advance. If you do not leave Canada as required or do not verify your departure with the Canada Border Services Agency, the departure order will become a deportation order. This means that you may be arrested at any time and removed from Canada immediately thereafter. You will not be allowed to return to Canada without the written consent of the Minister.

Acknowledgment letters

If the officer anticipates that a considerable delay may occur due to lack of an interpreter for an obscure language or some other legitimate reason, the officer may decide to issue an "acknowledgment letter." This document will allow the claimant to apply for social assistance and benefit from IFH before the immigration examination is concluded and the eligibility letter is issued. However, the use of acknowledgement letters should be avoided. If offices find they are using them frequently, advice should be obtained from Refugees Branch at NHQ.

8.13. Procedures for dealing with claimants who do not show up for the scheduled immigration examination

In dealing with "no shows" the following points are important:

- When an appointment is being made, basic information must be obtained from the claimant. This information must be recorded in FOSS.
- All claimants are encouraged to complete their claim at the same office where they initiated the process. If an immigration examination was initiated, the claimant **must** report back to the same office in order to complete the examination.
- Where a claimant does not show up for a scheduled interview, check FOSS for other claims. If no record appears of a claim at another office, a telephone call should be made to the claimant followed by a letter asking them to report to the office. This should be notated in FOSS.
- The officer will contact the Immigration Warrant Response Centre to initiate enforcement action. If the claim has been made, it is also necessary to contact the IRB to institute abandonment proceedings.

For more information on Warrants, refer to ENF 13.

9. Procedure - Referring claimants to PRRA

If the officer concludes that the claim will not be determined by the RPD, the officer must then decide if there is entitlement to a Pre-Removal Risk Assessment (PRRA).

If the claimant expresses a “fear of return” (the expression of “fear of return” does not have to be stated in specific terms such as “I want to make a refugee claim” or “I want to apply for PRRA”) before a removal order is issued, the officer must then determine if the claimant is entitled to a PRRA as per A112(1) and A112(2).

If the claimant is not entitled to a PRRA, removal arrangements will proceed and the claimant will be removed from the country. If the claimant is entitled to a PRRA, the officer must provide the claimant with both the *Confirmation of Entitlement to Apply for a Pre-Removal Risk Assessment* (http://www.ci.gc.ca/cicexplore/english/form/prra_erar/POE_Inland.doc) and an *Advance Information Regarding the Pre-Removal Risk Assessment* (http://www.ci.gc.ca/cicexplore/english/form/prra_erar/AdvanceInfo_Notice.doc)

The claimant is then permitted to enter Canada. At a later date, they will be called in to a Removal Interview at an office near their place of residence. If the claimant does not express any fear of return, the officer is not obligated to pursue the PRRA option. However, if the claimant expresses fear in any way, whether they use official terminology or not, the officer should explore the PRRA option. If a person expresses a need for protection, the officer must offer an opportunity to have those protection concerns reviewed by the appropriate authority (IRB or PRRA). If the claimant expresses no protection needs, the officer can cancel the stay and proceed with the removal arrangements.

9.1. Who can apply for PRRA?

Potential candidates for PRRA may be divided into five overall categories:

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

As per A112(1), only those persons who are subject to a removal order or a security certificate can apply for PRRA.

9.2. Does the officer have discretion to offer PRRA?

If a claimant expresses protection needs even if they know they are not eligible because they have made a previous claim, the officer would take a claim for refugee protection and make a negative eligibility decision. This is a decision for an officer to make, not the claimant. The officer would then explore the possibility of PRRA.

9.3. When is it mandatory to advise a claimant of PRRA?

An officer must advise a claimant that they might be entitled to a PRRA as soon as the claimant expresses a need for protection. If the claimant does not express such a need, the officer is under no obligation to inform the claimant of the PRRA.

9.4. Does the officer have discretion to stay a removal pending a PRRA?

At POEs, when claimants indicate a need for protection BEFORE issuance of the removal order AND where the officer has determined after review that the claimant may apply for a PRRA, the applicant would be allowed into Canada to pursue the PRRA application.

There is no statutory stay of removal when a person applies for PRRA after a removal order is issued at a POE and is in force. Departmental policy dictates that if the person claims protection BEFORE the removal order is issued, officers will NOT remove the person and will allow the person in under an administrative stay. If the person claims protection only AFTER the removal order is issued, discretion is available to the officer who must determine whether the person should be allowed in to pursue the application in Canada or whether the removal order should be executed.

Clearly, this discretion must be exercised with great care and the officer should consider whether the PRRA application is made simply as a means to gain access to Canadian territory or whether it is being made because there may be genuine protection concerns.

PRRA officers will not be available at POEs; therefore, in some instances, the claimant may be allowed into Canada while their PRRA is being assessed.

9.5. Is a POE considered to be "in Canada" for the purpose of PRRA?

A POE is considered to be in Canada for the purpose of PRRA so that an applicant can ask for PRRA protection at a POE.

9.6. PRRA applicant returns to Canada within six months of an ineligible refugee protection claim

If a person who is not eligible to make a refugee protection claim returns to Canada within six months, the POE officer will make the determination that the applicant is not entitled to apply for a PRRA.

9.7. In-force removal order after June 28, 2002

Persons with an "in force" removal order after June 28, 2002 will be entitled to apply for a PRRA.

9.8. How we deal with the claimant while the PRRA review is being done

A PRRA applicant is treated in the same manner as a refugee claimant.

9.9. Are applicants who are entitled to a PRRA eligible for Interim Federal Health (IFH)?

An applicant who is entitled to a PRRA is also eligible for IFH. This is in keeping with the purpose of the IFH program which is to provide in-Canada health care for certain migrants who are unable to pay for expenses related to urgent and essential services. The program has been put in place for humanitarian reasons to allow access to essential health care to those present in Canada who would not otherwise be able to avail themselves of it. It is not meant to replace provincial health plans.

As in the case of claimants for refugee protection, PRRA applicants receive IFH pending their qualification for other means of payment.

Officers who find an applicant entitled to a PRRA should issue the appropriate IFH document for the applicable time period. For more information on IFH, see section 15.14 below.

For more information, refer to Pre-Removal Risk Assessment (PRRA) PP 3.

10. Procedure - Suspension

10.1. Suspension before claim is referred to the RPD

Claims for refugee protection are to be processed within three working days. However, there are two circumstances under which an officer can suspend the processing of the claim and delay the eligibility decision. By permitting the suspension of the processing of claims for refugee protection by persons charged with serious criminal offences until their eligibility is properly assessed, IRPA provides a consistent approach in denying access to the refugee determination system to persons who could pose a danger to Canadians. When the matter is resolved, and if the claim is determined to be eligible, the proceedings at the RPD shall continue.

As per A100(2), when making a determination of eligibility to refer a claim to the RPD, the officer shall suspend the eligibility consideration if:

- a report is to be referred to the Immigration Division (ID) for a determination at an admissibility hearing on grounds of security, violating human or international rights, serious criminality or organized criminality;

OR

- the officer considers it necessary to wait for a decision of a court with respect to a claimant who is charged with an offence under an Act of Parliament that is punishable by a maximum prison term of at least ten years.

In cases where the above-noted circumstances come to the attention of the officer before the eligibility decision is made, the officer will suspend consideration until the ID or the court renders a decision. There is no need to notify the RPD of the decision to suspend the claim because the RPD is not aware that the claim exists.

It is important to note that A133 prohibits a refugee claimant from being charged with certain offences relating to their coming into Canada if refugee protection is conferred or, if it is not, until their claim is disposed of. This ensures that refugee claimants will not be punished for violations of the Act which facilitated their arrival in Canada. This would include offences related to documents pursuant to A122.

Procedures for suspending eligibility prior to referral to the RPD

To suspend a claimant's eligibility prior to a referral to the RPD, the officer will:

- schedule an in-person CSIS interview for cases involving security, violation of international or human rights and organized crime;
- complete the applicable A44(1) reports;
- enter information into FOSS;
- in the Record of Refugee claim (RR) screen, enter the claim date and, instead of entering the date the three-day time limit will elapse, place an "x" in the box marked "Suspend" (this will prevent the case from being ***deemed*** referred to the RPD);

- complete the Eligibility of Results (ER) screen, enter the Decison as "suspended"
- notify client of suspension (see Appendix D);
- determine if arrest and detention is appropriate (refer to ENF 7, Investigation and Arrests and ENF 20, Detention).

When the C&I or PSEP Minister's Delegate (MD) receives a report containing allegations of A34 (security), A35 (human or international rights violations), A36 (serious criminality outside Canada) or A37 (organized crime), the MD should cause an admissibility hearing before a member of the ID.

However, there will be criminality cases where the claimant has been convicted outside Canada of an offence that, if committed in Canada, would constitute an indictable offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years. The officer should review the facts of the conviction and, if the facts do not support requesting a danger opinion, the officer should allow the claim to be deemed referred, with the concurrence of the supervisor. There is no need to suspend the claim if a danger opinion is not being requested as it simply slows down the process. By allowing the claim to be deemed, the A44(1) report can be dealt with at the ID and the claim can be dealt with at the RPD.

An option the officer may consider would be to allow the three-day clock to expire, which would cause the claim to be deemed referred to the RPD.

The important point to remember is that, if the officer is not requesting a danger opinion, it is not necessary to suspend the eligibility decision and delay processing of the claim.

Note: Where consideration of eligibility is suspended under A100(2), the claimant may not be issued work or study permits. It is advisable to indicate this in FOSS.

10.2. Resumption of eligibility processing

Upon determination of admissibility or upon receipt of the decision of the court, the eligibility decision must be made. There is no specific time period to resume eligibility processing but every effort should be made to ensure that the claim is processed as soon as possible. It will be necessary to schedule an appointment as soon as practicable in order for the claimant to return to the office to complete the examination process (refer to Appendix E).

If the ID determines that the person is inadmissible based on security, violating human or international rights, serious criminality or organized criminality, then the claim should be determined ineligible. Conversely, if the ID determines that the person is not inadmissible based on security, violating human or international rights, serious criminality or organized criminality, the officer should readily make a determination of eligibility and provide the claimant with the appropriate documentation (i.e., Eligibility document, PIF, etc). Once the eligibility decision is made, it should be entered in the "Notification to RPD - Subsequent Eligibility/Redetermination of Eligibility" (SE) screen. The initial "suspended" Eligibility Results decision remains on FOSS as a historical record of the suspension.

10.3. Suspension after claim is referred to the RPD

Similar to suspension prior to referral to the RPD, A103 requires the RPD to suspend proceedings when notified by an officer that the case has been referred to the Immigration Division to decide whether the claimant is inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality.

As well, suspension after the claim is referred to the RPD is required if the claimant is charged with an offence punishable by a maximum prison term of at least 10 years and the officer considers it necessary to wait for the court's decision.

If the finding of the ID or the court does not render the claimant to be ineligible, the claimant should be informed in writing that the claim is no longer under suspension and proceedings are moving forward (refer to Appendix F).

10.4. Procedures for suspending eligibility after referral to the RPD

To suspend eligibility after referral to the RPD, the officer will:

- schedule an in-person interview for CSIS interest cases;
- complete the applicable A44(1) report;
- complete, copy and distribute to those concerned (the client, the RPD and the file) form IMM 5359B – "Notification to the Refugee Protection Division and the Refugee Appeal Division and the Person Concerned by an Immigration Officer Pursuant to A103(1) of the Suspension of Consideration of Claim'';
- refer the claim to the ID for determination;
- complete the "Notification to RPD to Suspend" (NS) screen in FOSS; and
- notify the RPD to suspend consideration either by sending the notification through FOSS or manually by fax.

10.5. Extradition procedure

If an officer comes across a case that involves extradition procedures, Case Management Branch at National Headquarters must be contacted.

Suspension if proceeding under *Extradition Act*

A105(1) states that the RPD shall not commence, or shall suspend, consideration of any matter concerning a person against whom an authority to proceed has been issued under section 15 of the *Extradition Act* with respect to an offence that is equivalent to an offence under Canadian law that is punishable under an Act of Parliament by a maximum term of imprisonment of at least 10 years, until a final decision under the *Extradition Act* with respect to the discharge or surrender of the person has been made.

Continuation if discharge under *Extradition Act*

A105(2) stipulates if the person is finally discharged under the *Extradition Act*, the proceedings of the applicable Division may be commenced or continued as though there had not been any proceedings under that Act.

Rejection if surrender under *Extradition Act*

Under A105(3), if the person is ordered surrendered by the Minister of Justice under the *Extradition Act* and the offence for which the person was committed by the judge under section 29 of that Act is punishable under an Act of Parliament by a maximum term of imprisonment of at least 10 years, the order of surrender is deemed to be a rejection of a claim for refugee protection based on paragraph (b) of Section F of Article 1 of the Refugee Convention.

Final decision

As per A105(4), the deemed rejection referred to in A105(3) may not be appealed, and is not subject to judicial review except to the extent that a judicial review of the order of surrender is provided for under the *Extradition Act*.

Limit if no previous claim

A105(5) states that, if the person has not made a claim for refugee protection before the order of surrender referred to in subsection A105(3), the person may not do so before the surrender.

11. Procedure - Redetermination of eligibility

An officer "may" proceed with a redetermination of eligibility if there is information to indicate that the claimant should not have been found eligible to make a claim or is no longer eligible to make a claim. A104 allows an officer to redetermine the eligibility of a claim and to notify the Refugee Protection Division that the claim is no longer eligible, thus ending their jurisdiction over the case.

Although redetermination is discretionary, if there is evidence to prove that a person is ineligible, redetermination should be the preferred course of action. However, there may be situations where it is appropriate to have the RPD make a decision on the claim. For example, cases involving exclusion clauses could merit consideration by the RPD. Refer to Section F of Article 1 of the *United Nations Convention Relating to the Status of Refugees*.

An officer can end the Refugee Protection Division jurisdiction and redetermine eligibility with respect to a claim that is before it or has been determined when it is not the first protection claim made by the person. If the ineligibility is based on multiple protection claims under A104(1)(d), any decision respecting a claim other than the first claim will be nullified pursuant to A104(2)(b).

11.1. Where can redetermination be applied?

IRPA provides the following eight grounds on which an officer may determine that a claim is not eligible for referral to the Refugee Protection Division (RPD).

1. Refugee protection has been conferred on the claimant under IRPA (includes any previous Immigration Act) [A104(1)(a), A101(1)(a), R338]

Persons whose claims have already been determined in Canada are not eligible because they have already been determined to be protected persons. A101(1)(a) includes persons accorded Convention refugee status by Canadian visa officers abroad in accordance with the Regulations.

2. A claim for refugee protection by the claimant has been rejected by the Board under IRPA or any previous Immigration Act [A104(1)(a), A101(1)(b), R338]

This provision prevents someone from making repeated claims for refugee protection. Although these previous claimants are barred from a subsequent IRB protection determination, they may, if returning to Canada after six months, apply to the C&I Minister for a pre-removal risk assessment (PRRA).

Note: CIC's operational policy is that refugee claims made prior to June 28, 2002 will not automatically be found ineligible on the basis that they are repeat claims. Thus, someone who has made a claim that was refused by the Board, left Canada, returned after three months under the 1976 legislation, and made another claim before June 28, 2002 will not, for that reason alone, be found ineligible under IRPA. However, if the repeat claimant is inadmissible due to security, violating human or international rights, serious criminality or organized criminality, the claimant's eligibility will be redetermined. Whether they were referred before or after June 28, 2002, officers will continue to redetermine eligibility for claimants who have been determined to be inadmissible based on grounds of security, violating human or international rights, serious criminality or organized criminality [A101(1)(f)].

3. A prior claim by the claimant was determined to be ineligible to be referred to the Refugee Protection Division, or to have been withdrawn or declared abandoned under any previous *Immigration Act* [A104(1)(a), A101(1)(c), R340, R341]

A claim that has been withdrawn to an officer or to the RPD or declared abandoned by the RPD is considered to have been finalized and no further claims will be considered.

4. A claimant who has been recognized as a Convention refugee by a country other than Canada and can be sent or returned to that country [A104(1)(a), A101(1)(d)]

Persons who have already been granted protection as refugees are not eligible for determination by the RPD if they can be returned to the country of first asylum. A person may be in possession of an identity or travel document stating that the person has been granted refugee status in the issuing country. The officer must be satisfied that the person was granted refugee status under the Convention. Some countries grant temporary refugee status or asylum that does not necessarily comply with the requirements of the Convention. If the country that granted the refugee status has not signed the Convention, the claimant cannot be returned there.

If a person has been recognized as a Convention refugee and the person claims that they cannot be returned to the recognizing country, the officer must make an assessment. This may require liaison with Consulates. If a person has two nationalities, they must make a claim for protection against both countries. However, case law confirms that A101(d) can be applied to a Convention refugee of another country even if they now claim persecution from the country that granted them protection [*Jekula v. Canada* (2000) FCA]. The words "can be returned to that country" simply refer to whether that jurisdiction will readmit the person.

The Refugee Convention does not apply to any person who has acquired a new nationality and enjoys the protection of the country of new nationality. This means that, once someone becomes a citizen of the country of refuge, they are no longer a refugee and would be eligible to make a claim against the new country of nationality.

For a list of Convention countries, see http://www.unhcr.ch/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=PROTECTION&page=PROTECT&id=3b73b0d63

5. The claimant came directly or indirectly to Canada from a country designated by the Regulations, other than a country of their nationality or their former habitual residence [A104(1)(a), A101(1)(e), A102]

In order for a country to be designated a “safe third country” pursuant to the Regulations, it must comply with Article 33 of the Refugee Convention and Article 3 of the Convention Against Torture. The United States is the only country that has been designated to date. The *Agreement between Canada and the United States for Cooperation in the Examination of Refugee Status Claims by Nationals of Third Countries*, commonly known as the Safe Third Country Agreement, outlines the application of the Agreement. For more information, refer to http://www.cic.gc.ca/english/policy/safe%2Dthird.html

6. The claimant has been determined to be inadmissible on grounds of security, violating human or international rights, serious or organized criminality. The exception is if the person is from a country in which Canada has imposed or agreed to impose sanctions in concert with an international organization or association of states [A104(1)(b), A101(1)(f), A35(1)(c), A101(2)]

Under the terms of the Convention, a country is not obliged to provide protection where the person poses a danger to security, violating human or international rights, or has committed a serious non-political crime outside the country of refuge prior to their admission to that country. Accordingly, persons who constitute such a danger are not eligible for a determination of their claim in Canada. In cases where an A44(1) report has been referred to the Immigration Division and the claimant is found described, an officer can then redetermine eligibility.

