

Claiming Refugee Protection Under the New System: A Basic Overview

Introduction

The purpose of this document is to introduce you to the new refugee system that is taking place in Canada. However, before we begin with the specific steps of making a refugee protection claim, it is important to understand some of the concepts and language that are used throughout the document. Specifically, as part of the new process, new claimants will be divided into three categories, which will have different significance at different stages.

Designated Countries of Origin (DCO):

The Minister of Citizenship and Immigration can designate countries of origin. The nationals of these countries have reduced rights in the refugee process. Countries can be designated on the basis of quantitative factors (a rejection rate of at least 75% or a withdrawn and abandoned rate of at least 60%), or on the basis of the Minister's opinion that the country has an independent judiciary, democratic rights, etc.

Designated Foreign Nationals:

The Minister of Public Safety can designate groups of people as "irregular arrivals" in particular circumstances, including if the Minister considers that the group cannot be examined in a timely manner or suspects that the group might have been smuggled for profit. Individuals in the group are subject to many extreme measures, including mandatory detention (for all over 16 years of age) and a bar on applying for permanent residence for five years even if they are accepted as persons in need of protection by the Immigration and Refugee Board (IRB). They also face a reduction of their rights and some differences in terms of the refugee claim process.

These countries have begun to be designated as of December 14th, 2012. As of the production of this document 27 countries have made the list – 25 countries are in the European Union (EU) as well as Croatia and the US. To see the updated list, please visit www.cic.gc.ca.

Regular Refugee Claimants:

This category is for any claimant who is not from a Designated Country of Origin (DCO) according to Citizenship and Immigration Canada (CIC), or who is not a Designated Foreign National according to the Minister of Public Safety.

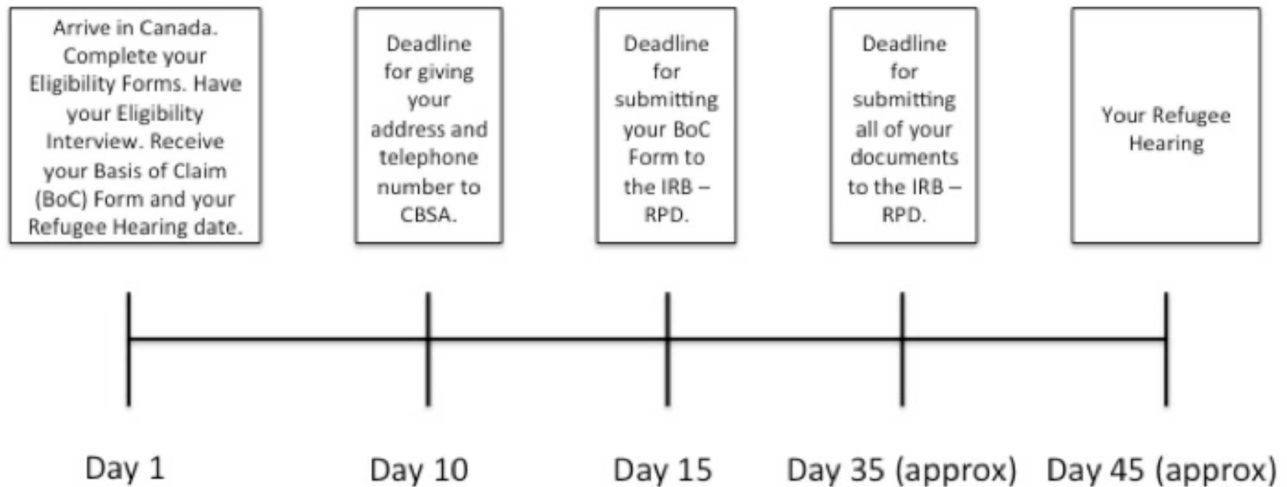
Timeline and Important Dates:

The timeline for your claim process will depend on where you make your claim and whether or not you are from a Designated Country of Origin (DCO)



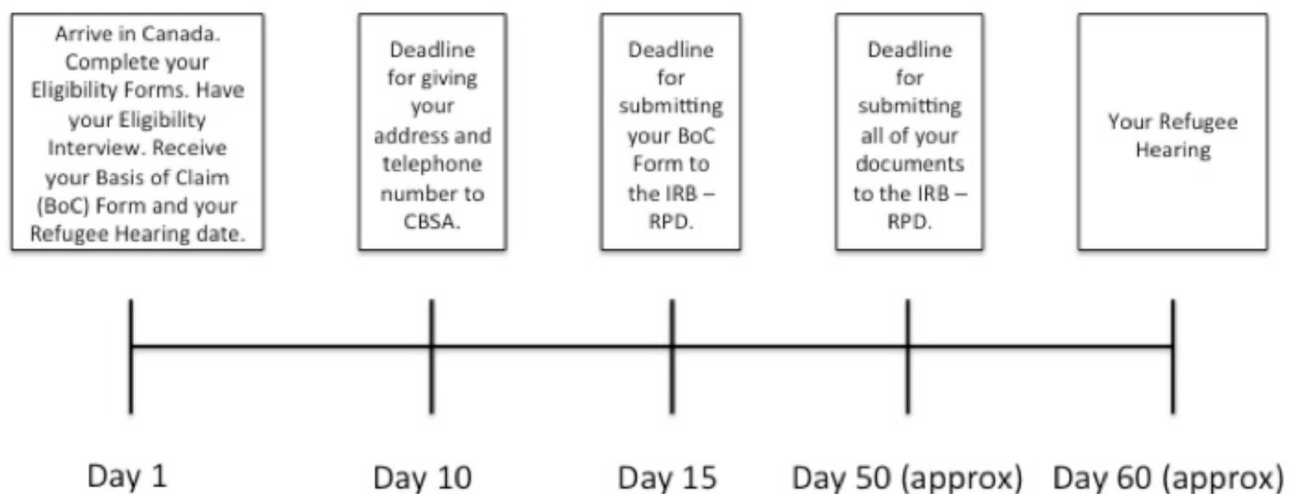
Timeline A (DCO)

