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Permanent Resident Card Renewal Based Upon Humanitarian and Compassionate Grounds

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This article outlines the rule regarding the Canadian residency obligation, the requirement for renewing a Permanent Resident Card (“PR card”), and explores a possible route to obtaining a new PR card even when the minimum residency obligation has not been met.

Overview of Permanent Resident Status

A permanent resident card (“PR card”) serves as official proof that the holder is a permanent resident of Canada. The PR card holds important value – it also serves as a travel document that will allow the holder to re-enter Canada for as long as it is valid [1]. These cards are, however, only valid for five years, and various requirements must be met to obtain a renewal [2]. One of the main criteria needed to renew a PR card is meeting the minimum residency obligation contained in s. 28(2)(a) of the Immigration and Refugee Protection Act (The “IRPA”) [3]. With few listed exceptions, this requires that all permanent residents demonstrate that they have been physically present in Canada for a minimum of 730 days (two years) within the past five years [4]. How these 730 days are divided up is irrelevant – the only factor required to meet the minimum residency requirement is that the permanent resident spends a cumulative 730 days within the five-year period. As such, in theory, a Canadian permanent resident can spend up to three years within their five-year window outside of the country and still maintain their permanent resident status, provided of course that they spend the other 730 days physically present in Canada.

[1] Government of Canada, “*Travelling with a permanent resident card*” (last modified May 5, 2017), online: <https://travel.gc.ca/travelling/documents/permanent-resident-card> >.

[2] Government of Canada, “*Understand permanent resident status*” (last modified September 17, 2019), online: <https://www.canada.ca/en/immigration-refugees-citizenship/services/new-immigrants/pr-card/understand-pr-status.html>.

[3] *Immigration and Refugee Protection Act*, SC 2001, c 27 at para 28(2)(c).

[4] *Ibid*, at para 28(2)(a).



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Renewing a Card

Under ordinary circumstances, when it comes time to renew a PR card, it will be necessary to make an application describing travel history in the past five years to demonstrate that the applicant has met the 730-day minimum residency obligation [5]. Once approved, the immigration authorities will again issue a new PR card which will be valid for the next five years [6].

Renewing a PR card on Humanitarian Grounds

In the event that a permanent resident does not meet the minimum residency obligations due to extenuating circumstances, an application can be made for a renewal of the card (and with it renewed confirmation of permanent resident status) on Humanitarian and Compassionate (“H+C”) grounds under s. 28(2)(c) of the Act. However, it is important to note that in order to be considered for an exemption from the usual requirements, an applicant must “demonstrate that there are sufficient and compelling reasons to be granted an exemption [7]. In a renewal application based upon H+C grounds, immigration officers have the discretion to analyze the extenuating circumstances which had prevented a resident from meeting their two-in-five-year obligation [8]. Immigration officers will then apply a personalized and subjective assessment to either grant – or not – a renewal.

Given the global pandemic during which travel and public health restrictions have been imposed, some scenarios may exist where a permanent resident’s return to Canada has been impeded, and their minimum residency obligation not met.

An officer’s decision that loss of status has occurred caused by a breach of the residency obligation, and further that insufficient humanitarian and compassionate grounds have been demonstrated as to justify a forgiveness of that residency obligation, will result in the permanent resident having a right of appeal of that decision to the Appeal Division of the Immigration and Refugee Board.

[5] Government of Canada, “Apply for, renew or replace a PR card: who can apply” (last modified May 29, 2020), online: <https://www.canada.ca/en/immigration-refugees-citizenship/services/new-immigrants/pr-card/who-can-apply.html>.

[6] Government of Canada, “Apply for, renew or replace a PR card: After you apply” (last modified May 29, 2020), online: <https://www.canada.ca/en/immigration-refugees-citizenship/services/new-immigrants/pr-card/after-you-apply.html> .

[7] Government of Canada, “Guide 5291 – Humanitarian and Compassionate Considerations” (last modified June 6, 2021), online: <https://www.canada.ca/en/immigration-refugees-citizenship/services/application/application-forms-guides/guide-5291-humanitarian-compassionate-considerations.html>.

[8] *Ibid.*



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Factors Considered by the Decision Makers in a H+C Application

There are some legal cases that illustrate the factors governing the immigration officers' assessments of granting a PR renewal based upon H+C grounds. In the case of *Arce v. Canada (Minister of Citizenship & Immigration)* [9], the Immigration and Refugee Board of Canada ("IRB") approved the use of certain factors in helping guide the decision makers with their analysis of applications based upon H+C grounds [10]. The factors that were used in this case were later expanded and their use confirmed by the Federal Court in the decision of *Ambat v. Canada (Minister of Citizenship & Immigration)* [11]. The Federal Court essentially confirmed the factors that officers may use in guiding their decision to renew, or not to renew, a PR card based upon H+C grounds.