Note: The security certificate provisions in Division 9 of IRPA provide that, once a security certificate is signed by the Minister of Immigration and the Minister of Public Safety and Emergency Preparedness and referred to the Federal Court under A77(2) for a reasonableness determination, no other IRPA proceedings may commence except for an application under PRRA made pursuant to A79. If a proceeding has commenced (including a refugee protection claim before RPD) it must be adjourned until the Court makes a decision. If a certificate is found reasonable by the Federal Court, then an officer is authorized to terminate a claim that is before the RPD [A104(1)(b), A104(2)(a)]. Once the Federal Court finds a certificate reasonable, the person would be subject to removal and no application for PRRA is possible as per A81(c).

7. The person's claim was referred as a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter and the claim was not otherwise eligible to be referred to the RPD [A104(1)(c)]

A104(1)(c) is distinct from A104(1)(a) and A104(1)(b). While (a) and (b) refer to situations where it has come to light that a claim before the Refugee Protection Division (RPD) is ineligible under A101(1)(a) to (f), A104(1)(c) refers to a situation where a claim was referred to the RPD because material facts relating to a relevant matter were withheld or misrepresented, and had those facts not been withheld/misrepresented, the claim would not have been eligible to be referred to the RPD. IRPA allows redetermination of eligibility for exactly the same reasons as the original determination. Misrepresentation of identity does not, on its own, render the claim ineligible. If the claimant misrepresented or withheld material facts that would have rendered the claim ineligible to be referred to the RPD, the claimant may be found to be inadmissible pursuant to A104(1)(c).

Example: A person may come to Canada from a designated safe third country and be found eligible to make a claim based on the exception that they have an anchor relative in Canada. If information later comes to light that they misrepresented the relationship and the person is not a relative, the claimant should not have qualified for an exception and thus, an officer can redetermine eligibility.

8. The person's claim is not the first claim that was received by an officer in respect to the claimant. This is the only provision that includes claims on which the RPD has rendered a decision [A104(1)(d), A104(2)]

Evidence, such as fingerprint matches provided by the RCMP or statutory declarations signed by claimants, can indicate that the claimant has previously claimed refugee protection. The officer will notify the claimant and the IRB of the determination that a previous claim for protection has been made. The first claim will be considered to be the only claim and all other claims/determinations will be considered null and void. This provision includes both repeat claims and multiple claims. A repeat claim occurs when a person makes a claim for refugee protection in Canada, leaves Canada, returns to Canada and makes another claim. A multiple claim occurs when a claimant makes a claim and then, without leaving Canada, makes another claim while the first claim is still in process.

11.2. Procedure: Redetermination

IRPA authorizes officers to redetermine eligibility. Officers must exercise good judgement in cases where identity is uncertain or where there is some doubt as to whether or not protection has been granted in another jurisdiction. In most cases, the claimant should be notified of an interview date that will allow the claimant an opportunity to respond to the evidence gathered prior to the officer making a decision (refer to Appendix N). This procedure is encouraged to ensure procedural fairness.

Officers should:

- send a letter to the claimant (refer to Appendices G to M) with relevant evidence advising that the eligibility decision may be/has been redetermined and advising of a date to report for an interview (see note below);

- allow the claimant an opportunity to respond to the evidence (see note below);
- render a decision based on evidence and submissions;
- enter the Redetermination decision, date and reason in FOSS "Notification to RPD – Subsequent Eligibility Decision" (SE screen);

Note: For a multiple claim case, no redetermination of eligibility is necessary. The officer enters the information on the "Nofication to the RPD - Multiple Claims" (MC) screen in FOSS and then transmits the information to the RPD which notifies them to terminate proceedings/nullify decision respecting any claim but the first claim..

- once the FOSS screen is complete, choose Print Final [or Send Notification Only (SN)] option which electronically sends the notification to the RPD forthwith in order for the hearing to be terminated;
- complete, copy and distribute to those concerned (the client, the RPD and the file) form IMM 5363B "Notification to the Person Concerned By An Immigration Officer Pursuant to Paragraph 104(1)(a),(b),(c) or (d)".

There may be certain cases where ineligibility is abundantly clear and pertains to something that the claimant was asked about previously (and failed to reveal) during the initial eligibility decision. In those cases, it is not necessary to go back to the applicant for a response and the redetermination decision can be mailed to the client. See examples below for cases where an in-person interview is not required.

Inadmissibility due to serious criminality in Canada

If a claimant is inadmissible due to serious criminality in Canada, officers will:

- provide the claimant with a letter notifying them that the CBSA is in possession of information indicating that they are ineligible to make a refugee claim because they have been convicted of an offence in Canada (refer to sample letter in Appendix J);
- include a copy of the court record detailing the in-Canada conviction(s).

For a previous decision by the Refugee Protection Division or previous ineligibility decision, officers will:

- provide the claimant with a letter outlining the reasons for client's ineligibility to make a refugee claim (refer to sample letter Appendix G);
- include a copy of the previous decision or confirmation from RCMP fingerprint matches.

Further to the outcome of an admissibility hearing before an adjudicator where the claimant was present, officers will:

- provide the claimant with a letter stating inadmissibility that was determined at a hearing before the Immigration Division (ID) (refer to sample letter Appendix K).

11.3. Redetermine or suspend?

In some situations, officers may be required to make a decision whether to suspend the Refugee Protection Division (RPD) proceedings now or redetermine eligibility later. Where an officer becomes aware that the claimant is in fact ineligible, eligibility may be redetermined before the

RPD renders a decision or, in the case of multiple claims, notification to nullify a decision can be sent to the Board after the RPD decision.

Suspension is a possible course of action when a report has been referred to an admissibility hearing for security, violating human or international rights, serious criminality, organized criminality, or where serious criminal charges in Canada are outstanding.

Redetermination

An officer may redetermine eligibility when evidence becomes available that the claimant is ineligible to have a claim referred to the RPD.

A case may have already been referred to the RPD or with reference to A104(1)(d), the RPD may have already rendered a decision on the claim.

Redetermination may also be exercised in cases where an officer is waiting for information to confirm that the person is ineligible. The claimant can be determined eligible and then be redetermined once confirmation is received [A104].

Suspension

An officer suspends the proceedings of the RPD when a report has been completed by an officer and the case has been referred to the Immigration Division for an admissibility hearing [A103, A34 to A37].

In cases involving security, violating human or international rights, serious criminality or organized criminality, the proceedings at the RPD are suspended until the result of the hearing is received [A103(1)(a)].

If the officer is waiting for a decision from the court (i.e., matter pending before the court), the officer may suspend the RPD proceedings or the officer may refer the claim to the RPD and then proceed with redetermination once the court renders a decision. The officer may also inform the hearing officer of a possible intervention at the RPD. Situations where a claimant's criminality may not warrant a suspension of eligibility are referred to in section 10 above [A100(2)(a), A103(1)(a), A104].

12. Procedure - Intervention before the IRB

(See ENF 24, Ministerial Interventions.)

Officers may revisit any eligible claim if, while the claim is still pending at the RPD, information is discovered that would render the person ineligible under A104(1)(a) to (c).

After a decision has been made by the RPD, the eligibility of multiple claims cases can be redetermined.

See A104(1) or section 3 above.

13. Procedure - Withdrawal of claims for refugee protection

The claimant should provide a travel document with proof that they are leaving Canada (usually a travel ticket). The officer will:

- photocopy the documents and attach them to the file;
- complete required form IMM 5317B, Withdrawal of a Claim for Refugee Protection prior to Referral to the RPD";

- complete Voluntary Departure - Confirmation IMM 5021B (the top portion only);
- read the withdrawal letter to the claimant and ensure that the claimant understands the statement and the consequences of the withdrawal;
- once the claimant signs the document, give the claimant the top copy and keep the other copies on file;
- attach a photo to both forms and port stamp the photos.

If the claimant is out of status, they must leave Canada immediately. If in status, the claimant must be counselled to leave upon expiry of their status. Officers will:

- remind the claimant that they must confirm departure with an officer upon departure by checking in with the airline to obtain a boarding card and then presenting the card along with the voluntary departure form;
- enter an NCB in FOSS, and the office holding the refugee file can close the file;
- if the claimant does not confirm departure, the CBSA will issue a warrant for arrest;
- if the claimant does confirm departure, notate on the RR screen that the claimant withdrew the application; select “Otherwise concluded – Code 3” and indicate the date the notation was entered;
- If an A44(1) report was written, it must be concluded; cancel the direction for admissibility determination and in the “DM Disposition” area, state “no direction” – Code 02.

If a refugee claimant withdraws the application because a sponsorship has been initiated, the conditional removal order becomes effective and the claimant is required to leave Canada within 30 days.

The withdrawal of refugee claim (IMM 5317B) BEFORE referral to the Refugee Protection Division does not deal with cases already referred to the RPD. The declaration form IMM 1392B must be used and must indicate that the person is withdrawing the refugee claim and understands that leaving Canada may result in a deportation order. Officers will send this form to the Commission office in charge of the case for action and send a copy of the declaration to the claimant.

Once a refugee protection claim has been referred to the IRB, the claimant has to withdraw the claim at the IRB (orally at a proceeding, or in writing). If the claimant does not do so, and leaves the country, the RPD will determine the claim to be abandoned. Once the claim is withdrawn or abandoned, the removal order will come into force on the 15th day from the date of the withdrawal or abandonment under A49(2)(d).

Only before the claim is referred to the RPD can the case be withdrawn to an officer, who has the person sign the IMM 5317B, Withdrawal of a Claim for Refugee Protection prior to the referral to the RPD. If a person subject to a removal order that is "not in force" has presented themself to the CBSA at a POE, has indicated a desire to leave Canada and indicated that they no longer want to continue their claim for refugee protection, an officer cannot prohibit the person from leaving. An officer can allow the person to depart from Canada. However, a Certificate of Departure (IMM 0056B) should not be issued until the removal order has come into force. If the CBSA were to issue a Certificate of Departure before the removal order was in force, an officer would be "enforcing" the removal order before the order had come into force and would be in violation of the Act.

When faced with the above scenario, before allowing the person to leave Canada, officers should:

- ensure that the person concerned is aware of the fact that the removal order is not yet in force and the implications; obtain a statutory declaration which indicates that the person was advised of these details;

- obtain an address for service of the IMM 0056B, Certificate of Deparature, which will be sent to the person concerned after the expiration of the 15-day period under A49(2)(d). If a statutory declaration is obtained, the address for service could be noted in the declaration;

- ensure that an NCB in FOSS contains detailed notes explaining the circumstances. FOSS notes should include:

  - the person wanted to depart Canada voluntarily;

  - reasons for departing;

  - whether a statutory declaration was obtained and whether the it was translated; and

  - where and when the IMM 0056B should be sent;

- follow-up the case and mail the IMM 0056B to the address provided by the person after the removal order has come into force under A49(2)(d).

14. Procedure - Minor children

14.1. Purpose

This section applies to taking a refugee protection claim from a person who is below the age of 18 years. The words “child”, “minor child”, or “minor” are all used to describe these people. Admission, eligibility, and referral to the Immigration Division or Refugee Protection Division of the Immigration and Refugee Board, for inquiry or hearing are covered below.

One need not be an adult to make a claim for refugee protection to the Refugee Protection Division of the Immigration and Refugee Board (IRB). The IRB Chairperson's Guidelines (Guideline 3 - Child Refugee Claimants: Procedural and Evidentiary Issues) address the specific procedural issue of the designation of a representative and the more general procedural issue of the steps to be followed by the IRB in processing claims by unaccompanied children. The Guidelines also address the evidentiary issues of eliciting evidence in a child's claim and assessing that evidence. See the IRB website at

www.irb-cisr.gc.ca

14.2. Obligations and definitions

Minor children are generally subject to all the obligations and requirements that adults are. They are also subject to requirements that apply specifically to children (i.e., child protection legislation, education, health) and specific provincial departments and agencies that deal with children.

Convention on the Rights of the Child

The United Nations *Convention on the Rights of the Child* recognizes the obligation of a government to take measures to ensure that a child seeking refugee status receives appropriate protection. Canada has signed and ratified this Convention. The text can be found at http://www.pch.gc.ca/progs/pdp-hrp/docs/crc_e.cfm.

Article 1

". . . a child means every human being below the age of eighteen years. . ."

Article 3

"1. In all actions concerning children . . . the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures."

Article 22

"1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties."

Other relevant articles include Article 2 (non-discrimination); Article 6 (right to life and maximum survival and development); Article 7 (birth registration, name, nationality and right to know and be cared for by parents); Article 8 (preservation of identity); Article 9 (separation from parents); Article 10 (entering or leaving countries for family reunification); Article 12 (respect for the views of the child); Article 16 (right to privacy); Article 20 (children deprived of their family environment); Article 30 (children of minorities or indigenous peoples), Article 37 (torture, degrading treatment and deprivation of liberty); Article 38 (pprotection of children affected by armed conflict); and Article 39 (rehabilitation of child victims).

Other international obligations

The UN *Convention against Transnational Organized Crime*, which came into force in September 2003, has two protocols, one on trafficking, which came into effect in December 2003 and one on smuggling, which came into effect January 2004. They provide a balance between legitimate anti-trafficking measures and the basic tenets of international refugee protection. They include "saving clauses", such that States' refugee protection obligations are unaltered by the operation of the Protocols. The primary effect is to ensure access to an identification and screening process so that everyone in need of international protection has an effective means of claiming it.

UNHCR

The 1997 Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum call for an "effective continuum of care and protection" that starts with the arrival and identification of the children when they enter Canada and continues through all aspects of their care as they go through the immigration process and either obtain status to remain in Canada or require removal.

The section on unaccompanied minors in the UNHCR Handbook on the Convention on the Status of Refugees provides:

"214. ... In the absence of parents or of a legally appointed guardian, it is for the authorities to ensure that the interests of an applicant for refugee status who is a minor are fully safeguarded."

UNHCR Guidelines with respect to gender and sexual violence issued in May 2002 (*Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the*

1951 Convention and/or its 1967 Protocol relating to the Status of Refugees) recognize that trafficking for the purposes of forced prostitution or sexual exploitation, as well as trafficking for other purposes, may be a form of persecution that would found a valid refugee claim, where there is also a failure of state protection. Paragraph 18 of the Guidelines states:

> "18. Some trafficked women or minors may have valid claims to refugee status under the 1951 Convention. The forcible or deceptive recruitment of women or minors for the purposes of forced prostitution or sexual exploitation is a form of gender-related violence or abuse that can even lead to death. It can be considered a form of torture and cruel, inhuman or degrading treatment. It can also impose serious restrictions on a woman's freedom of movement, caused by abduction, incarceration, and/or confiscation of passports or other identity documents. In addition, trafficked women and minors may face serious repercussions after their escape and/or upon return, such as reprisals or retaliation from trafficking rings or individuals, real possibilities of being re-trafficked, severe community or family ostracism, or severe discrimination…"

Furthermore, in May 2003 UNHCR issued its revised document, *Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons*, *Guidelines for Prevention and Response*. The Guidelines acknowledge that any abuse of a position of vulnerability, differential power or trust for sexual purposes constitutes exploitation, and that the perpetrator may be any person in a position of power, influence or control, including humanitarian workers, soldiers, officials, teachers, smugglers, traffickers and others.

Goal Two, paragraph 2 of the Agenda for Protection, recently adopted by States and by the UNHCR, requires States to ensure that their asylum processes are open to receiving claims from individual trafficked persons, especially women and girls.

http://www.unhcr.ch/cgi-bin/texis/vtx/home/+dwwBmSe_DTpwwwwnwwwwwwwhFqA72ZR0gRfZNtFqrpGdBnqBAFqA72ZR0gRfZNcFqVwtnDmwahdGapGdBnqBodDDzmxwwwwwww1FqmRbZ/opendoc.pdf

Immigration and Refugee Protection Act

IRPA does not set out specific procedures or criteria for dealing with claims from children. However, A3(3)(f) requires that IRPA be interpreted and applied in compliance with international instruments, which includes the *Convention on the Rights of the Child*.

A60 affirms as a principle that a minor child shall be detained only as a measure of last resort, taking into account the other applicable grounds and criteria including the best interests of the child. (See ENF 20, section 5.10, Detention of minor children.)

Canadian court decisions

The Supreme Court of Canada in *Baker v. Canada,* [1999] 2 S.C.R. 819, recognized that the *Convention on the Rights of the Child* has an impact on administrative decision-making by federal government officials. The decision-maker must be "alert, alive and sensitive" to a child's interests. In *Legault v. Canada (Minister of Citizenship and Immigration)*, [2002] 4 F.C. 358; (2002), 212 D.L.R. (4th) 139; 20 Imm. L.R. (3d) 119; 288 N.R. 174 (C.A.); leave to appeal to S.C.C. refused, 21/11/02, the Court said that the interests of the children must be examined with care and weighed with other factors. While the best interests of the child are one factor that an officer must examine with a great deal of attention, there is no presumption that this must necessarily prevail over other important considerations.

Best interests of the child

The "best interests of the child" principle is a recognized legal principle. The Supreme Court of Canada, in *Canadian Foundation for Children, Youth and the Law*, found that it is not a principle of fundamental justice as defined in Canadian law.

Some factors which may affect the best interests of the child are age, gender, cultural background and past experiences.

14.3. What is expected of the officer

Minor children who make refugee claims in Canada: Admission

The situation of a minor child claiming refugee protection in Canada will be affected by a number of factors, which may occur in various combinations (described in more detail below):

- the child may arrive with adults, meet adults on arrival, plan to meet adults elsewhere in Canada, or have no contacts in Canada on arrival;
- there may be one or more children;
- there may be one or more adults;
- the adults may be parents, other family members (for example, grandparents, adult siblings), customary caregivers, friends or neighbours, or child care or other professionals;
- the adults may purport to belong to any of the above categories.

