

A Guide to Humanitarian and Compassionate Applications

At any time during the process of applying for refugee status, you can apply to stay in Canada on humanitarian and compassionate (H & C) grounds. An H & C application is usually a last attempt to stay in Canada after a refugee claim has failed.

What you should consider before applying

Making an H & C application is risky for four reasons:

1. Unless you are waiting for a Pre-Removal Risk Assessment (PRRA), an H & C application does not prevent Citizenship and Immigration Canada (CIC) from requiring you to leave Canada.
2. The chances of winning an H & C application are very low (less than 20 percent).
3. The responsibility is entirely yours to prove that you deserve to have your case approved on humanitarian and compassionate grounds. This means you will have to provide a lot of documents as evidence.
4. It is expensive. The H & C application fees are \$550 per adult, plus \$150 per child. If you have to hire a private lawyer to help you make the application, you will also have legal costs.

If you decide to go ahead with an H & C application, make sure that the forms, documents, and argument you present are compelling (strong) enough to convince an immigration officer to accept your application.

If you lose your H & C application, the only option you have is to go to the Federal Court of Canada and apply for a judicial review (an appeal). If you cannot represent yourself in court, you will have the added expense of hiring a lawyer. The court will not allow a friend or consultant to present the case on your behalf.

What are grounds for an H & C application?

There are two grounds (valid reasons) on which you can apply for an H & C:

1. Hardship

Forcing you to return to your home country would result in hardship that is unusual, undeserved, or disproportionate. This means that you are unable to leave Canada voluntarily, or your personal circumstances are such that sending you home would create a severe or serious hardship.

2. Risk

There is a serious possibility of persecution, torture, a risk to your life, or risk of cruel or unusual treatment or punishment if you return to your home country.

What is considered unusual, undeserved, or disproportionate hardship?

You have to prove that your removal from Canada would create a severe, undeserved, or disproportionate hardship for you and your family members in Canada. In addition, you must prove that you are well established here.

It will be your responsibility to present your case in the best possible light. Here are some of the factors that CIC will consider:

- How long you have been in Canada (the longer the better, unless you have been avoiding interviews with CIC or the Canada Border Services Agency, and have failed to provide the necessary documents).
- How long you spent on welfare (the less time the better).
- Your English/French language skills and the effort made to improve them.
- Whether your education or skills improved while in Canada.
- The number of family members you have in Canada (the more the better).
- Your contact with family in Canada (the more the better).
- Your contact with family abroad (if you have a lot of close relatives in your home country, CIC may decide there is no hardship in you returning).
- If you are married, whether you are married to a permanent resident or a Canadian citizen.
- If you have any Canadian-born children (helps your application), or children still in your home country (does not help).
- If you have any non-related “family” in Canada (for example, neighbours, a church group, or other support group that is a surrogate family to you).
- If you have worked in Canada and paid your taxes.
- How important your present job is and how long you have been employed.
- Your assets in Canada (the more the better; for example, a family home, RRSP, RESP,

bank account, investment account, business vehicle, etc.)

- Your assets abroad (the fewer the better).
- Volunteer work and community involvement, either religious or non-religious.
- If you have reference letters from your employer, school, volunteer groups, religious community, or anyone else who wrote positively about you.
- If you have made any financial or cultural contributions to Canada.
- What hardship you would face if you had to return to your home country. (For example, who would miss you, what would make it difficult for you to live in your home country, and what would be the effect on your children.)
- If you are a woman, if it would be difficult to live in your home country.

When reviewing your application, CIC will also consider the following:

If you have children

CIC officers are required to consider “the best interests of the child” when they review an application involving children. This means they have to consider whether it is better for the child/children to remain in Canada or go with you to your home country. For example, if your children were born in Canada, are attending school, and have never been to your country, your case is stronger than if you have an infant, or your children have spent most of their lives in another country and do not have close ties to Canada.

If children are part of your H & C application, get letters from people who can describe any negative physical or mental effects your child/children would experience if they were removed from their school or community

and returned to your home country. People who could do this for you include a school counselor, community health workers, the family doctor, teachers, social workers, and/or psychologists.

