Citizenship and Immigration Canada
Citoyenneté et Immigration Canada

IP 5

Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds

Canada

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Updates to chapter

Listing by date:

2011-04-01

Chapter IP 5 has been re-written. Please discard any previous versions.

2009-08-31
Chapter IP 5 has been completely revised and expanded. Any previous version of IP 5 should be discarded.

2008-04-14

Section 13.7 has been updated to clarify the cost recovery for protected persons applying for permanent residence after the 180-day filing period has expired.

2005-06-09

Sections 13.2 to 13.6 published on May 20, 2005, have been deleted as well as the sample letter in Appendix A, Annex 8.

Section 13 has been renumbered.

2005-05-20

Section 5.19 has been updated to include expanded guidelines on the best interests of the child.

Section 13.1 has been modified to further explain the role of the H&C officer and the Pre-removal Risk Assessment (PRRA) officer. It is stated that, in some cases, the PRRA officer should make separate H&C and PRRA decisions.

Sections 13.5 and 13.6 have been updated to direct officers to the correct sample letter informing applicants of a negative risk opinion and allowing them to make submissions on any errors or omissions. The sample letter has been included in Appendix A, Annex 8. All references to the Montreal Call Centre have been removed.

2005-01-12

Section 13.7 has been updated to clarify that protected persons applying for permanent residence via an H&C retain their protected person status and, therefore, retain all protected person exemptions. As a result, the following inadmissibility provisions do not apply to protected persons applying through H&C:

- financial inadmissibility [A39];
- medical inadmissibility based on excessive demand [A38(1)(c)];
- criminality [A36(2)];
- inadmissibility based on prior misrepresentation [A40(1)(a)];
- inadmissibility on the basis of an inadmissible family member [A42].

These applicants are now also permitted to provide alternative identity documents as protected persons (i.e., statutory declarations), as provided for in R178.

2004-11-05
The major changes that were made to this chapter include:

- Section 4.2 has been updated to clarify the delegations governing H&C authority. The technical amendments to the delegations clarify the policy intent of granting officers the delegated authority to assess all H&C applications at Step 1, including when the applicant is inadmissible on technical grounds, grounds related to criminality, security, violation of human or international rights, organized crime, or health.
- Section 5.4 has been added to provide guidance in cases where H&C applications are submitted by permanent residents or Canadian citizens.
- Sections 5.9, 5.12, and 16.10 have been reworded to clarify that H&C applicants should not be refused permanent resident status for the sole reason of being inadmissible for being out of status [pursuant to A41].
- Section 5.18 has been expanded to indicate that when in-status spouses apply via an H&C, it is reasonable for officers to inform applicants of their ability to apply in the spouse or common-law partner in Canada class. However, there is no facility to convert H&C applications to FC1 applications. This section has also been expanded to state that there are no determinative factors when processing H&C spousal applications. All factors in spousal cases, including marriage, must be considered.
- Section 5.19 has been expanded upon to detail that the obligation to consider the best interests of the child in an H&C application arises only when it is clear from the information submitted that the application relies on this factor.
- Section 5.20 further clarifies that the existence of an H&C sponsorship undertaking does not indicate that the applicant is a member of the family class.
- Section 5.22 has been updated to include the existence of a public policy in relation to resumption of citizenship (under Appendix F of this chapter).
- Section 5.28 has been updated for consistency with new Regulations governing paid representatives.
- Section 7.2 has been updated to detail exemptions to the Right of Permanent Resident Fee (RPRF) for H&C applicants:

  Protected persons and their family members are exempted from this fee.

  H&C principal applicants who are dependent children of Canadian citizens or permanent residents are exempted from this fee.
- Section 10 has been updated with procedures for applicants residing in the province of Quebec (interim until the joint directives are completed).
- Section 11.3 has been changed to detail the importance of justifying reasons for positive H&C decisions in national security cases.
- Section 13.7 has been updated to clarify that protected persons applying for permanent residence via an H&C are exempt from medical inadmissibility based on excessive demand provisions [A38(1)(c)].
- Section 16.2 has been updated with an example of the type of situation in which the authority to waive the examination of non-accompanying family members could be appropriate.
- Section 16.9 is a new section. It explains that, in accordance with the technical revisions to the Regulations, family members who are outside Canada cannot be processed for permanent resident visas concurrently with the principal applicant in Canada. However, this change does not apply to H&C applications received at a CIC office prior to August 11, 2004.

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- Section 21.3 has been updated with a reminder to officers that it is very important to use the special program codes for H&C cases.

1. What this chapter is about

This chapter provides policy and procedural guidance for processing applications for permanent residence in Canada based on humanitarian and compassionate grounds (H&C) under A25(1), R66. This assessment applies to applicants who are seeking an exemption from certain requirements under the *Immigration and Refugee Protection Act* (IRPA) and who make an application to become a permanent resident from within Canada (contrary to A11).

2. Program objectives

Discretion is a valuable element of Canada's immigration program. It benefits our clients and is consistent with the objectives of IRPA.

The purpose of H&C discretion is to allow flexibility to approve deserving cases not covered by the legislation. This discretionary tool is intended to uphold Canada's humanitarian tradition. Use of this discretion should not be seen as conflicting with other parts of the *Act* or *Regulations* but rather as a complementary provision enhancing the attainment of the objectives of the Act.

The H&C decision-making process is a highly discretionary one that considers whether a special grant of an exemption from a requirement of the *Act* is warranted. It is widely understood that invoking Subsection 25(1) is an exceptional measure and not simply an alternate means of applying for permanent resident status in Canada.

A humanitarian and compassionate assessment considers circumstances and/or factors that may be sufficiently compelling to allow for the requested exemption.

3. The *Act* and *Regulations*

In addition to providing the prescribed requirements as to who may enter and remain in Canada, IRPA also provides discretion to delegated decision-makers to approve individual deserving cases that would otherwise be refused.

Provisions for applications on humanitarian or compassionate grounds

For more information about	Refer to
Requirements for application before entering Canada	A11(1)
Humanitarian and compassionate considerations	A25(1)
Payment of fees	A25(1.1)
Bar on concurrent H&C applications	A25(1.2)
Non-application of certain factors in H&C (s.96, s.97)	A25(1.3)
H&C Minister's own initiative	A25.1(1)
Exemption from fee requirement	A25.1(2)
Provincial criteria (Minister's initiative)	A25.1(3)
Public policy considerations	A25.2(1)
Exemption from fees for public policy	A25.2(2)
Provincial criteria (public policy)	A25.2(3)
Rules of interpretations of grounds for inadmissibility (A34 to A37)	A33

Grounds for inadmissibility	A34, A35, A36, A37, A38, A39, A40, A41, A42
Applications under A25(1)	R66
Applicants outside Canada	R67
Applicants in Canada	R68
Accompanying family member in Canada	R69(2)
Requirements for a foreign national to become a permanent resident in Canada	R72
Work permit	R200(1), R207(d)
Study permit	R215(g), R216(1)
Stay of removal	R233

3.2. Forms required

Form title	Form number
Application to change conditions, extend my stay or remain in Canada	IMM 1249
Application for permanent residence from within Canada – Humanitarian and compassionate considerations	IMM 5001
Supplementary information – Humanitarian and compassionate considerations	IMM 5283
Document checklist – Humanitarian and compassionate considerations	IMM 5280
Instruction guide – Applying for permanent residence from within Canada – Humanitarian and compassionate considerations	IMM 5291
Application to sponsor and undertaking	IMM 1344A
Document checklist – Sponsor	IMM 5287
Use of a representative	IMM 5476
Authority to release personal information to a designated individual	IMM 5475
Request for screening action	IMM 0703B

4. Instruments and delegations

A6 authorizes the Minister to designate officers to carry out specific duties and powers and to delegate authorities. It also states those ministerial authorities which may not be delegated, specifically those relating to security certificates or national interest.

4.1. Ministerial authority to exercise discretion to grant permanent residence

The *Immigration and Refugee Protection Act* and its Regulations provide for circumstances in which foreign nationals may submit an application in Canada to become a permanent resident. In order to be eligible, a foreign national must be a member of a class set out in Subsection R72 (2).

The classes described in R72 (2) reflect the objectives of the *Act* but do not cover all circumstances. Thus, A25 (1) gives the Minister and the Minister's delegates the authority to use discretion to grant an exemption to these requirements where it is justified by humanitarian and compassionate considerations.

4.2. Delegated authorities:

More information can be found in chapter IL 3 - Designation of Officers and Delegation of Authority, items 28 through 31.

The following is an overview of the relevant designations and delegations for decision-making in H&C cases.

Delegations – Quick reference guide

Authority to…	Under (provision)…	Is delegated/designated to…			
		CIC Minister	Director of Case Review	PRRA Officer	C&I Officer
assess all H&C applications	A25, A25.1	√	√	√	√
render a negative decision on all H&C applications	A25, A25.1	√	√	√	√
render a positive decision on H&C applications	A25, A25.1	√	√	√	√
exempt from inadmissibility requirements	A25, A25.1 with A36(2), A39, A40, A41 or A42	√	√	√	√
exempt from serious inadmissibility requirements	A25, A25.1 with A36(1) or A38	√	√		
exempt from other serious inadmissibility requirements	A25, A25.1 with A34, A35 or A37	√			

5. Departmental policy

The purpose of this section is to describe the intent behind Section 25 of IRPA and how such discretionary powers should be applied.

While policy guidelines provide assistance to decision-makers, they are not intended to be either exhaustive or restrictive. Unlike IRPA or its Regulations, guidelines are not legally binding upon the Minister and ~~d~~do not afford the applicant the right to a particular outcome" (see *Legault v. Canada (Minister of Citizenship and Immigration), [2002] 4F.C.358, (2002) 212 D.L.R. (4th) 139 (C.A.)*). Each individual case must be assessed on its own merits through consideration of individual circumstances. While guidance may be sought from other government officials, the discretionary decision ultimately rests with the delegated decision-maker.

5.1. Requirement to apply for permanent residence from outside Canada

It is a cornerstone of IRPA that, prior to their arrival in Canada, foreign nationals who wish to live permanently in Canada must:

- submit their application outside Canada; and
- qualify for and obtain a permanent resident visa.

Foreign nationals do not have the right to apply for permanent residence from within Canada except as provided by the legislation. Foreign nationals who do not qualify under IRPA to apply from within Canada must, therefore, seek an exemption from the requirement to be a member of a class referred to in R72(2). A25(1) provides the flexibility to grant an exemption to approve deserving cases that were not anticipated in the legislation and to process applications for permanent residence from within Canada.

5.2. Eligibility to submit an H&C application

Any foreign national who is inadmissible or who does not meet the requirements of the *Act* or *Regulations* may make a written request for consideration under A25(1).

In accordance with R66, a request under A25(1) for an exemption based on humanitarian and compassionate or public policy considerations (IMM 5283) must accompany an application for permanent residence in Canada (IMM 5001). The application must be submitted in accordance with the requirements specified in R10.

As per A25(1.1), applicable fees must be paid in full in order for an application for H&C to be considered.

5.3. H&C applications submitted by permanent residents or Canadian citizens

Permanent residents or Canadian citizens are not eligible for consideration under H&C because a person who is already a permanent resident or a Canadian citizen has all the legal rights accorded to a person with that status. There are no additional rights that can be gained by permanent resident status once they have already acquired those rights.

Persons who have lost their permanent resident status or Canadian citizenship may make an H&C application.

See also Section 14.4, *Former Canadian citizens*.

5.4. Concurrent applications for H&C and/or permanent residence

A25(1.2) stipulates that a foreign national may not have more than one H&C application under consideration at the same time.

If an H&C applicant also has a pending application for permanent residence in another category (e.g. live-in caregiver, spouse or common-law partner in Canada, protected person etc.), the application that was received first normally takes precedence although certain types of cases may have priority (e.g. spousal application). Multiple permanent resident applications should be consolidated. Processing of the H&C application should not begin until a decision is made on the first application.

5.5. Spouse or common-law partner in Canada class

Spouses and common-law partners of Canadian citizens and permanent residents may be members of the spouse or common-law partner in Canada (SCLPC) class prescribed in the *Immigration and Refugee Protection Regulations* (IRPR). This class is covered in chapter IP 8.

In order to maintain the intent of the SCLPC class and ensure that the benefits associated with the class are limited to those who are sponsored by and cohabiting with a spouse or common-law partner in Canada, the following policy approach has been adopted:

- SCLPC applicants who satisfy the SCLPC eligibility requirements set out in R124(a) and (c), in that they are sponsored by and cohabit with a spouse or common-law partner in Canada, and who request H&C consideration to exempt them from inadmissibilities or other applicable requirements, such as the requirement to have temporary resident status, a passport or other documentation, will be processed as members of the class.

- SCLPC applicants who do **not** satisfy the SCLPC eligibility requirements set out in R124(a) and (c) and who request H&C consideration will not be processed for permanent residence as members of the class. Their applications will be transferred to the H&C queue for processing in accordance with current H&C procedures.

5.6. Balance between discretion and consistency

Effective decision-making in H&C cases involves striking a balance between certainty and consistency on the one hand and of flexibility to deal with the specific facts of a case, on the other. In addition to the legislation, documents such as policy statements, guidelines, manuals and handbooks, provide guidance to applicants and decision-makers on when and how discretion should be best exercised in keeping with the policy intent. Such documents may legitimately influence decision-makers in their work.

See Thamotharem v. Canada (Minister of Citizenship & Immigration); 2007 CarswellNat 1391; 2007 FCA.

5.7. Onus on applicant

The onus is entirely upon the applicant to be clear in the submission as to exactly what hardship they would face if they were not granted the requested exemption(s). Officers do not have to elicit information on H&C factors and are not required to satisfy applicants that such grounds do not exist. The onus is on applicants to put forth any H&C factors that they believe are relevant to their case.

5.8. Threshold of proof

Fact finding should be done using the usual standard of proof in administrative law: Balance of probabilities --- is it more likely than not that the evidence or information presented is true?

A lower standard of proof, reasonable grounds to believe, may be used to assess inadmissibility. In this regard, A33 of IRPA provides –The facts that constitute inadmissibility under A34 through A37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur."

A lower standard of proof may also be used to predict risk of harm, e.g. discrimination. Here, officers may be guided by the standard used for determining persecution: A reasonable chance" or a "serious possibility" (that the harm feared will happen).

Once all elements of the case have been determined, using the appropriate standard of proof, the officer should assess all facts in the application and decide whether a refusal to grant the request for an exemption would, more likely than not, result in unusual and underserved or disproportionate hardship.