Any of the categories of adults accompanying child claimants (parent, purported or actual family member, or friend) may have the child's best interests at heart or may be acting contrary to the child's best interests. In the majority of cases, the adult will likely be acting in the best interests of the child but it is also possible that the child may be trafficked, abducted, or smuggled, contrary to the best interests of the child.

For the purpose of acting in the child's best interests, and to comply with international obligations, officers should take some care to ensure that a person purporting to be a parent, other relative, guardian, caregiver, friend or neighbour is legitimate (i.e., not victimizing the child).

At the POE, when there are concerns about the purpose of their trip to Canada, their welfare or the parental/family relationship of an accompanying adult, children are mandatory referrals for an immigration secondary examination. This is true whether they are accompanied or alone. (See Customs Inspector's Handbook on Immigration.)

An important factor in looking at the legitimacy of the relationship between the child and the adult (if there is one) is whether the adult is also seeking to enter Canada or making a refugee protection claim. If the adult, as well as the child, is seeking to enter Canada or claiming refugee protection, an officer has more authority to examine the adult to determine his or her identity.

The categories below all involve a child who is making a claim for refugee protection. For the purposes of this section, it is assumed that the child has the capacity to make a claim (see Capacity to make a claim, below). If there is more than one child, officers should determine the relationship of the adult or adults to each child separately and not assume they are siblings.

If the child is accompanied by two adults (POE or inland) and they all claim refugee protection

Officers will proceed as follows:

- as part of the examination of the adults, determine their relationship to each other and to the child;
- if the adults are not the parents, ask where the parents are, and who has legal custody;
- try to establish proof of relationship with the child if the adults are not the parents;

- it is not necessary to examine the child separately from the adults, unless there is some reason to do so;
- fingerprint and otherwise attempt to identify the adults (the examination process gives this authority);
- if the adults are the parents of the child, proceed as per PP 1, Processing Claims for Refugee Protection in Canada.

If the child is accompanied by one adult (POE or inland) and both the adult and the child claim refugee protection

Officers will proceed as follows:

- as part of the examination of the adult, determine the adult's relationship to the child;
- if the adult is a parent of the child, ask where the other parent is, and whether they know the whereabouts of the child;
- ask whether this parent has the legal right to travel with the child, and what documentation they have to prove this;
- fingerprint and otherwise attempt to identify the adult (the examination process gives this authority);
- as part of the examination of the child, ask the child's relationship with the adult.

If it is a possible case of abduction, including parental abduction (if an officer is not satisfied that this adult has the right to travel with this child), see procedure described in Notifying child welfare authorities: Formal reporting requirements, below.

If one or more children are accompanied by more than one adult (group arrivals) and they all claim refugee protection

Officers will proceed as follows:

- as part of the examination of each adult, determine the adult's relationship to the child;
- if one of the adults is a parent of one of the children, ask where the other parent is, and whether they know the whereabouts of the child;
- ask whether this parent has the legal right to travel with the child;
- fingerprint and otherwise attempt to identify the adults (the examination process gives this authority);
- as part of the examination of the child, ask the child's relationship with each adult;
- if none of the adults is a parent of the child, ask where the parents are and if they know the whereabouts of the child.;

If it is a possible case of abduction or trafficking, see procedure described in Notifying child welfare autorities: Formal reporting requirements, below.

If the child is accompanied by one or more adults (POE); the child makes a claim and the adult(s) do(es) not

Officers will proceed as follows:

- as part of the examination of the adult (who is seeking to enter Canada), ask the adult's relationship with the child;
- refer to ENF 7, section 22 for authority to fingerprint the adult.;
- ask the adult for identification;
- as part of the examination of the child, ask the child's relationship with the adult.

If the child is accompanied by one or more adult (inland); the child makes a claim and the adult(s) do(es) not

There is no authority to examine the adult, therefore, officers will proceed as follows:

- ask the adult about their relationship with the child; in some cases, the adult may be a child care or social service worker, a relative, or a family friend;
- if the adult is not a parent, ask about the existence and/or whereabouts of the child's parent(s) or guardian;
- if the adult is a parent, ask the whereabouts of the other parent;
- ask the adult for identification, however, there is no authority to fingerprint them;
- as part of the examination of the child, ask the child's relationship with the adult.

If the child arrives alone (POE) and makes a claim and an adult comes to meet the child

There is no authority to examine the adult, therefore, officers will proceed as follows:

- ask the adult's relationship with the child;
- ask the adult for identification, however, there is no authority to fingerprint them;
- if it is not a parent, ask about the existence and/or whereabouts of the child's parent(s) or guardian;
- as part of the examination of the child, ask the child's relationship with the adult.

If the child arrives alone, makes a claim, and states that they are going to meet an adult elsewhere in Canada

Officers will proceed as follows:

- as part of the examination of the child, ask about the existence and/or whereabouts of the child's parent(s) or guardian;
- attempt to contact the adult, if possible;
- ascertain whether the child has appropriate travel and care arrangements..

If the child who makes a claim is entirely alone, or with minor siblings, with no connection with any adult in Canada

Officers will:

- contact the appropriate social service agency. See Notifying child welfare autorities: Formal reporting requirements, below.

If an adult contacts a CIC/CBSA after the child has made a claim, and left the CIC/CBSA

Officers will verify if the adult was named by the child during the examination.

Note: More than one of these situations may be the case for any particular child/group of children. For example, they might arrive with one adult and plan to meet another.

Notifying child welfare authorities: Formal reporting requirements

Every jurisdiction in Canada has legislation for reporting children at risk.

Key differences from province to province include:

1. the threshold age for a child (varies from 16 to 19);
2. who can or should report;
3. specific criteria for when a child is considered to be at risk;
4. the threshold for reporting ('reasonable suspicion' vs. 'reasonable belief', etc.).

Key similarities among all the provinces include:

- "At risk" includes situations where children have suffered or are likely to suffer serious physical or emotional harm, or sexual abuse or exploitation, and a parent or guardian is unwilling or unable to protect them.
- Most provinces recognize abandonment as a ground for reporting. However, the simple fact of the child being unaccompanied does not always mean they are abandoned. Other factors must be considered, including the child's age, maturity, existing arrangements for their care, location of parents or family, assessment of the person coming to meet the child, etc.
- The standard of proof is low: the laws allow for good faith reporting where there are plausible reasons to suspect children are at risk. Once officers have an honest belief that a child is at risk in Canada they can report the situation to the provincial authorities for investigation.
- The provincial laws generally protect authorities who report in good faith from liability.
- Some provinces create offences for knowingly or recklessly failing to report.

To trigger reporting, officers need to believe that the child could be at risk in Canada. Having made a refugee claim is not in itself proof that the child is at risk under child welfare legislation. Each case must be assessed on its facts and circumstances, taking into account the factors outlined above. The child may claim to be at risk elsewhere, but there may be no indication that they may be at risk in Canada.

However, officers should remember that after-effects of previous harm or abuse (medical, psychological, developmental) can place a child at continuing risk, and trigger reporting. Indications that would trigger concerns may be related to:

- suspected child smuggling;
- trafficking;
- the facts of the refugee claim itself, if relevant to the ongoing situation in Canada;
- other immigration-related issues.

It is for the provincial authorities, not officers, to investigate, determine the issues and take any action required. Officers should not ask detailed questions related to child welfare issues once they are satisfied that they ought to report the matter to the provincial authorities.

Like other issues under IRPA, the choice of whether to formally report a child to the child welfare authorities must be made on a case-by-case basis. Judgement must be exercised, as the possibility of risk to an unaccompanied child will depend on many circumstances, including the child's age and the appropriateness of any arrangements previously made for the child's care and other factors listed above. Risk, in the child welfare context, does not refer to risk of persecution, but rather risk as defined under the child welfare legislation in the province in which the claim is made. Officers should refer to the relevant criteria and threshold for reporting children at risk in the appropriate provincial child welfare legislation.

See ENF 20, section 5.10, Detention of minor children.

Notifying child welfare authorities: Privacy concerns

The disclosure of personal information must comply with the federal *Privacy Act (PA)*.

Disclosure of information about the child

Provided that officers conclude, on a case-by-case basis, that each unaccompanied child may need protection, disclosure is authorized as a consistent use under section 8(2)(a) of the *Privacy Act*, as long as there is a reasonable and direct connection to the original purpose for which the information was obtained. The question is "would it be reasonable for the individual who provided the information to expect that it would be used in the proposed manner". In general, it would be reasonable to expect that the authorities in a country of refuge would share information for the purposes of ensuring the safety of the claimant and providing assistance by referral to appropriate agencies, such as child welfare authorities.

However, the power to disclose under the *Privacy Act* is subject to a minimal disclosure principle: disclose no more personal information than is required to accomplish the permitted purpose. This will depend on the circumstances of each case. Judgement must be exercised regarding the extent of disclosure.

Thus, in order to respect the child's right to privacy, officers should disclose only the minimum amount of personal information necessary to convey the grounds for concern for the child's welfare, in order to enable the provincial authorities to commence their investigation.

The *Privacy Act* covers personal information only. An officer who observes an unattended infant in a public place would be entitled (as any citizen would) to report such an observation to the appropriate authorities.

Disclosure of information to the child

Section 10(a) of the *Privacy Regulations* allows for the rights or actions provided for under the Act and Regulations to be exercised or performed on behalf of a **minor** by a person authorized by law to administer the affairs of that person. This means that **all** the rights or actions given to individuals under the Act and Regulations may be undertaken by a person designated under provincial child welfare statutes, on behalf of the child. One of these rights is the right of access to

an individual's personal information. The person may then use and disclose this information for any purpose they chose.

However, it is important to remember that the right of access is restricted to Canadian citizens, permanent residents, or individuals who are present in Canada at the time access is requested **and** when access to the information is given. Thus, once the child is in Canada and would likely remain, they would be afforded access rights, which then become transferable under section 10(a) of the *Privacy Regulations*. The intent of this provision is to permit other "authorized" individuals to obtain the personal information of these categories of persons, for the purpose of fulfilling their legal obligations for their care and safety.

Reception: Regional agreements and informal arrangements

Some regions/offices have negotiated arrangements or procedures that cover the responsibilities of CIC/CBSA, child welfare authorities, and/or other agencies, particularly with regard to the reception and care of separated (unaccompanied) children. Local arrangements and procedures should be on file at Regional HQ.

Where an officer does think that there are grounds for formal reporting under provincial legislation, it might be appropriate to inform the social service office by fax that a separated child is in their area and may require social service support. They can then decide if further action is appropriate. In other cases, the officer might want a childcare officer on site to intervene. If there are protection issues, and social services refuse to become involved, officers should request that social services put the refusal in writing and send it to them by fax.

It is preferable for officers to ask the young person if it is all right for them to inform social services.

Designated representative

IRPA requires the Refugee Protection Division of the Immigration and Refugee Board to designate a representative for every person under 18. In cases where the child and parents claim together, they usually appoint one parent as the designated representative of the child.

Duties of the representative designated by the IRB include:

- retaining counsel;
- instructing counsel or assisting the child in instructing counsel;
- making other decisions with respect to the claim or helping the child make those decisions;
- informing the child about the various stages and processes of the claim;
- assisting in obtaining evidence and being a witness, if necessary;
- acting in the best interests of the child.

The role of the designated representative is not the same as that of legal counsel. The child also has the right to be represented by counsel before the Refugee Protection Division of the IRB.

At present, CIC has no authority to designate a representative. Nevertheless, it is preferable that every child have an appropriate adult to assist with the claim in its early stages before it goes to the Board. This person should not be called a "designated representative" (although they may later become a designated representative, if so appointed by the Board). This adult should act in the best interests of the child and not be in a conflict of interest position with the child. It may be someone who has traveled with, or come to meet the child, or someone asked to assist according to regional/office practice.

New Regulations prescribe that if a C&I or PSEP minister's delegate is of the opinion that an A44(1) inadmissibility report is well founded and the case involves a minor who is not accompanied by a parent or adult legally responsible for them, the report must be referred to the Immigration Division of the IRB for an admissibility hearing. The Immigration Division may designate a representative to act on behalf of the child at that time.

For more information, refer to ENF 6.

Identification and age-related issues

Proof of age

There are currently no objective and scientifically definitive tests to determine age. Officers should try to establish the age of a claimant for refugee protection, if necessary, using the same means that they use to establish any other question related to identity (i.e., through documentary evidence or testimony).

The decision whether or not to treat the person as a child must be based on evidence. Written documentation may not always be available, and credible testimony may sometimes be sufficient. The burden of proof is on the claimant, and the level of proof is "on a balance of probabilities".

Capacity to make a claim

There is no age threshold for launching a claim. Officers can make reasonable, non-intimidating inquiries to ensure that the child has at least a rudimentary understanding of what they are claiming, to ensure that the child is seeking protection. Whether the child has an understanding of the process or not is irrelevant. The key is whether the child is asking for Canada's protection because they fear returning to their country of origin or former habitual residence because of persecution, torture, or risk of cruel and unusual treatment or punishment. Even if the child does not use the exact wording of A96 or A97, officers should follow through with a claim unless questioning clearly indicates that the child is not seeking protection.

Officers should keep children informed. Children old enough to understand what is meant by refugee status determination should be informed about the process, where they stand in the process, what decisions have been made and the possible consequences. Uncertainty leads to unnecessary anxiety, and, if not accurately informed, a child will be all the more receptive to rumours and bad advice and may form unrealistic expectations.

There is no requirement to sign a refugee claim application. However, to avoid future issues (such as identification), it is preferable to have both the child and a responsible adult sign the eligibility document where appropriate, having regard to the age and understanding of the child.

Fingerprinting children

Only those children 14 years of age and over should be fingerprinted.

When fingerprinting children, care must be taken to ensure that the child is reassured that this is routine and the officer does not think the child has committed a crime. Officers must take the time to explain that all persons age 14 and over are fingerprinted. For children aged 12-14, see ENF 12, section 12.1 and section 8.4 above.

Interviewing children

Children have a right to freely express their views in all formal decision-making processes that affect them, which shall be given due weight, depending on the age and maturity of the child. Closely related is the fact that the child needs appropriate information about options and consequences, in order to make an informed decision. On the other hand, a child should not be compelled to express views; this is a right, not an obligation.

Officers should be aware that a child may not perceive events in the same way as an adult or be able to present evidence with the same degree of precision with respect to context, timing, importance and details. As well, officers should be aware of cultural and gender issues that may affect communication, including both verbal and non-verbal signals. An assessment should be made of what evidence the child is able to provide, taking into account the age and maturity of the child and the nature of the claim.

The number of participants in the interview room should be limited. They may include:

- the child;
- the interviewer;
- the interpreter;
- the designated representative or person looking after the child's interests; and
- a lawyer or other counsel, if appropriate (see ENF 20 for information on counsel at examination)

Officers should try to avoid interviewing children without an adult in the room. If the nature of the relationship of the child with the accompanying (or meeting) adult is in question, another appropriate adult, child welfare worker, or counsel may be sought.

The length of the interview should take into account that the attention span of children is often shorter than that of adults. Officers should ask children periodically if they would like to take a break and allow for extra breaks, if necessary.

Officers should try to sit at the same level as the child to ensure a balance. If possible, they should sit across from one another, without a desk between the child and the interviewer.

Officers should ensure that the child and the interpreter understand each other. If possible, officers will choose an interpreter who can develop a relationship of trust with the child and continue to interpret for the child in further processes. Age-appropriate vocabulary should be used, and children should be encouraged to say so if a question is not understood. Officers should be patient if the child is slow in responding.

Detention of children

See ENF 20, section 5.1, Detention of minor children.

Flow-chart

Customs: mandatory referral

Officers will proceed as follows:

- interview adult(s), child/ren:
  - ♦ does the child appear to be afraid of the adult or show signs of abuse?
  - ♦ is it possible to determine who the legal guardian is?

Note: For details on authority to ask questions/require documents depending on the situation, see Minor children who make refugee claims in Canada: Admission, above.)

- perform a FOSS check on any adults;
- perform a CPIC check on any adults;

- check the Our Missing Children (OMC) website/fill out the OMC form and send it to the CIC/CBSA OMC representative;
- refer to or notify child protection authorities/social services as appropriate, according to local/regional procedures;
- ensure that the child and an adult both sign the eligibility documents;
- have Schedule 1 completed by all applicants as completely as possible. Explain that it was designed for adults and some of the questions may not be applicable;
- forward Schedule 1 (as per section 8.2, Step 2, above) only if, in the officer's view, it contains information that might require further investigation;
- fingerprint the child (if 14 and over).

14.4. Special categories of children

Separated children (unaccompanied minors)

There are a number of definitions of the phrases "unaccompanied minors" and "separated children".

The new Regulations refer to a person who is "under 18 years of age and not accompanied by a parent or an adult legally responsible for them." Thus, the child may be totally alone or accompanied/to be met by extended family members, family friends, or other adults. They are often referred to as separated, rather than unaccompanied, as a child may be separated from, and therefore without the care and protection of, their parents, and still be accompanied by an adult, who may not necessarily be able or suitable to assume responsibility for their care.

Children who are separated from their parents or legal guardian are considered unaccompanied for the purpose of making a claim, even if they are with other adults. In other words, for the purpose of CIC, children should be considered to be separated if they are not with a legal caregiver (custodial parent or legal guardian). For the purpose of reception, whether the person accompanying them (or coming to meet them) is able to provide sufficient care, should be referred to provincial authorities as appropriate. Some of the factors that they might consider in determining whether someone other than a parent or legal guardian can be an adequate caregiver include:

- the child's relation to the person (are they one of the relatives that may be sponsored for family reunification?);
- economic dependence (the further removed the family relationship, the greater the need for economic dependency);
- the age of the accompanying person and their ability to care for the child concerned;
- the age of the child;
- the child's family situation in the country of origin;
- the child's opinion;
- whether the child and the accompanying person lived together in the country of origin;
- whether the accompanying person has the parents' consent.

Children should have some capable person to represent their interests. Proper representation should be considered as soon as practicable in accordance with local or regional guidelines. See Designated representative, above.