I made my refugee claim at a port of entry (airport, seaport, or land border crossing)



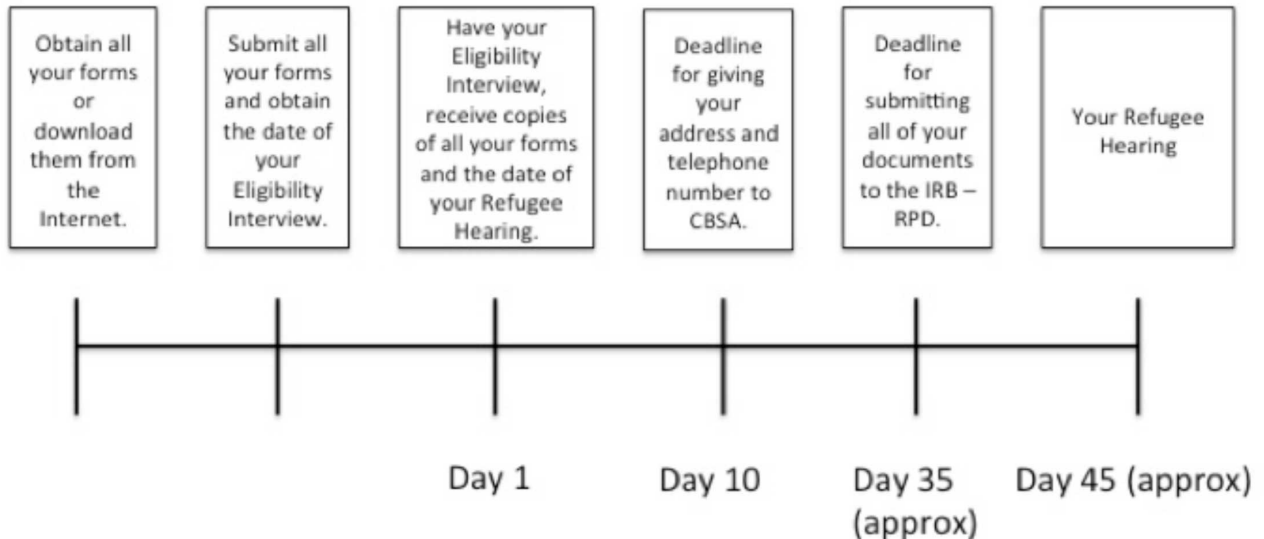
Timeline A (non - DCO)

I made my refugee claim at a port of entry (airport, seaport, or land border crossing)



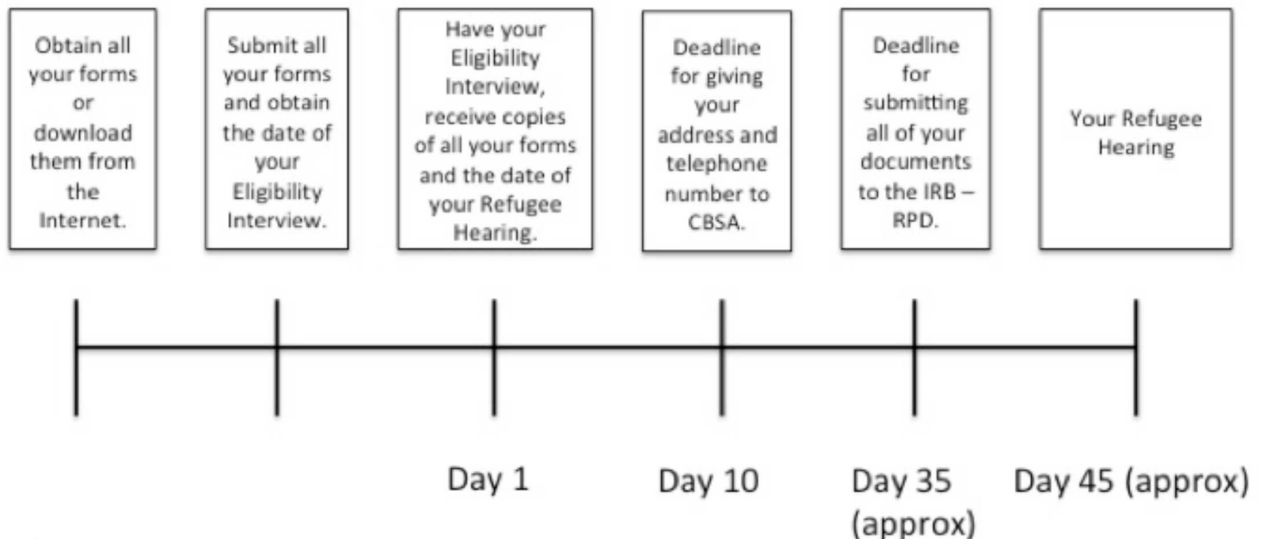
Timeline B (DCO)

I made (or will make) my refugee claim at an immigration office *inside* Canada.