Element	Standard of proof
Fact finding	Balance of probabilities
Inadmissibility	Reasonable grounds to believe
Discrimination	Serious possibility

5.9. Impact of the Balanced Refugee Reform *Act* on H&C Processing

Applications received before June 29, 2010, will continue to have Sections 96/97 risks assessed. The following chart provides some examples:

If	Then
A person made an asylum claim prior to June 29, 2010, and has a pending H&C application.	The H&C application will be considered by a CIC officer. There are no restrictions on access to H&C by refugee claimants.
An H&C application was received before June 29, 2010.	All H&C applications received before June 29, 2010, will continue to be examined according to Section 25 as

	it was prior to Royal Assent. This means, for example, that reference to risk factors that fall under Section 96 and Section 97 will continue to be considered as part of the application. PRRA units will make these decisions, as is presently the case. This is also the case for an application received before June 29, 2010, and where a decision on such an application was challenged at the Federal Court and where, as a result of a successful judicial review, the application was sent back for re-assessment.
An H&C application was received before June 29, 2010, and the applicant has submitted additional information (e.g. cites risk in Section 96 and Section 97) in support of the initial application. The new information is received on or after June 29, 2010.	The entire application, including any new submissions, will be assessed under Section 25 as it existed before Royal Assent. In the case of the example, Section 96 and Section 97 risk will be considered. Such cases should go to the PRRA Unit for decision as they are considered —grandfathered".
H&C application received on or after June 29, 2010, cites risk that falls under Section 96 and Section 97.	The application will be assessed but risks that fall under Section 96 and Section 97 will not be taken into consideration in the decision. Such cases will no longer be transferred to the PRRA Unit for decision.

5.10. The assessment of hardship

The assessment of hardship in an H&C application is a means by which CIC decision-makers determine whether there are sufficient H&C grounds to justify granting the requested exemption(s).

The criterion of "unusual, undeserved or disproportionate hardship" has been adopted by the Federal Court in its decisions on Subsection 25(1), which means that these terms are more than mere guidelines.

See *Singh v. Canada (Minister of Citizenship & Immigration)*; 2009 Carswell Nat 452; 2009 CF 11, 2009 FC 11.

In many cases the hardship test will revolve around the requirement in A11 to apply for a permanent residence visa before entering Canada. In other words, would it be a hardship for the applicant to leave Canada in order to apply abroad.

Applicants may, however, request exemptions from other requirements of the *Act* and *Regulations*. In such cases, the test is whether it would be a hardship for the applicant if the requested exemption is not granted.

Individual H&C factors put forward by the applicant should not be considered in isolation in a determination of the hardship that an applicant would face; rather, hardship is determined as a result of a global assessment of H&C considerations put forth by the applicant. In other words, hardship is assessed by weighing together all of the H&C considerations submitted by the applicant. Hardship must be unusal and undeserved or disproportionate as described below:

Hardship

Unusual and undeserved hardship	**Disproportionate hardship**
• The hardship faced by the applicant (if they were not	• Sufficient humanitarian and compassionate grounds may also

Unusual and undeserved hardship	Disproportionate hardship
granted the requested exemption) must be, in most cases, unusual. In other words, a hardship not anticipated or addressed by the *Act* or *Regulations*; **and** • The hardship faced by the applicant (if they were not granted the requested exemption) must be undeserved so in most cases, the result of circumstances beyond the person's control.	exist in cases that do not meet the ~~-u~~nusual and undeserved" criteria but where the hardship of not being granted the requested exemption(s) would have an unreasonable impact on the applicant due to their personal circumstances.

5.11. Factors to consider in assessment of hardship

Subsection A25(1) provides the flexibility to grant exemptions to overcome the requirement of obtaining a permanent residence visa from abroad, to overcome class eligibility requirements and/or inadmissibilities, on humanitarian and compassionate grounds.

Officers must assess the hardship that would befall the applicant should the requested exemption not be granted.

Applicants may base their requests for H&C consideration on any number of factors including, but not limited to:

- establishment in Canada;
- ties to Canada;
- the best interests of any children affected by their application;
- factors in their country of origin (this includes but is not limited to: Medical inadequacies, discrimination that does not amount to persecution, harassment or other hardships that are not described in A96 and A97);
- health considerations;
- family violence considerations;
- consequences of the separation of relatives;
- inability to leave Canada has led to establishment; and/or
- any other relevant factor they wish to have considered not related to A96 and A97.

For more information see Sections 5.12-5.17.

5.12. Children – Best interests of a child

In an examination of the circumstances of a foreign national under A25(1), IRPA introduces a statutory obligation to take into account the best interests of a child who is directly affected by a decision under this section. This codifies departmental practice into legislation, eliminating any doubt that the interests of a child will be taken into account. This applies to children under the age of 18 years as per the Convention on the Rights of the Child.

Officers must always be alert and sensitive to the interests of children when examining A25(1) requests through identification and examination of all factors related to the child's life. However, this obligation only arises when it is sufficiently clear from the material submitted that an application relies in whole, or at least in part, on this factor. An applicant has the burden of justifying the basis of their H&C submission. An officer may also wish to consider that for some applicants it can be difficult to express themselves in writing and that the applicant may be able to provide more information in an interview. If an applicant provides insufficient evidence to support the claim, the officer may conclude that the grant of the exemption is not justified. As with all H&C assessments, the officer has full discretion to decide the outcome of a case.

The codification of the principle of "best interests of a child" into the legislation **does not mean** that the interests of the child outweigh all other factors in a case. While factors affecting children should be given substantial weight, the best interests of a child is only one of many important factors that officers need to consider when making an H&C or public policy decision that directly affects a child.

A decision on an H&C application must include an assessment of the best interests of any child **directly affected** by the decision. "Any child directly affected" in this context means a Canadian or foreign-born child (and could include children outside Canada). The relationship between the applicant and "any child directly affected" need not necessarily be that of parent and child, but could be another relationship that is affected by the decision. For example, a grandparent could be the primary caregiver who is affected by an immigration decision and the decision may thus affect the child.

The outcome of a decision under A25(1) that directly affects a child will always depend on the facts of the case. Officers must consider all evidence submitted by an applicant in relation to their A25(1) request. The following guidelines are not an exhaustive list of factors relating to children, nor are they necessarily determinative of the decision. Rather, they are meant as a guide to officers and illustrate the types of factors that are often present in A25(1) cases involving the best interests of a child. As stated by Madame Justice McLachlin of the Supreme Court of Canada, "The multitude of factors that may impinge on the child's best interest make a measure of indeterminacy inevitable. A more precise test would risk sacrificing the child's best interests to expediency and certainty." (*Gordon v Goertz*, [1996] 2 S.C.R. 27).

Generally, factors relating to a child's emotional, social, cultural and physical welfare should be taken into account when raised. Some examples of factors that applicants may raise include but are not limited to:

- the age of the child;
- the level of dependency between the child and the H&C applicant or the child and their sponsor;
- the degree of the child's establishment in Canada;
- the child's links to the country in relation to which the H&C assessment is being considered;
- the conditions of that country and the potential impact on the child;
- medical issues or special needs the child may have;
- the impact to the child's education; and
- matters related to the child's gender.

The facts surrounding a decision under A25(1) may sometimes give rise to the issue of whether the decision would place a child directly affected in a situation of risk. This issue

of risk may arise regardless of whether the child is a Canadian citizen or foreign-born. In such cases, it may be appropriate to refer to Section 12 of this chapter for further guidance.

For supplementary reading on relevant case law, refer to *Baker v. MCI*, [1999] 2 S.C.R. 817; *Legault v. MCI*, [2001] 3 F.C. 277; MCI *v. Hawthorne*, [2003] 2 F.C. 555, *Owusu* v. *MCI,* [2004] 2 F.C. 635, and see the *Convention on the Rights of the Child*, [Can. T.S. 1992 No. 3].

Children 18 years and over

BIOC must be considered when a child is under 18 years of age at the time the application is received. There may, however, be cases in which the situation of older children is relevant and should be taken into consideration in an H&C assessement. If, however, they are not under 18 years of age, it is not a best interests of the child case.

5.13. Spouses and common-law partners

Marriage or the existence of a common-law relationship is **not** automatically considered **sufficient grounds for a positive humanitarian and compassionate decision**, neither is a physical separation of the couple. There are no determinative factors when processing an H&C application. While a marriage or the existence of a common-law relationship is an important factor to consider, the officer must take into consideration all the factors of the case before deciding whether or not to grant an exemption. Among the factors, the officer should consider the consequences of separation on the relationship and other family members.

See also 12.3, *Sponsorship of spouses and common-law partners*.

5.14. Establishment in Canada

(see also Procedures 11.4 *Prolonged stay or inability to leave has led to establishment*, 11.5, *Assessing applicant's degree of establishment*)

Positive H&C consideration may be warranted when the period of inability to leave Canada due to circumstances beyond the applicant's control is of considerable duration and where there is evidence of a significant degree of establishment in Canada such that it would cause the applicant unusual or disproportionate hardship to apply from outside Canada.

The following table may assist to clarify what is meant by circumstances beyond the applicant's control:

Circumstances beyond the applicant's control	**Circumstances not beyond the applicant's control**
Example: If general country conditions are considered unsafe due to war, civil unrest, environmental disaster, etc., the Minister of Public Safety may impose a temporary suspension of removals (TSR) on that country (R230).	**Example:** An applicant, in Canada for a number of years, is unwilling to sign a passport application or provide particulars for a passport application.
Example: An applicant was awaiting a decision on an immigration application and spent several years in Canada with status (e.g. Live-in-caregiver program).	**Example:** An applicant wilfully loses or destroys their travel document(s). **Example:** Applicant goes ~~-u~~nderground" and remains in Canada illegally.
In such cases the ability to leave Canada can be considered to be due to circumstances beyond the applicant's control.	In such cases, inability to leave Canada is not considered beyond the control of the applicant and could reasonably be viewed as a strong negative factor. See Legault decsion at http://decisions.fca-

Circumstances beyond the applicant's control	Circumstances not beyond the applicant's control
	caf.gc.ca/en/2002/2002fca125/2002fca125.html.

Temporary suspension of removals (TSRs) and establishment

Situations may arise where the suspension of removals continues for a number of years and there is no other viable destination option for the applicant. When a TSR continues for a number of years and foreign nationals affected by it have become established in Canada as a result of their prolonged stay, this could reasonably be considered circumstances beyond the applicant's control.

In cases where the foreign national's H&C application is assessed after the lifting of a TSR but the applicant's prolonged stay in Canada during the time of the TSR led to their establishment, the applicant's extended presence in Canada can still be considered to be a result of circumstances beyond the applicant's control.

For a list of the countries under a TSR, refer to http://cicintranet.ci.gc.ca/cbsa-asfc/eb-dgel/reference/man-pol-proc/inlandenf-execint/pol-pub/temp_susp_rem_e.asp#6.

5.15. Factors in the country of origin that may not be considered

Section 25(1.3) of IRPA states: "...the Minister may not consider the factors that are taken into account in the determination of whether a person is a Convention refugee under Section 96 or a person in need of protection under Subsection 97(1) but must consider elements related to the hardships that affect the foreign national".

Note: Foreign nationals whose application for H&C is submitted on or after June 29, 2010, and who claim risk related to factors in A96 or A97, should be advised in writing that such claims are addressed through Canada's asylum system or PRRA and not via an H&C application. See Appendix D, Annex 1 for sample letter.

Risk factors that may **NOT** be considered

Section 96 factors	Section 97 factors
Well founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group, or political opinion. Further information and guidance on the Convention refugee definition can be found at the Immigration and Refugee Board (IRB) website at: • http://www.irb-cisr.gc.ca/eng/brdcom/references/legjur/rpdspr/def/Pages/index.aspx.	Person in need of protection because if they returned to their country, there are substantial grounds to believe they would be subject to torture or risk to life or risk of cruel and unusual treatment or punishment. Information and guidance on persons in need of protection can be found at the IRB website at: • http://www.irb-cisr.gc.ca/eng/brdcom/references/legjur/rpdspr/cgreg/lifevie/Pages/index.aspx. http://www.irb-cisr.gc.ca/eng/brdcom/references/legjur/rpdspr/def/Pages/index.aspx

5.16. H&C and hardship: Factors in the country of origin to be considered

While A96 and A97 factors may not be considered, the decision-maker must take into account elements related to the hardships that affect the foreign national. Some examples of what those —hardships" may include are:

- lack of critical of medical/healthcare;
- discrimination which does not amount to persecution;
- adverse country conditions that have a direct negative impact on the applicant.

Inability of a country to provide medical treatment

If an applicant alleges he will suffer hardship if returned to his country of origin because of a medical condition, the officer must be satisfied that the applicant requires the treatment, and that the treatment is not available in the applicant's country of origin.

The onus is on the applicant to provide the following:

- Documentary evidence from the applicant's doctor(s) confirming the applicant has been diagnosed with the condition, the appropriate treatment, and that treatment for the condition is vital to the applicant's physical or mental wellbeing; and
- Confirmation from the relevant health authorities in the country of origin attesting to the fact that an acceptable treatment is unavailable in the applicant's country of origin.

For cases involving a suspected or known health inadmissibility (A38), please refer to Section 5.25 –*Applicants with inadmissibilities*".

In order to substantiate an applicant's claims, the officer may wish to access reliable, unbiased internet resources for information on medical care available in the country of origin, for instance:

- UK Home Office Country of Origin reports: http://rds.homeoffice.gov.uk/rds/country_reports.html
- World Health Organization: http://www.who.int/en/
- UNAIDS (for HIV cases): http://www.unaids.org/en/CountryResponses/Countries/default.asp
- International Organization for Migration: http://www.iom.int/jahia/jsp/index.jsp.

Client consent may be required if case specific information is requested from third parties.

Evidence gathered to counter the applicant's submissions must be disclosed to the applicant and an opportunity for reply provided.

If there are medical services readily available in the country of origin that the applicant could access, that fact cannot be ignored when conducting an analysis of hardship. The applicant cannot refuse to access those services in order to support his claim for hardship in the H&C application — the hardship must be assessed by the officer based on all of the evidence of services available to the applicant. If the applicant acknowledges that treatment is available but submits that it is at a prohibitively high cost, or that the treatment itself, hospital conditions, availability of medicines, etc., are inadequate or substandard, these factors, if substantiated, should be taken into account and weighed in

the balance with the other H&C factors. Positive consideration may still be given in such cases if other positive factors are evident in the applicant's submissions.

If the officer is satisfied that because of a medical condition the applicant would suffer hardship if returned to his country of origin, this and other positive factors (evidence of establishment in Canada, lack of family ties in the country of origin, best interests of the child considerations, etc.) should be weighed against any negative factors, such as the existence of an inadmissibility. Where positive consideration may be warranted, but there exists a serious inadmissibility, i.e. an inadmissibility that falls under Sections A34, A35, A36(1), or A37, or where the applicant is inadmissible under Section A38, the officer should forward the case to the Director of Case Review, NHQ for a Stage 1 assessment. See Section 10, *Referral to NHQ for procedures*.

Discrimination

Discrimination is: A distinction based on the personal characteristics of an individual that results in some disadvantage to that individual.

In Andrews, Canada's Supreme Court wrote:

"Discrimination may be described as a distinction, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society. Distinctions based on personal characteristics attributed to an individual solely on the basis of association with a group will rarely escape the charge of discrimination, while those based on an individual's merits and capacities will rarely be so classed".