When dealing with separated children, it is important to treat them in a manner that is appropriate to their age, while still taking account of other considerations, such as their refugee protection claim. Depending on the child's age and apparent ability to reason, the following information might be obtained by asking the child simple questions in a sensitive and non-threatening manner:

- biodata of the child and their identity;
- family situation [the whereabouts of the child's parent(s) or other guardian];
- the possible presence of any other relatives (in the country of origin or elsewhere);
- information about non-family members of importance to the child (in country of origin and elsewhere);
- information about the child's life before arrival;
- information concerning the child's separation from the family;
- travel routes.

Abducted children

See ENF 21, Recovering Missing and Abducted Children.

See ENF 24, Ministerial Interventions, for special case concerning the abduction or removal of a child from custody in contravention of a custody order.

Trafficked/smuggled children

Trafficking in persons involves some form of deception, coercion or force; the movement, transfer or harbouring of a person (legal or illegal); and actual or intended exploitation of the person on arrival or in transit. Under the *Protocol to Prevent, Suppress and Punish Trafficking in Persons*, the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation is considered to be "trafficking in persons". Exploitation includes the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

People smuggling, on the other hand, involves the procurement, for consideration, of the illegal entry of a person into a country (*Protocol against Smuggling of Migrants*). It is defined in A117 as knowingly organizing, inducing, aiding, or abetting the coming into Canada of one or more persons who are not in possession of a visa, passport, or other document required by the Act.

The issue of consent does not arise in child trafficking and abduction cases; by definition, a child cannot consent to most criminal acts.

Children can be trafficked (around the world) for the sex trade, forced labour, drug couriers, forced begging, body organs, or as child soldiers. While all trafficked persons are not refugees, and all refugees are not trafficked, refugees are particularly vulnerable targets for trafficking rings, especially in camp situations. Trafficking rings flourish in armed conflict and other situations of insecurity and chaos. In such situations refugee women and girls are particularly susceptible to a variety of threats. Refugee women are often without, or become separated from, family members during flight and fall victim to sexual abuse and exploitation. As well, some trafficked persons in Canada, particularly women and young girls, may in fact be considered refugees under the

Convention definition as a result of their trafficking experience and the inability or unwillingness of their country of origin to provide effective protection against such harm.

War-affected children

If information is provided in examination which suggests that the claimant may be a child soldier, before determining eligibility officers will send name, FOSS ID, DOB, and any other relevant information to the National War Crimes Unit at the following internal e-mail address: Nat-WarCrimes. If no response is received within three working days, refer to section 8.3 and section10 above.

Children between the ages of 16 and 18

Many provinces, by law or *de facto*, do not consider children between 16 and 18 to be as vulnerable as younger children. This does not change the fact that they are considered to be children in the Federal context and according to the *Convention on the Rights of the Child*.

15. Procedure - Administrative issues

15.1. Official languages

Members of the public have a right to communicate in the official language of their choice, either French or English. An officer who speaks the official language requested by a person will be provided.

The language of the proceedings respecting a claim for refugee protection is the language chosen by the claimant, either French or English.

15.2. Interpreters

In general, an interpreter provides an oral translation and a translator provides a written translation. In *R. v. Tran*, [1994] 2 S.C.R. 951, the Supreme Court of Canada provided the following comment:

> "…it may be helpful to note the conceptual distinction that exists between "interpretation", which is primarily concerned with the spoken word, and "translation", which is primarily concerned with the written word. In light of the fact that interpretation involves a process of mediation between two people which must occur on the spot with little opportunity for reflection, it follows that the standard for interpretation will tend to be lower than it might be for translation, where the source is a written text, where reaction time is usually greater and where conceptual differences which sometimes exist between languages can be more fully accommodated and accounted for."

Since the right to an interpreter is not absolute, a claimant who attended university in English or French, or who lived for many years in an English or French-speaking country may be, in some cases, properly questioned as to why an interpreter is being requested. However, it would be a very rare case, and only in the clearest of circumstances, where an officer would decide that an interpreter should not be provided. It would have to be determined that the claimant does understand and speak one of the official languages and was only making the request for an interpreter for some ulterior and improper motive.

The Ontario Court of Appeal noted in *R. v. Petrovic* (1984), 47 O.R. (2d) 97 that, when an accused person requests an interpreter, one ought normally to be provided without question. It is not the proper function of the trial judge or other decision-maker (such as an officer) to conduct a detailed inquiry into the claimant's ability to understand or speak the language of the proceedings. Very strong evidence would have to be presented to show that such a request is made in bad faith or for an improper motive before the constitutional right to an interpreter under section 14 of the

Canadian Charter of Rights and Freedoms is removed.

The Ontario Court of Appeal also noted that a person may be able to communicate in a language for general purposes but not have sufficient comprehension or fluency to face a proceeding with important consequences without the assistance of an interpreter.

15.3. Medical screening

As per R30(1)(e), all persons who claim refugee protection in Canada must submit to a medical examination.

The medical examination may include a mental examination, a physical examination, laboratory tests, including a chest x-ray and an assessment of medical records.

Claimants who are given appointments inland to return for front-end processing will be asked to bring proof that they have undergone a medical examination.

Where a medical officer is of the opinion that a person seeking to come into Canada is or may have a sickness or mental or physical disability or has been in contact with a contagious or infectious disease, the officer may direct that the person be taken to a suitable hospital or other place for treatment.

Refugee claimants are assessed by the Designated Medical Practitioner (DMP) for health and safety factors only. They are not assessed on whether or not they will cause an excessive demand on medical or social services.

15.4. FOSS

The Field Operational Support System (FOSS) assists the process for determining eligibility and referring claimants to the IRB. It is imperative that any action taken by an officer with regard to a claimant for refugee protection be recorded in FOSS.

Refer to the FOSS User Guide.
http://www.ci.gc.ca/cicexplore/english/systmguides/foss_ssobl/user_usager/index.htm

15.5. FOSS check for existing claimant

To conduct a name query in FOSS to determine if claimant already exists, officers will proceed as follows:

- enter claimant’s name in full in FOSS;
- perform Name Query (NQ) in FOSS using “All Immigration” function;
- check name;
- if multiple refugee claims are indicated, cross reference and enter NCBs on both names in FOSS;
- conduct complete FOSS check to see if the person is a potential "danger" or a previous refugee claimant.

In the RR screen, the “Family Status” section should indicate “Principal, Spouse or Dependant.” The “Total Persons in Family” should reflect the total number of persons in the family unit including the head of the family and any accompanying family members less than 19 years of age. By fully completing these sections, the electronic eligibility referrals arrive at the IRB properly cross-referenced.

15.6. CPIC and NCIC checks

CPIC/NCIC checks are done for all refugee claimants to identify criminality.

Officers should not place records on file that are irrelevant and could bias the case. However, the standard of proof in determining criminal inadmissibility is "reasonable grounds to believe." Therefore, officers must use discretion in attaching CPIC or NCIC printouts to a file.

15.7. CPIC checks

Officers should provide the claimant's name and details.

If a CPIC station is available, officers will proceed as follows:

- log onto CPIC;
- enter Claimant Name;
- go to level two;
- if printout required, stamp copy "not admissible as evidence".

15.8. NCIC checks

NCIC checks are conducted if it is suspected that there has been criminality in the United States.

NCIC checks should be conducted on any claimant who admits to having spent time in the U.S.A.

Checks with U.S. authorities may also be conducted to determine eligibility based on status in the U.S. Refer to the *Statement of Mutual Understanding (SMU) on Information Sharing* signed in 1999.

http://www.ci.gc.ca/cicexplore/english/org/aob/statement.htm

15.9. Fingerprints

The Immigration and Federal Branch, Refugee Identification Section, of the RCMP is responsible for national criminal screening of applicants for protection in Canada. They also deal with international inquiries on behalf of CIC and the CBSA.

Applicants' fingerprint bio-data are queried on the RCMP Police Information Retrieval System (PIRS) and matched to an operational file. These files are generated by a download from FOSS. The fingerprints are not processed until they are matched to an interfaced FOSS identification number that electronically generates an operational file.

The fingerprints are searched, classified and maintained on the RCMP Automated Fingerprint Identification System (AFIS) database, which contains all of the criminal history files. Applicants for protection who are fingerprinted for a criminal offence are assigned a criminal history (FPS) number. The criminal history and subsequent criminal convictions are forwarded to the CIC responsible for processing the claim. The RCMP maintains this file until CIC notifies them that the claimant has become a Canadian citizen. This is done via an interface that was created so that information on all new citizens is downloaded to the RCMP. The fingerprints are then deleted.

Since some offices use the wrong fingerprint forms for immigration purposes, it is sometimes impossible for the RCMP to determine what to do. Sometimes the office has attached part of an application to the fingerprint form, possibly to indicate what type of application it is, but the RCMP is not familiar with the applications so the purpose still cannot be identified. Therefore, it is essential that officers use the appropriate forms.

Photographs are to be maintained on the immigration file and should be sent to the RCMP only at their request.

Some private fingerprint companies take digitized photos (some black and white, some coloured) and these appear on the bottom corner of the fingerprint form. These do not interfere with the scanning of the prints.

Once Livescan is available, it will not impact on copies of fingerprints. Once the "original" transmission of fingerprints and client (photograph) are sent to RCMP/AFIS, the CIC officer should print a copy or copies for the client file. The copy looks exactly the same as the "ink and roll" versions (i.e., the C-216 and/or the C-216R fingerprint form).

Officers should stamp the printed copy with a "certified true copy" stamp, sign the document, and have the client sign the document.

Note: There is no electronic signature on the Livescan transmission. The printed copy is placed on the client's file.

Unacceptable prints

The RCMP tracks the number of unacceptable prints received and the percentage for some offices is high. This is cause for concern because some claimants who smudge the prints may not be identified.

When fingerprints cannot be used, a generic letter is sent to CIC or the CBSA from a reviewer/analyst with the original prints, asking that a new set be obtained. It is very important to follow up on these letters and obtain a replacement set of fingerprints.

Officers should not staple or glue a picture on the print form. This makes it impossible to scan because the scanner will not accept the thickness of the paper.

15.10. Interpol requests

Some officers try to go directly to Interpol to obtain information about claimants. The RCMP "is" Interpol in Canada and all requests directed to Interpol must go through their office.

All requests for Interpol information are to be directed to:

RCMP
Immigration and Federal Branch
Refugee Identification Section
1200 Vanier Parkway
Ottawa, Ontario
K1A 0R2

This will prevent the duplication of inquiries. As well, privacy legislation in most countries does not allow criminal information to be released for non-law enforcement purposes and an immigration matter would be considered to be an administrative request.

The RCMP can supply criminal information obtained through the Interpol network, but any other information relating to immigration matters should be obtained through the Immigration Control Officer at the appropriate foreign visa office When the RCMP advises that a subject has been identified to have a criminal history, additional information on foreign charges, criminal statute interpretations and penalties for the offence should also be requested from the Immigration Control Officer at the visa office.

15.11. Liaising with visa offices abroad

In the case of a foreign national who makes a claim for refugee protection, the application shall not be divulged to government officials of their country of nationality or, if there is no country of

nationality, their country of previous habitual residence, as long as the removal order to which they are subject is not enforceable.

Unclassified messages which include the name, date of birth and the fact that a refugee claim has been made should not be sent to visa offices abroad. Similarly, overseas offices should not reply with unclassified messages that include details and comments on the validity of the refugee claim.

When this exchange of unclassified messages is to and from the home country of the refugee claimant, the messages could jeopardize the security of that claimant and lead to reprisals against the claimant's family or associates. There is also a real danger that such messages could create a "refugee-*sur-place*" situation.

As the electronic mail system allows for direct communications to visa offices, separate instructions for visa offices where there is not an obvious security issue for the claimant have been created. Those visa offices are ones from which the refugee claim does not originate. In exchanging messages, CICs and visa offices may use unclassified electronic messages, faxes or telexes. It remains the discretion of the manager to classify messages for cases that they judge warrant additional security because of the particular circumstance of the claimant.

For all other offices located in the home country of the refugee claimant, including Hong Kong for refugee claimants from the People’s Republic of China (PRC), communications both ways must be by secure means. Secure fax is the most expedient and efficient method for most CICs and offices overseas.

Visa office files are only retained for two years. If it is determined that the file could be useful, it should be requested as soon as practicable.

The format

When a temporary resident visa is present in the refugee claimant's passport, messages (whether by electronic mail, fax or telex) from the CIC to the visa office should follow the example format below:

> Request for IC3 information: TRP V970100012 issued on 02Jan03.
>
> Provide details of temporary resident visa request for subject and forward a copy of the temporary resident visa application by fax to (name and fax number of officer at CIC).

When the temporary resident visa is not available or the refugee claimant has mentioned only that they applied for a visa in a certain country, the format should begin with "Request for IC3 information" and provide the name, date and place of birth, CLPR and date of application of the person. The message should request that the reply be by secure fax and provide the secure fax number of the CIC.

When there is a request for information of another nature, the visa office must ensure that any investigations ensure the confidentiality of the refugee claimant. In responding to the CIC, the visa officer should provide details on how the information was gathered and who was contacted. If information must be obtained through other Canadian government agencies, the visa officer must advise that agency of these guidelines to ensure the security of the refugee claimant. If confidentiality cannot be ensured, then the officer from the visa office should advise the CIC that it will not be possible to obtain this information.

For all other visa offices located in the home country of the refugee claimant (including Hong Kong for refugee claimants from the PRC), communications both ways must be by secure means.

15.12. Counsel

Right to counsel

There is no legal right to counsel at examinations, administrative removal order determinations or eligibility determinations. The current policy, based on a Supreme Court of Canada decision in the case of *Dehghani v. Canada*, [1993] 1 S.C.R. 1053, is that there is no right to counsel at examinations. The case involved an undocumented refugee claimant who was examined at a port of entry without the benefit of counsel. The notes from the examination were later entered as evidence at a credible basis hearing into his refugee claim. He was later determined not to have a credible basis for his claim.

The Supreme Court of Canada ruled that, at the examination, the claimant was not detained in the sense contemplated by section 10(b) of the Charter. The principles of the Charter do not require that the appellant be provided with counsel at the pre-inquiry or pre-hearing stage of the refugee claim determination process. The Court further stated that an examination is not analogous to a hearing and that it is an interview to aid in processing an application for entry to Canada and to determine the appropriate procedures that should be invoked in order to deal with the application for refugee status. In conclusion, the Court stated that “the principles of fundamental justice do not include a right to counsel in these circumstances of routine information gathering.”

In regard to administrative removal order determinations and eligibility determinations, the position of CIC and the CBSA is that there is no right to counsel at these proceedings unless the person is detained. Notwithstanding this, it is departmental policy to permit counsel to attend an eligibility determination as long as counsel is ready, willing and able to proceed at the time set for the determination.

Counsel may include a lawyer, an immigration consultant (in good standing with CSIC), a family member, or a friend. The form entitled "Use of a Representative/Release of Information" (IMM 5476E) must be completed and attached to the file. Should counsel become disruptive and their presence interfere with the examination, counsel should be cautioned that should it occur again, they will be asked to leave. Providing hand signals or coaching claimants is disruptive. A supervisor should be called to ask counsel to leave. All such incidents must be carefully documented and notes kept on file.

Persons who are detained must be given full reasons for their detention, be informed without delay of their right to retain and instruct counsel for the purpose of review of detention and be given a reasonable opportunity to exercise that right.

A reasonable opportunity would include, for example, providing access to a telephone and telephone directory (with an interpreter, if needed), and informing the individual of the possibility of applying for such legal aid as may be available in the applicable province.

If counsel for detention review is not yet retained or cannot be present within the prescribed period of time, the examination must proceed in the absence of counsel.

Application to be removed as counsel

To be removed as counsel of record, counsel must provide a letter requesting to be removed as counsel of record. Counsel must also provide a copy of the letter to the claimant and the other party.

Where the claimant or protected person wishes to remove counsel as counsel of record, the claimant or protected person must provide a letter stating that the counsel is no longer the claimant’s counsel of record.

15.13. Processing fees

There are no processing fees for claims for refugee protection in Canada.

As well, claimants are not required to pay the fees normally charged for work and study permits.

15.14. Interim Federal Health program

The purpose of the Interim Federal Health (IFH) program is to give effect to a 1957 Order-in-Council that authorizes the federal government to pay for in-Canada health care for certain claimants who are unable to pay for expenses related to urgent and essential services. Coverage is provided pending their qualification for other means of payment.

Until April 1995, Health Canada was responsible for the administration of these funds through the Non-Insured Health Benefit Program. On that day, the mandate was transferred to CIC to be administered through the IFH program. The program has been put in place for humanitarian reasons to allow refugee claimants, PRRA applicants, protected persons, persons in need of protection, humanitarian classes and others under immigration control to receive essential health care. It is not meant to replace provincial health plans.

Eligibility for the IFH program

Refugee protection claimants and their in-Canada dependent children are eligible for the IFH program if they are unable to pay for their health care services and if they are not covered by a private or public health care plan.

Persons in need of protection on a reviewable indefinite stay of their removal order under PRRA will continue receiving IFH indefinitely.

Determining eligibility to the IFH program

To determine whether refugee protection claimants qualify for IFH, officers will ascertain the status of the claim for refugee protection, ask the claimants whether they are in a position to pay for health care or are eligible for private or public health insurance. If claimants indicate a need for coverage and officers are otherwise satisfied that the applicants qualify, eligibility will be given without further investigation.

Benefits of the IFH program

The benefits of IFH program are limited to:

- essential health services for the treatment and prevention of serious medical/dental conditions (including immunizations and other vital preventative medical care);
- essential prescription medications;
- contraception, prenatal and obstetrical care;
- the immigration medical examination.

Forms

The following two paragraphs will be printed on forms giving access to IFH and will advise the claimants as to when benefits will no longer be available to them:

> "The above-mentioned person is eligible for benefits under the Interim Federal Health (IFH) program as described on the attached list. Eligibility will continue until… (day/month/year)… but may be revoked before, should the holder qualify for private or public health insurance or otherwise ceases to be eligible.
>
> I, the undersigned, declare that I require assistance for medical care and that should my circumstance change or should I qualify for any other form of medical coverage, I will no longer seek to obtain benefits under the IFH program."