Timeline B (non - DCO)

I made (or will make) my refugee claim at an immigration office *inside* Canada.



Making a Refugee Protection Claim

You can make a claim for refugee protection by speaking to an immigration officer inside Canada (“Inland claim”) or at Port of Entry (“POE claim”).

You do NOT have to pay any kind of fee to make a refugee claim.

An ***Inland claim*** is a refugee claim made at a Citizenship and Immigration (CIC office).

Most major cities in Canada have a CIC office where you can make a claim. To find the nearest office you can call the CIC Call Centre at 1-888-242-2100, or email question@cic.gc.ca. You may also get a list of CIC offices throughout Canada by visiting: <http://www.cic.gc.ca/english/information/offices/help.asp>

A ***POE claim*** is a claim made at Canada Border Services Agency (CBSA) upon arrival at a land border crossing, airport or seaport. **Be aware that POE officers are NOT allowed to send you back if you make a refugee claim upon arrival.**

If you came to Canada through the USA, you may need to consider the ***Safe Third Country Agreement*** between the U.S. and Canada and how this system works. A common exception to this agreement is when someone has family residing in Canada, so it's important to keep in mind that you must have close relatives in Canada if you would like to apply at a US/Canada land border.

There are several differences between the processes for Inland Claims and POE Claims. These processes are outlined on the following page:

POE Claims (*Persons who arrive at airport, land border or seaport*)

- The Canadian Border Services Agency (CBSA) officer determines eligibility (in some instances you may be asked to return the next day)
- You must complete and sign the following forms:
 - i) Schedule 12, - Additional Information - Refugee Claimants Inside Canada
 - ii) Generic Application Form (IMM008)
 - iii) Schedule A -Background Declaration
 - iv) Basis of Claim Form
- These forms will be completed with the CBSA officer, who will ask you many questions to determine your eligibility. The CBSA officer is trying to determine if you qualify to have a refugee hearing with the Refugee Protection Division (RPD) at the Immigration and Refugee Board (IRB). To determine if your claim is eligible or ineligible they will ask you what specifically you fear about returning to your country. Be sure to answer these questions as truthfully and completely as you can.
- You will also be given a Basis of Claim (BoC) form, which is described in detail below. You must submit this form no later than 15 calendar days after the date the claim was sent to the RPD. This form must be submitted to the IRB. The IRB will send the copies of the BoC to CIC and CBSA. You may submit this form in person, by courier, or by email. Do not send the BoC by regular mail. If the BoC is not completed on time, the RPD will hold a special hearing no later than 5 working days after the due date. At this hearing you will have to explain why you did NOT provide the BoC on time, and why the RPD should continue with the claim. If you need more time to complete your BoC, you must apply for an extension at least 3 working days before the BoC is due. Extensions are granted only for reasons of procedural fairness.
- The CBSA officer will keep your documents and give you copies of them.
- If you are found eligible, you will receive a folder of documents



Inland Claims (Persons who go to a CIC office once already in Canada)

- The Citizenship and Immigration Canada (CIC) officer determines eligibility. You must obtain all of your forms or download them from the Internet. The forms include the Basis of Claim (BoC) form (explained in detail below), Refugee Intake Form, Generic Application Form and Background Declaration. Submit all of your forms and obtain the date for your Eligibility Interview.
- The Eligibility Interview is not a decision about whether or not your claim is valid, but rather an interview with an immigration officer to determine if you qualify to have a refugee hearing with the Refugee Protection Division (RPD) at the Immigration and Refugee Board (IRB). Therefore, during the eligibility interview your claim can be found eligible or ineligible. For this interview you should consider the following:
 - i) It is extremely important to go to the interview on the date and time set, because it will NOT BE RESCHEDULED if you miss it!
 - ii) During the interview, the officer will ask questions similar to those on the forms you were given when you made your claim. They will ask you what specifically you fear about returning to your country. Be sure to answer these questions as truthfully and completely as you can.
 - iii) Make sure to bring your passport or travel document to this meeting. The office will keep these documents and give you copies of them.
 - iv) On the date of the interview you must provide all of the above completed forms, including the original BoC form, plus an additional copy. If the forms are incomplete you will be sent away and told to return later with the completed forms.

Whether making an Inland or POE claim, the information you provide (both in the documents and during the interview) will be given to the Immigration and Refugee Board (IRB). You will also receive a copy of this (make sure to ask for a copy if you do not receive one). The IRB looks at all this information when they decide whether you need refugee protection.

A claim is considered **ineligible** if you:

- have made a refugee claim in Canada before
- have been granted refugee protection by another country
- came to Canada through a “Safe Third Country” without qualifying under any of the exceptions
- are inadmissible on certain criminality or security grounds

When the claim is found **eligible**, you are referred to the RPD to have your case heard.

