Temporary Residence

Temporary Resident Visa (TRV)

* Visa ≠ status ≠ permit; visa is *sine qua non*, i.e. necessary but not sufficient for admission [A11(1), R7(1)]
  + Also require **valid documents** [R52(1)] such as **permits** [A30(1)], UNLESS exempt under R52(2)
  + Final decision made by visa/CBSA officer at **port of entry** [A18(1), A22(1)]; can request further docs if unsatisfied under A23 (*Galloway*)
* **Apply for it before arrival [A11(1), R11(2)]**
  1. In country where applicant is *present* & *has been lawfully admitted* (even if he subsequently loses status)
  2. In applicant’s *country of nationality* (or country of habitual residence if stateless – must be lawfully admitted there)
* **Exceptions** 
  + Visa exempt [R190]; still requires ETA
    - By nationality – US citizen, etc.
    - By documents – diplomatic
    - By purpose of entry – NATO armed forces, for US visa interview
  + Persons in transit [R7(1)(b)]
  + TRP holder
* **Criteria [R179]**
  1. Has applied for a TRV as *visitor, worker or student*
  2. Will leave Cnd by end of period authorized for their stay [A20(1)(b)]
     + Consider likelihood of return as a reasonable person: familial & economic ties to country of residence (CR), financial stability for time here, immigration status in CR, economic/political status in CR, obligations in CR
     + Allows for **dual intent** [A22(2)]: intention to become PR doesn’t preclude the from becoming TR if officer is satisfied they’ll leave Cnd before expiry
     + ***Khatoon***: Pakistani, citizen grandchildren have funds, have travelled to Saudi; child’s satus cant be used to impute similar future conduct to applicant; can’t use cultural practices to attack the *bona fides* of application
  3. Holds a permit
  4. Meets applicable requirements at time of issuance *& cont. to meet at time of entry* [R180]
  5. Not inadmissible
  6. **Medical examination** if required [A16(2)(b)]
     + R30(1)(iii) &(2) >6mo stay in Cnd incl 14 days away, lived in place w communicable disease for >6mo in last yr
     + R30(3), see A38(1-2) inadmissibility
  7. Not subject to **A22.1(1) declaration** (*Galloway* PP exception by ministerial discretion; ***Toronto Coalition to Stop the War*** – hasn’t been refused at POE or applied for TRP; now covered under A179(g) PP discretion)
* **Expiry** 
  + **Extension** [R181(1-2)]: made before expiry & complied w conditions; has implied status once applied; officer MUST extend if cont. to meet requirements of R179; typically valid for 6mo
  + **Restoration** [R182(1-2)]: made within 90 days of expiry & complied w other conditions & not subject to 22.1(1); officer MUST NOT restore if student doesn't comply w R220.1(1) (***Owaza***– restoration cures breachof length of stay requirement)
* **Loss of TR status [A47]**
  1. At the end of authorized period
  2. For non-compliance – becomes inadmissible
  3. On cancellation of TRP

4 TYPES of TRV

1. Single entry (**SEV**)
2. Multiple entry (**MEV**) – presumption even if you apply for SEV; up to 10yrs less 1mo
3. **Transit**
4. **Parent/grandparent super visa** (2011 by MI): valid for 10yrs, multi-entry, can stay for up to 2yrs on initial stay, can’t access health care; REQUIRES
   * Letter of invitation from sponsor + proof of relationship
   * Sponsor meets LICO min. (ex. notice of assessment, T4 or T1, employer letter, or pay stubs)
   * Buy Cnd private medical insurance for a min. of $100,000 & 1yr
   * May require med exam [A16(2)(b)]

Types of Temporary Residence

TRP holder [A24(1)]

* FN who’s inadmissible but *it’s justified in the circumstances* to issue him a TRP; cancellable 🡪 **necessary presence in Cnd outweighs risks to Cnd society**
  + Considers why they’re excluded & why they’re here
  + Ex. criminally inadmissible ppl to attend one-time event, children for treatment not available in CR, deported but not convicted + has compelling reason to return, human trafficking victims)
* Can apply at POE or inland; must be examined upon arrival if issued outside Cnd
* Can apply for WP [R199; R208 temporarily destitute] or SP [R215(1)] inland if TRP is valid for ≥6mo
* Can access health/social services once admitted
* Valid until [R63]
  1. Cancelled under A24(1) – absolute discretion, but must act fairly & give notice
  2. Leaves w/o authorization to re-enter
  3. Expiry
  4. >3yrs from date of validity

