

February 14, 2013

Making a Refugee Claim in Canada: What You Need to Know

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Are you or someone you know planning to come to Canada to claim refugee status? If so, you should know that the refugee determination process from within Canada has recently undergone some dramatic changes. Timelines are shorter, and stricter standards are now applied to claimants originating from certain countries deemed “safe”. It is essential for potential claimants and those who assist them to understand the new system and to take important steps that will increase the potential for a positive outcome.

Claiming Refugee Status at the Port of Entry

A foreign national (i.e. a non-Canadian) can claim refugee status as soon as he or she arrives at a Canadian port of entry (the airport or border crossing). If the foreign national is found eligible to make a refugee claim, a date for the hearing of the claim will be provided right away. The claimant will also be given a form called the Basis of Claim form (BoC) that needs to be completed and filed at the Immigration and Refugee Board (IRB) within 15 days.

Claiming Refugee Status from within Canada

If a person decides to make a refugee claim after entry to Canada, he or she can fill out the forms at any time (though delays should be avoided—see the section of this article entitled “Do Not Delay”). The potential claimant can go into a Citizenship and Immigration Canada (CIC) office to obtain the forms, or can [download them online](#). The necessary forms include the Basis of Claim (BoC) form as well as permanent resident application forms. Once these are filled out, the potential claimant must go into a CIC office to make the refugee claim. CIC will take the forms, and will provide a date for the claimant to come back for an interview. At that interview, the claimant’s eligibility will be determined. If eligible, the claimant will be given a hearing date.

The Basis of Claim Form

The Basis of Claim (BoC) form should never be filled out without the assistance of a lawyer or paralegal. For low-income claimants, the Legal Aid body in their province of residence may offer funding for legal assistance in filling out the BoC. The BoC is the most important document for a refugee claim. It must be completed thoroughly and carefully. Too often, when refugee claimants complete this form without professional assistance and advice, mistakes are made and important details are left out. Even a strong claim for protection will be seriously compromised by a deficient BoC. Only a specialist with a strong understanding of Canadian refugee law can ensure that the BoC is thorough and complete.



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The Hearing

Everyone who makes a refugee claim in Canada after 15 December 2012 will have a hearing within 60 days of being found eligible. If the claimant comes from a country of origin that has been "[designated](#)", the hearing will be held within 45 days (if the claim is made at the Port of Entry) or 30 days (if the claim is made from within Canada). Claimants are required to submit all evidence 10 days before the hearing.

These timelines leave very little time to prepare. As such, it is important for claimants to be organized in advance. Claimants should arrange for legal representation at the hearing before or as soon as possible after they are given a hearing date. Any and all relevant documents should be gathered prior to departure and brought to Canada. If it is not possible to bring all documents to Canada at the time of the claimant's arrival, the claimant should arrange for them to be sent as soon as possible. If uncertain whether a document is relevant, a claimant should provide it to their legal advisor, who will be able to make that determination.

Evidence

Refugee claimants must always prove their identity. The more documentation provided to establish the identity of the claimants and their family members, the better. National identity cards, birth certificates, marriage certificates, and membership cards from organizations are just some examples of the documents that should be gathered and brought to Canada where possible. Original documents, with certified translations, are always best.

A refugee claimant must also provide evidence to show that his or her claim of persecution is truthful. Again, the more documentation provided to validate the claimant's statements, the better. Examples of helpful documents include police reports, medical records, newspaper articles (naming the claimant or others experiencing similar persecution), photographs, signed letters from individuals who can confirm details of the claimant's story, and reports of human rights organizations or academic bodies. Individuals in Canada who can verify the claimant's identity or support the protection claim can appear at the hearing to give testimony. Such individuals might include expert witnesses with knowledge of the conditions in the claimant's country of origin.

Do Not Delay

In our practice, we often see refugee claimants who leave the country where persecution is feared, and then travel to other places before coming to Canada. We also see claimants who, despite their fear, return to their country of origin after spending time abroad. Oftentimes, a claimant will stay in Canada for months or years before deciding to make a refugee claim, or will wait months or years to leave their country after obtaining the necessary visa or travel documents.

Although there are many valid reasons to explain why a refugee claimant will wait to come to Canada and/or make a refugee claim in Canada, the Board members who evaluate refugee claims usually take a negative view of these delays. Delay is treated as a sign that a person is not truly afraid to return to their country of origin.

As such, it is always best to claim refugee status in Canada in a timely manner. Those planning to make a refugee claim should avoid spending lengthy periods of time in other countries en route to Canada. They should also avoid going back and forth to the country where persecution is feared. They should leave their country as soon as possible after the act or threat of persecution presents itself and, upon arrival in Canada, they should make a refugee claim without delay.

Sometimes, delays cannot be avoided. However, claimants often allow time to pass without understanding that this could impair their chances of obtaining refugee protection in Canada. All claimants should be aware that delays are to be avoided wherever possible, and that they must be prepared to explain any inevitable delays.

Getting to Canada

Out of desperation, refugee claimants often hire people to help them acquire false documents to enter Canada, or to help them enter Canada by means that are illegal (i.e. “smuggling”). When two or more people enter the country together in this way, they may be considered as “designated foreign nationals”, which means they will be treated differently from other refugee claimants under Canada’s new laws. “Designated foreign nationals” face automatic detention in Canada. If they are accepted as refugees, they are barred from applying for permanent resident status for five years. They cannot access Canadian healthcare unless it is an emergency. If the refugee claim of a designated foreign national fails, that claimant will not have the appeal rights that normally apply.

Sometimes, the only way for a person to escape their home country is by way of a smuggler. However, if there are potentially other means of bringing a claimant to Canada, these should be considered, because the consequences of being named a “designated foreign national” are severe.

Who Can Help

If the claimant or his/her supporters have access to funds to hire legal counsel, an experienced Canadian refugee lawyer or paralegal can be approached directly for help. Claimants are advised to verify the credentials and experience of their legal advisor before engaging their services.

If a claimant cannot afford a lawyer, he or she can approach the Legal Aid office in their Canadian province of residence to determine eligibility for free or subsidized legal assistance. If eligible, Legal Aid will provide the names of nearby refugee lawyers who will accept Legal Aid certificates.

Individuals can also approach refugee settlement organizations for advice on refugee claims, and for assistance with adjusting to life in Canada. Settlement organizations are located across the country. In Ontario, [this website](#) can help refugee claimants locate nearby services.

The Immigration Law Group at Perley-Robertson, Hill & McDougall LLP/s.r.l. is proud to assist refugee claimants in the Ottawa area, either directly or through Legal Aid Ontario. Both Warren Creates and Jacqueline Bonisteel are members of [Legal Aid Ontario's](#)

[Refugee Law Panel](#). We invite potential refugee claimants or their supporters to contact our office to set up a consultation.

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