The Andrews decsion can be found at http://csc.lexum.org/en/1989/1989scr1-143/1989scr1-143.html

Persecution vs. Discrimination

While there is no definition of persecution in IRPA or its Regulations, the term has a generally accepted meaning. Persecution is a serious and persistent violation of fundamental human rights (including the right to freedom of religion).

Persecution may be carried out by state or non-state actors. Actions of non-state actors may constitute persecution if the authorities are unable or unwilling to protect the person concerned. Certain isolated incidents (such as attempted murder) are so serious that even one occurrence may constitute persecution against the individual targeted.

Example: If members of a religious minority group are prohibited by law from owning property or businesses, and as a result they live persistently in conditions of dire poverty and homelessness, it could be considered persecution.

Many people face less serious forms of discrimination and harm that do not amount to persecution.

Example: Isolated incidents of arbitrary arrest, violent assault for reasons of religious hatred, or exclusion from certain restaurants or painted symbols of hatred on their place of worship or gathering. Such incidents of discrimination do not amount to persecution because they occur

infrequently, or the harm caused is not serious. Still many persons facing these types of discrimination will believe that they are not able to live safely in their country of origin.

In order for discrimination to amount to persecution it is normally repetitive, persistent and has grave personal consequences such as serious body injury, torture, mistreatment or in the denial of fundamental human rights. Information exists at the IRB along with relevant jurisprudence of when discrimination does or does not meet the —persecution" level. This material is found at Section 3.1.2 of the IRB guide ~~"~~Interpretation of the Convention Refugee Definition in the Case Law" Chapter 3, with examples of litigated cases on this issue.

5.17. Assessment of discrimination

Applicants may claim to be victims of ~~"~~discrimination" in their home country and that return would result in events or circumstances that would result in hardship. They may claim that the discrimination is systematic and that neither the state nor the society at large offer meaningful redress.

Discrimination that does not constitute persecution, is a relevant factor in the assessment of hardship in an H&C application. Nevertheless, discrimination alone would not necessarily be sufficient to warrant a positive H&C decision, in the absence of other positive considerations in the applicant's favour. The focus should continue to be on a global assessment, including factors such as establishment in Canada, best interests of the child, ties to Canada, etc. Officers must consider both Canadian and international information in relation to the various forms of discrimination and should do so both in terms of the law and social organizations. Officers should determine if the term and the degree of the alleged discrimination is equivalent to discrimination in Canada, and to see how redress is handled in this country.

Redress

If the officer concludes that the claim of discrimination is valid, then they shall consider what avenues for recourse or other forms of prevention or redress exists in the applicant's country of origin. Aside from a determination of how traditional state bodies like police and courts operate, this may include an investigation of the presence and effectiveness of human rights tribunals, civil society organizations, political parties and other special interest lobby groups or rights activist bodies, as well as a determination of how freely other types of non-governmental organizations, which might have an interest in the applicant's case, operate within the country.

The availability of redress is an important, but not necessarily a determinative factor in the assessment of discrimination as an H&C consideration. As usual, the assessment of the H&C application focuses on a global assessment of factors presented in the application.

Relocation

An applicant for H&C consideration may face hardship in one part of the country of origin, but might reasonably be expected to seek relief at some other locality within that country. In such a situation, it may be determined that undue hardship does not exist because the applicant could eliminate the hardship through relocation.

Relocation outside the country of citizenship may also be an option for persons who are citizens of countries that have entered into bilateral or multilateral agreements with neighbouring countries and which permit mobility with respect to travel, extended sojourn, employment and study e.g. the Schengen Agreement in the European Union (EU). There are other such regional agreements.

The availability of relocation is an important, but not necessarily a determinative factor in the assessment of discrimination as an H&C consideration. As usual, the assessment of

the H&C application focuses on a global assessment of factors presented in the application.

5.18. Conducting research

The H&C officer may undertake research with respect to the issues identified in the application. The research sources consulted by the officer will vary with each individual case.

When information is obtained through Internet research:

- Copies of all documents obtained from the Internet and used in the decision-making process will be retained on the case file (this will ensure not only that the document is available for review by the Court, but also that the ~~"v~~version" of the document available to the Court is the same as that consulted by the officer);
- Subject to the following paragraph, officers will retain discretion with regard to whether a document should be shared with the applicant prior to rendering a decision, if it can be demonstrated that the document is ~~"p~~publicly accessible" (~~"p~~publicly accessible" documents should originate from reliable sources, and should be available at sites directly related to the source, rather than through cross-references from other sites, the reliability of which may not be as well established);
- Applicants can expect officers to routinely refer to the most recent information sources identified below in 5.19;

Officers may seek responses from applicants with respect to relevant external documentation that comes to light, and on which they intend to rely, and about which the foreign national could not reasonably be expected to be aware.

5.19. Information sources

A number of both electronic and conventional sources of research exist and may include but are not limited to the following:

- UNHCR reports and documentation: http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain;
- the U.S. Department of State Country Report on Human Rights Practices: http://www.state.gov/g/drl/rls/hrrpt/;
- U.K. Home Office Reports;
- the Lawyers Committee for Human Rights Critique;
- Amnesty International Reports;
- Reporters Without Borders;
- *L'État du monde*;
- Europa World;
- IRB National Documentation Packages: http://www.irb.gc.ca/Eng/resrec/ndpcnd/Pages/index.aspx;;
- Human Rights Watch World Reports;

A list of human rights organizations in various countries, with links, can be found on the Internet.

Lists of many world-wide NGOs involved in minority rights in various countries can be found on the Internet, including at the following two links:

- http://library.duke.edu/research/subject/guides/ngo_guide/ngo_links/rights.html;

- http://www.worldadvocacy.com/.

5.20. Assessment of applicants' submissions

Determine	Assessment of documentation	Assessment of credibility
• Which facts have been established on balance of probabilities and which statements are supported by the submissions. • Whether the facts establish that the applicant would face hardship if they were not granted the requested exemption.	Factors that can be taken into consideration in an assessment of the weight to be given to documentary evidence include: • the date of the document; • the reasons for which it was prepared; • the relationship between the person who prepared the document and the applicant; • whether the author has an interest in the outcome of the application; • whether the document shows signs of bias; • whether it appears to be contrived; • whether its contents are consistent with other reliable information; and • whether the author was a witness to the events described or whether it consists of hearsay (a legal term describing a class of evidence that is based on the reports of others rather than the personal knowledge of a witness [and that is generally not admissible as testimony).	• The weight given to any factor in a case is an objective determination of the decision-maker. The task is to weigh the facts in a fair and impartial manner, considering both positive and negative elements. H&C decision-makers must determine which facts are most important, which evidence is the most persuasive, which argument is the most compelling or convincing, and why. • If credibility is central to the decision, then an interview should be conducted. • Explain in the H&C decision why one piece of evidence was preferred over another. It is not necessary to mention every piece of evidence supplied by the applicant. Focus on those which are directly applicable to the formation of the decisions or those that are particularly significant to support the decision.

The IRB has extensive documentation on how to weigh evidence that can be found at http://www.irb.gc.ca/eng/brdcom/references/legjur/alltous/weiapp/Pages/index.aspx.

- See also Appendix A, *Administrative Law Principles*;

- See also Appendix B, *Guidelines for Notetaking and Recording Decisions*.

5.21. Decision-making process overview

An application for consideration to remain in Canada as a permanent resident on H&C grounds is comprised of two distinct assessments:

- H&C assessment of the requested exemptions (Stage 1) ; and
- Final decision on the permanent residence application (Stage 2).

Stage 1 and Stage 2 are referred to in R68 and R233 briefly refers to the initial determination. R68 refers to an exemption being granted under A25 and also mentions that the foreign national will become a permanent resident if they can establish that certain requirements (e.g. admissibility) are met. While R68 refers to an exemption being "granted", the context and the words used point to a two-staged decision.

These assessments will be referred to as Stage 1 and Stage 2 throughout this chapter.

5.22. H&C assessment (Stage 1)

Types of exemption requests

It is the responsibility of the applicant to identify any known inadmissibilities and to clearly state the reasons why they should be exempted from the requirements of IRPA. The applicant bears the onus of satisfying the decision-maker, until the time a decision is made, that the H&C factors present in their individual circumstances are sufficient to warrant an exemption.

Exemption request	Example
Exemption to apply from inside Canada	Applicant applies to overcome the requirement of A11 to obtain a permanent resident visa before entering Canada
Exemption from requirement of the *Act* or *Regulations*	Applicant is unable to obtain a travel document as required by R50 and applies for exemption
Exemption from Immigration Category Criteria	Applicant applies for exemption from requirement of Live-in-caregiver program for two years of cumulative employment as a caregiver (R115)
Exemption from Inadmissibility	Applicant is inadmissible on medical grounds (A38) and applies to become a permanent resident in spite of the inadmissibility

Assessment of exemption requests

See also 5.28, *Granting exemptions on one's own initiative*.

(For procedures, refer to Sections 11 through 15.)

Decision-makers must conduct a comprehensive assessment of all the relevant factors in an application to determine whether H&C considerations justify the grant of the requested exemption. This requires the decision-maker to weigh all the relevant factors in the case.

Decision-makers must consider exempting any applicable criteria or obligation of the *Act*, including inadmissibilities, when the foreign national has specifically requested such an exemption or when it is clear from the material that the foreign national is seeking such an exemption (see also Section 5.28, *Granting exemptions on one's own initiative*).

Officers assess the applicants' submissions in light of all the known information, taking into consideration all known inadmissibilities. Procedural instructions are detailed in Section 11, *Procedures: Stage 1 assessment*.

Note: Requirements for protected persons differ from those required of other H&C applicants. For more information, see Section 14.3, *Protected persons*.

Positive Stage 1 assessment (approval in principle)

If the officer is of the opinion that H&C considerations warrant the grant of the requested exemption(s), then the officer may render a positive Stage 1 assessment if it is within their authority.

When a positive Stage 1 assessment has been made, **it is for the purposes of the current application only.** This positive assessment (also called approval in principle):

- exempts the applicant from the in-Canada eligibility criteria based on humanitarian and compassionate considerations in order to facilitate processing the application for permanent residence from within Canada;
- exempts the applicant from the requirement to meet any criteria or obligations of the *Act* or *Regulations* from which they have been granted an exemption by the delegated authority;
- allows the foreign national to become a permanent resident, subject to certain requirements [R72(1)(b) and (e)], if these requirements were not specifically waived in the Stage 1 assessment; and
- Will put into effect a stay of removal (R233) and allow the applicant to apply for a work permit [R207 (d)] and/or study permit [R215 (g)].

Negative Stage 1 assessment

CIC officers have the authority to **render a negative decision** on any H&C application, regardless of the inadmissibility, including those involving A34, A35 and A37, if they are of the opinion that H&C considerations do not warrant the grant of the requested exemption(s).

Permanent residence application (Stage 2) *(For procedural guidelines, refer to Sections 16, Stage 2 assessment and 17, Finalizing a case after Stage 2 assessment.)*

Processing of the application for permanent residence follows a positive Stage 1 assessment.

To become a permanent resident, the applicant must meet the requirements in R68, including that the applicant and their family members, whether accompanying or not, are not inadmissible and otherwise meet the requirements of the *Act* and *Regulations* (unless already exempted to meet that requirement at Stage 1).

The officer assesses all information relating to the requirements and admissibility of the applicant up to the time the applicant is granted permanent resident status, including the permanent residence interview. A final negative decision may be made at any time during processing if the applicant or their family members are found to be inadmissible. A final positive decision is made only at the interview for permanent residence.

In cases where the applicant has been granted an exemption to overcome inadmissibility, the applicant should have no other inadmissibilities prior to the final decision. If other inadmissibilities are discovered during Stage 2, and where the officer does not believe that the H&C factors outweigh these inadmissibilities, the application for permanent residence should be refused unless the officer chooses to grant an exemption on their own initiative.

Note: Any existing inadmissibilities that were known by the applicant but not disclosed before the Stage 1 assessment may result in a negative final decision. If, after a Stage 2 approval (i.e. after the Confirmation of Permanent Residence has been created in FOSS and communicated to the applicant) a new or previously unknown inadmissibility comes to light, officers can prepare an A44(1) report to address the inadmissibility.

Where a positive Stage 1 assessment has been made, the applicant should not be refused at Stage 2 for the sole reason that they are inadmissible pursuant to A41 for being out of status.

Applicants must meet the requirements in R72, including possession of a passport (unless they were exempted from that requirement) and a medical certificate based on a medical examination within the preceding 12 months [R72 (1) (e) (ii)].

Applicants in Quebec must also meet provincial criteria (see Section 13, *Applicants resident in Quebec*).

Temporary resident permit (TRP) - See also IP 1

There may be situations where an H&C application has been refused but issuance of a TRP may still be appropriate. For instance:

- if a family member of the applicant who was included in the permanent residence application cannot be granted permanent residence due to an inadmissibility, a TRP may be issued to that individual while permanent residence is granted to the principal applicant and to the other accompanying family members. (The principal applicant is able to overcome the inadmissibility under A42, Inadmissible family member, based on H&C considerations.)
- the officer does not believe that there are sufficient grounds to grant an exemption under H&C but feels the applicant should be allowed to remain in Canada temporarily, perhaps to apply for a pardon for a criminal conviction.

Note: A TRP cannot simply be the end result of an H&C application. The H&C application must first be refused and a rationale provided.

While IRPA does not prevent the issuance of a TRP to a person under a removal order, it is not the intention of the Department to allow an individual to be a permit holder while under a removal order (see Section 5.6 of IP 1); nor does a TRP stay a removal order.

5.23. Reconsideration of inland H&C decisions

In exceptional circumstances, reconsideration of a decision may be warranted.

H&C Stage 1 approvals

A Stage 1 approval is considered an interim decision, since the applicant has not yet received confirmation of permanent residence. Consequently, if some new or undiscovered **significant** factor comes to light, it should not be ignored by CIC officers. If, following a Stage 1 approval, an inadmissibility or another significant factor, such as the breakdown of a relationship or the withdrawal of an undertaking, comes to light, the officer should take this information into account and, where appropriate, revisit the Stage 1 decision.

Stage 1 refusals, Stage 2 approval, Stage 2 refusal

According to the decision of the Federal Court of Appeal (FCA) in (*MCI v. Kurukkal*, 2010 FCA 230), the legal doctrine of *functus officio* does not automatically bar reconsideration of final H&C decisions.

Generally speaking, given the importance of finality, reconsideration should only be undertaken in exceptional cases. Officers should consider all relevant factors and circumstances to determine whether a case merits reconsideration.

Dissatisfaction or disagreement with the decision does not by itself qualify as an exceptional case.