Worker

* **Special types of WP**
  + **Bridging open work permit**: not tied to an employer; issued for a PR applicant awaiting decision
  + **Post-graduation work permit program (PGWPP)**: open permit for up to 3yrs; must apply within 90 days from date of graduation; must have studied full-time at post-2nd level for ≥8mo, have valid SP, & have received graduation notice from school
* **International Mobility Program**: pursuant to intl/fed-prov agreements or other specified policy aims incl FNs who’re indigent or deserving
* **4 streams of TFWP**
  + **Primary agricultural stream**: seasonal, max 8mo, employer must prove X hours of work for within 6 weeks & cover all costs incl insurance, transportation, accommodations, etc.; pursuant to bilateral agreements
  + High wage positions
  + Low wage positions
  + **Caregivers** [R112 + MI]: live-in NOT required; can apply for PR after 4rs w parallel processing [R207]
    - Applicantmust (a) apply as such, (b) have education level equivalent to HS, (c) have employment-related training (either 6mo full-time training, or 1yr full-time paid employment incl 6mo cont. w one employer within the 3yrs before application), (d) can communicate in unsupervised setting, & (e) have employment contract
    - Employer must apply for MLIA
* Work = activity that pays wages/commission, or directly competes in Cnd labour market; i.e. not volunteer [R2]
* **Application** 
  + R197 – before entry/abroadgenerally
  + R198 – upon entry/POE if visa-exempt w exceptions
  + R199 – after entry/inland if already holding SP/WP/TRP, or working under R186, or family thereof
* **Exemptions for WP [R186]**
  + Performing artists, athletes, new reporters, public speakers, clergy, judges, referees, expert witnesses, investigators, health care students, civil aviation inspectors, full-time students
  + Business visitor (not paid by Cnd employer, ex. from another branch)
* **Criteria for WP [R200(1)]** – officer SHALL issue WP if applicant meets criteria
  + Applicant must
    - Submit proper application, incl med certificate if required
    - Satisfy officer he’ll leave by end of period authorized (can have dual intent)
    - Have job offer, and LMIA if required [R200-203 regular stream requires both; R204-208 preferred stream requires WP but not LMIA; R186-187 requires neither]
    - Capable to perform the duties & intend to do so
  + Officer must assess203(1)
    1. Job offer is genuine [R200(5)]
       1. Whether employer is actively engaged in the business
       2. Officer is consistent w employer’s reasonable employment needs
       3. Employer is reasonably able to fulfill terms of offer
       4. Employer/recruiter has complied with fed/prov employment laws
    2. Employment of FNis likely to have a neutral/positive effect on Cnd’s labour market

(**Criteria for LMIA** – ESDC must considers R203(3); see if there’s Cnd for the job)

* + - 1. Direct job creation/retention for Cnd
      2. Transfer of skill/knowledge that would benefit Cnd
      3. Fill labour shortage
      4. Consistent w prevailing occupational wage rate & work conditions
      5. Employer made reasonable efforts to hire Cnd
      6. Adversely affect settlement of labour dispute
      7. Employer made reasonable efforts to fulfill (a), (b) & (e) (added after ***Construction & Specialized Workers Union*** – requires Mandarin, but still reasonable to issue LMIA)
    1. Employment isn’t inconsistent w prov/fed agreement
    2. Employer didn’t breach offer w/o justification in past 6yrs (ex. underpaid a FN for similar job)
  + **Exemptions for LMIA** (i.e. granted open permit)
    - R204 – agricultural work under intl agreement
    - R205 – creates social/cultural/economic benefit to Cnd or reciprocal employment (***Da Silva*** – Brazilian martial art; discretionary), designated as essential to research/educational/professional program, or of religious/charitable nature
    - R206 – refugee claim or unenforceable removal order w no other means of support
    - R207 – member of caregiver, spouse or CL partner class, protected person, or H&C exemption
    - R208 – temporarily destitute SP or TRP holder (≥6mo)
* **Restrictions for WP [R200(3)]** – officer SHALL NOT issue WP if
  + Unable to perform work sought (***Randhawa*** – unreasonable to pull hygiene out of job offer as duty; ***Singh Grewal*** – reasonable to use NOC duties & require her to speak En)
  + Work will adversely affect settlement of any labour dispute
  + Live-in caregiver who doesn’t meet R112 requirements
  + Engaged in unauthorized work or study (unless 6mo elapsed, unauthorized bc of non-compliance w conditions deemed inconsequential, needed to support self, or TRP)
  + Unpaid R303.1 fees
  + Worked for a period of 4+yrs (unless 4yrs elapsed, work of social/cultural/econ benefit, or intl agreement)
  + Employer of sexual services, or non-compliant employer