The two paragraphs that confirm the claimant's eligibility for, and access to IFH are added to the eligibility document created in FOSS.

The "Interim Federal Health Certificate" is FOSS-generated and is printed on IMM 1442B. It contains basic identification and the paragraphs noted above. It bears the claimant's photograph and signature.

The above forms will confer IFH eligibility for 12 months or a lesser period, as determined by the officer. Eligible claimants who do not benefit from a basic provincial health insurance plan may be entitled to some services. Those that are already eligible for provincial health insurance may still be eligible for limited benefits.

Offices will photocopy the appropriate appendices as necessary for distribution to eligible claimants.

Process

It is the intent of the program to limit the number of times a claimant should communicate with an officer with regard to coverage under IFH. To this end, the document giving access to coverage will be issued to the eligible claimant at the admissibility/eligibility interview or as soon as possible after. Those persons whose cases are already in process in Canada will be issued a document when they seek access to IFH and this document will be used for all subsequent eligible medical needs.

"Determination of Eligibility" is created in FOSS. Enter "Y" in the "eligible for IFH Benefits" field. The relevant paragraphs will then be printed on the document. The expiry date on the IMM 1442B will be one year from the date of issuance or another date (less than one year) as set by the officer. This document will be given to the claimant along with a list of benefits.

Some inland offices processing claims for refugee protection issue an IFH document at first contact with the claimant. The document is valid only until the date of the eligibility determination appointment, and it is clearly stamped that it is valid only for payment for the immigration medical examination. If the claimant is found eligible at the determination interview, an IFH document valid for one year can be issued.

Extensions

Some individuals will need an extension of their eligibility to the program because their refugee claim is still being processed. Provided that the applicant is eligible, an extension may be granted for the estimated period of time that it will take to finalize the case but not for more than 12 months at a time.

When a person wants to renew coverage under IFH, the procedure is to call the Call Centre and ask for an application. A one-page application form is mailed to them.

OM IP 98-16, December 1998, outlines the current guidelines for the Interim Federal Health (IFH) Program.

http://www.ci.gc.ca/cicexplore/1976archive/english/guides/om-nso/1998/ip/ip98-16.html

15.15. Security and criminal screening

Security screening is initiated for all claimants at the time the claim is submitted. Greater coordination between domestic and international agencies will improve the timeliness of security information.

15.16. Front-End Refugee Security Screening User Guide

The Front-End Refugee Security Screening module provides users with the ability to enter, modify and delete entries into FOSS for the purpose of screening persons who wish to claim refugee protection in Canada. Information on these persons, once entered, will be stored in FOSS and later sent to CSIS for the purpose of performing the screening process. CSIS will then return information to be stored on FOSS, including the security decision. See http://www.ci.gc.ca/cicexplore/english/systmguides/foss_ssobl/front_end_security.doc

15.17. Support system for intelligence

(To be developed.)

15.18. Student permits

Minor children of refugee claimants do not require a study permit as per A30(2) which states:

> "30.(2) Every minor child in Canada, other than a child of a temporary resident not authorized to work or study, is authorized to study at the pre-school, primary or secondary level."

R215 states that foreign nationals may apply for a study permit after entering Canada if they are subject to an unenforceable removal order. This would apply to refugee claimants and their family members.

For information about issuing study permits, see OP 12, Students.

15.19. Temporary foreign worker documents (TFWD)

R206 states:

> "206. A work permit may be issued under section 200 to a foreign national in Canada who cannot support themself without working, if the foreign national
> (a) has made a claim for refugee protection that has been referred to the Refugee Protection Division but has not been determined; or
> (b) is subject to an unenforceable removal order."

Family members of a pending claimant are also entitled to a temporary foreign worker document (TFWD).

However, it is important to remember that the claimant can only receive a TFWD if they could not otherwise subsist without public assistance and an officer has determined that the claimant is eligible to have a claim determined by the RPD. As well, medical examinations, fingerprinting and photographing must have been completed and the claimant must have filed a Personal Information Form (PIF) with the RPD.

Applicants for protection are given medical instructions upon making a claim. A work permit may not be issued until the results of the medical examination for the claimant are received.

Open work permits may be issued to persons whose results are M1, M2, M3, M5 or M7 along with any occupational restrictions noted by the assessing physician.

Applicants with medical results M4 and M6 do not receive work permits as protection of public health is at issue.

The work permit should be valid for 24 months from the date the applicant's claim was forwarded to the IRB. This period is based on the estimate of the time it takes to have a claim considered by the RPD. Subsequent renewal periods should be for 12 months or less, depending on the circumstances of the claim.

Work permits should only be issued if the applicant has demonstrated compliance in pursuing the refugee claim (i.e., the applicant has not delayed the process through adjournments or no-shows).

Applicants for protection are fee exempt and HRSDC exempt (S61).

PRRA applicants require a work permit, are HRSDC exempt, entitled to an open work permit, but are required to pay fees.

For refugee claimants, the work permit ceases to be valid at the end of the duration period or when all legal recourses that allow the person to remain in Canada have been exhausted.

For information about issuing temporary foreign worker documents, see FW 1, Foreign Worker Manual.

15.20. Replacement of lost or stolen eligibility documents

To be developed.

15.21. Notes to file

It is important that officers make notes detailing the process followed in decision-making.

Presence and identity of counsel, circumstances relating to detention or release, and the basis for any decision made must be documented.

Officers should make particular note of the nature and content of any representations made by the claimant.

15.22. Identity documents

(To be developed.)

15.23. Referrals to social services

In large processing centres, inland CICs may have an informal relationship with social service agencies whereby claimants for refugee protection are referred by the agency. It is important to see these claimants expeditiously so that they do not remain in shelters longer than necessary.

15.24. Transmission to the IRB of information concerning refugee claimants

It is appropriate to provide the RPD with information relating to the claimant's identity, admissibility to Canada and eligibility for refugee determination.

Regions will request every PIF from the IRB for review by an officer to determine if the PSEP Minister should intervene at the RPD hearing. It is appropriate to request the PIF in the following situations:

- multiple claims;
- exclusion clauses (Article 1E or 1F of the 1951 Convention);
- selected cases involving possible systemic fraud, or any case that might threaten the integrity of the refugee protection determination system.

The RPD discloses all information collected about the claimant to the claimant and claimant's counsel. Therefore, officers must take notes cautiously and impartially. Information provided must have probative value and be clear and complete so that it can stand on its own, thus reducing the necessity for officers to appear at hearings.

Important points to remember when taking notes:

- notes should not contain personal recommendations and comments, particularly with regard to the application of the Convention;
- information must be recorded in a neutral tone;
- notes must be clear and concise;
- the fact that the interpreter was contacted by phone, if applicable, should be recorded.

For more information see **OM IP 95-10** 12 June 1995.

http://www.ci.gc.ca/cicexplore/1976archive/english/guides/om-nso/1995/ip/ip95-10.html

15.25. MOU with the IRB

Refer to Agreement Regarding Claim-Related Information from Refugee Claimants at

http://cicintranet/CICExplore/english/org/srd/intldocs/subagree.html

16. Role of the UNHCR

The United Nations High Commissioner for Refugees (UNHCR) was established on December 14, 1950 by the U.N. General Assembly and began its work on January 1, the following year. The agency helps the world's uprooted people by providing them with basic necessities such as shelter, food, water and medicine in emergencies and seeking long term solutions, including voluntary return to their homes or beginning afresh in new countries. In more than five decades, the agency has helped an estimated 50 million people restart their lives. Today, a staff of around 5,000 people in more than 120 countries continues to help an estimated 22 million people.

See the UNHCR web site at www.unhcr.ch/cgi-bin/texis/vtx/home.

16.1. Protocol for UNHCR field visits

Canada being a signatory to the 1951 Refugee Convention and a signatory to various international agreements and instruments accepts its obligation to protect refugees from return to persecution, and to follow certain international standards in processing refugee protection claimants. The UNHCR monitors compliance with the Refugee Convention and provides guidance on its implementation and, as such, Canada will endeavor to cooperate with UNHCR’s requests for access to processes involving refugee protection claimants.

On occasion the UNHCR may make a request for a site visit to a Canada Immigration Centre (CIC), a Canadian Border Service Agency office (CBSA) or an immigration detention facility for the purpose of observing an interview with a refugee protection claimant, or to interview a refugee protection claimant. The following guidelines will assist in ensuring an orderly and effective field visit from the UNHCR.

16.2. UNHCR requests

All requests for visits to a port of entry, detention facility or an inland CIC or CBSA office should be made in writing to the manager of the local office with a copy to Refugees Branch at National Headquarters and a copy to the Director of Inland Immigration Enforcement, CBSA . Written requests from the UNHCR to conduct a site visit must be received a minimum of 48 hours in advance. Requests submitted less than 48 hours in advance will only be granted in exceptional circumstances.

The request should include the site(s) and purpose of the visit, the duration of the visit, the full names of the UNHCR staff on the delegation, the title and official responsibilities of everyone in the delegation, which person on the delegation is leading the team, and whether they have any

special needs or requests. The local CIC or CBSA office will evaluate the request in consultation with NHQ and make a decision as quickly as possible.

16.3. Scope of UNHCR's access to facilities

The UNHCR has agreed to maintain the confidentiality of any information to which it has access. Therefore, it can be given full access to tour immigration detention facilities and interview areas. While UNHCR representatives are on site, a CIC or CBSA official should be present except in cases where a confidential interview between the UNHCR and a refugee protection claimant has been arranged.

Due to safety issues, the UNHCR representatives will not be allowed to participate or observe body searches and pat downs. They may observe luggage searches if a CIC or CBSA officer determines that there are no safety or security concerns. The UNHCR representatives should not be given access to computer databases or programs.

CIC or CBSA will designate a representative to assist the UNHCR and to respond to questions.

Representatives of the UNHCR also act as observers at RPD hearings.

16.4. Interactions between UNHCR and refugee protection claimants

If a UNHCR representative asks to sit in on interviews, either of a specific claimant or a random case, a CIC or CBSA officer should explain to the claimant the role of the UNCHR, that they do not work for the Canadian government and that the claimant may have a private interview with the UNHCR. The officer should also explain that the claimant has the right to refuse to allow the UNHCR to observe the interview. No more than two representatives from the UNHCR should be present during an interview and they should provide business cards to the claimants at the completion of the interview. The UNHCR should not ask questions or make comments during the interview. If the claimant wants to have a confidential discussion with the UNHCR after the interview, they may do so.

If the claimant indicates that they do not want the UNCR representative present, the interview should proceed without the UNHCR representative.

If the UNHCR representative reports that the claimant has alleged abusive treatment by either the CBSA or CIC, a supervisor and NHQ (CIC and CBSA) should be notified immediately and the complaint should be investigated by the manager of the local office. The results of the investigation should be communicated to both CIC and CBSA at NHQ.

If serious problems or misunderstanding arise during the UNHCR site visit and the visit has to be terminated, the local CBSA or CIC office should advise the leader of the UNHCR delegation of the reason for terminating the visit. The local CBSA or CIC should notify Refugees Branch NHQ and Inland Immigration Enforcement CBSA if there are serious problems or misunderstandings during any site visits.

17. The *Agreement Between Canada and the United States for Cooperation in the Examination of Refugee Status Claims by Nationals of Third Countries* (Safe Third Country Agreement)

Background

Paragraph 101(1)(e) of the *Immigration and Refugee Protection Act* stipulates:

> 101.(1) A claim is ineligible to be referred to the Refugee Protection Division if
>
> (e) the claimant came directly or indirectly to Canada from a country designated by the regulations, other than a country of their nationality or their former habitual residence;

The possibility of finding applicants for refugee protection ineligible to have their claims heard by the IRB because they accessed Canada from a safe third country has existed in legislation since 1988.

In order for a country to be designated a "safe third country" for the purposes of A101(1)(e), it must comply with Article 33 of the *1951 Convention Relating to the Status of Refugees* and Article 3 of the *Convention Against Torture*. The United States (US) is the only country that has been so designated to date .

Negotiations to create an agreement with the U.S. flowed from the *Smart Border Declaration* and *Action Plan* of December 2001. The result is the *Agreement Between Canada and the United States for Cooperation in the Examination of Refugee Status Claims by Nationals of Third Countries. It is commonly referred to as the Safe Third Country Agreement* or Agreement. The text of the Agreement may be found at:

http://www.cic.gc.ca/english/policy/safe%2Dthird.html

While methods of processing claims for refugee protection are similar in Canada and the U.S., there are differences. Neither country is required to alter its basic procedures.

17.1. Definitions

These definitions are to be used in applying section A101(1)(e) and do not necessarily apply to other immigration matters

Anchor relative – a family member of the person seeking refugee protection who is in Canada and who qualifies under the definition of family member pursuant to the Agreement.

Arrival at a land border port of entry - generally includes persons presenting themselves for inspection at a port of entry, persons coming or attempting to come into the country through a port of entry (whether or not by presenting themselves for inspection) and persons apprehended or continuously observed crossing the land border by a port official within the physical boundaries of the port or in the immediate vicinity of the port.

Country of former habitual residence - relates to stateless persons. It is parallel to the phrase "country of nationality" for claimants who have a nationality.

Country of last presence - that country, being either Canada or the U.S. in which the refugee claimant was physically present immediately prior to making a refugee status claim at a land border port of entry.

Designated country – a country designated pursuant to the *Immigration and Refugee Protection Regulations* as a country that complies with Article 33 of the *1951 Convention Relating to the Status of Refugees* and Article 3 of the *Convention Against Torture*.

Family member - spouse, sons, daughters, parents, legal guardians, siblings, grandparents, grandchildren, aunts, uncles, nieces, and nephews. Canada will recognize common-law and same-sex spouses for the definition of family member in applying the Agreement.

Former habitual residence - former habitual residence is only relevant where the claimant is stateless, i.e., they do not have a country of nationality.

The term implies a situation where a stateless person was admitted to a given country with a view to continuing residence of some duration, without necessitating a minimum period of residence.

Legal guardian – in respect of a claimant who has not attained the age of 18 years, legal guardian means a person who has custody of the claimant or who is empowered to act on the claimant's behalf by virtue of a court order or written agreement or by operation of law

Refugee status claim - a request from a person to the government of either Canada or the U.S. for protection consistent with the *1951 Convention Relating to the Status of Refugees* or its *Protocol*, the *Convention Against Torture* or other protection grounds in accordance with the respective laws of each country.

Refugee status claimant - any person who makes a refugee status claim in either Canada or the U.S.

Refugee status determination system - the sum of laws and administrative and judicial practices employed by each party's national government for the purpose of adjudicating refugee status claims.

Stateless - the condition of not having a country of nationality, which must be beyond the power of the person to control. The status of statelessness is not one that is optional for a person; in other words, one cannot "choose" to be stateless. The UNHCR defines a "stateless person" as a person who is not considered as a national by any State under the operation of its law;

Unaccompanied minor - a claimant who has not yet reached the age of 18 years and is not accompanied by their mother, father or legal guardian and has neither a spouse nor common-law partner and does not have a mother, father nor a legal guardian in Canada or the U.S.

United States – means the United States of America, but does not include Puerto Rico, the Virgin Islands, Guam or any other possession or territory of the United States of America.

17.2. Highlights of the Agreement

Highlights of the Agreement are as follows:

- It allows for the return to the U.S. of persons arriving in Canada from the U.S. seeking refugee protection unless the person can satisfy an officer, on a balance of probabilities, that an exception from the Agreement applies and vice versa.

- The Agreement does not apply to refugee claimants who are American citizens or habitual residents of the U.S. who are not citizens of any country [stateless persons - Article 2 of the Agreement], therefore, these claims cannot be determined ineligible under A101(1)(e).

- Neither country is required to accept the return of an applicant for refugee protection until a final eligibility decision has been made [Article 3.1 of the Agreement]

- It ensures that once a positive eligibility decision has been made, a claim will be adjudicated in the country that made the positive eligibility decision. [Article 4.4 of the Agreement] In Canada, should information come to light that confirms that the exception applied was not valid, the claimant will not be returned to the U.S. Instead, A104 will apply and the eligibility of the claim could be subject to redetermination. However, as per the terms of the Agreement, Canada will not be redetermining under A104(1)(a) for A101(1)(e). For more information on redetermination of eligibility, refer to section 17.20, below.

- It permits either country to decide whether or not to adjudicate the claim if it is in the public interest to do so [Article 6 of the Agreement].

17.3. Where the Agreement applies

The Agreement applies to:

- Land border ports of entry where the person arrives from the U.S. (includes arrivals by car, train, bus, foot or other means not excluded by the Agreement).

- Arrivals by train where the passengers on the train are either examined at the border or other place inland where the train arrives and has been designated as a port of entry for the purpose of conducting the examination of persons seeking to enter Canada.

- Airports when the claimant is a person who has been determined by the U.S. not to be a Convention refugee, who has been ordered deported from the U.S. and is in transit through Canada for removal from the U.S.

17.4. Where the Agreement does not apply

The Agreement does not apply to:

- A location that is not a port of entry such as a point of entry to Canada between designated ports of entry.
- A port of entry that is a marine port including a ferry landing.
- Inland offices.
- Airports (except when the claimant is a person who has been determined by the U.S. not to be a Convention refugee, who has been ordered deported from the U.S. and is in transit through Canada for removal from the U.S.).
- Arrivals from the U.S. who will be returned to the U.S. for refugee determination as per A(101)(1)(e)
- Persons arriving from the U.S. who do not satisfy an officer that an exception from the Agreement applies

17.5. Arrivals from the U.S. who will be allowed to make a claim for refugee determination in Canada despite the Agreement (Exceptions)

A claimant arriving from the U.S. will be allowed to make a claim for refugee protection in Canada if the claimant:

- arrives at an airport, except when the claimant is in transit through Canada and they have been ordered removed from the U.S. and they have made a claim for refugee protection that has been rejected by the U.S.;
- enters Canada between ports of entry;
- has a family member in Canada who is a Canadian citizen;
- has a family member in Canada who has made a claim for refugee protection that has been accepted under the Act or has become a permanent resident under the Act;
- has a family member in Canada who is a protected person within the meaning of subsection A95(2) (PRRA);
- has a family member in Canada who is a person in favour of whom a removal order has been stayed in accordance with section R233 (humanitarian and compassionate considerations);
- has a family member in Canada who is over age 18 and has made a claim for refugee protection that has been referred to the IRB for determination and the claim has not been withdrawn by the family member or has been declared abandoned or rejected by the IRB and any pending proceeding or proceedings respecting the claim have not been terminated under subsection A104(2) and any decision respecting the claim has not been nullified under that subsection;

- has a family member in Canada who is the holder of a work or study permit other than the holder of a permit that has become invalid or expired, or that was issued to a foreign national who is the subject of an unenforceable removal order, or when a removal order that was made against the holder of the permit becomes enforceable;

Note: This exception refers only to family members who are in-status.