Factors for an H&C officer to consider when reviewing a request for reconsideration

According to the Federal Court of Appeal, the officer must take into account all relevant circumstances in a decision to determine whether to exercise their discretion to reconsider. The following is a non-exhaustive list of factors that may be relevant for an officer to consider:

- Whether the officer failed to comply with the principles of natural justice or procedural fairness when the decision was made;
- Where additional evidence that was available prior to the original decision is presented, whether the applicant was diligent and included that evidence before the original decision was made, and whether that evidence is material and reliable;
- Whether new documentation is submitted by clients who indicate that they did not receive previous requests from CIC for critical additional supporting documentation and who, therefore, did not submit such documents in a timely manner;
- Whether the applicant has presented new evidence, based on new facts (i.e. facts that arose after the original decision was made and communicated to the applicant), and whether that evidence would more appropriately be considered in the context of a new application;
- The passage of time between the date of the original decision and the date of the reconsideration;
- Whether the request is being made for *bona fide* reasons, or for a collateral purpose (such as to support a request to defer imminent removal from Canada) (2009 FC 695);
- Where it is necessary to correct a clerical error, or an accidental error;
- Lack of jurisdiction of the officer, for instance, where a decision was made by an officer who did not have the delegated authority to do so;
- Concerns regarding fraud or misrepresentation relating to a material fact.

Response to the reconsideration request:

In light of the court's decision in *Kurukkal,* when an applicant makes a request for reconsideration of their final H&C decision, officers should not cite the doctrine of *functus officio* as a bar to reopening the case, and should not otherwise state that they are completely barred from reconsidering a case. If an officer decides that a reconsideration is not warranted, their decision should be communicated to the applicant. The Federal Court has stated that there is no general duty to provide detailed reasons for not reconsidering a decision (*Trivedi*, 2010 FC 422).

The Federal Court has stated that the record as a whole should communicate to the applicant the reasons for which their application was refused. If the applicant was informed of the reasons that their application could be, or was refused, whether in a fairness letter or in the refusal letter, and those reasons are still applicable for refusing a reconsideration request, a simple referral back to that previous information is adequate. This is because the applicant was issued a clear warning that the consequence of failing to provide sufficient evidence could be refusal.

See Appendix F, Annexes 12 and 13 for sample refusal letters.

Note: In circumstances other than those described above, or in particularly problematic cases, H&C officers should not reconsider a decision without guidance from the OMC Branch.

5.24. Applicants under a removal order

Persons under a removal order who submit an H&C application and pay the appropriate fee are entitled to a decision on that application. However, there is no **stay of removal** unless a positive Stage 1 assessment has been made (R233).

For information on removals, see ENF 10.

Stage 1 assessment cannot be completed prior to removal

If the Stage 1 assessment cannot be completed prior to the applicant's removal from Canada, it will be made after the removal and the applicant will be informed of the decision. Please see Section 14.1, *Stage 1 Assessment post-removal*.

Officers should, upon request, advise applicants that:	Officers should not:
• their H&C application will be considered after removal; • when a Stage 1 assessment is made, they will be informed of the decision in writing; and • if their application receives a positive Stage 1 assessment and they are not otherwise inadmissible to Canada, they may be allowed to return to Canada for processing.	• request that applicants attend an interview in Canada after the date scheduled for their removal. (To avoid this, officers should contact the local removals unit to obtain details about removal plans before scheduling an interview. Where an interview is required and it cannot be done prior to removal, it may be conducted via telephone by an officer following removal.)

5.25. Inadmissible applicants

Foreign nationals who are inadmissible may submit an H&C application to overcome their inadmissibility.

However, exemptions to inadmissibility must be weighed against the objectives as expressed in the *IRPA* which indicate an intent to prioritize security. This objective is given effect by preventing the entry of applicants with criminal records, by removal of applicants with such records from Canada, and by emphasis on the obligation of permanent residents to behave lawfully while in Canada. This marks a change from the focus in the predecessor statute (1976 Act), which emphasized the successful integration of applicants more than security.

Example: See Section 3(1)(*i*) of the *IRPA* versus Section 3(*j*) of the former Act; Section 3(1)(*e*) of the *IRPA* versus Section 3(*d*) of the former Act; Section 3(1)(*h*) of the *IRPA* versus Section 3(*i*) of the former Act.

If the applicant did not specifically request an exemption and the inadmissibility was discovered during the application process, the officer can refuse the application.

Viewed collectively, the objectives of the *IRPA* and its provisions concerning permanent residents, communicate a strong desire to treat criminals and security threats less leniently than under the former Act: Medovarski v. Canada (Minister of Citizenship and Immigration); Esteban v. Canada (Minister of Citizenship and Immigration), 2005 SCC 51, [2005] 2 S.C.R. 539. Upon request, officers may grant an exemption from inadmissibility if:

Note: they are of the opinion that it is justified by H&C considerations; **and** they have the delegated authority to grant the exemption. If the officer is of the opinion that the H&C considerations might justify an exemption but they **do not** have the delegated authority to grant the exemption, the entire case should be forwarded to the Director of Case Review at NHQ for assessment (see Sections 4.2, Delegated authorities and 10), Referrals to NHQ. , If the officer believes that H&C factors are sufficient to justify an exemption and if the inadmissibilities fall under A34, A35, A36(1), A37 or A38, the case should be forwarded to NHQ for consideration. In order to avoid situations where there is more than one decision-maker on file (when the applicant or officer, on their own initiative, requests exemptions and both a CIC officer and NHQ are delegated), the higher authority will assess both exemptions.

Criminal charges formally laid and still outstanding

There will be cases in which there are outstanding criminal charges against an applicant either in Canada or in another country. In such cases, applicants bear the responsibility to provide all the necessary information to demonstrate that their personal circumstances justify an exemption from any requirements of the *Act* or *Regulations*.

The following table contains examples and possible actions that may be taken:

Examples	Possible actions
All other factors of the case are very favourable except an outstanding charge for shoplifting. The matter is expected to conclude before the courts within the next three months.	Officers may decide that, even if the applicant had a conviction for shoplifting, there are enough H&C factors to offset the relatively minor and single incident of criminality.
The criminal charge is very serious (i.e. a conviction would be a significant factor in any H&C assessment such as an outstanding charge for the attempted murder of a family member) and/or it appears that it will be quite some time before the matter is resolved.	The application may be refused if, considering all factors at the time of the Stage 1 assessment (not including the possible inadmissibility that would result from the outstanding charges); the officer does not believe the H&C grounds warrant an exemption. Officers may decide that if the applicant were convicted, it would present too great a negative factor. In such cases, the officer should wait until the court renders a decision on the criminal matter before pursuing the process of the application. If, however, H&C factors are compelling and the situation merits an exemption, officers should follow the guidelines provided in Sections 11.5 and 16.7 of this chapter.

Cases involving criminality (A36(2)) – Options for rehabilitation or pardon

Before granting an exemption and making a decision in cases regarding criminal inadmissibility, the officer should determine if the client is eligible to apply for either rehabilitation or a pardon. If the client has specifically requested an exemption pertaining to their inadmissibility, the officer may inform the client of other appropriate options available to them. If the applicant does not specifically request an exemption or the inadmissibility is discovered during the application process, then the application will proceed normally. The officer is not obliged to counsel the client and can refuse the application, however the officer may, on their own initiative, consider an exemption on the inadmissibility. See also Sections 5.27, *Inadmissibilites for which no exemption has been requested* and 5.28, *Granting an exemption on one's own initiative*.

For information on rehabilitation and pardons, refer to ENF 14, Section 5.2. For persons who are not eligible for rehabilitation or pardon, refer to IP 1, Section 14.

Cases involving a suspected or known health inadmissibility (A38)

Medical results may already exist in the applicant's file. These may alert an officer to a potential inadmissibility. However, no decision on medical inadmissibility should be made without medical results specific to an application for permanent residence. Results of a temporary residence medical examination may not be used to refuse an application for permanent residence.

No Stage 1 approval can be rendered without all known inadmissibilities considered and assessed, including health inadmissibilities (Quebec cases are an exception, see Section 13.3).

If there are no medical results available but the officer suspects a medical inadmissibility, whether at Stage 1 (see Section 11.7, *Health inadmissibility*) or Stage 2 (see Section 16.6, *Health inadmissibility (A38) discovered at Stage 2*) of the process, the officer must send a letter to the applicant instructing them to report to a Designated Medical Practitioner for a medical examination [R30(1)(d)].

The delegated authority at NHQ will not contact provincial authorities directly on medically inadmissible cases. Therefore, consultation with the provincial health authorities should be done at the regional level. The results of the consultation should be included as part of the referral package for NHQ.

If provincial health authorities have been consulted and do not favour granting the exemption, the delegated authority must consider this position when weighing all the factors.

It is the responsibility of each regional office to develop the liaison procedures with their provincial health authority counterparts.

Medical officers' opinions and provincial health authorities' opinions are considered extrinsic information (see Section 6, *Definitions*). If the applicant is the subject of a medically inadmissible opinionthey should, therefore, be informed of such and be given an opportunity to make submissions on the matter.

For cases involving an inadmissibility under excessive demand on social services [A38(1)(c)], please see OB 063 dated September 24, 2008, and OB 063B dated July 29, 2009.

Cases involving an inadmissible family member (A42) – Family member abroad

All family members in Canada or overseas must be examined for medical, criminal and security admissibility requirements, whether they intend to immigrate or not (R68(c)).

The CPC or inland CIC may learn of the potential inadmissibility either as a result of:

- information provided by the applicant in their submission for H&C consideration (at Stage 1); or
- information received from the visa office after they have completed the required medical, criminal and security verifications of family members outside Canada (Stage 2).

The inadmissibility of family members abroad could have serious consequences for the family unit such as the permanent separation of family members and the potential inadmissibility of the applicant. This information should be considered in conjunction with all other factors of the case.

Officers are delegated the authority to waive the requirement under R68(c) that non-accompanying family members be examined in order for a foreign national to become a permanent resident. For information on this topic, see Section 16.7, *Inadmissibility of a family member (A42)*.

If the applicant has requested an exemption from A42, the officer should take into consideration whether the H&C grounds outweigh the inadmissibility and render a decision based on that assessment. Note that the officer does **not** waive the actual inadmissibility of the family member but rather the requirement that a family member be examined. Exemptions should be granted when the officer is satisfied that every effort has been made to have the family member examined.

Example: The H&C applicant has a family member abroad who is inadmissible under A36. If the officer opts to grant the exemption, they are granting the H&C applicant an exemption from A42. The family member abroad remains inadmissible under A36.

Cases involving national security (A34, A35 and A37)

In national security cases, CIC officers are advised to contact the Canada Border Services Agency (CBSA) National Security Division (Modern War Crimes, Organized Crime or Counter Terrorism). Assistance to determine whether a foreign national is inadmissible on national security grounds is available to CIC through these units. A recommendation and suggested interview questions are just two ways that CBSA can assist CIC in rendering admissibility decisions on applications involving national security.

For the purpose of determining whether a foreign national or permanent resident is inadmissible under paragraphs 34(1)(c) or 35(1)(a) of the Act, findings of fact set out in decisions or determinations by competent authorities (under R14 and R15 respectively) shall only be considered as conclusive findings of fact. The officer must consider any new information or evidence provided by the applicant in relation to their admissibility; however, evidence must be weighed and assessed according to whether it is credible, corroborated and compelling.

Note: With respect to R14 and R15, it is **not** the decision by the competent authority that is binding; it is the finding of facts that are conclusive.

Where the officer finds the applicant to be inadmissible under A34, A35 or A37 and is of the opinion that the H&C grounds might justify an exemption, the case **must** be forwarded to the Director of Case Review at NHQ (see Section 10, *Referrals to NHQ*). The assessment of admissibility must be made prior to forwarding the file to NHQ as the analysis needs to be used in the officer's assessment of the H&C factors.

Note: For those who are inadmissible under IRPA for reasons involving security [A34], human rights violations [A35], or organized crime [A37], an application for Ministerial Relief can be submitted, with the exception of those who are inadmissible under A35(1)(a). A person inadmissible on these grounds is not eligible to receive relief as per A35(2). Ministerial Relief is a legislative mechanism that allows clients who are inadmissible on certain grounds to request relief of this inadmissibility from the Minister of Public Safety (PS). Relief is permanent and once granted the person is no longer considered to be inadmissible on those grounds. These applications are currently received by both CBSA and CIC offices, but the package that is reviewed by the Minister is prepared exclusively by CBSA. Please see IP 10, Section 9 for more details on Ministerial Relief.

For functional direction and guidance in the application of the inadmissibility provisions of IRPA, consult ENF 1 - Inadmissibility. For further information on war crimes, genocide and crimes against humanity, refer to ENF 18.

Cases where a remedial solution for the inadmissibility is being sought

In cases where a remedial solution is pending (e.g. an application for a pardon, rehabilitation or Ministerial Relief) processing of the H&C application may continue even in the absence of a decision on the remedial solution. However, the circumstances of the individual case should be examined and, if warranted, processing may be postponed. An applicant is inadmissible until such time as the applicable remedy is granted.

When an H&C application is received and there is an outstanding request to –resolve" an inadmissibility through rehabilitation or a request for an exemption, the circumstances of the individual case should be examined and, where possible, processing deferred C:\Users\Stephanie.Roy\AppData\Local\Microsoft\Outlookuntil a decision has been rendered under the applicable section. However, if the inadmissibility is one that requires Ministerial Relief, processing of the application should continue and the application may be refused if it is determined at Stage 1 that an exemption is not warranted.

Individuals named in an immigration warrant

When an individual named in an immigration warrant submits an H&C application, CIC must inform the CBSA. In most cases, where a warrant exists against individuals who have passed Stage 1, the warrant will be cancelled since there is a stay of removal. This

will ensure that the individual is not arrested by the CBSA or any law enforcement agency thereby reducing the liability to all departments and agencies involved and maintaining the integrity of the immigration program. For more information on warrants refer to ENF 7, Sections 7.3 and 15.9.

5.26. Sponsorship

See also Procedures Section 12.

An H&C application based on a family relationship is normally supported by a sponsorship application from a Canadian citizen or permanent resident. Sponsorship forms are included in the H&C application kit and can be submitted at the same time as the H&C application.

Sponsorship is not a requirement in H&C applications, so applications should not be refused solely due to lack of sponsorship. Rather, sponsorship is a factor to be taken into account by the decision-maker.

The decision on the sponsorship application (i.e. sponsor's eligibility) must be made **before** a decision on the H&C request is made so that a sponsorship or a lack thereof can be considered in the Stage 1 assessment. See Section 13 for information specific to Quebec cases.

In the case of applications submitted under H&C grounds, sponsors and applicants do not have a right of appeal to the Immigration Appeal Division in the case of refusal.

Note: **The existence of a sponsorship does not mean that the H&C applicant is a member of the family class**. Only persons applying for a visa outside Canada as a member of the family class [R117] or persons applying to become permanent residents as members of the spouse or common-law partner in Canada class [R123], are members of the family class. Successful H&C applicants in Canada are granted an exemption from the requirement to be a member of one of the prescribed classes of persons who can apply for permanent residence from within Canada.