Student

* **Application** 
  + R213 abroad generally
  + R214 POE for US citizen/PR or resident of Greenland
  + R215 inland
    1. FN in Cnd already holding a permit, ex. work/study permit holder, or
    2. Family of FN in Cnd already holding a permit, ex. wife of a scholar/TFW
* **Criteria [A30(1), R216]**
  + \*officer MUST issue SP if FN meets criteria, subject to (2)&(3)
  + R216(1) – has applied, will leave, meets requirements incl med exam (***Babu*** – refused 3x in 5yrs; insufficient funds, lack to ties to Pakistan; ***Obot*** – unreasonable to expect a 22yo to have trappings of permanency)
  + R219 – written acceptance letter from a designated learning institution
  + R220 – sufficient financial resources w/o working in Cnd for tuition, maintenance & transportation
  + R220.1(1) – student must enroll at designated institution & *remain enrolled* until studies are completed & actively pursue studies 🡪 post-2nd intl student may transfer btw institutions/programs/levels w/o apply to change conditions of permit, subject to R185(c)
  + R221 – hasn’t previously engaged in unauthorized work/study or failed to comply w permit, UNLESS
    - >6mo have passed
    - Unauthorized activity consisted of failing to comply w length of stay, or engaging in prohibited work/w prohibited employer/in prohibited location
    - Was subsequently issued TRP
  + R185(c) – officer may impose, vary or cancel conditions such as type/location/duration of study
* **Duration of stay**
  + R222(1) – **becomes invalid if**
    1. 90 days after completion of studies, or
    2. The day removal order becomes enforceable, or
    3. The day permit expires
  + R217(1) – **may apply for renewal if**
    1. Application is made before expiry
    2. Compliance w all conditions
    3. Officer MUST renew SP if FN cont. to meet requirements of R216

\*R189 – can study w/o SP until decision if he remains in Cnd & complies

* + R182 – **restoration of TRV**
* **Exemptions** 
  + R188(1) – **exempt from SP**
    1. Family or private staff of foreign representative
    2. Armed forces of a designated state under *Visiting Forces Act*
    3. Duration of studies ≤6mo & will finish before expiry (already in Cnd)
    4. Indian

A30(2) minor child

* + R186 – **students exempt from WP**
    - (f) On campus: full-time enrolment
    - (v) Off campus: full-time enrolment in a ≥6mo degree/diploma program, <20hrs/week (bars exchange student & full-time work except on break)
    - R208 – may be granted work permit for duration of study if temporarily destitute for reasons byd his control & control of his financial sponsor

*Permanent Residence*

Permanent Resident Visa (PRV)

* Selection of PR [A12], Sponsorship of FN [A13]
* **Apply for it before arrival [A11, R6]**
  + Officer may refuse if sponsor doesn’t meet criteria [A11(2)]
  + **Abroad** [R11]
    1. In country where applicant is *present* & *has been lawfully admitted*
    2. In applicant’s *country of nationality*
  + **Inland** [R11(3)] – apply to remain in Cnd; submit to Case Processing Centre in Cnd; no appeal to IAD & directly to JR
* **Criteria**
  + **Abroad** [R70(1)]
    - (c) member of family/economic/refugee class
    - (d) meets applicable criteria
    - (e) applicant & family members, *whether accompanying or not*, are not inadmissible
  + **Inland** [R72(1)]
    - (c) member of live-in caregiver/spouse or CL partner in Cnd/protected TR class (refugee)
    - (d) meets applicable criteria
    - (e)(i) applicant & family members, *whether accompanying or not*, are not inadmissible; (iii) holds a medical certificate – not danger to public safety & no excessive demand
* **Residency requirements [A28, R61]**
  + For ≥730 days in 5-yr period
    - Either physically present in Cnd
    - Or 1) accompanying a citizen spouse/CL/child; 2) employed full-time by Cnd business/govt; 3) accompanying a PR spouse/CL/child & employed full-time by Cnd business/govt
* **Loss of PR status [A46(1)]**

1. Become citizen
2. Final determination you failed to meet A28 residence requirements (can appeal to IAD)
3. Removal order comes into force
4. Final determination you’re not a refugee
5. Renounce PR status

Types of Permanent Residence

Family Class [A12(1)]