- is an unaccompanied minor;
- has a valid visa, travel document for permanent residents or for refugees or other valid admission document (other than a transit visa) issued by Canada;
- was not required to obtain a visa to enter Canada but was required to obtain a visa to enter the U.S.;
- has been charged with or convicted of an offence that could subject the claimant to the death penalty in the U.S. or in a third country
- will be denied deferral of removal by the U.S. due to serious criminality (for all potential cases, contact Refugees Branch at NHQ for advice).
- is a national who, not having a country of nationality, is a habitual resident of a country in respect to which the PSEP Minister has imposed a stay on the enforcement of removal orders and the stay has not been cancelled pursuant to R230(2) and the claimant is not a person identified in any of paragraphs R230(3)(a) to (f)

17.6. Persons returning to Canada after being denied admission to the U.S.

There are situations where a person who has been denied entry by the U.S. might return to Canada and make a refugee protection claim. Such persons would qualify for an exception to the Agreement and these claims would be processed in the normal manner. Claimants should not be found ineligible merely for arriving from the U.S.

These situations would include:

- Persons who attempt to enter the U.S. from Canada across a land border and are denied entry by U.S. border officials. These people are generally allowed back into Canada. Permanent residents of Canada who go to the U.S., contravene U.S. immigration or criminal laws and are deported to Canada. They are normally accepted since they are permanent residents. If criminality is involved, the person could face a report of inadmissibility. A permanent resident could make a refugee claim when faced with the possibility of deportation.
- Persons who travel from Canada to the U.S., make a refugee claim, receive a negative decision, and are returned by the U.S. to Canada under the *Reciprocal Arrangement between the Canada Employment and Immigration Commission and the United States Immigration and Naturalization Service, Department of Justice, for the Exchange of Deportees between the United States of America and Canada* (Refer to section 17.10 below).

17.7. Standard for determining eligibility for an exception (Principle 3—see Statement of Principles at Appendix C)

The U.S. will use the "preponderance of evidence" standard to determine whether an applicant qualifies for an exception under the Agreement. Canada will use the "balance of probabilities" standard. These standards are functionally equivalent.

“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. “Balance of probabilities” 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.

17.8. Potential questions related to safe third country exceptions

Claimants may not be aware of the existence of exceptions. Officers should ask probing questions to ensure that claimants have an opportunity to explore all options. Officers are reminded that these are examples only, and all areas of investigation must be explored. Questions may include but are not limited to:

- Are you a Canadian citizen or permanent resident of Canada?
- Are you a citizen of the United States of America?
- Are you a citizen of any other country?
- Do you have a family member in Canada?
- If so, what is that person’s status in Canada?
- What is your age?
- Did you obtain a visa to enter Canada?
- What country did you travel from?
- Did you obtain a visa to enter the United States?
- In what country were you last physically present before arriving in the United States?
- Were you ever charged or convicted of a crime in the United States or any other country?

(For those under 18):

- Where is your mother?
- Where is your father?
- Do you have a legal guardian?

It will be very important in each case for the examining officer and the Minister’s delegate to take detailed written notes of the review of each possible exception. This is especially critical if the applicant claims to have a family member in Canada, but is unable to provide proof. The notes will be instrumental in proving that the exception was properly investigated and the ineligibility decision was well-founded.

17.9. American citizens and habitual residents of the U.S. who are not citizens of any country (Article 2 of the Agreement)

American citizens regardless of where they reside and stateless persons where the U.S. is their country of former habitual residence do not fall under the Agreement; therefore, their claim for refugee protection cannot be determined ineligible under A 101(1)(e).

In order to establish whether a person is considered a former habitual resident of the US, two conditions must be met:

1- The person should be stateless;

2- The person must have established *de facto* residence in the US.

Principles and criteria for establishing statelessness and country of former habitual residence:

The UNHCR defines a "stateless person" as a person who is not considered as a national by any State under the operation of its law. It is the action of a government that makes a person stateless, not just a declaration of statelessness by the person.

This view is supported by the Canadian courts in that the condition of not having a country of nationality must be one that is beyond the power of the person to control. One cannot "choose" to be stateless.

Thus, in assessing a claim for statelessness, it is important to ascertain that the statelessness has been imposed on the person as a result of the application of a state's laws which are beyond the power of the person to control and not just by the person's own claim; otherwise, a person could claim statelessness merely by renouncing their former citizenship.

The concept "former habitual residence" is only relevant where the claimant is stateless, that is the claimant does not have a country of nationality. The "country of former habitual residence" does not have to be the country where the claimant has initially feared persecution.

The term "former habitual residence" implies a situation where a stateless person took up residence in a given country without necessitating a minimum period of residence.

Furthermore, as supported in a number of decisions by the Federal Court, a country may be a country of former habitual residence even if the claimant is not legally able to return to that country.

Under the Safe Third Country Agreement, stateless persons whose country of former habitual residence is the US are exempted from the Agreement; as such, claims for refugee protection of these individuals cannot be determined ineligible under A101(1)(e).

In order to assess whether the person is considered a former habitual resident of the US, officers may consider if the claimant has established a significant period of *de facto* residence in the US.

To assist in establishing a significant period of *de facto* residence in the US, officers may ask questions about the length of residency in the US and where appropriate, request documents attesting to residency in the US. Documents including but not limited to immigration status, driver's license, social security card, bank cards and deposit books as well as utility bills may assist in establishing *de facto* residency in the US.

The idea here is to distinguish between individuals who were resident as opposed to the others who were merely transiting through the US.

Example: A Palestinian refugee claimant at Canada-US POE claimed that he is stateless. He stated that he was born in an area controlled by Jordan in 1965. This area was taken over by Israel at a later date. He showed his Jordanian birth certificate with an expired Israeli travel document. Also, it became known that neither Jordan nor Israel will issue him a travel document or facilitate his return. He declared that he had lived in the US since his arrival in 1984. Further information revealed that this person has had encounters with law enforcement authorities in the US in 1996.

The following were considered in determining that the person is stateless and that he is considered a former habitual resident of the US:

Although, the claimant provided a birth certificate form Jordan, the Jordanian Government has refused to issue a travel document to the claimant. On the other hand, despite the fact that Israel now controls the

area where it used to be a part of Jordan and that in the past, a travel document was issued to the claimant by Israel, the Israeli Government, too, refused to issue a travel document to the claimant. Neither country considers this person a national, thus, rendering this person stateless.

Documents provided showed that the claimant and his family had lived in the US for a considerable amount of time (court documents dated back to 1996 and marriage certificate dated back to 1998, among other documents).

Cases where persons claim they are stateless should be given careful individual consideration.

Officers may contact the Asylum Division, Refugees Branch at CIC-NHQ in cases where they need assistance to ascertain whether a person can be considered a *de facto* resident of the US.

17.10. Detailed explanation of exceptions:

Airport arrivals (Article 5(b)(i) and 5(b)(ii) of the Agreement)

Normally claimants who arrive at an airport are exempt from the Agreement and will be able to apply for refugee protection in Canada. However, Article (5)(b)(i) states that any person being removed from the U.S. in transit through Canada who makes a refugee claim in Canada whose refugee claim has been rejected by the U.S. shall be permitted onward movement to the country to which the person is being removed.

Claimants who are being removed from the U.S. for other reasons would still be eligible to make a claim for refugee protection in Canada. Article 5(b)(ii) states that a claimant who is being removed from the U.S. and is in transit through Canada and who has not had a refugee determination by the U.S. shall be returned to the U.S. to have the refugee status claim examined in accordance with the refugee status determination system of the U.S.

Arrivals at non-designated ports of entry

The Agreement is not applicable to claimants who enter between ports of entry. A land border port of entry is any designated land port of entry as in Schedule 1 of the Regulations and the Ports of Entry list on CIC Explore http://www.ci.gc.ca/CICExplore/english/org/sed/sem/ports/List_PortsofEntry.htm.

“Arrival” at a land border port of entry generally includes:

- persons presenting themselves for inspection at a port of entry;
- persons coming or attempting to come into the country through a port of entry (whether or not by presenting themselves for inspection); and
- persons apprehended or continuously observed crossing the land border by a port official within the physical boundaries of the port or in the immediate vicinity of the port.

Sometimes persons who are referred to secondary examination at the primary inspection line attempt to drive through without reporting to an immigration officer. This is commonly referred to as "running the port." They may be apprehended several miles inland. As well, persons try to go on foot around the port of entry buildings or across land in the immediate vicinity. The Agreement is only applicable if CBSA port-of-entry officials observe or detect the person in the act of attempting to avoid examination and the person is captured without delay. If the person is captured inland at a later date, the person could not be returned to the U.S. pursuant to the Agreement.

Claimants who have family members in Canada (Article 4(2)(a) and 4(2)(b) of the Agreement)

A family member in respect of a claimant means any of the following persons:

- spouse, sons, daughters, parents, legal guardians, siblings, grandparents, grandchildren, aunts, uncles, nieces, and nephews (does not include in-laws);
- a legal guardian in respect of a claimant who has not attained the age of 18 years means a person who has custody of the claimant or who is empowered to act on the claimant's behalf by virtue of a court order or written Agreement or by operation of law.

Canada will recognize common-law and same-sex spouses for the definition of family member in applying the Agreement. At the present time, the U.S. may not recognize the same unions for the purpose of the Agreement. Officers will be guided by the instructions in IP5 in verifying common-law and same-sex spouses in Canada.

A claimant arriving from the U.S. qualifies for an exception and will not be returned to the U.S. if they have:

- a family member in Canada who is a Canadian citizen;

In this case, officers will verify that the family member is in Canada. Verification that the relative is a Canadian citizen can be done by reviewing documents provided by the claimant, through FOSS checks or by contacting CPC Sydney.

- a family member in Canada who has made a claim for refugee protection that has been accepted under the Act or has become a permanent resident under the Act;

In this instance, officers will verify that the relative is in fact in Canada and that the claim for refugee protection has not been abandoned, withdrawn or rejected, or that the relative is still a permanent resident.

- a family member in Canada who is a protected person within the meaning of subsection A95(2);
- a family member in Canada who is a person in favour of whom a removal order has been stayed in accordance with section R233 (humanitarian and compassionate considerations);

There may be cases where the anchor relative has been approved in principle under humanitarian and compassionate considerations but has not yet become a permanent resident. Officers should determine if there is an obstacle to permanent resident status such as a problem with security checks or medical results.

- a family member in Canada who is over age 18 and has made a claim for refugee protection that has been referred to the IRB for determination and the claim has not been withdrawn by the family member or declared abandoned or rejected by the IRB and any pending proceedings or proceedings respecting the claim have not been terminated under subsection A104(2) and any decision respecting the claim has not been nullified under that subsection;
- a family member in Canada who is the holder of a work or study permit, other than the holder of a permit that does not confer status, that has become invalid or expired, was issued to a foreign national who is the subject of an unenforceable removal order, or a removal order that was made against the holder of the permit becomes enforceable

Proof of family relationship (Principle 2—See Statement of Principles at Appendix C)

Due to language barriers and cultural differences, applicants may not fully understand the concept of "family member." In order to ensure that every claimant has a full and fair opportunity to be considered under this exception, officers should consider the following questions. (Officers are reminded that these are examples only and that all areas of investigation must be explored.) Questions may include but are not limited to:

- Do you have any relatives in Canada?
- If reply is negative, ask, "Do you know anybody in Canada?"
- If reply is affirmative, ask, "How do you know this person?"
- How is this person related to you?
- What is your relative's name?
- What is their status in Canada?
- What is their birthday?
- Do you have other siblings?
- When and where did they enter Canada?
- What is their address/phone number?
- What is their profession?
- What is their marital status?
- What is their hair colour, eye colour?
- Do they have any distinguishing features?

This gives the applicant an opportunity to identify relatives who might otherwise be missed. If the applicant identifies a family member in Canada, the officer must be satisfied that there is a genuine family relationship. The 3-day time frame before the case is automatically deemed referred to the IRB poses a challenge. Although the burden of proof is on the claimant, officers should make reasonable efforts to confirm family relationships and that the relative has the necessary status in Canada using the tools at their disposal such as FOSS, files held in other CBSAs, IRB records, city directories, telephone books and Internet sites.

Officers should generally make eligibility decisions on the day of application or the next day in cases of late arrivals.

Officers are required to assess the validity of relationships in a port-of-entry context bearing in mind that documents may not be genuine. Where applicable, relatives should be contacted to confirm relationships. However, the burden of proof is on the applicant and the level of proof is “on a balance of probabilities.” Written documentation may not always be available to establish a family connection. Thus, credible testimony may sometimes be sufficient.

Statutory declarations may be useful but are not required. As well, in some cases the officer may want to contact the office dealing with the refugee claim or other immigration files to ask if the claimant was listed as a relative when the anchor relative completed an application form. Officers

should not hesitate to call the relative to ask relevant questions to verify relationship, but must use their judgment in revealing any information about the claimant and family member to each other.

These are guidelines but officers are not limited to these and should question the applicant using any available information in FOSS or other sources. Specific family information could be available in NCBs. The officer may be assessing the credibility of the applicant in determining relationship and in making the determination of whether or not an exception applies. The officer will decide on a case–by-case basis if testimony alone is sufficient or if more documentation is required.

There is no level of support expected from the family member. It is sufficient for the claimant to establish that a relative exists in Canada and that the relative has the required status in Canada. As well, the anchor relative has no say in whether or not the claimant is allowed to enter Canada.

Proof of family member's status in Canada

In order to confirm the family member's status in Canada, the officer should check the family member's name in FOSS as well as any documents provided by the claimant. For foreign-born anchor relatives, this will reveal whether the anchor relative has refugee status, permanent resident status or has citizenship. The relative cannot have been found not to be a Convention refugee by the IRB or be under consideration for PRRA.

Officers should put a general information NCB "12" in FOSS under the anchor relative's FOSS ID to indicate that this person was identified as an anchor relative. Officers should also read NCBs to determine if the anchor relative has been identified by other claimants. Multiple use of the same anchor relative could merit investigation.

Unaccompanied minors (Article 4(2)(c) of the Agreement)

An unaccompanied minor arriving from the U.S. is eligible to apply for refugee protection. Proving age is an important issue and officers should be sensitive to the needs of children and the *Convention on the Rights of the Child* while maintaining the integrity of the Agreement.

For more information on the *Convention on the Rights of the Child* see: www.unhchr.ch/html/menu3/b/k2crc.htm

An unaccompanied minor is a person who:

- has not attained the age of 18 years and is not accompanied by a mother, father or legal guardian, has neither a spouse nor a common-law partner; and
- does not have a mother or father or a legal guardian in Canada or the U.S.

As a result of this exception for unaccompanied minors, there is potential for an increase in the number of people claiming to be under 18 years of age.

Officers should obtain the names of both parents and consider contacting American officials to determine if the parents are present in the U.S. If minor children have parents in the U.S., they do not meet the definition of unaccompanied minors.

It is essential to develop a good local liaison with social service agencies that may assist in assessing these cases.

Refer to section 14 above on Minor Children.

Claimants who hold valid Canadian visas or travel documents (Articles 4(2)(d)(i) and 4(2)(d)(ii) of the Agreement)

If a claimant has a valid temporary resident visa, a work permit or study permit issued by an officer, a claim for refugee protection can be made in Canada. A claimant arriving from the U.S. will not be returned to the U.S. if they are the holder of any of the following valid documents, excluding any document issued solely for the purpose of transit through Canada:

- a permanent resident visa or a temporary resident visa:
- travel documents issued to permanent residents by the Canadian government:
- refugee travel papers issued by the Minister of Foreign Affairs: or
- temporary travel documents issued by the Canadian government (i.e., TRP):

If the Canadian document is altered or counterfeit, the applicant will not qualify for an exception. However, if the document is genuine, and properly issued by a qualified Canadian official, then the exception will be granted even if the document was obtained by misrepresentation.

Visa exemptions

If a claimant arrives from the U.S. and is a person who may, under the Act or Regulations, enter Canada without being required to obtain a visa and was required to obtain a visa to enter the U.S., an exception applies and the claimant would be able make a claim for refugee protection in Canada.

If the claimant requires both a U.S. visa and a Canadian temporary resident visa and does not have both the Canadian and American documents, the claimant is ineligible to make a claim for refugee protection in Canada. The onus for proving possession of the required visas is on the claimant.

The United States has a Visa Waiver Program (USWVP) for certain countries. If the claimant does not require a visa to enter either Canada or the U.S. , the Agreement is applicable. The officer will only be required to take into consideration American visa exemptions for specific countries, not other circumstances where visas might be exempt such as under *the North American Free Trade Agreement* (NAFTA).

When the USVWP was created in 1986, the U.S. had a visa-exempt privilege for a handful of countries (Canada and a few islands like the Bahamas) while Canada had a visa-exempt privilege for about 60 countries. Over the years, the expansion of the USVWP and the imposition of a number of visa requirements by Canada have made the lists more and more convergent.

Countries in the Visa Waiver Program

Andorra (MRP)	Iceland	Norway
Australia	Ireland	Portugal
Austria	Italy	San Marino
Belgium (MRP)	Japan	Singapore
Brunei (MRP)	Liechtenstein (MRP)	Slovenia (MRP)
Denmark	Luxembourg	Spain
Finland	Monaco	Sweden
France	the Netherlands	Switzerland
Germany	New Zealand	United Kingdom

Note: Countries in bold above, i.e., Andorra, Belgium, Brunei, Liechtenstein, Luxembourg, and Slovenia are required to have machine-readable passports (MRP) to enter the U.S. on the visa Waiver Program.