5.27. Inadmissibilities for which no exemption has been requested

See also Section 5.25, *Inadmissible applicants*.

During the Stage 1 or 2 assessments, a known or suspected inadmissibility may be identified, that is, an inadmissibility for which no exemption has been requested.

This can occur during the review of a client's history in FOSS or through information provided by the applicant (e.g. on the IMM 5001) that suggests that either the applicant or a family member is inadmissible. In such cases, the officer may:

- refuse the application based on the existence of the inadmissibility; or
- the officer may use discretion to consider, on their own initiative, whether an exemption on H&C grounds would be appropriate.

When the applicant does not directly request an exemption, but facts in the application suggest that they are requesting an exemption for the inadmissibility, **officers should treat the application as if the exemption has been requested**.

Example: It would be clear that the applicant is seeking an exemption for an inadmissibility without explicitly asking for it if the applicant has a criminal conviction and, in the submission, made a case as to why they should be exempted from that inadmissibility (e.g. they have served their time, are rehabilitated, have done community service, have full-time employment, etc.). The onus always rests on the applicant to make their case and it is the applicant who —bears the burden of proving any claim upon which he relies" (*Owusu* v. MCI, 2004 FCA 38).

When an officer decides to consider an exemption in the absence of a specific request from the applicant, the applicant should be notified that H&C is being considered and provided with an opportunity to present their own reasons for H&C consideration. This is procedurally fair and ensures that the decision-maker has all the necessary information before making a decision.

If an applicant provides updated or additional submissions and if in these submissions the applicant requests an exemption on H&C grounds from the new or newly discovered inadmissibility, the request must be considered by the officer who has the delegated authority to do so.

5.28. Granting exemptions on one's own initiative after Stage 1 approval

In some cases, an officer may consider it appropriate to grant an exemption on their own initiative due to, for example, a change in the applicant's circumstances. Although it is entirely possible that an officer exempts on their own initiative at Stage 1, these types of situations usually involve new inadmissibilities that emerge subsequent to a positive Stage 1 assessment (but prior to the granting of permanent residence).

Example: The applicant may develop a medical condition after a positive Stage 1 assessment or it is evident to the officer that the applicant was unaware of an existing medical condition or did not realize it made them inadmissible (A38). Officers may consider the new circumstances and, if they believe that an exemption is justified, send the application to the Director of Case Review for assessment.

Example: A member of the applicant's family becomes inadmissible subsequent to a positive Stage 1 assessment. However, in the officer's opinion, the offence is not significant enough to **outweigh** this positive assessment. Officers may wish to exercise their discretion and grant an exemption, if they are of the opinion that it is warranted by the existing H&C grounds.

The applicant should be notified that an exemption is being considered and provided with an opportunity to present their own reasons for H&C consideration.

6. Definitions

Term	Definition	Examples
Exemption	A25(1) authorizes the Minister to grant an exemption from any applicable criteria or obligation of the *Act* if they are of the opinion that it is justified by humanitarian and compassionate considerations.	• Exemption from criminal inadmissibility A36(2). • Exemption from requirement to apply for permanent residence from outside Canada (A11).
Public policy	A25.2(1) allows the Minister to establish, from time to time, categories of persons whose applications for permanent residence may be considered for processing as ~~"~~public policy" cases.	A public policy initiative took effect on February 18, 2005, in relation to exemptions from status requirements in the spouse or common-law partner in Canada class. Details can be found in chapter IP 8.

Term	Definition	Examples
Administrative law principles – A guide to decision-making	Before processing an H&C application, officers should review the list of administrative law principles in Appendix A along with the summary explanation provided for each principle. The summary explanations are only overviews of each principle and do not constitute an exhaustive presentation of legal principles applicable to the H&C assessment.	See Appendix A.
De facto family members	*De facto* family members are persons who do not meet the definition of a family class member. They are, however, in a situation of dependence that makes them a *de facto* member of a nuclear family in Canada.	• a son, daughter, brother or sister without family of their own; • an elderly relative such as an aunt or uncle or an unrelated person who has resided with the family for a long time.
Intrinsic information	Intrinsic information (which does not need to be disclosed to the applicant) is: • information that is provided by or readily available to the applicant; and • information that the applicant is aware will be used in the decision.	Information provided by an applicant's spouse at an interview to determine the *bona fides* of a marriage is considered intrinsic because the applicant has access to it and would reasonably expect it to be used in the decision.
Extrinsic information	Extrinsic information (which needs to be disclosed to the applicant so they have a chance to respond) is: • information that is from a source other than the applicant; and • information that the applicant does not have access to, or is not aware of, and that is being used in the decision.	• Information received from an anonymous source that is integral to the decision. • Following a request about the authenticity of documents, the visa office replies that the documents are not authentic. Although the documents were submitted as part of the H&C application, the information related to their authenticity will be used as the basis for the decision or as a determinative factor. • Opinions from medical officers and provincial health authorities.

Term	Definition	Examples

7. Procedures: Role and responsibilities – Applicant

7.1. Obtaining and submitting an application

Applicants should obtain the application kit IMM 5291 *Application for Permanent Residence from Within Canada – Humanitarian and Compassionate Considerations*, either by downloading it from the CIC web site or by contacting the CIC Call Centre at 1-800-242-2100.

Applicants should:

- read and understand all the instructions in the guide;
- ensure that they have presented all the facts that support their belief that the hardship of not being granted the requested exemption would be either unusual and undeserved or disproportionate (applicants may present whatever facts they believe are relevant);
- ensure that they have, where applicable, requested exemptions to overcome their inadmissibilities and included the relevant facts pertaining to the inadmissibility and the H&C grounds that they wish to have considered;
- complete and sign the required forms and gather all required documentation; and
- forward the application to the office indicated in the application kit with proof of payment of the appropriate fees.

For additional instructions specific to protected persons, see also in Section 14.3 *Protected Persons*.

7.2. Cost recovery fee and Right of Permanent Residence Fee (RPRF)

Applicants must pay the applicable cost recovery fee (processing fee) as per A25(1.1). The fee is non-refundable even if the H&C application is refused; fees are charged for the process, not for the result.

Payment must either be made at a designated financial institution using an original Handling Public Monies (HPM) receipt form (IMM 5401B) or through the CIC website. Applications without an official receipt will be returned.

The following H&C applicants are **exempted** from the RPRF:

- protected persons within the meaning of Subsection A95(2) and their family members. In the H&C context, this refers to Convention refugees or protected persons who apply for permanent residence after the 180-day deadline (see Section 14.3, *Protected persons*); and
- an H&C principal applicant in Canada who is a dependent child of a Canadian citizen or permanent resident.

For information on fees, consult chapter IR 5.

7.3. Withdrawing an application

Applicants who wish to withdraw their application for H&C considerations must do so in writing. They should be encouraged to follow the instruction in the "While Your Application is Processed" section of the Instruction Guide (IMM 5291).

A template letter to confirm the client's withdrawal request is available in Appendix F, Annex 11.

When closing the file in FOSS the officer should choose the "withdrawn" option in the final decision field of the APL screen.

Note: Sponsors who wish to withdraw an undertaking must also do so in writing **prior** to the final decision/grant of permanent residence (see Section 12.10, *Withdrawal of sponsorship*).

8. Procedures: Roles and responsibilities – CIC

8.1. Role of the Case Processing Centre in Vegreville (CPC-V)

All H&C applications are sent to CPC-V as that office is responsible for the review as well as the screening of all applications and supporting documents.

Screening of the application

CPC-V screens the application to verify that:

- the appropriate forms have been submitted;
- all forms are completed, signed and dated;
- the applicant and, if applicable, the sponsor, reside in Canada;
- the address for any family members abroad is complete and in the script of the country of residence;
- all required supporting documents, as listed on the IMM 5280 *Document Checklist*, are included; and
- the receipt for the correct processing fee(s) is included.

Incomplete applications

An incomplete application which does not meet the requirements of R10 and R11, or that does not pass the screening steps listed above, will not be processed.

CPC-V has the authority to return an incomplete application to the applicant as per R12.

Referral to a local CIC office

H&C applications approved by CPC-V that are ready for the final examination are transmitted to the appropriate local CIC for the confirmation of permanent residence appointment.

H&C applications unsuitable for processing by CPC-V are transmitted to the appropriate H&C Unit at a local CIC where officers will investigate issues of concern and make a final decision. Applications are usually referred to a local CIC when:

- In the case of an application received before June 29, 2010, it includes allegations of risk and it cannot be approved on non-risk H&C factors ;
- the case is complex or requires an in-depth assessment of bona fides or degree of hardship before a decision is made;
- a personal interview may be required; or

- refusal is a possible outcome.

PRRA offices may request from CPC-V H&C applications received before June 29, 2010, which include assertions of risk, for concurrent assessment with a pending PRRA application. Where operationally feasible, CPC-V transmits such applications directly to the responsible PRRA Unit.

8.2. Role of H&C Units

When the H&C application is referred by CPC-V to the H&C Unit at the local office, the Unit performs a preliminary screening of the application to determine:

- whether the application was received before June 29, 2010, and indicates an allegation of risk; and
- whether there may be sufficient grounds to accept based on non-risk H&C factors.

Triage - Preliminary screening prior to formal H&C assessment

If there is…	Then file is transferred to…
Application received before June 29 2010, and no assertion of risk	An H&C officer.
Application received before June 29, 2010, with assertion of risk but preliminary screening indicates there might be **sufficient** non-risk H&C factors for acceptance	An H&C officer.
Application received before June 29, 2010, and assertion of risk but preliminary screening indicates there might be **insufficient** non-risk H&C factors for acceptance	the PRRA Unit.
Application received after June 29, 2010	An H&C officer.

See also Section 14.2, *Allegations of risk*.

8.3. Role of H&C officer

Applications received on or after June 29, 2010, will no longer have risks related to A96 and A97 assessed. All such applications will be assessed by an H&C officer, taking into account H&C factors not related to A96 and A97.

In the case of an application received before June 29, 2010, the H&C officer assesses only non-risk factors presented by the applicant.

In the case of an application received before June 29, 2010, if, **after** the assessment of only non-risk factors, the H&C officer finds that there are sufficient grounds to allow the application without a need to examine risk, the case is processed to completion according to normal procedures (when necessary, the file is referred to NHQ).

If, **after** the assessment of only non-risk factors on an application received before June 29, 2010, the H&C officer does not find sufficient grounds to allow the application and the applicant has asserted risk factors, the file is transferred to the PRRA Unit for assessment, in accordance with Sections 8.4, *Referral to PRRA Unit* and 8.6, *Role of PRRA officer*.

With respect to applications received before June 29, 2010, the PRRA officer is the departmental expert in matters of risk and, therefore, even if the applicant did not provide ~~"e~~vidence" supporting the risk allegations, the application should be forwarded to the PRRA Unit. The mere claim or allegation of a risk is sufficient to support a transfer to the PRRA Unit, **provided that the non-risk factors are insufficient to allow the application**. It is not for the H&C officer to weigh whether the risk as stated meets some ~~"t~~hreshold" for referral.

8.4. Referral to Pre-removal Risk Assessment (PRRA) Units

If an application was received before June 29, 2010, and includes risk grounds and the H&C officer determines that there are insufficient non-risk grounds for approval, the application is referred to the PRRA Unit. In the case of applications received after June 29, 2010, in which risk is cited, see Section 5.9, *Impact of Balanced Refugee Reform on H&C processing*.

Assessment of risk in applications for H&C versus PRRA

There is an important distinction between the assessment of risk in an H&C application and in one for a PRRA (*Lazlo Pinter et. al. v. MCI*, Feb. 25, 2005). The H&C assessment is lower in threshold than PRRA and is not limited to the PRRA's specific legislative parameters of persecution: Risk to life, torture and cruel and unsual treatment or punishment. For an H&C application, the PRRA officer assesses *all* elements of the application and decides if the risk or non-risk factors would amount to unusual and undeserved or disproportionate hardship.

Even if the PRRA officer is not satisfied that the applicant would be subject to personal risk as set out in A96 and A97 if removed from Canada, the PRRA officer may still grant a positive Stage 1 assessment if satisfied that an exemption is justified, taking into account all relevant factors including whether the applicant would be subject to unusual and undeserved or disproportionate hardship.

For more information about assessment of risk in such cases, see the following Federal Court decisions:

Rahman c Canada, 2009 CF 138, *Sharan Paul c Canada*, 2009 FC 1300, *Chand c Canada*, 2009 FC 964.

8.5. Role of PRRA coordinator

On receipt of the referral from the H&C unit, the PRRA coordinator verifies whether a removal order has been identified. When there is an existing removal order, the PRRA coordinator determines whether the applicant also has a pending PRRA application that may be processed simultaneously.

Preliminary screening

If…	**Then the PRRA co-ordinator…**
there is no removal order on file	consults with CBSA and, if required, CBSA might create a removal order.
there is an outstanding removal order but no PRRA has been initiated or no application is pending	consults with CBSA's Removals Unit on whether a simultaneous PRRA application should be initiated.
a PRRA application has been submitted (on file)	refers the case to a PRRA officer for simultaneous assessment.
a PRRA application will soon be initiated	retains the file until the PRRA application is received in order to enable the PRRA officer to assess both applications at the same time.
a PRRA was previously rejected or closed, **or** no PRRA application anticipated in near future (following consultation with CBSA).	refers the application to a PRRA officer for assessment.

8.6. Role of PRRA officer

If both a PRRA and an H&C with risk applications (application received before June 29, 2010) have been referred to the PRRA Unit, the PRRA officer may concurrently assess both applications.

The officer must render separate decisions with respect to the H&C and the PRRA applications, where applicable. While there may be common ground between the PRRA application and the risk factors considered with respect to the H&C application, the latter

application and assessment are more broadly based in that the PRRA officer must consider both risk and non-risk factors and may also render a positive decision based on non-risk factors only. Risk factors within an H&C application are not determined with the thresholds, standards, or criteria of a PRRA. Rather, when risk is cited as a factor in an H&C application, the risk is assessed in the context of the applicant's degree of hardship, as detailed within this chapter. When risk is included in an H&C application, it is only one of many factors that must be considered by the officer. It is important to note that risk factors do not outweigh all other factors in a case. They are one of many factors that officers need to consider when making an H&C decision.

Although both assessments may be done concurrently by the PRRA officer, a positive decision is normally necessary on only one application. For example, after a preliminary assessment, an officer may find that the PRRA criteria are not met while H&C factors justify a positive assessment. The H&C decision should be finalized and the PRRA application put on hold until the processing for permanent residence is completed.

Once a final decision is rendered on one or both applications, the PRRA officer records each decision and their date in FOSS and NCMS.

For instructions on rendering a decision at Stage 1, see Section 15, *Case processing after Stage 1 assessment*.

For instructions on processing the permanent residence application following a positive Stage 1 assessment, see Section 16, *Stage 2 assessment*.