* **Sponsorship classes**
  + **Family class** – apply abroad [R117(1)]
    - (a) sponsor’s spouse/CL partner/conjugal partner, (b) dependent child, (c) parents, or (d) grandparents, (f) orphaned minor who’s sponsor’s sibling, niece/nephew, or grandchild, (g) adopted minor, (h) sponsor’s relative regardless of age if there’s no other family in Cnd
  + Spouse or CL partner in Cnd class – apply inland [R124]
    - Spouse/CL partner of a sponsor and cohabit w that sponsor in Cnd, have TR status in Cnd, and are subject of a sponsorship application (***Xuan*** – separation must be temporary & short, joint interests not necessary)
    - R125 exclusions
* **Accompanying members** [R1(3), R70.4]
  + (a) spouse/CL partner; (b) dependent child of person or his spouse/CL partner; (c) dependent child of (b)
* **Validity of relationship** 
  + R1(1-2) **CL partner** **= cohabiting in conjugal relationship for ≥1yr**, unless unable to cohabitate due to persecution or penal control
  + R2 **conjugal partner** **= in conjugal relationship for ≥1yr but can’t cohabitate due to broader reasons**
    - Conjugal partner only has meaning in immigration law, not entitled to benefits upon arrival, must have financial inter-mixing (unlike CL partner)
    - *M v H* factors (*Macapagal*): shared shelter, sexual & personal behaviour, service, social activities, economic support, children, societal perception of the two as a couple
    - *Slide factors?*
  + R2 **marriage** outside of Cnd must be valid both where it took place & in Cnd (***Agha*** – marriage by phone no longer valid; ***Amin*** – validity of divorce)
  + R2 **dependent child** **= (a) biological or adopted child and (b) in a situation of dependency** 
    - BIOLOGICAL: incl child born by assisted reproduction; female partner must carry child though doesn't need to share genetic relationship (***Mao*** – legal child isn’t included but can’t adopt under Sharia law, officer misinterpreted “best evidence” & shouldn’t have asked for DNA)
    - DEPENDENCY: >19yo & not a spouse/CL partner, or>19yo & has depend ended substantially on parent’s financial support & can’t self-support bc of physical/mental condition
      * Date is locked in when application is received by processing centre; marriage/CL partner requirement applies at entry (even if you age)
  + R4 **bad faith relationship: (a) entered into primarily for the purpose of immigration, or (b) not genuine**
    - Poison pen letter is hearsay & not admissible in court
    - ***Abebe*** – arranged marriage; compatibility factors incl age, education, religion; considers culture; ***MacDonald*** – online LD, she wasn’t credible; ***Xie*** – cheat sheets, assessed genuine integration rather than minor inconsistencies
  + R5, R117(9) exclusions
    - (a) FN is under 18yo
    - (b) sponsor has an existing undertaking
    - (c)(i) FN/sponsor is already married *at the time of marriage*, or (ii) they’ve lived apart for ≥1yr & FN/sponsor already has a CL/conjugal partner; (c.1) FN/sponsor wasn’t physically present at marriage ceremony
    - (d) sponsor didn’t incl FN as non-accompanying member on previous PR application
* **Adoption [R117(1)(g) finalized in Cnd, 117(2-4) finalized abroad]**
  + R117(1)(g) – can’t be for child trafficking or undue gain, or primarily for immigration; if child’s CR is a party to Hague Convention on Adoption, must approve adoption 🡪 child is legally available for adoption
  + R117(2) – child <18yo: not primarily for immigration & **in best interest of child (Hague)** [R117(3)]
    - Home study of adoptive parents
    - Child’s parents gave free + informed consent
    - Adoption created a genuine parent-child relationship (***Kwan***– for geographical separation)
      * *Waldman* factors**:** evidence of ties, communication, financial support, control exercised & reason for adoption
      * *Guzman* factors: motivation of AP/NP, supplanting of authority of NP, child’s relationship w AP (before adoption)/NP (after adoption), treatment of adopted vs. natural children by AP, changes flowing from new status, what AP does to provide & care for child
    - Complied w laws of both places; built-in prov consent: prov child welfare authorities must approve
    - R117(1)(g)
  + R117(4) – child >18yo ISN’T a member of family class unless
    - Complied w law of sponsor’s prov governing adoption >18
    - **Genuine** **(i.e. best interest of child)** parent-child relationship existed *at the time of adoption* & *before child reached 18yo*
    - And not primarily for immigration
  + R3(2) – adoption severs pre-existing parent-child relationship
* **Sponsorship [A13(1)]**
  + **Criteria** [R130(1)]: sponsor must be Cnd citizen or PR, ≥18yo, resides in Cnd (if not intends to when FN becomes PR), and applies under R10
    - If sponsor came as spouse, must be PR for 5yrs before sponsoring someone as spouse
  + **Undertaking** [R131-132]
    - Obligation: support FN, reimburse govt if FN goes on social assistance
    - Duration:since FN becomes PR or enters w TRP
      * Partner: 3yrs
      * Child: 10yrs or age 22 whichever is earlier
      * Parent/grandparent: 20yrs
    - Nature of sponsorship both contractual & statutory, which creates duty of procedural fairness (***Mavi***)🡪 notify sponsor of claim, provide opportunity to explain, consider relevant circumstances, notify sponsor of decision, no need to provide reasons; but DOESN'T have to tell you when FN starts to collect social assistance; Cr may delay debt but can’t forgive it
  + **Requirements** [R133]: must intend to fulfill undertaking; not subject to removal order; not detained; not convicted of an offence that’s sexual, srs violent, or caused bodily harm to a family member; not convicted of a similar offence abroad; not in default of an undertaking or govt debt; not bankrupt; at least min. necessary income, plus 30% x 3yrs for parent/grandparent; not receiving social assistance except disability
    - **Low Income Cut-off (LICO)** [R134] – those in sponsor’s family plus all those sponsored (incl *their* family whether accompanying or not)

|  |  |  |  |
| --- | --- | --- | --- |
| 1 | $23,861 | 5 | $50,290 |
| 2 | $29,706 | 6 | $56,718 |
| 3 | $36,520 | 7 | $63,147 |
| 4 | $44,340 | 7+ | $6,429 each additional |

* + **Exceptions**
    - R133(2-3) 5yrs elapsed since completion of sentence (also show rehabilitation if conviction outside of Cnd)
    - R133(4) LICO exception for spousal sponsorship and/or dependent child w no dependent children; also applies to intended adoptee under 18yo

Economic Class [A12(2)]