Your claim will be classified into different categories, which are regular claim, **Designated Country of Origin (DCO)**, or **Designated Foreign National (DFN)**. The Minister of Immigration will create a list of countries which are considered to be safe, have low acceptance rates at the Immigration and Refugee board, so claims from countries on this list will have a more expedited process. The Minister can also designate a group of individuals who may have entered Canada through irregular means and their process will be expedited as well as carry different restrictions.



Once your claim is found eligible you will receive a folder of documents. The content of this folder depends on whether your claim is POE or Inland. The folder will contain the following documents:

Folder of Documents

BOC Form

*This form is described in detail below. **The process for a BoC differs slightly for POE and Inland claims: For POE claims, you will be given the BOC and have 15 days to fill out and submit the form (see above). For Inland claims, you will be given the form and have to complete it and submit it at your eligibility interview (where you will receive a copy).*

Notice to Appear

The date on your notice is NOT your refugee hearing date. It is a date for you to appear before the IRB. With the notice to appear you can receive a warning re-abandonment claim, which says that if you fail to provide the BOC form on time or fail to attend the scheduled hearing on the claim, your refugee claim may be declared abandoned.

Conditional Removal Order

This form means that if you lose or withdraw your case, or if it is declared abandoned, you will be removed from Canada.

Counsel Contact Information Form

If you want counsel to help at the hearing, you must complete the RPD-02-04 form. Your counsel does not need to be a lawyer – it can be anyone you choose.

If your counsel is charging you a fee or receiving other payment, they must be one of the following;

- ✓ A lawyer or paralegal who is a member in good standing of a provincial law society
- ✓ A member in good standing of the Chambre des notaries du Quebec
- ✓ An Immigration Consultant who is a member in good standing of the Immigration Consultants of Canada Regulatory Council

Notice of Representative without Fee or other Consideration Form

If anyone is helping you free of charge, like a family member, friend, or volunteer of a community organization, he or she must complete the notice of representative form.

Other Information

As part of your Kit Package, you will receive information explaining how to access the list known as National Documentation Package (NDP). This list contains documents about home countries' conditions such as: reporting of human rights security, citations, media articles, etc.

Copy of Documents

- ✓ Refugee Intake Form,
- ✓ Generic Application Form (IMM008),
- ✓ Background Declaration (schedule A).



FCJ Refugee Centre
A Project of the Sisters, Faithful Companions of Jesus

Basis of Claim BoC Description

The Basis of Claim Form *replaces* the older “Personal Information Form” (PIF). It covers many of the same questions as the PIF, including detailed biographical information. It asks questions about the basis of the claim through several questions (rather than asking for a narrative as in the PIF).

The BOC has the following sections:

Sections of BOC form	Description
Section 1: Who You Are	In this section you must provide general information about yourself, such as date of birth, sex/gender, nationality, religion and language.
Section 2: Details About Your Claim	In this section you must describe in detail the reasons for your refugee claim. Unlike the narrative section of the PIF, Section 2 of the BoC is comprised of leading questions. It includes broad questions that allow you to describe the reasons for your claim (e.g. “If you returned to your country today, do you believe you would experience harm or mistreatment or threats by anyone?”), as well as more specific questions assessing the validity of the claim (e.g. “Did you move to another part of your country to seek safety?”). Importantly, there is a final open question which allows you to supply any other relevant information.
Section 3: Why You Are Claiming Refugee Protection in Canada	In this section you must provide the name(s) of the country or countries against which you are claiming refugee protection, and select under which grounds you are making the claim (e.g. fear of persecution, risk to life or risk of cruel and unusual treatment, or risk of torture).
Section 4: Your Status in Other Countries	In this section you must list all countries in which you have lived since birth, when you lived in them, and the status (e.g. citizen, permanent resident, etc) you had/have in each country.
Section 5: Your Family	In this section you must provide details of all immediate family, living or dead.
Section 6: Previous Claim	In this section you must provide details of any previous refugee claims made in any country (including Canada), or applications for recognition as a refugee to UNHCR, by yourself or any of the relatives listed in Section 5.
Section 7: Where You Have Travelled	In this section you must provide details of all countries you have travelled to in the past 10 years, including countries you passed through on your route to Canada.
Section 8: Your Documents	In this section you must provide details of all documents which you have now or can obtain. This includes identity and travel documents, as well as any other documents such as medical, psychological or police documents.
Section 9: Visa Applications	In this section you must provide details of any Canadian visa for which you have applied (e.g. which type, date of issue or refusal, and reason for refusal).
Section 10: Where You Can Be Contacted In Canada	In this section you must provide your current contact information (address and telephone number).