Medical hardship

Medical problems generally do not help an H & C application, but if you or a family member cannot receive treatment in your home country and possibly might die, then evidence describing the medical condition might help your case. You will have to get medical information from experts in your home country that can confirm the medical danger to you or a family member if you returned.

What is considered risk?

A Pre-Removal Risk Assessment (PRRA) officer reviews H & C applications that contain allegations of persecution, torture, risk to life, or risk of cruel or unusual punishment if you return to your home country. In these cases, you cannot be removed from Canada until the PRRA officer makes a decision.

If your refugee hearing was held after June 28, 2002, you will have to provide evidence that is different from the information you used to make your refugee claim.

Although PRRA officers are only supposed to consider new evidence, they may consider important and believable evidence that could have (and should have) been presented at your refugee hearing but was not available at that time. This evidence may include medical evidence of torture, or evidence of country conditions that only apply to your case.

The risk that you say you would face has to be a risk to you or your family. It is not enough to provide general information about your

country's poor human rights record if it does not affect you personally.

You can find information about current conditions in many countries on the Internet (for example, the websites of BBC News, Amnesty International, and Human Rights Watch), or at the Immigration and Refugee Board Documentation Centre.

You are not considered to be at risk if you would not be able to find work upon returning home, or the educational facilities are poor. For more information about the PRRA, see fact sheet # 5, *A Guide to Pre-Removal Risk Assessment Applications*.

If you are at risk and have not made a refugee claim, you should consider making one. In addition to Convention refugees, Canada recognizes and protects "people in need of protection" who may not fit the UN definition of a refugee.

What is not considered grounds for an H & C application?

The following factors will generally not help you to remain in Canada on humanitarian and compassionate grounds:

- Your establishment in Canada is primarily based on having worked and paid taxes.
- You have been on welfare for most of the time you have been in Canada.
- You want to stay because you are married to a Canadian or permanent resident.
- You have a criminal record.

How to make an H & C application

If, after reading this guide, you decide to make an H & C claim, follow these steps:

1. Obtain the application guide called *Applying for Permanent Residence from Within Canada — Humanitarian and Compassionate Cases*. You can find the guide on the CIC website (www.cic.gc.ca/english/applications/handc.html), or order it by phoning CIC directly (1-888-242-2100). You cannot pick up the guide in person.
2. Follow the guide closely and fill out all the required forms. Make sure you answer all the questions.
3. If you are applying after your refugee claim has failed, you do not have to submit the application with a Canadian medical exam or police clearance (because you already did that when you made your refugee claim). If your H & C application is accepted, CIC will ask for a new medical exam and police clearance.
4. Before you send the application to CIC, make a copy of all the documents for your records.
5. Send the application via registered mail or express post so that you can confirm that your application arrived at CIC.

How to get legal help

The Legal Services Society no longer provides legal aid for H & C applications. If you can afford one, call a lawyer.

If you do not know a lawyer, call the Lawyer Referral Service. This service can give you the name of a lawyer who you can call for a half-hour appointment that costs \$10. You can then decide whether you want to hire this lawyer. Ask the service for a lawyer who specializes in immigration law. In the Lower Mainland, call (604) 687-3221; or toll free elsewhere in BC at 1-800-663-1919.

You can also contact a community group to find a lawyer. These agencies are listed in the front of the yellow pages (“SuperPages”) under “Community Services.”

For more information on how to get legal help, see fact sheet #2,

Legal Help and Other Services for Refugee Claimants.



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This fact sheet is one in a series for people who are making a refugee claim:

#1 *Starting a Refugee Claim*

#2 *Legal Help and Other Services for Refugee Claimants*

#3 *How to Fill Out a Personal Information Form*

#4 *A Guide to Humanitarian and Compassionate Applications*

#5 *A Guide to Pre-Removal Risk Assessment Applications*

These fact sheets are available in Chinese, English, and Spanish. You can read them online at www.lss.bc.ca (under “publications”). For copies, contact:

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This fact sheet explains the law in general. It is not intended to give you legal advice on your particular problem.