* Based on ability to become economically established
* Ministerial Instructions: A87.3 (2008), A14.1 (2012), Division 0.1 ss 10.1-10.4 (2013)
  + Not statutory, no notice/consultation/evidence/analysis required, unilaterally overhauled economic class
  + *Liang* – prospective MI, unreasonable delay bc of the 4 MIs, MI should be prospective
  + *Austria* – retrospective legislation, amendment to IRPA in anticipation of MI (to launch EE) retrospectively ended FSW applications made before 2012/03/29, non-discretionary factual determination

Skilled Immigrants **Express Entry** [MI]

* \*NOC (National Occupational Classification), ESDC (Economic & Social Development of Canada)
* Stages
  + **Enter EE pool** (applicant)
    - Submit Expression of Interest (EOI): fill out online form, meet applicable requirements, register w job bank if no job/nomination
  + **Invitation to apply** (IRCC, employer)
    - IRCC ranks EOI using Comprehensive Ranking System (CRS) – A+B+C = max 600 points
    1. Core/human capital factors
    2. Spouse or CL partner factors
    3. Skill transferability factors
    4. Additional 600 points: **provincial nomination** (arranged employment no longer a trump)
    - Multiple rounds of invitations per yr, sent out in 1 day, each in MI w own pass score
  + **Apply for PR within 60 days**
* **Federal Skilled Worker (FSW)**

R75-76 **3 basic rules**: meet min requirements, assess using points system, have settlement funds/job

* 1. R75(2) min requirements
     + 1yr+ continuous/indefinite + permanent full-time (or part-time equivalent) in last 10yrs in NOC 0, A or B; must perform actions described in lead statement & a substantial number of main duties for job as set out in NOC
     + Language proficiency
     + Has educational credentials required for job [R75(2.1), R75(2)(e)] (**Taleb** – oncologist)
  2. R76-83 points system to access ability to become economically established 🡪 67/100 pass mark
     + Official language (max 28 pts), education (25) [R78(1)], experience (15), age (12), arranged employment (10), adaptability (10) [R83(1); **Patel** – diff education programs don’t count]
     + 76(3) substituted evaluation (**Chen** – should only assess ability to make a living, not moral integrity)
  3. R76(1)(b) settlement funds: need half of LICO & LMIA
* **Federal Skilled Trade (FST) [R87.2]** (2013)
  + 2yrs experience in NOC level B
  + Language threshold level 5
  + Meet employment req’ts for trade
    - Trade certification or Cnd work experience
    - Full-time job offer for 1yr+ – either LMIA-approved work permit + job offer, or informal LMIA assessment; can have jobs form 2 employers
  + Settlement funds: need half LICO & probably LMIA
* **Cnd Experience Class (CEC) [R87.1]** (2008, amended in 2012); 2-step PR
  + 1yr within last 3yrs in NOC type 0, or level A or B (can use wage rates to determine whether she performed main duties in that class)
  + Language threshold level 7
  + Doesn’t require educational credentials (but will help earn pts in EE) or settlement funds
* **Provincial Nominee Program (PNP) [R87]**
  + Based on ability to become economically established
    - 1967 Act s 95 concurrent jurisdiction w paramountcy & s 91(14) feds over naturalization/aliens; IRPA ss 8 & 9 fed-prov agreement 🡪 prov responsible for selection, feds for inadmissibility
    - OBJECTIVES: regional diversity, local labour market needs, poor immigrant labour market outcomes, local demographic req’t, social support networks, broader skill recruitment
  + Stages
    - 1st apply to prov for nomination (pass prov program criteria & pay fees) 🡪 prov will notify by letter, issue certificate of nomination, & notify visa office
    - 2nd apply to visa office for PR, **may go through EE or not** 🡪 **if through EE, must also meet req’ts of an EE category** (i.e. FSW, FST, CEC)
  + 87(2) named in nomination certificate + intend to reside in prov
  + 87(3-4) officer’s duty to consult prov: nomination creates presumption that applicant will be econ established; officer may substitute evaluation w concurrence of another officer (**Kikeshian**)
  + 87(5) nomination can’t be based on provision of capital; FN can’t participate in immigration-linked investment scheme 🡪 limits investors but not entrepreneurs

Business Class

* Selected on ability to create jobs for themselves & other Cnd; require sufficient funds for 1yr
* **Start-up Visa** (2013): replaces entrepreneur program
  + Business must be
    - Incorporated here when you get PR
    - Applicant owns 10%+ of business; only applicant or designed org may own controlling share
    - Letter of support from designated org (Cnd investor group or venture capital funds)
  + Language benchmark of 5
  + Education requirements
  + Settlement funds: half of LICO
* **Immigrant Investor Venture Capital Pilot Program** (2015); replaces investor program
  + Invest $2 million in venture capital fund; application now suspended
* **Self-employed [R88(1)]**
  + Ability & intention to contribute to specified econ activities in Cnd, i.e. 2yrs within last 5yrs experience in cultural activities, athletics, purchase & management of farm
  + Modified points system for ability to become economically established [102-105] 🡪 35/100 pass mark
    - Age, education, official language, experience, adaptability
* **BC Entrepreneur Program**
  + Residency in & active management of business in BC
  + Net worth of $600,000; make eligible investment of $200,000
  + Create at least one permanent full-job
  + Business or work experience (3yrs as owner– 10%+ ownership; 4yrs as senior manger, 1yr as owner manger + 2yrs as senior manager)
  + Adaptability factors
  + Can incl on key staff member who can get a work permit w you
  + Sign performance agreement