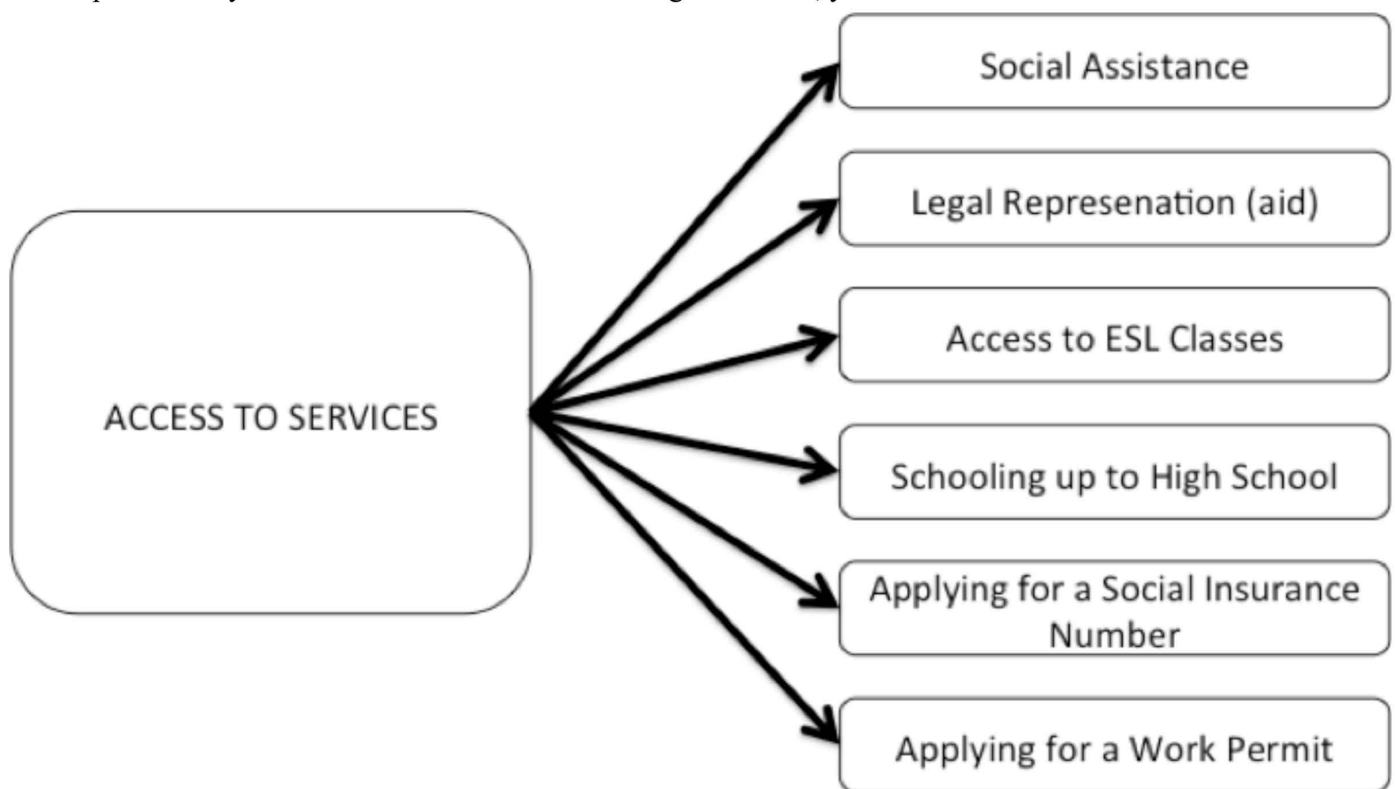


Section 11: Your Counsel Information	In this section you must provide details of the person assisting you with your claim (if you have one).
Section 12: Language and Interpreter	In this section you must choose whether you would like the IRB to communicate with you in English or French, and you can request an interpreter for your hearing.
Your Declaration As A Claimant	In this section you must sign to declare that all information given is true and correct. There are separate declarations for those who completed the form on their own and those who used an interpreter.
Interpreter's Declaration	In this section the interpreter must sign to declare that their interpretation was accurate and that the claimant indicated that they understood everything.

All members of your family must provide their own BoC form. Children 6 years old or younger only need to complete BOC part 1, "Who You Are." Application for an extension of time for BoC submission must be made no later than 3 working days before the date when the BOC is due. Extensions are granted only for fairness and natural justice reasons.

Access to Services for Refugee Claimants

From the point when you have been determined to be a refugee claimant, you will have access to different services:



Be aware that in the main cities of Canada, if you do not have representation, there are community based organizations that can help free of charge to help you with your forms, preparing for the refugee hearing, and with other procedures.



Refugee Hearing

Hearings are usually a half day long and take place in private in order to protect your privacy, unless an application was made to have the hearing open to the public.

Preparation for the Refugee Hearing

The hearing is your opportunity to tell everything that is relevant to your claim. You may provide documents to support your claim or show the current situation in your country of origin. Most of the questions will be about why you fear persecution in your country. Therefore, while you are waiting for your hearing, your priority is still your refugee case, so please contact either relatives or friends or institutions back home to ask for evidence (e.g. identification documents, newspaper articles, medical reports, police reports, etc.) to support your claim and to prepare for your hearing. Your legal counsel is in the best position to suggest what type of documents you need to support your refugee claim.

Timelines of Refugee Hearing

☒ POE claimants will be given a date for their refugee hearing:

- 45 days after eligibility if the claimant is from a DCO
- 60 days after eligibility for other claimants

☒ Inland claimants will be given a date for their refugee hearing:

- 30 days after eligibility if the claimant is from a DCO
- 60 days after eligibility for other claimants

There will be very limited opportunity to change the date of the hearing (only in a few specific circumstances and only by a few days). You must submit any documents at least 10 days before your refugee hearing.