Overall, there are eight factors that are used in weighing a PR card renewal based upon H+C grounds. These eight factors receive discretionary weight by decision makers. They are as follow [12]:

1. The extent of the non-compliance with the residency obligation
2. The reasons for the departure and stay abroad
3. The degree of establishment in Canada, initially and at the time of the assessment
4. Family ties to Canada
5. Whether attempts to return to Canada were made at the first opportunity
6. Hardship and dislocation to family members in Canada if the applicant is removed from or is refused admission to Canada
7. Hardship to the applicant if removed from or refused admission to Canada
8. Whether there are other unique or special circumstances that merit special relief

Essentially, a decision maker will weigh any evidence relating to these eight factors, as well as a further consideration of the best interests of any child affected by the decision, in order to come to a decision on the renewal application. The best interests of a child remains one of the most important factors, with the eight other factors listed above being additional considerations [13].

The first factor, the extent of the non-compliance, examines the severity of the breach of the residency obligation. A shortfall in the number of days

[9] *Arce v. Canada (Minister of Citizenship & Immigration)*, [2003] DSAI No 370.

[10] *Ibid*, at para 7.

[11] *Ambat v. Canada (Minister of Citizenship & Immigration)*, 2011 FC 292 at para 27. [Ambat]

[12] *Ibid*.

[13] *Ambat*, *supra* note 11.



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needed to meet the residency obligation is not necessarily fatal to an application [14]. If the applicant has spent over 50% of the minimum residency time in Canada, (i.e., has been physically present in Canada for over half of the required 730 days), the significance of the breach will be less of a negative factor than if the applicant achieved less than 50% of their required 730 days [15]. When calculating physical presence in Canada, any duration of time physically spent in Canada on a new calendar day will result in that day being counted. In other words, the day of departure from Canada and the day of arrival in Canada are both counted as days of physical presence in Canada [16].

The second factor turns on the reason for the applicant leaving Canada in the first place and why they have not returned. If the applicant has left and not returned for one or more significant reasons, such as serious illness which prevented travel, a positive consideration on this factor can be given [17]. The door may currently be open for the interpretation of COVID-19 travel restrictions as a valid reason for not being able to return to Canada.

The third factor considers the investment of an applicant in Canada, both economically and in their lifestyle. An applicant who demonstrates a commitment to settle in a permanent fashion in Canada will benefit from a positive treatment of this factor [18].

For the fourth factor, strong family ties to Canada are a very significant feature in the decision to grant a PR card renewal based upon H+C grounds [19]. It is important to note that immigration officers can consider strong family ties outside of Canada as a negative consideration, so care must be used to show the importance of any family ties in Canada [20].

The fifth factor is guided by substantive proof of the applicant trying to return to Canada, and if these efforts were made in a timely manner [21].

The sixth and seventh factor require officers to consider whether a decision to deny a PR card will cause significant hardship to, respectively, family members in Canada and the applicant themselves. Examples of hardship caused to family members include separating the applicant from a tightly

[14] *Parikh v. Canada (Public safety and Emergency Preparedness)*, 2019 FC 13. [Parikh]

[15] *Nekoie v. Canada (Minister of Citizenship & Immigration)*, 2012 FC 363, 2012 CF 363.

[16] Citizenship and Immigration Canada, "Physical Presence Calculator", *Government of Canada* (last modified December 1, 2020), online: <https://eservices.cic.gc.ca/rescalc/redir.do?redir=faq#Q3>.

[17] *Tatchinda Kuete et Canada (Ministre de la Citoyenneté et de l'Immigration)*, Re, 2019 CarswellNat 6580.

[18] *Kok v. Canada (Minister of Citizenship & Immigration)*, 2003 CarswellNat 6347.

[19] *Canada (Minister of Citizenship & Immigration) v. Sidhu*, 2011 FC 1056. [Sidhu]

[20] *Bermudez Anampa c Canada (Citoyenneté et Immigration)*, 2019 FC 20.

[21] *Sidhu*, supra note 17.



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knit family or removing an income provider from a family [22].

Examples of hardship caused to the applicant include possible isolation, and if the applicant could seamlessly reintegrate into their respective country of citizenship (considering factors such as language, age, religion, and the overall ease of transition) [23].

Lastly, immigration officers must consider any other unique or relevant circumstances that could justify a renewal based upon H+C grounds. These circumstances are case-specific and, in some cases, could tip the scale in favour of granting a PR card renewal.

The Bottom Line

Applying for a renewal of a PR card can be a stressful experience for a permanent resident in general, let alone a resident who has not fulfilled their minimum residency requirements. Fortunately, for those that have not been able to meet their residency requirement of 730 days within a period of five years for reasons beyond their control or if a revocation of their PR card would cause significant hardship, hope for renewal exists. An application for a PR card renewal based upon H+C grounds can allow the resident to renew their PR card and remain or return to Canada.

The Immigration Law Group at Perley-Robertson, Hill & McDougall has many years of experience helping clients with matters related to PR card renewals. Please contact us if you require our assistance or further information.

[22] *Ibid.*

[23] *Parikh*, supra note 13.