8.7. Role of the Case Management Branch (CMB)

The Director of Case Review at the CMB at NHQ analyzes all case information, including the case summary and research documents, to determine whether sufficient grounds exist to grant exemptions on cases involving A34, A35, A36(1), A37 and A38.

The Minister of CIC or the Director of Case Review decides whether or not to grant a waiver of the inadmissibility (and Stage 1 decision, if applicable), but communication of the refusal to the client or continued processing of the application is the responsibility of the local office.

Note: In the case of a refusal, the reasons provided by the Director of Case Review may be appended to the refusal letter sent to the client.

8.8. Keeping applicants informed: Role of decision-maker

Applicants must be informed when:

- additional information is required;
- the Department has extrinsic information material to the H&C or admissibility decision; and
- a decision has been made.

The principal methods used to keep clients informed are:

- automated letters;
- phone calls; or
- in-person interviews and counselling.

Extrinsic information suggesting inadmissibility

Information may come from the applicant (intrinsic information, Section 6, *Definitions*) or from some other source (extrinsic information, Section 6, *Definitions*). When it appears that the decision will be negative due to information obtained from someone other than the applicant, procedural fairness requires that officers inform the applicant, providing an opportunity to respond before making a decision.

Officers should share extrinsic information with the applicant and allow them to make submissions on it **before** the information is used in the decision.

Release of information and answers to queries/comments

Privacy legislation requires that a client's information be released only to the client or the client's appointed representative. Officers should give information over the phone only when the caller can be positively identified as either the client or their representative. For further information on representatives, see IP 9.

The decision-maker may consult the *Privacy Act* to see if certain information can be released.

Comments or complaints regarding decisions should be responded to only, in person or by mail, according to regional directives.

8.9. Monitoring the assessment of H&C applications

The NHQ, the Regional Headquarters and the local offices may monitor H&C assessments to:

- identify the types of applications made;
- ensure that delegated authority is exercised in a fair and consistent manner; and
- identify training needs.

9. Procedures: Decision-maker requires further information

9.1. Obtaining further information from applicant

Requests for further information should be, as much as possible, sent to the applicant in writing. Officers may choose the appropriate letter in the list of templates available at the end of this chapter (Section 19, *Table of appendices*). If further information is requested **prior** to a Stage 1 assessment, see Appendix D – Annex 6. If further information is requested **following** a positive Stage 1 assessment, see Appendix E – Annex 4.

The letter should include:

- a description of the information or documents required;
- the period of time allowed for response (allow a reasonable length of time for the applicant to obtain the information or a shorter period of time with a request that applicant provide evidence of having taken the steps to obtain the information);
- information about the consequences of not providing the requested information or not responding within the specified period; and
- an opportunity for the applicant to request an extension of the specified period of time for response.

9.2. Addressing issues of fraud or misrepresentation

When misrepresentation or fraud related to a material fact has occurred or is suspected, the officer should request written information from the client or schedule an interview, depending on the situation and type of information required.

The following table describes situations and corresponding actions to be taken. Officers should update FOSS notes accordingly.

Suspected fraud or misrepresentation

If…	officers should…
an officer suspects that the applicant used fraud or misrepresentation to obtain a positive Stage 1 assessment;	send a letter to the applicant: • inform them that the application may have to be

If…	officers should…
	reconsidered; • indicate the reasons (e.g. the suspected fraud or misrepresentation); and • advise that submissions may be made. See Appendix F, Annex 1.
no reply was received from the applicant;	refer to Section 9.4, *Loss of contact with the applicant*.
the applicant's submissions were received;	review the applicant's information and decide whether there is sufficient evidence of fraud or misrepresentation.
a review of the submissions result in the officer finding insufficient evidence of fraud or misrepresentation;	send a letter to inform the applicant that: • there is insufficient evidence of the fraud or misrepresentation; and • normal processing of the application will continue. See Appendix F, Annex 3.
a review of the submissions result in the officer finding sufficient evidence of fraud or misrepresentation;	send a letter to inform the applicant that: • the original exemption is cancelled; • the applicant is subject to an A44(1) report; and • the applicant may submit information about their current situation to be taken into account in making the A44(1) report recommendation. See Appendix F, Annex 4.
an applicant submits information to be considered in an A44(1) report recommendation;	• review all information on file including new information; • make an A44(1) report recommendation; and • send a letter to inform the applicant of decisions made. If the refused applicant wishes to make a new H&C submission, then a new application and new fees are required.

Identity issues

For information on verification of the identity of an applicant and maintaining program integrity, please see OP 23 and IP 11 Anti-Fraud, Section 7 - *Procedures*.

9.3. Requested information is received after the specified period of time

Follow these instructions when an applicant's submission arrives after the specified period of time for response has elapsed:

Submission arrives late and…	then officer should…
the refusal letter has already been sent to the applicant (that is, assessment has already been made on the basis of information on file and a negative decision was rendered);	normally, remind the applicant that a specified period of time had been provided for response and that the specified number of days elapsed with no submissions received and, as stated previously, a decision was based on information on file. However, officers have the discretion to reopen a case if significant information that would have a critical impact on the original decision is received within a reasonable period of time after the final

	decision. See also Section 5.23, *Reconsideration of inland H&C decisions*.
decision has not been made. For example, reply period was 30 days, submission arrives in 40 days, and file is scheduled to be reviewed at a later date.	make a decision based on information available at that time, including the late submission. There is no ~~-p~~enalty" to applicant.

9.4. Loss of contact with the applicant

Officers should indicate in FOSS and on the file any attempts to communicate with the client and any attempts to verify the applicant's current address such as looking in the local telephone directory, calling the most recent telephone number provided on the application form or calling other persons listed as contacts or representatives.

If correspondence is returned due to an invalid address

Check that the most recent address on the file was used and that there were no transposition errors for the street name or number, apartment numbers or the postal code.

If correspondence is not returned, yet no response is received from the applicant

If the applicant does not respond to requests for information, fails to provide an updated address or fails to appear for the interview for the grant of permanent residence, a decision can be taken based on information in the file as long as a previous correspondence has informed the applicant of how to reply, when to reply and the consequences of failing to reply.

Note: There is no provision to ~~-l~~close" an application unless the applicant has formally withdrawn it. Otherwise, the application must be processed through to a decision, that is, either approval or refusal.

10. Procedures: Referrals to National Headquarters

The case should be forwarded to the Director of Case Review at NHQ:

- if it involves inadmissibilities A34, A35, A36(1), A37 or A38; **and**
- where, in the officer's opinion, the H&C factors **might justify an exemption**.

The Director will assess the entire case and determine whether an exemption regarding the inadmissibility and eligibility requirements is justified.

Note: The Director of Case Review does not communicate directly with the client or their representative. The Director's role is to examine the application to see if an exemption from the inadmissibility is warranted. Carriage of the file and communication with the client as well as finalization of the application remain the responsibility of the forwarding office.

Below are tables which illustrate the procedures to follow for each delegated authority:

Process for the CIC Officer	
Steps	**Action**
1	Ensure that applicant is indeed inadmissible under A34, A35, A36 (1), A37 or A38.
2	In keeping with procedural fairness, send a letter to the applicant to advise them of the suspected inadmissibility and provide them with an opportunity to make submissions to include in the information for NHQ. Review reply from client to ensure applicant is still inadmissible prior to sending the package to NHQ.
3	Prepare a package for the Director of Case Review containing copies of relevant documents for H&C decision-making. It should include:

Process for the CIC Officer	

	• a brief factual case summary (see Appendix C for template). Detailed assessment is not required because the delegated decision-maker must still review the case in its entirety;
	
	General guidelines to write the case summary:
	
	  ◦ be objective (i.e. use neutral terms and avoid comments on the credibility of the information, do not record your opinions or interpretations of the facts, do not include a recommendation); and
	
	• use point form whenever possible. Some situations may warrant more complete notes (e.g. for issues which are crucial to the decision or where there is a complicated history and several parties involved); a copy of the entire H&C case file including any submissions related to the case;
	
	• any correspondence between CIC and the applicant as well as notes from an interview with the applicant regarding the application;
	
	• if the case involves a health inadmissibility:
	
	  ♦ a medical notification;
	
	  ♦ the client's submissions following the procedural fairness letter;
	
	  ♦ the results of consultations with the provincial/territorial health authorities, when required by the province or territory, or a statement confirming that the province or territory does not require a consultation;
	
	  ♦ detailed information on the medical condition and the associated costs (this may be available from the Health Management Branch). This information should be disclosed to the applicant to allow them an opportunity to respond prior to referring the case to NHQ;
	
	  ♦ for cases involving A38(1)(c), the officer's assessment (see Appendix G);
	
	  ♦ if the applicant states that treatment is not available in their country of origin and the officer has information to the contrary (e.g. obtained from the responsible visa office), this information should also be forwarded, after disclosure to the applicant to allow them an opportunity to respond.
	
	• for Quebec cases (see Section 13), if available, the selection result from the *Ministère de l'Immigration et des Communautés culturelles* (MICC);
	
	• a conviction certificate and any police/intelligence report (e.g. a CBSA file containing police reports, Correctional Services reports or Canadian Police Information Center reports). This information should be disclosed to the applicant to allow them an opportunity to respond prior to the case referral to NHQ; expert evidence (i.e. a report from a health care professional explaining how being removed from Canada would affect the applicant's health and well-being);
	
	• if risk factors are cited (in applications received before June 29, 2010) and the PRRA officer gathered information resulting from the research, these documents should be included in the package to NHQ);
	
	• if the applicant is awaiting a decision on a Ministerial Relief request, this should be flagged in the case summary; and
	
	• other relevant documents in the file (e.g. if new information becomes available to the officer after the package is referred to NHQ, the officer must advise NHQ and send the new information).

Process for the CIC Officer	
	If the applicant was a refugee claimant who was excluded from refugee protection by the RPD, under Article 1F(a), (b) or (c) of the Convention Relating to the Status of Refugees, the officer must reach a conclusion as to whether the exclusion equates to an inadmissibility under IRPA (refer to Section 5.25 *Inadmissible applicants*). Please include this analysis in your summary sent to the Director, Case Review. Any extrinsic evidence should be forwarded to CMB along with the file and an indication of whether any of it has already been disclosed to the client.
4	Indicate in FOSS when the application has been forwarded to NHQ for consideration and specify the date of the referral. Officers should: • update CS screen (APL remarks) and if applicable insert a remark in the appropriate Work in Process (WIP) Event screen.
5	Receive decision from the delegated authority at NHQ.
6	Enter the decision in the FOSS APL screen. If an exemption has been granted, the officer should enter the following remark, "An exemption is hereby granted from the inadmissibility under [provide Section or Subsection] of the IRPA for [name of person(s)]". If an exemption has not been granted, the officer should enter the following remark, "An exemption is hereby not granted from the inadmissibility under [provide Section or Subsection] of the IRPA for [name of person(s)]".
7 8 9	Send a letter to inform the applicant of the decision-maker's decision. See the template letters in Appendix D of this chapter. If the exemption is granted, the application proceeds to Stage 2 – Assessment of the permanent residence application. If the client makes an application for leave and judicial review, the local office should: • forward the request from the Federal Court for a Rule 9 or Rule 17 (to the decision-maker at NHQ along with the actual refusal letter which was sent to the client). See http://laws.justice.gc.ca/eng/SOR-93-22/FullText.html • The record will be prepared at NHQ, where the decision was made.

Process for the Director of Case Review (for inadmissibilities A36(1) and A38)	
Steps	**Action**
1	Receive the H&C application package from the CIC officer.
2	Determine whether the file is at Stage 1 or Stage 2: **No Stage 1 Decision:** If client has a **known inadmissibility,** then the local office has no authority to make a positive Stage 1 decision and the Director, Case Review must assess whether there is (a) sufficient H&C grounds to warrant a positive Stage 1 decision and if yes, then also (b) assess whether there is sufficient H&C to warrant granting an exemption. **Note:** Quebec cases with a known medical inadmissibility need to be done in two steps. The Director Case Review first decides whether there is sufficient H&C grounds to warrant a positive Stage 1 decision. If yes, the Director, Case Review then informs the local office that they should proceed to contact MICC regarding the issuance of a CSQ and to provide any costing information. This can be done by e-mail – no separate decision is required. Once MICC's input is received at the local office, it should be forwarded to the Director, Case Review who will then examine the case in more detail and write a final decision on whether or not to grant a waiver of the medical inadmissibility. See also Appendicies H&I. **Stage 1 Decision taken:** If the client already passed Stage 1 and the inadmissibility was

Process for the Director of Case Review (for inadmissibilities A36(1) and A38)	
	revealed at Stage 2, then the Director, Case Review decides only on the exemption(s) in question.
3	Review all material submitted by the applicant. **Note:** If the H&C factors do not justify the exemption, the Director assesses any risk factors cited by the applicant.
4	Render a decision after weighing all the information submitted. **Note:** For cases in which more than one inadmissibility has been identified, the Director, Case Review must address whether the waiver (if granted) applies to each/all inadmissibilities (e.g. client inadmissible pursuant to both A39 and A38).
5	Prepare reasons for the decision, taking into consideration all the relevant information in the file, including recent FOSS entries.
6	Convey the decision to the forwarding office.

Process for the Director of Case Review (for inadmissibilities A34, A35 and A37)	
Steps	**Action**
1	Receive the H&C application package from the CIC officer.
2	Review all material submitted by the applicant. **Note:** If the non-risk factors do not justify the exemption, the Director will assess any risk factors cited by the applicant.
3	If the Director is of the opinion that there are **insufficient** H&C grounds to justify an exemption, the Director has the authority to render a negative decision. If the Director is of the opinion that the H&C factors warrant consideration by the Minister, the Director will consult with National Security Division, CBSA, and NHQ to obtain their input. The Director Case Review will then prepare a case summary and a briefing note to the Minister requesting a decision. The result of the consultation with CBSA should be included in the case summary.

11. Procedures: Stage 1 assessment – Common to all applicants

Officer should follow the assessment procedures in this section in conjunction with:

- Section 13, when processing applicants residing in the province of Quebec;
- Section 12, when processing applicants with a family relationship; or
- Section 14, when processing applicants in other specific situations (e.g. protected persons, former Canadian citizens).

11.1. Procedural fairness

Officers must follow procedural fairness when making a decision. Officers should:

- carefully consider all the information before them;
- inform the applicant when extrinsic information is considered and provide the applicant with a chance to respond;
- request any additional information needed;
- weigh all the facts according to their degree of importance;
- separate facts which favour a finding of hardship from those that do not; and
- consider the objectives of the Act.

Officers may discuss cases with their colleagues and supervisor to share ideas. However, officers must make their own decisions based on the facts before them. More information is available in Appendix A – *Administrative law principles*.

11.2. Applications from permanent residents or Canadian citizens

See also Section 5.3, *H&C Applications submitted by permanent residents or Canadian citizens*.

If an H&C application is received from a permanent resident or Canadian citizen and loss of status is being examined, CPC-V will return the kit and the cost recovery processing fees and inform the client that permanent residents and Canadian citizens are not eligible for H&C consideration (see the template letter in Appendix F, Annex 9). The application should not be kept on hold while loss of status is examined.