Canada is visa exempt, but not under the USVWP. Nationals of the Bahamas can travel directly to the U.S. without a visa.

For more information and updates on the Visa Waiver Program, see:

http://travel.state.gov/visa/tempvisitors_novisa_waiver.html#2

Mexican nationals require visas for entry to the U.S., but they do not require visas to enter Canada. Therefore, they will be eligible to seek refugee protection in Canada if they arrive from the U.S. As a result, there is a possibility that persons who are in fact nationals from Central American countries to claim to be Mexican. Officers should examine such claimants to verify their nationality. Questions that would assist in verifying nationality should be developed locally.

Public interest (Article 6 of the Agreement)

Article 6 of the Agreement provides that either country may decide to adjudicate any claim where to do so would be in the public interest.

Section R159.6 states that a claimant will not be returned to the U.S. if the claimant:

> 159.6(*a)* is charged in the United States with, or has been convicted there of, an offence that is punishable with the death penalty in the United States;
>
> (*b*) is charged in a country other than the United States with, or has been convicted there of, an offence that is punishable with the death penalty in that country; or
>
> (*c*) is a national of a country with respect to which the PSEP Minister has imposed a stay on removal orders under subsection 230(1) or a stateless person who is a former habitual resident of a country or place with respect to which such a stay has been imposed, **and** if
>
> (i) the stay has not been cancelled under subsection 230(2), and
>
> (ii) the **claimant** is not a person identified in subsection 230(3).

There is no legal definition of "public interest" in Canadian immigration legislation, but since Canada does not have a death penalty, it is considered in the public interest to allow persons who may be facing the death penalty to make a claim for refugee protection. The same principle applies to persons who would be protected from removal from Canada because of a moratorium on removals. However, the burden of proof is on the claimant to prove that they would be subject to the death penalty or that they come from a country to which there is a stay of removal.

The officer will still apply all the other eligibility criteria, such as A101(1)(f) which states:

101.(1) A claim is ineligible to be referred to the Refugee Protection Division 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 paragraph 35(1)(c).

17.11. Safe Third Country vs Reciprocal Arrangement

The *Reciprocal arrangement between the Canada Employment and Immigration Commission and the United States Immigration and Naturalization service, Department of Justice, for the Exchange of Deportees between the United States of America and Canada* dates back to 1984. It was designed to create a formalized process for two neighbours to accept responsibility for a common border. It applies at all POEs, provided the last point of embarkation was either Canada or the U.S. It applies to U.S. and Canadian citizens, U.S. resident aliens and Canadian permanent residents, and third-country national non-residents.

Section R159.5(h)(i) [as per amendments implemented on December 29, 2004] allows for the return of persons under the Reciprocal Arrangement with the United States. A person must have access to one asylum determination system. Therefore, such persons are not subject to return to the United States under the Safe Third Country Agreement.

If the person did not make a claim in the United States, the Safe Third Country Agreement does not apply. If a claim for refugee protection was made in the United States, the claim will be determined ineligible in Canada under A101(1)(e) but the claimant will not be returned to the United States.

If a claimant cannot be returned to the U.S. under the provisions of the Safe Third Country Agreement, the provisions of the Reciprocal Arrangement could be explored. For more information on the Reciprocal Arrangement refer to section 34 of ENF 10.

http://www.ci.gc.ca/Manuals/index_e.asp

17.12. Opportunity for third party during proceedings

Principle 1 of the Statement of Principles [Appendix C] agreed upon by Canada and the U.S. specifies that, provided no undue delay results and it does not unduly interfere with the process, the officer will provide an opportunity for the applicant to have a person of their own choosing present at appropriate points during proceedings related to the Agreement.

17.13. Record of examination and review of the record of decision

Principle 4 of the Statement of Principles [Appendix C] specifies that the officer must provide an opportunity for the applicant to understand the basis for the proposed eligibility determination and to correct or provide relevant information, provided it does not unduly delay the process. The officer must explain the decision and be satisfied that the applicant understands the decision.

Officers should take detailed notes regarding the examination and the eligibility determination. If an interpreter is required, the interpreter should read the notes to the claimant at the completion of the interview.

Officers should bear in mind that upon request and subject to national law, Canada may share with the U.S. all written materials pertaining to whether an applicant qualifies for an exception under the Agreement. Subject to national law, this information will also be available to the applicant. [Principle 5, see Appendix C]

17.14. Separate decision maker

Principle 4 of the Statement of Principles requires an opportunity for the applicant to have a separate decision-maker, who was not involved in preparing the proposed determination, review any proposed determination before it is finally made.

The officer must share all written information, state the decision and keep all relevant documentation on file.

Examination will be done by an officer who will write a section A44(1) inadmissibility report and make an eligibility recommendation. This officer will then present the report to a different officer (Minister's delegate) who will make a decision on admissibility as well as an eligibility determination. The Minister's delegate will review the information and give the claimant a chance to respond.

17.15. What if no exception applies?

Persons claiming refugee protection at ports of entry are also making an application to enter Canada. If they fail to satisfy an officer that they are admissible by providing the required documents such as travel documents and a permanent resident visa and that they will leave Canada at the end of an authorized period, they will be subject to a report of inadmissibility and the officer will issue a removal order.

Existing procedures for processing claims apply. Admissibility is still determined before eligibility. Fingerprints and photographs are taken and kept on file.

When claimants are found ineligible, it is still necessary to:

- complete SSI input;
- finalize all admissibility issues;

- issue the ineligibility document.

However, if the claimant is to be returned to the U.S. pursuant to the Agreement, it is not necessary to complete a IMM 5474E (Schedule 1 - Background Information).

17.16. FOSS Updates

Modifications have been made to the "Eligibility Results and Referral" screen in the Refugee Monitoring Menu to track Safe Third statistics. Two new fields have been added:

Exception Req. (Y/N) and Type

Exception Req. (Y/N) records whether or not the client requested an exception.

The type will be entered as a code which will record the category of exception applied for. Up to 2 codes can be entered, each separated by a comma. The following table identifies the codes and their meanings.

Code	English Description	French Description	Meaning
01	RELATIVE (CC OR PR)	*MEM. DE FAM. (CC OR RP)*	Family member in Canada who is a Canadian citizen or permanent resident.
02	RELATIVE (CR)	*MEM. DE FAM. (R)*	Family member in Canada who has been accepted as a Convention refugee.
03	RELATIVE (18+ AT IRB)	*MEM. DE FAM. (18+ À CISR)*	Family member 18 or over in Canada with pending eligible refugee claim.
04	UNACCOMPANIED MINOR	*MINEUR NON ACCOMPAGNÉ*	Unaccompanied minor.
05	HAS CANADIAN VISA	*VISA CANADIEN*	In possession of Canadian visa or other status document issued by Canada.
06	NO CNDN VISA/US VISA REQD	*SANS VISA CNDN/VISA EU*	No Canadian visa required. However U.S. visa required
07	POSSIBLE DEATH PENALTY	*PASSIBLE DE PEINE DE MORT*	Has been charged with an offence that could subject the person to the death penalty.
08	MORATORIUM COUNTRY	*PAYS À MORATOIRE*	Is a national or habitual resident of a country with respect to which the PSEP Minister has imposed a stay of removal.
09	RELATIVE – STUDENT	*MEM. DE FAM.– ÉTUDIANT*	Family member who is in possession of study permit
10	RELATIVE – WORKER	*MEM. DE FAM.– TRAVAILLEUR*	Family member who is in possession of Work Permit

17.17. Pre-removal Risk Assessment (PRRA)

Persons determined ineligible to have their claims determined before the IRB because of paragraph A101(1)(e) are ineligible to make an application for a PRRA pursuant to paragraph A112(2)(b) .

17.18. Case Dispute Resolution Guidelines

A case is only reopened if there appears to be a systemic problem with the way the Agreement is being implemented. This gives each government the opportunity to inform the other government that the Agreement is not being implemented correctly (refer to Principle 6 in Appendix C).

If disputes about jurisdiction arise, port of entry managers will attempt negotiation. For continuity, officers should refer all cases requiring negotiation to their managers. However, supervisors can engage in a clarification process before going to the dispute level. This could be done by phone and could include asking for the officer's notes.

A review of ineligibility decisions may be appropriate if one of the countries feels that the other may have made an error in applying the agreement. However, there will be cases where the applicant may allege that there is new information when, in fact, the information was already considered. A decision can be reopened under the principle of *functus officio*. However, this will only occur in cases where there is an error or flaw in the decision..

A port director or manager would make a determination based on issues of credibility, evidence and facts or new evidence that was not previously reasonably available. Where there is a dispute about the facts or where there is a dispute over interpretation of the Agreement that cannot be resolved at the local level, the responsible director or manager should refer the case to the Director, Asylum Division, Refugee Branch at NHQ for resolution.

In order to limit disputes, it is recommended that officers from Canada and the U.S. receive joint training on the Agreement in order to build confidence and mutual respect.

Procedures when the U.S. requests reconsideration

If a U.S. official believes that the applicant's allegation of new material evidence has merit, the procedure will be:

- U.S. port director will contact the Canadian CBSA manager in writing by the most secure and efficient method, providing the name and FOSS ID of the client and a summary of the new material evidence to be considered along with any supporting documentation.
- The CBSA manager will ask an officer (preferably a different examining officer or the Minister's delegate) to review the case and determine if the evidence was considered at the time of the examination in Canada.
- If it is clear that the information was already considered, the officer's interview notes and any other information on the file that supports the refusal of the exception will be provided to the U.S. port director with confirmation that the case will not be reconsidered.
- If new material evidence merits investigation, it will be necessary to review the evidence and supporting documentation provided by the U.S. port director.
- If the officer requires clarification, contact with the claimant will be by telephone.
- If it is determined that the applicant still does not qualify for an exception, a written decision will be conveyed to the U.S. port director by the most secure and efficient method and the decision will be final.

- If it is determined that the applicant is in fact eligible to make a claim for refugee protection in Canada, the CBSA manager will request the return of the applicant to Canada.

- If the U.S. port director does not agree with the decision that the applicant is still ineligible to make a claim for refugee protection in Canada, this opinion will be conveyed to the CBSA manager. However, the decision will stand that the applicant is ineligible.

- The CBSA manager will prepare a summary of each case where reconsideration was requested and send a report to the regional program advisor and the Refugees Branch, NHQ.

Procedures to request a review of an ineligibility decision by U.S. officials

- The CBSA manager will contact the U.S. port director by the most secure and efficient method, providing the name and U.S. identification number of the applicant and a summary of the new material evidence to be considered along with any supporting documentation.

- The U.S. port director will respond either by providing proof that the information was already considered or by requesting further contact with the applicant. The applicant will remain in Canada unless return to the U.S. is requested by the U.S. port director and access to the applicant will be made available by telephone upon request.

- The CBSA manager may request the U.S. officer's interview notes.

- If it is clear that the information was already considered, the Canadian officer will proceed to consider other grounds of eligibility and if the applicant is otherwise eligible, the officer will make a positive eligibility decision.

- If the information was not already considered, the U.S. port director will issue a final decision on the case.

- If the CBSA manager does not agree that the new material evidence was properly considered, this opinion should be forwarded to the U.S. port director, but the decision will stand.

- In each case where a CBSA manager requests reconsideration of a decision by U.S. officials, a report should be prepared and forwarded to the regional program advisor and the Refugees Branch, NHQ.

17.19. Agreement implementation dispute resolution guidelines

Whenever a new agreement with complex procedures is implemented, there is potential for differences of opinion on the interpretation or application of the articles at both local and national levels.

While CBSA managers will be encouraged to try to resolve issues concerning the application of the Agreement with their U.S. counterparts at the local level, should resolution fail, or trends and policy application become problematic, guidance should be sought from the Refugees Branch, NHQ through regional program advisors.

Program advisors will research the issues with all CBSAs in their respective regions to determine if the concerns are confined to certain POEs or if there is a broader problem.

Should it become evident through the analysis of the regional reports by NHQ that the Agreement is not being implemented in the spirit in which it was intended, the Director, Asylum Division, Refugees Branch will prepare a written report outlining any empirical evidence of specific concerns and forward it to the Director of Asylum in the U.S. Conversely, any report received by

the Director, Asylum Division, Refugees Branch, from the Director of Asylum in the U.S. will be investigated thoroughly and expeditiously.

Given the seriousness of any breaches of the articles of the Agreement, both respective Canadian and U.S. Directors will be asked to respond to the reports within thirty days.

Based on the nature of the concerns, the Directors may attempt to resolve the issues through telephone conferences. However, both parties may agree to face-to-face meetings of designated officials at a negotiated location.

17.20. Reopening eligibility decisions

Once a positive eligibility decision has been made, the claim will be adjudicated in Canada. Should information come to light that confirms that the exception that was applied was not valid, the claimant will not be returned to the U.S. Instead, A104 will apply and the eligibility of the claim could be subject to redetermination.

At the request of a U.S. port director, negative eligibility decisions will be reconsidered if the applicant for refugee protection provides new material evidence that was not considered at the time of the initial interview, where the officer's actions or decision were unreasonable or the process was flawed. For example, the applicant may not have had reasonable proof of eligibility for an exception at the time of the interview, but obtains it later. Failure by the claimant to present sufficient evidence or to satisfy the balance of probabilities test would not be grounds for reconsideration.

The officer should create a detailed NCB in FOSS to explain why there is a subsequent positive eligibility screen.

17.21. Redetermination of eligibility

According to the Safe Third Agreement, Canada will not be redetermining eligibility pursuant to A101(1)(e).

Article 4 of the Agreement states:

> Neither party shall reconsider any decision that an individual qualifies for an exception under this Agreement.

Once a person is found eligible to have their claim referred to the Refugee Protection Division of the Immigration and Refugee Board, an officer will not have the option of redetermining the eligibility pursuant to A104(1)(a) for A101(1)(e) as per the terms of the Safe Third Agreement. However, in cases of misrepresentation, redetermination could occur based on A104(1)(c) which reads:

> 104.(1)(c) the claim was referred as a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter and that the claim was not otherwise eligible to be referred to that Division; . . .

If the claim was referred to the RPD as of result of directly or indirectly misrepresenting or withholding material facts relating to a relative matter (i.e., existence of an anchor relative), and the claim was not otherwise eligible to be referred to the RPD, the eligibility of the claim may be redetermined as per A104(1)(c).

17.22. Information-sharing with the U.S.

Information-sharing is required for the effective operation of the Agreement subject to the *Privacy Act.* The following information can be disclosed:

- Port and date of entry to Canada
- Date

- Location of Canadian processing office
- Surname
- Address
- Sex
- Date of birth, place of birth
- Exception(s) applied for
- Travel document or travel document number (genuine or fraudulent)

Information should be shared using the most secure and efficient method.

17.23. Detention

As per existing operational procedures, each case must be assessed on a case-by-case basis to determine if the claimant is a danger to the public, is unlikely to appear, or cannot be identified.

17.24. Return to the U.S. of ineligible refugee claimants pursuant to A101(1)(e)

The primary consideration will always be the health and safety of the claimant. The officer must ensure that every precaution is taken to ensure that medical treatment is provided where required, and no situation exists where harm could come to the claimant during removal.

Removal procedures

Foreign nationals who are found to be ineligible, pursuant to A101(1)(e), to make a refugee claim and are issued a removal order can be removed to the United States. They are not eligible for a PRRA. There is no requirement for a passport or travel document. Removal in most cases should occur the same day. Under the Safe Third Agreement, both countries have 90 days after the original refugee claim is made to return ineligible claimants.

Officers effecting these removals to the U.S. shall follow the following procedures:

- advise the person that they are inadmissible and will be returned to the U.S.;
- fax Notification Form entitled " NOTIFICATION OF THE RETURN OF A NON-RESIDENT ALIEN UNDER THE TERMS OF THE AGREEMENT BETWEEN CANADA AND THE UNITED STATES FOR COOPERATION IN THE EXAMINATION OF REFUGEE STATUS CLAIMS BY NATIONALS OF THIRD COUNTRIES" (Appendix I, IMM 5569) to the designated U.S. official at the receiving POE and then telephone to confirm that the person is in the process of returning. The phone call following the fax is meant as a courtesy. Both the fax and the phone call are a notification to the U.S. rather than a request.

  The IMM 5569 provides the information required under the Agreement for the return of a refugee claimant, confirms that all possible exceptions were explored, and indicates why the person did not qualify for an exception.
- provide the person being returned with:
  - copy of Notification Form (Appendix I, IMM 5569);
  - copy of A44(1) Report;

  - negative eligibility decision;
  - copy of the removal order.

- seize all fraudulent documents;
- take copies of all legitimate documents and provide the originals to the ineligible claimant so that they can be turned over to U.S. authorities;
- if the person will be escorted, the escort officer shall keep possession of the documents and provide them to U.S. officials;
- fax copies of fraudulent documents to U.S. officials;
- complete statistical report for RHQ;
- enter IMM 0056 (Certificate of Departure) in FOSS.

Port-by-port procedures

Each port shall designate officials to track Safe Third Country removals and prepare required statistical reports for national monitoring and evaluation of the Agreement.

Ineligible claimants will usually be returned to the U.S. at the port of entry of arrival. Both Canada and the U.S. may return ineligible claimants at ports other than the port of arrival where a local agreement is in place. The eligibility determination process may take several weeks in the U.S. during which time the person may be detained at a location that is not near the original port of entry. While efforts will be made to return claimants to the original port of entry, officials at the local level will develop appropriate procedures.

Escorts

In most cases, ineligible claimants will be returned unescorted in their own vehicle. Uncooperative and dangerous persons should be escorted. Officers at ports of entry will continue to determine the need for an escort based on the criteria outlined in ENF 10, section 23. An escort may also be advisable if there is a serious concern about the person destroying documents.