IRPA s 25

* Based on either H&C grounds [25(1)] or exceptionally, on public policy grounds for a group of ppl [25.2]
* A25(1) for ppl who’re either inadmissible or doesn’t meet IRPA req’ts; absolute bar on srs inadmissibility [34,35,37]
  + Compulsory review for ppl in Cnd who apply, discretionary for ppl in Cnd who don’t apply & ppl outside
  + Considers **best interest of a child (BIOC):** child’s age, level of dependency, degree of establishment in Cnd, special/med needs, links to country, education, gender; conditions back home (***Williams***) 🡪 NOT decisive
  + Considers **hardship** 🡪 NO LONGER decisive (***Kanthasamy***)
* A25(1.01) if doesn't qualify for refugee & can’t be deported, can’t apply for H&C for 5yrs
* A25(1.21) can’t be removed if risk to life, stateless, won’t have adequate health/med care, or not in BIOC
* R66-69 onus on applicant who’s; entitled to a full & fair review, but officer has discretion not to re-open file; no appeal for H&C decision but for JR; application doesn't stay removal (officer has discretion to stay while decision is pending; applicant could also file stay in FC)

Inadmissibility

* A33 **threshold for facts wrt ss 34-37 inadmissibility = “reasonable grounds to believe”** (***Almrei***: = btw suspicion & BOP, objectively established on credible & compelling evidence; weighs competing evidence)
* **Standard of proof varies**
* CIC officers can deny visa abroad; CBSA officers can deny entry at POE or remove if already here

11 grounds of inadmissibility

\*saving provisions removed from 34, 35 & 37; could argue for less stringent test

\*A42.1 Minister may declare 34, 35(1)(b-c) & 37(1) doesn't constitute inadmissibility if not against national interest

*\*Faster Removal of Foreign Criminals Act* now part of IRPA

* 34(1) **security risk**: (a) espionage, (b) subversion, (c) subversion of democratic govt i.e. terrorism, (d-e) security danger, (f) member of such an org
  + **Terrorism:** finding by IRB or court under CC is conclusive [R14]; exempts acts in the context of (≠physical presence) armed conflict that complies w intl law (***Suresh***, ***Khajawa***)
  + **Membership**: interpreted broadly; looks at person’s involvement, length of time associated & degree of commitment (***TK***); status of minor is relevant & individuated – goes to capacity & knowledge (***Poshteh***)
* 35 **human/intl rts violation:** (a) crimes against humanity or (b) senior member of such a regime; finding by ICT, ICC, or IRB, or court under CC or CAHWCA is conclusive [R15]; **4 factors** (***Mugesera***)
  + Underlying act = either counselling of murder (that’s actually committed as result) or persecution by hate speech (blatant denial of fundamental rts on discriminatory grounds)
  + Act was part of widespread (frequent/large-scale) or systematic (organized/patterned) attack
  + Attack was directed against any civilian pop. or identifiable group of ppl
  + Person knew of the attack & knew/took risk that his act comprised a part of attack
* 36(1) **srs criminality:** PR & FN
  + (a) convicted in Cnd for offence either punishable by max 10yr+ jail or imposes >6mo jail
  + (b) convicted outside Cnd for offence that’d be punishable by max 10yr+ jail here
  + (c) committing an act outside Cnd that’s an offence there & that’d be punishable by max 10yr+ jail here 🡪 OBP standard for PR
  + ***Karchi* on equivalency** (ex. manslaughter by carelessness ≠ dangerous driving in CC):
    - 1) compare essential elements of offences, incl defences but exclude procedural/evidential rules such as standard of proof 🡪 question is “does this offence exist in a similar form in Cnd”, NOT “would he be convicted in Cnd” (***Li***); or
    - 2) see whether elements of an offence in Cnd have been proven in foreign proceeding; or
    - 3) comb of 1&2
* 36(2) **criminality:** FN
  + (a) convicted in Cnd for offence punishable by indictment (incl hybrid) or 2 offences on separate occasions
  + (b) convicted outside Cnd for the equivalent
  + (c) committing an act outside Cnd that’s an offence there & that’d be punishable by indictment (evidence)
  + (d) committing on entering Cnd an offence under Regs (ex. drugs in car, DUI)
* 36(3) **exemptions**
  + (b) not inadmissible if pardoned or acquitted
    - ***Saini*** **on equivalency of pardon**: must consider aim/content/effect of foreign law & gravity of offence – Pakistani legal system not similar to Cnd
  + (c) either deemed rehabilitation (10yrs, not 10yr+ jail), or applies & shows you’ve been rehabbed (5yrs)
  + (e) young offender
* 37(1) **organized criminality:** PR & FN
  + (a) part of a patterned crim activity planned & organized by multiple ppl in concert to commit an offence punishable by indictment (***Chiau*** – PF doesn't mean full disclosure)
  + (b) smuggling, trafficking or money laundering in context of transnational crime; exempts victims [37(2)]
* 38(1) **health grounds:** FN
  + (a-b) likely a danger to public health or safety
  + (c) reasonably expected to cause excessive demand on health/social services
    - R1(1)(a) exceed ave Cnd per capital costs over 5 consecutive yrs, or 10yrs if costs are significant; or (b) delay timely services to Cnd
    - 38(2) **exempts** partner/child, or refugee, or partner/child of refugee
    - Requires individualized assessment – rich ppl can provide declaration of ability of intent, supported by a credible plan (***Hilewitz; De Jong***); extended to byd business class (***Colaco***)
* 39 **financial reasons:** FN
  + R133(4) **exempts** sponsors from LICO for some categories (ex. refugees & protected persons)
* 40 **misrepresentation:** PR or FN
  + Intent is irrelevant; reasonable + honest belief isn’t misrep
  + (1)(a) misrep/withhold material facts; (b) sponsored by someone who’s inadmissible for misrep; (c) vacated refugee protection; (d) revocation of citizenship
  + (2)(a) unless 5yrs elapsed since final determination of inadmissibility or enforcement of removal order
* 40.1 **cessation of refugee protection**
* 41 **non-compliance** 
  + FN: (a) contravenes IRPA
  + PR: (b) contravenes any conditions [27(2)] or residency requirement [28]
* 42 **inadmissible family member:** FN except protected person
  + (1)(a) accompanying/non-accompanying family member *is inadmissible*; or (b) accompanying family member *of an inadmissible person* on 34, 35 & 37 grounds
  + (2) **exempts** TR applicants & inadmissibility on non-srs grounds