If an H&C application is received from a former permanent resident who has been allowed to remain in Canada as a temporary resident and there is no information to indicate that a final determination interview has been scheduled, CPC-V will return the kit and the cost recovery processing fees and advise them that the local CIC will be in contact with them to set up a residency determination interview (see the template letter in Appendix F, Annex 10). The local CIC also receives a copy of that letter.

11.3. Applicant accepted in another category

If an applicant has submitted applications in another immigration category and has obtained Stage 2 acceptance or permanent residence status, officers have the authority to refuse any subsequent applications for permanent residence, or pending applications; unless there are other exceptional circumstances that justify processing the application. The application fee will not be refunded in such cases.

11.4. Prolonged stay or inability to leave has led to establishment

See also Section 5.14, *Establishment in Canada*.

There is no hard and fast rule relating to the period of time in Canada but it is expected that a significant degree of establishment takes several years to achieve.

Officers should consider the following factors:

- The length of time the applicant has been in Canada.
- Were the circumstances that led the applicant to remain in Canada beyond their control?
- Is there a significant degree of establishment in Canada? (see also Section 11.5, *Assessing applicant's degree of establishment*.)
- Is, or was, the applicant the subject of a temporary suspension of removal (TSR)?
- To what degree has the applicant co-operated with the Government of Canada, particularly with regard to travel documents?
- Did the applicant wilfully lose or destroy travel documents? (Where no valid travel or identity document has been provided, contact the local Removals Unit to determine whether this is due to an applicant's unwillingness to complete a passport application.)

11.5. Assessing applicant's degree of establishment

The applicant's degree of establishment in Canada may be a factor to consider in certain situations (such as former Canadian citizens, family violence, prolonged inability to leave Canada, etc.). Officers should not assess the applicant's *potential* for establishment as this falls within the scope of admissibility criteria examined at Stage 2 (e.g. A39). The degree of the applicant's establishment may be measured with questions such as the following:

- Does the applicant have a history of stable employment?
- Is there a pattern of sound financial management?
- Has the applicant remained in one community or moved around?
- Has the applicant integrated into the community through involvement in community organizations, voluntary services or other activities?
- Has the applicant undertaken any professional, linguistic or other studies that show integration into Canadian society?
- Do the applicant and their family members have a good civil record in Canada? (e.g. no criminal charges or interventions by law enforcement officers or other authorities for domestic violence or child abuse).

The applicant's establishment up to the time of the Stage 1 assessment may be considered. The fact that the Applicant has some degree of establishment in Canada is not necessarily sufficient to satisfy the hardship test: (*Diaz Ruiz v. Canada* (Minister of Citizenship & Immigration), 2006 FC 465, 147 A.C.W.S. (3d) 1050 (F.C.); *Lee v. Canada* (Minister of Citizenship & Immigration), 2005 FC 413, 138 A.C.W.S. (3d) 350 (F.C.)).

11.6. Criminal inadmissibilities

Officers should assess whether the known inadmissibility, for example, a criminal conviction, outweighs the H&C grounds. They may consider factors such as the applicant's actions, including those that led to and followed the conviction. Officers should consider:

- the type of criminal conviction;
- what sentence was received;
- the length of time since the conviction;
- whether the conviction is an isolated incident or part of a pattern of recidivist criminality; and
- any other pertinent information about the circumstances of the crime.

The Danger to the Public – Rehabilitation Division in CMB can help equate criminal convictions from outside of Canada.

See also Section 5.25 *Inadmissible applicants*.

11.7. Health inadmissibility

As already stated in Section 5.25 *Inadmissible applicants*, any known inadmissibility, including health inadmissibility, should be assessed during the Stage 1 assessment, and either an exemption is granted to overcome the inadmissibility or the case is refused.

However, applicants normally undergo a medical examination at Stage 2 of the process. The health inadmissibility must be confirmed prior to the grant of an exemption to overcome it, so officers may request that the applicant completes their medical examination at Stage 1 [R30(1)(d)] if:

- the applicant has specifically requested an exemption from inadmissibility requirements related to health (A38) and the officer is of the opinion that the H&C factors might outweigh the inadmissibility; or
- the officer suspects that the case involves health inadmissibility.

For applicants residing in the province of Quebec, officers must follow a specific procedure outlined in Section 13.3, *Application involves health inadmissibility*.

Excessive demand on health or social services A38(1)(c)

The exemption under A38(1)(c) for excessive demand on health or social services applies to members of the family class, Convention refugees and protected persons only. H&C applicants and their family members are not members of the family class and must therefore have an exemption granted under A25(1).

When assessing cases involving A38(1)(c), officers should consider the following factors along with the essential instructions provided in OB 063 dated September 24, 2008, and OB 063B dated July 29, 2009:

- What is the cost of the treatment or care, if available?
- Where the health inadmissibility is one which exclusively affects social services, what arrangements are there to cover treatment, care and other costs (e.g. private insurance, family finances, public health coverage, etc.)?
- Is the applicant likely to become self-supporting?
- Is there a risk the person will require public assistance? and
- How severe is the applicant's anticipated need for health or social services in relation to the average demand for these services by Canadian residents?

11.8. Inadmissibility of family members (A42)

Since the background verifications of family members are generally initiated at Stage 2 of the process, their inadmissibility might only be discovered after a positive Stage 1.

However, an H&C applicant may specifically request an exemption from A42 which requires that the applicant's family members not be inadmissible. In such cases, at Stage 1, the officer should take into consideration whether the H&C grounds outweigh the inadmissibility and render a decision based on that determination (note that the officer is not waiving the actual inadmissibility of the family member but simply the requirement that a family member not be inadmissible).

Except in a few limited situations, an inadmissible family member, inside or outside of Canada, renders the principal applicant inadmissible, regardless of whether they are seeking permanent resident status.

For instances in which non-accompanying family members might not render an applicant inadmissible to Canada, please see OP 2, Section 5.11 – Inadmissibility and non-accompanying family members.

12. Procedures: Stage 1 assessment – Applicants with family relationships

When assessing applicants with family relationships, officers should follow the procedure common to all applicants detailed in Section 11, *Stage 1 assessment- Common to all applicants* and consider the specific factors detailed in this section.

A sponsorship in support of an applicant may accompany an H&C application and may be considered in conjunction with all other factors presented. However, sponsorship in the H&C context is not a legal or regulatory requirement and the foreign national is therefore **not a member of the family class**.

Refer also to Section 5.26 *Sponsorship*.

Note: A _Y screen' must be created in FOSS to record the decision made on the sponsorship.

12.1. Factors to consider regarding the applicant and their relatives

For applicants with family relationships, the following factors should also be considered:

- whether the applicant could have been a member of the family class had they applied outside Canada; and
- whether a sponsorship was submitted and approved. If so, this is a factor among all of the others that may be considered favourable. A lack of a sponsorship does not mean that the exemption request should be refused (see Section 12.2, *No sponsorship included in the application*. (In Quebec cases an undertaking may be approved by MICC only after approval in principle).

Factors related to country of origin

- an applicant's links with their country of origin (e.g. the length of time they resided in their country of origin, their ability to speak the language, return visits since their arrival in Canada and family members remaining in the country of origin); and
- family members' link(s) to the applicant's country of origin, if applicable (e.g. the length of time spent in applicant's country of origin, their ability to speak language of the applicant's country of origin, other family members in the applicant's country of origin).

Factors related to current immigration or citizenship status

- the current immigration or citizenship status of each member of the family;
- the applicant's immigration status at the time the family links were formed (i.e. status at the time of marriage, of having children, etc.); and
- if applicant's immigration status was lost after the family links were formed, what was the original status and under what circumstances was the status lost?

Factors related to links with family members

- the effective links with family members (children, spouse, parents, siblings, etc.) in terms of an ongoing relationship as opposed to a simple biological fact of relationship;
- an applicant's place of residence in relation to the family members, particularly their children;
- any previous period of separation (what was the duration and the reason?);
- court order in relation to custody arrangements, if applicable;
- if the applicant is the non-custodial parent, have they been exercising their visitation rights?
- information indicated in the family court documents about the family's circumstances;
- the degree of psychological/emotional support in relation to other family members;
- whether the family will have the option of being together in another country or be able to maintain contact; and
- the impact on family members, especially children, if the applicant is removed.

12.2. No sponsorship included in the application

Where an H&C application based on reunification of relatives or applicants with family relationships is not supported by a sponsorship, officers should:

- give the applicant an opportunity to have the sponsorship forms completed or to explain why there is no sponsorship; and
- make the Stage 1 assessment when all the relevant facts are available.

In these cases, the officer should consider:

- the reason for the lack of sponsorship (ensuring that it is not due to lack of information or an oversight on the part of the prospective sponsor). Lack of sponsorship usually falls into one of the three following categories:
  - ♦ sponsor unwilling to submit sponsorship;
  - ♦ sponsor self-screened out due to ineligibility; and
  - ♦ sponsorship submitted but refused due to ineligibility of the sponsor.
- whether the reason for lack of sponsorship has an impact on any H&C aspects of the application.

Principal applicant is a child yet no sponsorship was included

In addition to the factors outlined above, officers should consider:

- proof of relationship;
- the best interest of the child (see Section 5.12 *Children - Best interests of a child*); and
- how custody agreements or court decisions, if any, affect the H&C application.

12.3. Sponsorship of spouses and common-law partners

Spouses and common-law partners of Canadian citizens or permanent residents may apply to remain in Canada based on H&C grounds, **if they do not** meet the requirement to apply:

- as members of the spouse or common-law partner in Canada class (IP 8); or
- under the spousal *Public Policy Under 25(1) of IRPA to Facilitate Processing in accordance with the Regulations of the Spouse or Common-law Partner in Canada Class* (IP 8, Appendix H).

In such a case, the H&C application should be assessed using the same criteria as all other H&C applications (e.g. the assessment of hardship). Officers should consider the following factors:

- is the marriage or common-law relationship bona fide? Is there evidence that the relationship was entered into primarily to acquire any status or privilege under the *Act* ***or*** evidence that it is not genuine (R4(1)). Does the applicant intend to reside permanently with their sponsor in Canada?
- the legality of the marriage (see Section 5.30 of OP 2);
- what are the circumstances and timing of the relationship? For example, did the marriage take place after the applicant was refused a temporary resident extension or when removal was imminent?
- how long has the couple been in the relationship?
- are there children born of the relationship?
- what are the religious, social and cultural norms of the applicant's community?
- are there previous dealings with the Department that might be relevant (e.g. a previous marriage of convenience, enforcement action, refused immigration applications or misrepresentation)?

For further information see Section 5.13, *Spouses and common-law partners*.

12.4. Sponsorship of children

Officers should consider the following factors when the principal applicant is a minor being sponsored:

- proof of relationship to the sponsor;
- the best interest of the child; and
- how custody agreements or court decisions, if any, affect the H&C application.

Adoption of convenience – Known or suspected

For information on adoptions of convenience, see Sections 5.8 and 7.8 of OP 3.

12.5. Sponsorship of parents and grandparents

Parents and grandparents of Canadian citizens or permanent residents may submit an H&C application with or without the support of a sponsorship undertaking. In either case, officers should consider the following factors:

- proof of relationship;
- the hardship that would occur if the H&C application was refused;
- the information the applicant provided to the visa office to obtain their temporary resident visa, if applicable;
- the level of interdependency;
- the support available in their home country (other family members); and
- whether the applicant is able to work.

12.6. *De facto* family members

An important consideration is to what extent the applicant would have difficulty meeting financial or emotional needs without the support and assistance of the family unit in Canada. Separation of persons in such a genuine dependent relationship may be grounds for a positive assessment. In these circumstances, officers should consider the following factors:

- whether dependency is *bona fide* and not created for immigration purposes;
- the level of dependency;
- the stability of the relationship;
- the duration of the relationship;
- the ability and willingness of the family in Canada to provide support;
- the applicant's other alternatives, such as family (spouse, children, parents, siblings, etc.) outside Canada who are able and willing to provide support;
- documentary evidence about the relationship (e.g. joint bank accounts or real estate holdings, other joint property ownership, wills, insurance policies, letters from friends and family); and
- whether there is a degree of establishment in Canada (see Sections 11.4 *Prolonged stay or inability to leave has led to establishment* and 11.5, *Assessing applicant's degree of establishment*).

12.7. Family violence

Family members in Canada, particularly spouses, who are in abusive relationships and are not permanent residents or Canadian citizens, may feel compelled to stay in the

relationship or abusive situation to remain in Canada; this could put them in a situation of hardship.

Officers should be sensitive to situations where the spouse (or other family member) of a Canadian citizen or permanent resident leaves an abusive situation and, as a result, does not have an approved sponsorship.

Officers should consider the following factors:

- information indicating there was abuse such as police incident reports, charges or convictions, reports from shelters for abused women, medical reports, etc.;
- whether there is a degree of establishment in Canada (see Sections 11.4 *Prolonged stay or inability to leave has led to establishment* and 11.5, *Assessing applicant's degree of establishment*);
- the hardship that would result if the applicant had to leave Canada;
- the laws, customs and culture in the applicant's country of origin;
- the support of relatives and friends in the applicant's home country; and
- whether the applicant has children in Canada or/and is pregnant.

12.8. Consequences of the separation of relatives

The removal of an individual from Canada may have an impact on family members who do have the legal right to remain (i.e. permanent residents or Canadian citizens). Other than a spouse or common-law partner, family members with legal status may include, among others, children, parents and siblings. The lengthy separation of family members could create a hardship that may warrant a positive Stage 1 assessment.

To evaluate such cases, officers should balance the various interests at stake:

- Canada's interest (in light of the legislative objective to maintain and protect the health, safety and good order of Canadian society);
- family interests (in light of the legislative objective to facilitate family reunification);
- the circumstances of all family members, with particular attention given to the interests and situation of any dependent children with legal status in Canada;
- the particular circumstances of the applicant's child (age, needs, health, emotional development);
- financial dependence involved in the family ties; and
- the degree of hardship in relation to the applicant's personal circumstances (see Sections 5.11, *Factors to consider in assessment of hardship*).

To respect the objectives of the *Act* in the performance of their duties, H&C officers must bear in mind the "humanitarian and compassionate values" which are enshrined in the Charter and the *International Covenant on Civil and Political Rights* (ICCPR). The principles include:

- non-interference in family life in Article 17;
- the importance of a family unit and protection thereof by society and the State in Article 23; and
- the child's "right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State" in Article 24 of the ICCPR.

These are all family-related interests and are important when dealing with an A25 application. However, "paragraph 3(3)(*f*) of the [Act] does not require that an officer exercising discretion under Section A25 of the [Act] specifically refer to and analyze the

international human rights instruments to which Canada is signatory. It is sufficient if the officer addresses the substance of the issues raised". (See *Okoloubu v. Canada* (Minister of Citizenship & Immigration); 2008 CarswellNat 3852; 2008 FCA 326.)