Participants at the Refugee Hearing

The people who **must** be present at a refugee hearing are:

- A member of the IRB
- Yourself, as well as any family members claiming refugee status

Other people who may be present at the hearing:

- Interpreter, (specific language, dialect), if needed.
- Your legal counsel, if there is one.
- Minister's representative, if requested by the CIC
- Support people (close friends, family, etc.), strongly recommended.

The CIC can participate in refugee hearings, and may do so to challenge your credibility. They will usually participate only by submitting written documents, but they will sometimes participate in the hearing. The CBSA will continue to participate in some hearings in order to argue that you should be excluded.

In most cases the Member will probably give the decision orally at the end of the hearing. You will receive a written notice of the decision after the hearing. If the decision is not given at this time, you will receive it by mail, including the IRB's reasons for the decision (if negative). This decision will either be:



Negative:

In which case you will have access to the Refugee Appeal Division. However, there are many exceptions to this rule, which are explained in more detail in the next section. If you don't have access to the RAD you will receive a notice to appear at the Canadian Border Services Agency (CBSA) at a specific date and time to start the removal procedures.

Positive:

In which case you will receive refugee status, and can eventually apply for permanent residency. Please note that the government of Canada can appeal positive decisions.

Appeal at IRB: Refugee Appeal Division - RAD

The new refugee protection system includes a Refugee Appeal Division (RAD) at the Immigration and Refugee Board (IRB). The RAD will give some claimants a chance to prove that the RPD decision was wrong in fact or in law or both, and let new evidence be introduced.

Representation at RAD

You do not need to have counsel to represent you in your appeal; however, you may decide that you want counsel to assist you. If so, you have to hire counsel and pay their fees by yourself. If your counsel is charging a fee or receiving other payment, they must be one of the following;

- A lawyer or paralegal who is a member in good standing of a provincial law society
- A member in good standing of the Chambre des notaries du Quebec
- An Immigration Consultant who is a member in good standing of the Immigration Consultants of Canada Regulatory Council
- If your counsel is NOT charging a fee or receiving other payment, that person can be anyone, including a representative of a non-government organization, a friend, a relative or trusted community member. In this case, the claimant must complete a *Notice of Representative without a Fee or Other Consideration Form*.

Timelines at RAD

You have *15 calendar days* from the date you receive the negative RPD decision *to file an appeal* to the RAD. To file an appeal, you must provide to the IRB 3 copies of a written notice to appeal.

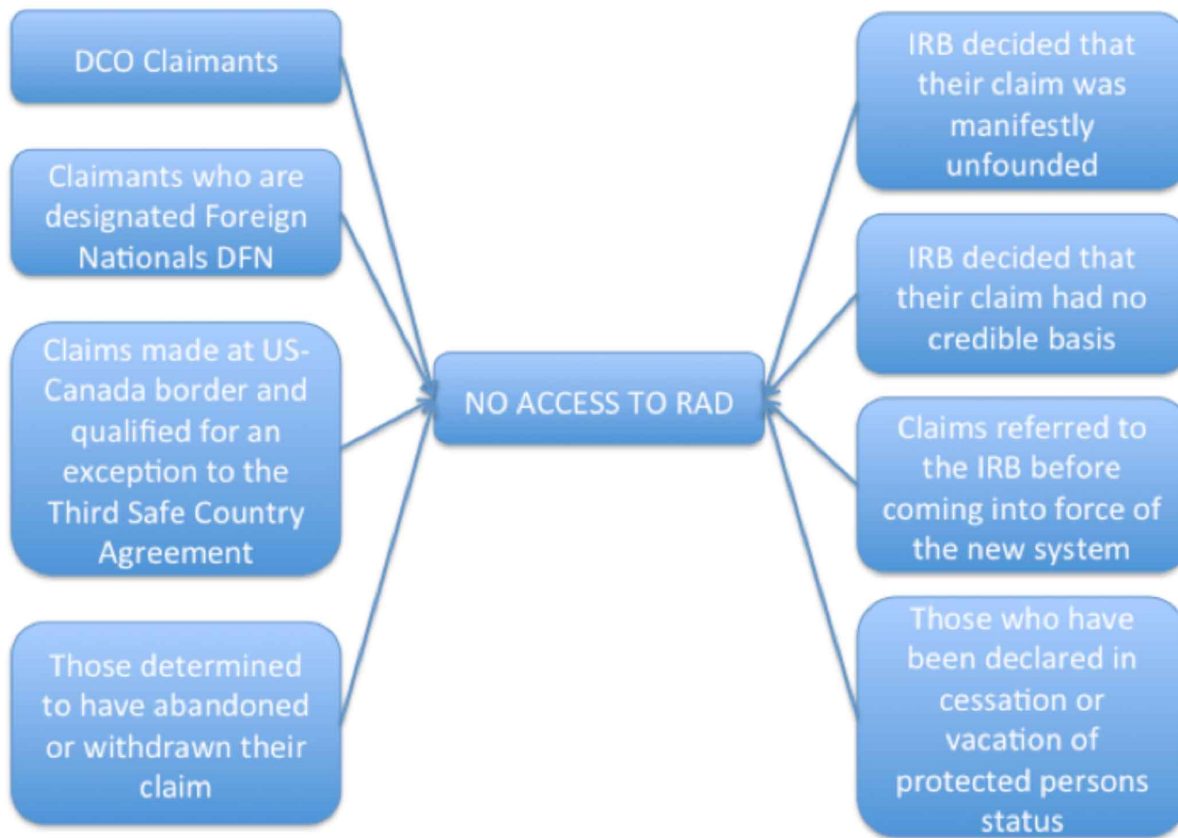
You have a further *15 days* to submit all your arguments and documents for the appeal. You must provide two copies of all these documents to the IRB. You must include all the arguments in your appeal.