Removal

* Stages
  + A44 **officer may prepare report & order removal, or refer report to ID for inadmissibility hearing**
    - R228 types of order officer must issue w/o referral to ID
    - R229 types of orders ID must issue
    - ***Cha***: FN; “may” sometimes means “shall”, i.e. enabling provision & officer on fact finding mission
    - ***Monge***: PR; should’ve sent report to ID under 228 & 229 but didn’t based on *Ribic* factors
  + A49(1) order in force/**enforceable** on the day final removal order is made/determined
    - CBSA officer must instruct person of requirements, confirm ID, obtain travel docs 🡪 may issue warrant if no-show
    - Removal costs may be paid by person, transporter, or govt (R243 must pay govt back before return)
  + R240(1) order is **enforced** (voluntary or enforced) when person arrives at POE + departs + obtains certificate + is authorized to enter country of destination
    - R241(1) removed to where you came from or last PRed, or country or birth/nationality
* Types of removal orders [IRPA Part 13]
  + A52(1) can’t return w/o authorization or in prescribed circumstance
  + R223 departure < exclusion < deportation orders
    - ***Sahakyan*** – late departure triggered deportation; should’ve had opportunity to address lateness
  + R224 **departure order**
    - Must depart + obtain certificate of departure within 30 days after order is enforceable; otherwise becomes deportation; 30-day period is suspended if detained or if order is stayed
    - Don’t need written authorization to return
  + R225 **exclusion order**
    - 229(1) mustbe issued if inadmissible for health, finances, 40(1)(a-b) misprep, failure to appear for exam, failure to est' PR or he’ll leave by end of stay
    - 1yr ban generally & 5yr ban for misrep, unless written authorization (42(1)(b) exemption)
  + R226 **deportation order**
    - 229(1) must be issue if inadmissible on A34-38 grounds (incl non-srs criminality) or 40(1)(d) revocation of citizenship (***Pham***)
    - Permanent ban, unless written authorization (42(1)(b) exemption)
  + R227 removal order extends to family members
* Recourses
  + ID
  + IAD appeal
    - A63-65 who can appeal
    - A67(1)(a) legal or mixed error; (b) breaches natural justice; or (c) on H&C ground
    - A68(1) can allow/dismiss appeal, or stay removal order if satisfied that sufficient H&C considerations warrant special relief in light of all circumstances, incl BIOC
      * ***Ribic* factors**: srs of offence, possibility of rehab, circumstances of non-compliance, time in Cnd, degree of est’, dislocation to fam, community support, hardship if removed) (***Khosa, Chieu***)
  + FC stay & statutory stay
  + H&C application – ***Caliskan, Hinzman, Kanthasamy***
  + TRP
  + Pre-removal risk assessment (PRRA) application – almost exclusively used in refugee context

Detention

**Grounds for detention [A55]**

* + - 1. may detain **PR/FN w warrant** on reasonable belief of inadmissibility + public danger/flight risk (unlikely to appear)
      2. may detain **FN w/o warrant** on reasonable belief of inadmissibility + public danger/flight risk **or** bc of identity
      3. may detain **PR/FN** **on entry** on reasonable suspicion of srs inadmissibility **or** for exam purposes
      4. must notify ID of detention w/o delay