Cooperation with U.S. border officials

The success of the Agreement depends upon cooperation between Canadian and American border officials. In order to ensure that removals are efficient and effective, officials should organize bilateral training sessions with officers to discuss return procedures and other operational issues.

Procedures for accepting persons back from the U.S.

The eligibility determination process is much longer in the U.S. and it may take several weeks for a decision, during which time the person could be detained. While efforts will be made to return claimants to the original port of entry, port directors at the local level will develop appropriate procedures. The U.S. will fax the Canadian port and confirm receipt of the fax.

17.25. UNHCR monitoring

The UNHCR will monitor the Agreement to:

- assess whether implementation of the Agreement is consistent with its terms and principles;

- evaluate whether implementation of the Agreement is consistent with international refugee law standards, particularly with regard to individual access to full and fair refugee status determination procedures in the United States or Canada

CIC will provide the UNHCR with copies of all national policy and operating guidelines that pertain to the Agreement.

The UNHCR will be given access to Canadian designated land border POEs and detention centres as per the guidelines in section 16.1 above.

17.26. Transitional provisions

In cases where there is a sudden surge of refugee claimants at the border in anticipation of the Agreement being implemented, the Direct Back policy may be utilized (see section 8.,7 above). Those who are directed back to the United States prior to the Agreement's implementation will not be excluded under the Agreement.

Appendix A Officer interview notes

PROTECTED "A" WHEN COMPLETED

Under IRPA, all individuals seeking refugee protection should go through an Immigration Examination (IE). The following set of questions serves as a guide and a template for questions that may be asked of persons seeking protection when they are interviewed. When completed, this document will become the officer's notes. Officers may use this template in conjunction with application forms that are completed by the claimant.

Date: __________ (dd, mm, yy)

CIC office file number: __________ - __________

FOSS ID: __________

Officer: __________ (Print name)

Interpreter: __________ (Print name) Language: __________

(Officer to ensure the claimant understands the Interpreter)

-Supplied by (name of organization): __________

-Any relation to the claimant? __________

Claimant's family name: ____________________

Claimant's given name(s): ____________________

Other names used: ____________________ (Maiden name, nicknames, aliases, name change)

Claimant's date of birth: __________ Male Female

(Claimant's date of birth in native calendar) __________

What is claimant's occupation? __________

A) What is claimant's level of education? __________

B) Field of study/specialization: __________

Claimant's health condition (physical or mental)?

____

____

____

Is claimant currently receiving medical treatment?

____

____

____

Does claimant have a passport or travel document? Yes No

If no, explain:

____

____

____

If document acquired by fraud, obtain more information (who, what, where, when and how much?)

____

____

____

Does claimant have other identification? Yes No

If yes, ID Card #: __________

If no, what documentation can the claimant obtain to establish his/her identity?

____

____

____

Is there anyone who can be contacted to have those documents sent to CIC?

If yes, name, address and phone number of the person:

____

____

____

How much money claimant has in his/her possession? __________

How did claimant travel to Canada and how did s/he enter Canada?

If the claimant arrived in Canada by using a false document, fraudulent means, misrepresentation or assisted by an agent, record any additional information over and above what the claimant has provided on the application form (IMM 5474E question 3(a) and (b)). The following set of questions illustrates the typical information required:

A) Name/address and description of all persons (agent) who facilitated the claimant's trip:

____

____

____

B) Where and how the claimant met the agent/facilitator and where the arrangements were finalized?

____

____

____

C) How much did the claimant pay the agent? ____

____

____

D) How did the claimant get the money to pay for the ticket?

____

____

____

E) Did the agent accompany the claimant (did they sit together on airplane)?

____

____

____

F) Names of all transit and the last embarkation point (cities & countries, airline carrier and the flight number)?

(What happened each time the claimant boarded the airplane? What did s/he show the personnel? When was the claimant asked to show passport/tickets? What questions were asked of the claimant?)

____

____

____

____

____

____

G) Did the claimant and the agent clear Canadian/USA customs/Immigration together? (or, did the agent represent the claimant?)

____

____

____

H) If fraudulent documents were used what happened to them after clearing Customs/Immigration?

____

____

____

I) Upon arrival in Canada or USA, did further agents meet the claimant?

____

____

____

What did the agent tell the claimant about getting to Canada and what would happen once the claimant arrives in Canada?

____

____

____

Did the agent tell the claimant what to say about his/ her claim? Yes No

If yes, explain:

____

____

____

____

____

____

If the claimant previously applied for a Temporary Resident permit (visitor Visa) or Permanent Resident Permit (immigrant visa), explain when and where.

____

____

____

____

____

____

Do the police or the military in any country want the claimant? Yes No

If yes, explain:

____

____

____

____

____

____

Has claimant ever been arrested/detained by the police/military in any country? Yes No

If yes, explain:

____

____

____

____

____

____

Association with any groups, societies or organizations? Yes No

If yes, what was the claimant's position?

If the claimant has indicated any association, affiliation or membership on the application, more detailed information is required relating to the specific activities (demonstrations, civil disobedience, and violent uprisings). If the claimant has participated as a member of this organization, information about locations, dates, names of associates, rank, duties, paying dues, how did s/he learn of the group, who recruited him/her (when, where, how), was the claimant given any training (i.e., weapons, tactical training) is important. Record information about any documentary proof the claimant provided to show s/he belonged to the group, etc.

____

____

____

____

____

____

Has claimant or any member of his/her family made a refugee claim or asked for political asylum (refugee protection) before, either in Canada or any other country? Yes No

If yes, provide names, relationship, date of birth, current location (city, country), decision/status granted and respective dates: ____

____

____

____

____

____

Were the application forms (IMM 5500 and IMM 5474) completed with the assistance of an officer during the interview? Did the claimant complete the forms? Or, did claimant receive help from a friend, relative or someone from the community? Explain (name, relationship, address and the phone number) ____

____

____

____

____

____

Any other information provided by the claimant:

____

____

____

____

____

____

Signature of Officer: ____________________

Date: __________

Appendix B [Spare]

Appendix C Procedural issues associated with implementing the Agreement for Cooperation in the examination of refugee status claims from Nationals of third countries

(30/08/02)

Statement of Principles

The Parties intend to act according to the following principles:

1. Opportunity for Third Party During Proceedings. Provided no undue delay results and it does not unduly interfere with the process, each Party will provide an opportunity for the applicant to have a person of his or her own choosing present at appropriate points during proceedings related to the Agreement. Details concerning access to proceedings will be set out in operational procedures.

2. Proof of Family Relationship. Procedures will acknowledge that the burden of proof is on the applicant to satisfy the decision-maker that a family relationship exists and that the relative in question has the required status. Credible testimony may be sufficient to satisfy a decision-maker in the absence of documentary evidence or computer records. It may be appropriate in these circumstances to request that the applicant and the relative provide sworn statements attesting to their family relationship.

3. Standard for Determining Eligibility for an Exception to the Agreement. The United States will use the preponderance of evidence standard to determine whether an applicant qualifies for an exception under the Agreement. Canada will use the balance of probabilities standard to determine whether an applicant qualifies for an exception under the Agreement. These standards are functionally equivalent.

4. Review. Each Party will ensure that its procedures provide, at a minimum: (1) an opportunity for the applicant to understand the basis for the proposed determination; (2) an opportunity for the applicant to provide corrections or additional relevant information, provided it does not unduly delay the process; and (3) an opportunity for the applicant to have a separate decision-maker, who was not involved in preparing the proposed determination, review any proposed determination before it is finally made.

5. Record of Interview and Eligibility Determination. Upon request and subject to national law, Canada and the United States will share all written materials pertaining to whether an applicant qualifies for an exception under the Agreement. Subject to national law, this information will also be available to the applicant.

6. Requests to Reconsider Exception Determinations. Each Party will have the discretion to request reconsideration of a decision by either Party to deny an applicant's request for an exception under the Agreement should new information, or information that has not previously been considered, come to light.

7. No Reconsideration of Positive Determinations. Neither Party will reconsider any decision that an applicant qualifies for an exception under the Agreement.

8. Timeframe for Return Under the Agreement. Returns to the country of last presence under the Agreement must take place within 90 days after the original refugee status claim is made.

Appendix D Sample letter acknowledging suspension of processing

[insert date]

Dear Sir/Madam:

This is in response to your application for refugee protection in Canada under the *Immigration and Refugee Protection Act*. We have reviewed your application and, pursuant to subsection 100(2) of the *Immigration Refugee Protection Act*, it has been determined that your claim to refugee protection has been temporarily suspended pending a determination by the [court, Immigration Division] regarding [alleged offence/violation]. Subsection 100(2) of the *Immigration and Refugee Protection Act* reads:

> 100. (2)The officer shall suspend consideration of the eligibility of the person's claim if
>
> (a) a report has been referred for a determination, at an admissibility hearing, of whether the person is inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality; or
>
> (b) the officer considers it necessary to wait for a decision of a court with respect to a claimant who is charged with an offence under an Act of Parliament that is punishable by a maximum term of imprisonment of at least 10 years.

Once a determination is made with regard to this matter, the processing of your claim for refugee protection will continue and you will be advised of an interview date.

Sincerely,

CBSA Officer

Appendix E Sample letter acknowledging resumption of processing

[insert date]

Dear Sir/Madam:

This is in response to your application for refugee protection in Canada under the *Immigration and Refugee Protection Act*. We have reviewed your application and it has been determined that your claim for refugee protection is no longer suspended pursuant to subsection 100(2) of the *Immigration and Refugee Protection Act*.

In order for us to continue processing your claim, you are required to meet with an officer to assess your eligibility to be referred to the Refugee Protection Division. Therefore, you are scheduled to report to [office address] on [date & time]. Please bring with you all relevant documentation with respect to your refugee claim.

Sincerely,

CBSA Officer

Appendix F Sample letter advising that proceedings are moving forward

[insert date]

Dear Sir/Madam:

This is in response to your application for refugee protection in Canada under the *Immigration and Refugee Protection Act*. We have reviewed your application and it has been determined that your claim for refugee protection is no longer suspended and thus the proceedings with respect to your claim for refugee protection shall continue pursuant to subsection 103(2) of the *Immigration and Refugee Protection Act*.

The Refugee Protection Division of the Immigration Refugee Board has been notified and will be in contact with you in the near future with regards to your hearing.

Sincerely,

CBSA Officer

Appendix G Sample letter outlining reasons for ineligibility [A101(1)(a) to (c)]

[insert date]

Dear Sir/Madam:

This is in response to your application for refugee protection in Canada under the *Immigration and Refugee Protection Act*. We have reviewed your application and, pursuant to section 104 of the *Immigration and Refugee Protection Act*, it has been determined that your claim for refugee protection is ineligible to be referred to the Refugee Protection Division of the Immigration Refugee Board. According to subsection 101(1) of the Act:

101. (1) A claim is ineligible to be referred to the Refugee Protection Division if

(a) refugee protection has been conferred on the claimant under this Act;

(b) a claim for refugee protection by the claimant has been rejected by the Board;

(c) a prior claim by the claimant was determined to be ineligible to be referred to the Refugee Protection Division, or to have been withdrawn or abandoned;

Enclosed you will find:

_____ a copy of the previous Convention refugee decision

_____ confirmation from the RCMP indicating a fingerprint match

_____ a copy of the subsequent Eligibility Decision

Please be advised that your file has been transferred to the Enforcement Office. You will be contacted in the near future regarding your removal from Canada. Furthermore, it is imperative that you keep us apprised of your current address.

Sincerely,

CBSA Officer

Appendix H Sample letter outlining reasons for ineligibility [A101(1)(a) to (d)]

[insert date]

Dear Sir/Madam:

This is in response to your application for refugee protection in Canada under the *Immigration and Refugee Protection Act*. We have reviewed your application and, pursuant to section 104 of the *Immigration and Refugee Protection Act*, it has been determined that your claim for refugee protection may be ineligible to be referred to the Refugee Protection Division of the Immigration Refugee Board. Specifically, information has come to our attention that your claim may be ineligible pursuant to paragraph 101(1)(d) of the Act which reads:

> 101. (1) A claim is ineligible to be referred to the Refugee Protection Division if
>
> . . .
>
> (d) the claimant has been recognized as a Convention refugee by a country other than Canada and can be sent or returned to that country

Furthermore, we have received information that you were recognized as a Convention refugee in [insert country] on [date]. We have enclosed a copy of this decision. You are scheduled to report to the following office [office address] on [date] to meet with an officer to discuss this matter.

Please bring with you any written submissions or relevant documentation that you believe is relevant to this redetermination. Failure to appear for the scheduled interview will result in a determination being rendered with the evidence we have provided and your file will be transferred to the Enforcement Office to initiate removal arrangements. Furthermore, it is imperative that you keep us apprised of your current address.

Sincerely,

CBSA Officer

Appendix I IMM 5569 - Notification of the return of a non-resident alien under the terms of The Agreement Between Canada and the United States for Cooperation in the Examination of Refugee Status Claims by Nationals of Third Countries

Appendix J Sample letter outlining reasons for ineligibility [A101(2)(a), A36(1)(a)]

[insert date]

Dear Sir/Madam:

This is in response to your application for refugee protection in Canada under the *Immigration and Refugee Protection Act*. We have reviewed your application and pursuant to section 104 and specifically paragraph 101(2)(a) of the *Immigration and Refugee Protection Act*, it has been redetermined that your claim for refugee protection is ineligible to be referred to the Refugee Protection Division of the Immigration Refugee Board. Paragraph 101(2)(a) of the Act reads:

> 101. (2) A claim is not ineligible by reason of serious criminality under paragraph 101(1)(f) unless
>
> > (a) in the case of inadmissibility by reason of a conviction in Canada, the conviction is for an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years and for which a sentence of at least two years was imposed

Our records indicate that you were convicted of the following offence: [insert offence], which is punishable by a maximum term of imprisonment of [insert max term], and you were sentenced to [insert number of years] imprisonment. Therefore, it has been determined that you are inadmissible to Canada pursuant to paragraph 36(1)(a) of the *Immigration and Refugee Protection Act* which reads:

> 36. (1) 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. . .

Enclosed you will find a court document which details your conviction(s), a copy of the report/removal order and the subsequent Eligibility Decision.

Please be advised that your file has been transferred to the Enforcement Office. You will be contacted in the near future regarding your removal from Canada. Furthermore, it is imperative that you keep us apprised of your current address.

Sincerely,

CBSA Officer

Appendix K Sample letter stating inadmissibility determined at an ID hearing

[insert date]

Dear Sir/Madam:

This is in response to your application for refugee protection in Canada under the *Immigration and Refugee Protection Act*. We have reviewed your application and, pursuant to paragraph 101(1)(f) of the *Immigration and Refugee Protection Act* it has been redetermined that your refugee claim is ineligible to be referred to the Refugee Protection Division of the Immigration Refugee Board. Paragraph 101(1)(f) of the Act reads:

> 101. (1) A claim is ineligible to be referred to the Refugee Protection Division if
>
> . . .
>
> (f) the claimant has been determined to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality. . .

At the Admissibility Hearing held on [date] you were found described under [insert section of Act] of the *Immigration and Refugee Protection Act* which reads:

> [insert section of Act]

Enclosed is a copy of the decision that was rendered by the Immigration Division and the subsequent Eligibility Decision.

Please be advised that your file has been transferred to the Enforcement Office. You will be contacted in the near future regarding your removal from Canada. Furthermore, it is imperative that you keep us apprised of your current address.

Sincerely,

CBSA Officer

Appendix L Sample letter outlining reasons for ineligibility [A104(1)(c)]

[insert date]

Dear Sir/Madam:

This is in response to your application for refugee protection in Canada under the *Immigration and Refugee Protection Act*. We have reviewed your application and, pursuant to paragraph 104(1)(c) of the *Immigration and Refugee Protection Act*, it has been determined that your claim for refugee protection may be ineligible to be referred to the Refugee Protection Division of the Immigration Refugee Board. Paragraph 104(1)(c) reads:

> 104. (1) An officer may, with respect to a claim that is before the Refugee Protection Division or, in the case of paragraph (d), that is before or has been determined by the Refugee Protection Division or the Refugee Appeal Division, give notice that an officer has determined that
>
> . . .
>
> (c) the claim was referred as a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter and that the claim was not otherwise eligible to be referred to that Division.

It has been determined that you misrepresented the following material facts:

[insert material facts misrepresented].

You are scheduled to report to the following office [office address] on [date] to meet with an officer to discuss this matter. Please bring with you any written submissions or relevant documentation that you believe is relevant to this redetermination.

Failure to appear for the scheduled interview will result in a determination being rendered based on the evidence we have provided and your file will be transferred to the Enforcement Office where removal arrangements will be initiated. Furthermore, it is imperative that you keep us apprised of your current address.

Sincerely,

CBSA Officer

Appendix M Sample letter outlining reasons for ineligibility [A104(1)(d)]

[insert date]

Dear Sir/Madam:

This is in response to your application for refugee protection in Canada under the *Immigration and Refugee Protection Act*. We have reviewed your application and, pursuant to paragraph 104(1)(d) of the *Immigration and Refugee Protection Act*, it has been determined that your claim for refugee protection may be ineligible to be referred to the Refugee Protection Division of the Immigration Refugee Board. Paragraph 104(1)(d) reads:

> 104. (1) An officer may, with respect to a claim that is before the Refugee Protection Division or, in the case of paragraph (d), that is before or has been determined by the Refugee Protection Division or the Refugee Appeal Division, give notice that an officer has determined that
>
> . . .
>
> (d) the claim is not the first claim that was received by an officer in respect of the claimant.

Enclosed is a copy of the previous Convention refugee decision with respect to [name of claimant] and confirmation from the RCMP indicating a fingerprint match.

You are scheduled to report to the following office [office address] on [date] to meet with an officer to discuss this matter. Please bring with you any written submissions or relevant documentation that you believe is relevant to this redetermination.

Failure to appear for the scheduled interview will result in a determination being rendered with the evidence we have provided and your file will be transferred to the Enforcement Office where your removal from Canada will be arranged. Furthermore, it is imperative that you keep us apprised of your current address.

Sincerely,

CBSA Officer

Appendix N *Immigration and Refugee Protection Act* - Redetermination of eligibility overview