In addition to arguing that the first decision was wrong, you may submit new evidence at the appeal (but only evidence that was not available at the initial hearing). Most of the time this will be in writing, but in some cases the Refugee Appeal Division can hold a hearing.



No Access to RAD

Most refugee protection claimants whose claims have been rejected have the right to appeal to the RAD; however, the following claimants have NO RIGHT OF APPEAL in the new refugee system:



For claims that are “manifestly unfounded” or have “no credible basis” these exact phrases must be used at the end of the IRB’s decision, which implies that you won’t have access to the Refugee Appeal Division.

RAD Decision

Except in cases where a hearing is held, proposed time lines for a RAD decision is 90 days from when the appeal is presented.

Judicial Review at Federal Court: Post-Rejection

Under Canada’s Immigration Law, if your refugee claim is rejected, you will still be able to seek a judicial review at the Federal Court of Canada **to review negative IRB decisions.**

Even though you do not need a lawyer to apply to the Federal Court, you will need a lawyer to submit the “memorandum of argument” and to make an oral argument before the Judge (if the case receives leave for judicial review). You can self-represent in this process but this is not recommended.



Stages of a Judicial Review

An application for a Federal Court Judicial Review comes in two stages:

1. **The Leave Stage:** You or your lawyer must file an application to ask for a Federal Court review within 15 calendar days of receiving a negative decision from the IRB. Once the application has been filed you have 30 calendar days to submit arguments to show why the decision of the IRB is unfounded.

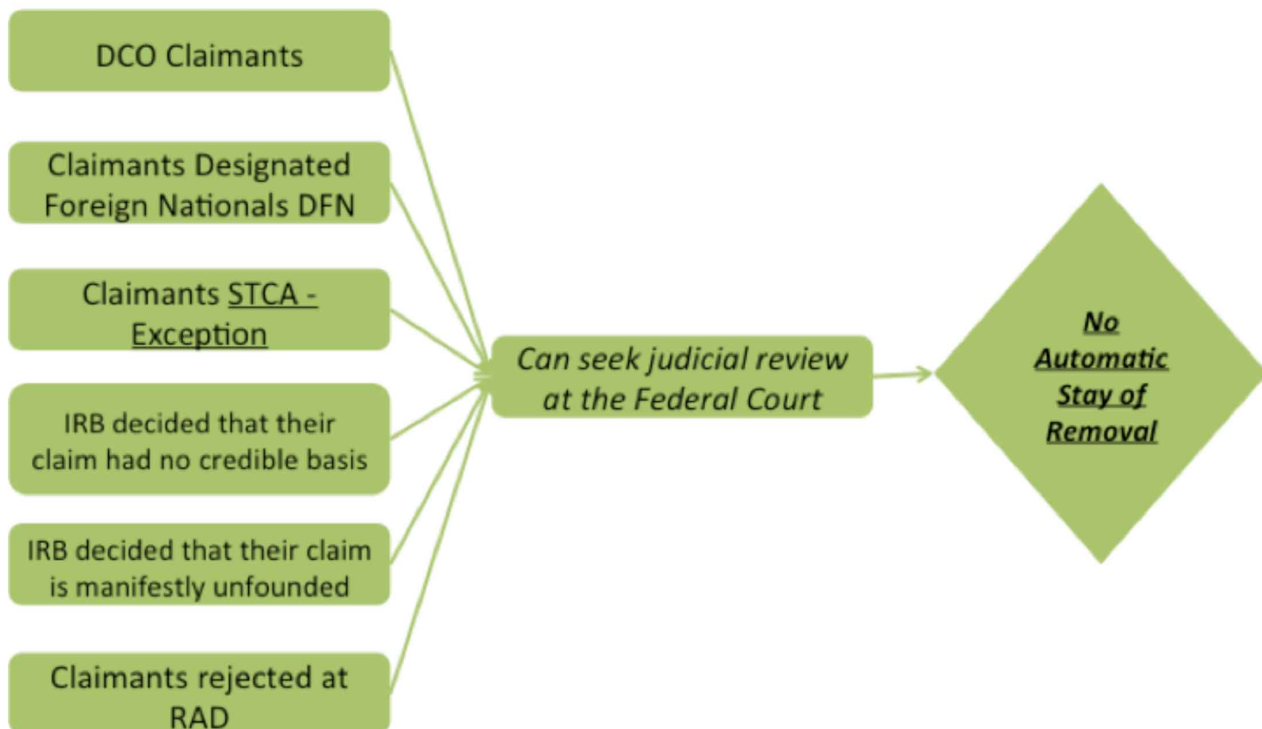
If the leave is given, it means the Court has agreed to examine the decision in-depth and you can make written submissions to complete the application.