**Review & release**

* A56(1) may release before 1st ID review if ground no longer exist; may impose conditions
* A57 must review detention (1) within 48hrs, (2) at least once in the next 7 days & every 30 days onward
* A58 must release on review unless there’s a ground for detention; may impose conditions
  + (a) **public danger** [R246 – rehab factors: change/willingness to change, behaviour since, fam/community support, recentness of conviction, pending charges]
  + (b) **flight risk** [R245: fugitive from justice in foreign jurisdiction, previous compliance/breach, involvement in organized crime, community ties]
  + (c) taking necessary steps to inquire into reasonable suspicion of **srs inadmissibility**
  + (d) **identity** **not est’d** & not cooperative [R247: cooperation, fraudulent docs, giving contradictory info]
* R248 if there’s a ground for detention, must consider **Sahin factors** before deciding(reason for detention, length/time, unexplained delay/lack of diligence, alternatives 🡪 NO prohibition against indefinite detention)
* A60: minor children detained as last resort; R249: BIOC, i.e. whether parent & child should be separated

Security Certificates

* A77 must issue certificate to PR/FN if srs inadmissibility & refer it to Fed Crt
* A80 finding that certificate is reasonable is conclusive proof of inadmissibility & an enforceable removal order
* A81 may issue a warrant on reasonable belief that person named poses public danger/flight risk
* A82 J must review reason for cont’ detention within 48hrs, at least once every 6mo pending/following decision on reasonableness of certificate 🡪 on review, may order cont’ detention if ground still exists
* A83 J can hear case in the absence of detainee/public
  + Can appoint **a special advocate** (“substantial substitute” for personal participation)
  + Can base decision on otherwise inadmissible & undisclosed evidence 🡪 minister is only required to discloses a summary of evidence that enables detainee to be **reasonably informed** of the case (***Harkat***: “incompressible min amount of disclosure is required”, i.e. enough to give meaningful instructions to counsel; evidence is excluded if can’t reconcile security & disclosure)

Trafficking & Smuggling

|  |  |  |
| --- | --- | --- |
|  | **Trafficking** | **Smuggling** |
| Action | [A118, *Palermo Protocol*] recruitment, transportation, transfer, harbouring or receipt; may be within Cnd  [A121] aggravating factors: bodily harm/death, crim org, profit, degrading treatment  [CC279] | [A117, *Palermo Protocol*] movement across intl border, incl aiding/abetting & recklessness  ***B010***: read “financial/material benefit” into A37(1) smuggling  ***Appulonappa***: smugglers exclude mere humanitarian conduct, mutual assistance, or aid to fam |
| Means | Coercion, position of authority/trust, fraud, deception or abduction (consent invalid) | Consent; free upon arrival but in debt |
| Purpose | Exploitation | Financial/material benefit |
| Party | Crime against individual | Crime against country |

Recourse

* Designated FN [A20.1]
  + Must be a group & in public interest (if can’t examine them in a timely way, or reasonably believes they’re victims of smuggling by crim/terrorist org)
* TRP
  + 180 days in Cnd, access to health care, can have work permit
* H&C application

Citizenship

Cnd Citizenship Act, 1977

* 3(1)(a) **by soil**: born in Cnd after 1997, except children of diplomats/their employees [3(2)] (***Budlakoti***)
* 3(1)(b) **by blood**: born outside Cnd after 1977 & at that time, one non-adopted parent was a citizen
  + ***Kandola*** – “born of a parent”; has to be biological/genetic
  + 8 28-yr rule(now revoked): persons born outside Cnd btw 1977-1987 who derived it from a parent also born outside Cnd would lose citizenship on attaining 28yo if they didn’t apply to retain it, i.e. “lost Canadians” 🡪 can apply for PR, ask minister to grant citizenship to alleviate statelessness under 5(4), or immigrate
  + 3(3) 1st generation limit: can’t pass on citizenship if both you & your parent were born + live outside Cnd
  + **By intl adoption:** direct grant of citizenship to adoptees unless subject to 1st generation limit
* 3(1)(c) **by immigration**: requirements set out in 5(1)
  + Age: 18yrs+ PR
  + Physical presence: 1095 days out of 5yrs
  + Language: CLB level 4 [regs 14]
  + Knowledge: citizenship test [regs 15]
  + Not subject to removal order
  + Oath & ceremony [regs 17]

*(McAteer* – allegiance to Cnd not to queen; *Ishaq* – citizenship J has discretion to accommodate religious freedoms)

* **Bars**
  + 19(2) threat to national security, pattern of criminality org’d by a group to commit an indictable offence
  + 22 temporary prohibitions while on probation, on parole or in jail
* **Revocation**
  + 10(1) minister finds OBP person misrepresented or knowingly concealed material circumstances
  + 10.1 minister reasonably believes misrep re srs inadmissibility; declaration needed before revocation 🡪 triggers A44 report
* **Renunciation**: not stateless/a minor, doesn't reside in Cnd, not subject to s 20 declaration & understands [9(1)]