1. **Application Stage:** You or your lawyer can attend an oral hearing before the Court and you must explain why you believe the original decision was wrong.

Consequences of a Judicial Review Decision

A request for review by the Federal Court, in some cases, puts a *removal order on hold*, which means, you *can stay in Canada until the Court makes its decision*.

However, many claimants who seek judicial review because they are not allowed to appeal to the Refugee Appeal Division, or have been rejected at the Refugee Appeal Division, DO NOT HAVE an automatic stay or removal. This is illustrated below.



After a Judicial Review the Federal Court can:

- **Agree with the original decision.** In this case, if the Court finds that there was NO error in the decision, you are under removal order, which means that you must leave Canada within 30 days.
- **Disagree with the RAD decision.** In this case, the Court can return the case to the Refugee Protection Division (RPD) to be reheard.

Pre-Removal Risk Assessment PRRA

This is an evaluation done by Citizenship and Immigration Canada to determine your risk of being removed from Canada to your country of origin, called a Pre-Removal Risk Assessment or PRRA. The PRRA is for people who are subject to a *removal order* that is in force or “removal ready.” Therefore, you cannot initiate a PRRA until Immigration notifies you that they are ready to make removal arrangements for you. If you are a person who must leave Canada, you will receive a *notice that the removal order is being enforced*. At that time, you are *eligible* to apply for a PRRA.

Under the new system, the access to the PRRA will be as follows:

- ☒ You are *NOT eligible for the PRRA for one year* (12 months) following a final negative refugee claim decision by the IRB (rejection at the RAD, or at RPD if you did not go to the RAD) or a negative PRRA decision.
- ☒ The ban on PRRA application will be extended to 36 months if you are from a Designated Country of Origin (DCO).
- ☒ In the event of a sudden change in country conditions that could lead you to being subject to personalized risk if returned to your home country, the Minister of Citizenship, Immigration and Multiculturalism may exempt you from the ban on accessing a PRRA.

PRRA Application

If you apply for a PRRA, an officer will review:

- Your application as well as documents and evidence that you provide to support it.
- If you previously made a refugee claim, the officer will limit his consideration to the new evidence. Notwithstanding this, in support of your application, you will be able to submit written evidence to help explain the risk that you would face if removed from Canada.
- You will have *fifteen (15) working days* to apply.
- If you are found eligible to apply for a PRRA, you will receive an application form and a guide. When you receive your PRRA forms, your removal order is *suspended for 15 days*.

Your PRRA won't be assessed if:

- You notify Citizenship and Immigration Canada (CIC) that you do not intend to apply for a PRRA;
- You miss the 15-day application deadline; or
- You apply for a PRRA and your application is withdrawn or you leave Canada by choice.

PRRA Decisions

Approved: You now have a “protected person” status in Canada and can make an application for permanent residence after the PRRA decision.

Denied: Stay of removal against you will be cancelled and arrangements for your removal from Canada will be started.



Humanitarian & Compassionate Consideration (H&C)

If you are given a removal order, you may apply for permanent residence under humanitarian and compassionate considerations (“H&C”). However, this application does not delay the removal order and you must leave Canada while the application is in process.

The H & C applications are based on:

- The fact that you would face excessive hardship and/or risk outside Canada
- The fact that you have significantly integrated your family into Canadian society. For example: close personal relationships (such as a Canadian spouse), Canadian-born children, gainful employment, or other strong ties to Canada. Your financial status in Canada will also be considered. Therefore it is ideal that you are not on any form of Social Assistance when you apply for an H&C.

Do not apply for H&C if you are eligible to apply for permanent residency from within Canada under the following categories:

- Married or in a common-law relationship with a Canadian citizen or permanent resident
- Working as a live-in caregiver
- Deemed to be a Protected Person or Convention refugee by the IRB or CIC
- A temporary resident permit holder.

You must ensure that all the circumstances you wish to have considered are identified and included in the application. You must also include any documents you believe will support your statements. If it applies, the best interests of a child directly affected by the decision made on the application will also be taken into consideration.

H&C Application

Under the new Refugee Protection System, **YOU CANNOT MAKE an H&C application FOR ONE YEAR** (12 months) following a final negative decision by the IRB. You can remain in Canada without status and still be eligible to apply.

Some exceptions where you can apply before the 12 months:

- The best interests of children directly affected, or
- Risk to life caused by health or medical condition for which there is no adequate care in the country of origin.

If you have an ongoing refugee claim, you can't make an H&C application.

- *Your refugee claim may be withdrawn and an H&C application submitted if the IRB has not yet heard substantive evidence on your claim.*



The Assisted Voluntary Return and Reintegration program (AVRR)

The AVRR program is run through a partnership between Canada Border Services Agency (CBSA) and International Organization for Migration (IOM).

If your file is at the CBSA Greater Toronto Area (GTA) office, and you want to leave Canada voluntarily after an unsuccessful claim, this pilot program provides services for your return (such as airline tickets, luggage fees, transportation to the airport, etc) and reintegration in your country of origin (first month's rent, tuition or school fees, start-up funds for a business, etc.). Details about this program can be found at <http://www.cbsa-asfc.gc.ca/prog/avrr-arvr/menu-eng.htm> l