Adult applicants may present submissions from, or on behalf of, members of their family, setting out the family members' views. For children, such submissions should be considered in accordance with the children's age and maturity, recognizing the increasing capacity of children as they mature, to present their own views.

12.9. Sponsorship submitted but refused

Where a sponsorship application was submitted but refused, officers should:

- inform the applicant that the sponsorship has been refused; and
- make the Stage 1 assessment when all relevant facts are available.

12.10. Withdrawal of sponsorship

A sponsorship agreement once entered into by the sponsor and CIC, can only be set aside if both parties agree.

If withdrawal of the undertaking is requested prior to the final decision (i.e. before the Confirmation of Permanent Residence is created in FOSS and sent to the client) and if the request to withdraw is approved, officers should:

- inform the applicant that the sponsorship has been withdrawn;
- give the applicant an opportunity to provide additional information in light of the change of circumstance; and
- make the decision when all relevant facts are available.

If an undertaking is cancelled after a positive Stage 1, a new Stage 1 assessment is required given that the H&C applicant's circumstances have changed.

Note: When a sponsorship has been submitted but is withdrawn or not approved, the H&C application should be coded as HC1.

Distinction for applicants resident in the province of Quebec

If the withdrawal is requested after a positive Stage 1, CIC cannot cancel the undertaking without the MICC's consent (whether or not the MICC had already rendered a decision). The MICC must therefore also agree to the withdrawal request before CIC can accept it. CIC can take the sponsorhip withdrawl into consideration and decide whether to continue processing as HC1.

13. Procedures: Stage 1 assessment – Applicants resident in Quebec

When assessing applicants residing in the province of Quebec, officers should follow the procedures common to all applicants detailed in Section 11 (and the procedures outlined in Sections 12 and 14, where applicable), as well as the specific procedures in this section.

13.1. Canada-Quebec Accord

The Canada-Quebec Accord is the most comprehensive of the provincial agreements. Signed in 1991, it gives Quebec selection powers and control over its own settlement services. Pursuant to Section 10 of the Accord, Canada determines who may have their application for permanent residence considered in Canada, and pursuant to Sections 11 and 12, Quebec has sole responsibility for the selection of these immigrants, unless they are members of the family class (Sections 13 and 14) or persons already in Quebec who

are recognized as Convention refugees (Section 20). Persons selected by Quebec are issued a Québec Selection Certificate (CSQ). Canada retains responsibility for:

- defining immigration categories;
- setting levels; and
- enforcement.

The Canada-Quebec Accord specifically gives Quebec sole responsibility for selection of all independent immigrants and refugees abroad who are destined to Quebec. It is also responsible for determining whether sponsors living in their province have the financial ability to sponsor family members and the length of the undertaking.

Those selected by the province receive a *Certificat de sélection du Québec (CSQ)*. The federal government ensures that statutory admission requirements (medical, criminal and security checks) are met before the foreign national acquires immigration status.

For additional information, please refer to the *Ministère de l'Immigration et des Communautés culturelles* (MICC).

13.2. Request for *Certificat de Selection du Québec* (CSQ)

The Canada-Québec Accord stipulates that provincial approval is required for all applications where the applicants are not members of the family class or Convention refugees. Provincial approval is, therefore, required for H&C applicants who have passed Stage 1 approval, if the applicants intend to reside in Quebec.

The procedures to follow for these applications are as follows:

Instance	Action required by officer
H&C application is received from a foreign national who resides in Quebec.	Assess application to determine whether sufficient H&C grounds exist to allow for the permanent residence application to be processed in Canada. Follow standard IP 5 procedures.
There are **insufficient** H&C grounds to grant (i.e. the exemption requested has not been granted).	Refuse the application and send the appropriate refusal letter to the applicant.
There are s**ufficient** H&C grounds (i.e. the exemption requested has been granted, positive Stage 1).	Forward a copy of the IMM 5001 and the IMM 5283 to the MICC for selection, specifying the immigration category (HC1 or HC2) in which the application is being processed. If the applicant is being sponsored, a copy of the sponsorship (IMM 1344) and related documents should also be forwarded for assessment of the undertaking. The MICC will inform CIC of the selection decision and, where applicable, whether a sponsorship undertaking has been signed.
MICC issues a CSQ.	Process continues to permanent residence.
MICC does not issue a CSQ.	IIf warranted, inform applicant of the possibility of admission to another province or territory.
MICC does not issue a CSQ and the applicant does not move to another province.	Refuse the application as there is no CSQ and send the appropriate refusal letter to the applicant.
MICC does not issue a CSQ and the applicant moves to another province.	Forward the application to the local CIC responsible for the client's new place of residence. This local CIC will finalize the case (they will not revisit the initial Stage 1 decision unless there is evidence of fraud or misrepresentation).

13.3. Application involves health inadmissibility

Since approval in principal (i.e. positive Stage 1 assessment) must occur before a CSQ can be requested from MICC, a different procedure must be followed for applicants residing in the province of Quebec. The charts in Appendix H and I illustrate both processes:

- Process if the health inadmissibility is known prior to a Stage 1 decision (see Appendix H).
- Process if the health inadmissibility is discovered after a positive Stage 1 decision (see Appendix I).

14. Procedures: Stage 1 assessment – Other specific situations

When assessing the specific situations outlined in this section, officers should still follow the procedures common to all applicants detailed in Section 11. Officers should also refer to Section 12 and 13, where applicable.

The listing of general case types cannot answer all eventualities nor are they framed to do so. Reasons for granting a positive Stage 1 assessment will occur outside of the general case types described.

14.1. Stage 1 assessment – Post-removal

In the case of an H&C application assessed after the applicant has been removed from Canada:

- The onus is on the applicant to provide submissions. Officers are not obliged to request updated submissions from applicants, including those who have been removed while their H&C application is pending.
- If the applicant made further submissions concerning their current circumstances post-removal, the officer must consider those submissions.
- In the absence of submissions from the applicant post-removal, the officer shall consider the case the way it was presented pre-removal considering the usual H&C factors such as establishment in Canada, best interest of the child, etc. The fact that the applicant has been removed, in and of itself, shall not prejudice the merits of the application.

If the decision-maker determines that a positive decision is warranted, the applicant will be advised and may be allowed to return to Canada to complete processing of the application for permanent residence. (See Section 15.5 Positive Stage 1 assessment after a removal).

14.2. Allegations of risk

In the case of an application received before 29 June 2010 in which the applicant has cited risk factors **and** an exemption cannot be granted based on non-risk H&C factors alone, procedures outlined in Sections 8.4, *Referral to PRRA units*, to 8.6 should be followed.

14.3. Protected persons

Under R175(1) and as detailed in Section 9.4 of PP 4, protected persons (other than members of the Protected Temporary Resident class) who fail to apply for permanent residence status within the prescribed 180-day period cannot be granted permanent residence. However, these clients are advised in writing that an H&C application may be submitted to waive this requirement.

If a protected person submits an H&C application to overcome the requirement in R175 (1) the application should be assessed like a protected person application for permanent residence and if the requested exemption to R175 (1) is granted, the application should be coded CR8.

Protected persons are exempt from the Right of Permanent Residence Fee as per R303 (2) (c). The application processing fee does apply.

Generally, these applications warrant favourable consideration.

Once both applications have been received, CPC-V:

- verifies that the applicant was determined to be a Convention refugee or protected person and that the 180-day filing period has expired; and
- examines the reason(s) why the application was not submitted within the 180-day filing period, such as:
  - a delay due to a language barrier;
  - the inability to pay application processing fees;
  - the applicant's failure to recognize the importance of filing within the prescribed period; or
  - a delay due to the applicant's return to the country of persecution as stated in their refugee claim, which would warrant further examination. In such cases, if referral to the IRB for cessation or vacation of Convention refugee status is an appropriate course of action, the assessment of the H&C application should be postponed until the Board's decision is known. The file should be sent to the appropriate local office to facilitate coordination with CBSA's Hearing section.

H&C - Stage 1 assessment

Officers should note that H&C applicants who were recognized as protected persons retain their protected person status as well as **all** the exemptions granted to protected persons. Consequently, the following inadmissibility provisions do NOT apply to protected persons applying through H&C:

- financial inadmissibility (A39);
- health inadmissibility based on excessive demand [A38(1)(c)];
- criminality [A36(2)];
- inadmissibility based on prior misrepresentation [A40(1)(a)]; and
- inadmissibility based on an inadmissible family member (A42).

These applicants are also permitted to provide alternative identity documents as protected persons (e.g. statutory declarations), as provided for in R178. Furthermore, they may have their family members outside Canada concurrently processed for permanent resident visas.

Provincial approval is not required for protected persons residing in Quebec. This is because these applicants retain their protected person status notwithstanding the processing of their application under H&C provisions.

Applicants with a simultaneous claim for refugee protection or a PRRA

A foreign national who has submitted a claim for protection or a request for judicial review of a negative decision by the Immigration and Refugee Board of Canada (IRB)'s Refugee Appeal Division, may make an H&C application at the same time. **It is not appropriate to counsel clients to withdraw** other applications as a condition of an H&C application (a signed withdrawal statement is neither mandatory nor necessary before granting permanent residence). This decision must be left up to the client.

After permanent resident status is granted, the officer should inform either the Refugee Protection Division of the IRB (for a refugee claim), the Department of Justice (for a judicial review application) or the relevant PRRA office, that the applicant was granted permanent residence.

14.4. Former Canadian citizens

See also 5.3, *H&C Applications submitted by permanent residents or Canadian citizens*.

Former Canadian citizens may request permanent resident status on H&C grounds. As with all applications, cases involving former Canadian citizens must be considered on their individual merit. Although not exhaustive, the following guidelines may be helpful.

Officers should first ensure that the applicant:

- was a Canadian citizen and that loss of citizenship has occurred;
- obtained written confirmation from the CPC in Sydney; and
- has exhausted all their options before requesting H&C.

Officers should then consider the following factors:

- why and how the applicant lost their Canadian citizenship and verify if they would have lost it under the present Act;
- the hardship that the applicant would experience if the application were refused;
- the closeness of family members in Canada;
- whether there are strong cultural and/or emotional ties to Canada;
- whether there are close relatives, friends and support in another country; and
- whether there is a degree of establishment in Canada (see Section 11.4, *Prolonged stay or inability to leave has led to establishment*, 11.5, *Assessing applicant's degree of establishment*).

Note: Bill C-37, an amendment to the *Citizenship Act* came into force on April 17, 2009. It automatically restores Canadian citizenship to many individuals who lost it due to former legislation and gives citizenship to certain individuals who have never been Canadian but who are of the first generation born outside Canada to a Canadian parent. Consequently, written confirmation from CPC-Sydney that the applicant is not a Canadian citizen should be dated on or after April 17, 2009. If confirmation is dated prior to April 17, 2009, the officer must confirm that the applicant will not acquire citizenship under Bill C-37.

14.5. Concurrent H&C applications

See also Section 5.4 *Concurrent applications for permanent residence*.

If more than one H&C application is received for the same person and the first applicaton is still open, the most recent application should be returned to the applicant with an explanation that the A25 (1.2) prohibits the consideration of more than one H&C application at a time (See Appendix F, Annex 9). Processing fees should be refunded.

14.6. Consecutive H&C applications

If an applicant had an H&C assessment and submits a new application, information and findings from any previous H&C application may be taken into account. The officer must also consider any new information submitted with the most recent application.

15. Procedures: Case processing after Stage 1 assessment

15.1. Negative Stage 1 assessment

The process following a negative Stage 1 assessment is as follows:

- the officer sends a refusal letter informing the applicant that the exemption will not be granted;
- if the applicant does not have valid immigration status in Canada, they should be instructed to leave Canada:
  - If voluntary departure is appropriate, include instructions for confirmation of departure and follow up to see if client departs. If departure is not confirmed within the time alloted, notify CBSA that client is believed to be in Canada without status.
  - if there is an outstanding removal order, inform the CBSA Removals Unit of the negative decision.
- the officer updates paper file, FOSS and, if applicable, the CPC system, with the refusal information; and
- the application is closed.

A negative Stage 1 assessment is a final decision.

Note: If the application was referred to a PRRA unit, see instructions detailed in Section 8.6.

15.2. Positive Stage 1 assessment

The process following a positive Stage 1 assessment is as follows:

- the officer sends an Approval in Principle letter (see Section 19, *Table of appendices* for a list of templates in Appendix D) informing the applicant that:
  - the eligibility criteria exemption has been granted; and
  - they and their dependants must still meet any admissibility requirements for which they were not granted an exemption. If these requirements are not met, the application for permanent residence may be refused at Stage 2;
- the officer updates the paper file, and FOSS including detailed remarks about the exemption granted, date of exemption and the relevant section of IRPA. Update the APR screen or create a NCB type 12. Also, if applicable, update the CPC System, with the approval information; and
- processing of the permanent residence application begins.

For policy information on reconsidering a positive decision, see Section 5.23, *Reconsideration of inland H&C decisions*.

Note: If the application was referred to a PRRA unit, see instructions detailed in Section 8.6.

15.3. Positive Stage 1 assessment – Stay of removal

After a favourable Stage 1 assessment, a removal order is stayed by regulation R233 until a decision is made on the permanent residence application.

If, before a Stage 1 decision is made on an application, an applicant who is subject to a removal order voluntarily leaves Canada and meets the requirements for voluntary complicance under R238, there is no guarantee they will be re-admitted to Canada.

Where a warrant exists against an individual who has passed Stage 1, in most cases the warrant will be cancelled since there is now a stay of removal. For more details on the process, refer to ENF 7, Sections 7.3 and 15.9.

15.4. Positive Stage 1 assessment – Interim documentation

Applicants who have received a positive Stage 1 assessment may be eligible for interim status, including a study or work permit, pending the finalization of their application.

Status	Situation
Temporary resident status	Temporary resident status may be extended as long as there is no known inadmissibility. An extension of one year should be sufficient. Where loss of temporary resident status is described, a recommendation for restoration of their temporary resident status should be made, where possible (see IP 6).
Work permit	Work permits may be issued pursuant to R200(1). Applicants may request a work permit by completing an *Application to Change Conditions, Extend My Stay or Remain in Canada as a Worker* (IMM 1249).
Study permit	Study permits may be issued pursuant to R215(g). Applicants may request a study permit by completing an *Application to Change Conditions, Extend My Stay or Remain in Canada as a Student* (IMM 1249).
Temporary Resident Permit (TRP)	Applicants in possession of a TRP may apply for a new TRP.

15.5. Positive Stage 1 assessment after a removal

Applicants who receive a positive Stage 1 assessment after removal from Canada by the Minister as per R239 and who are not otherwise inadmissible, may be allowed to return to Canada.

When a positive Stage 1 assessment is made after removal of the applicant, the local CIC or CPC-V sends an e-mail to the appropriate visa office informing them that a positive assessment was made.

The message will include the following details:

- the client‘s information, including their client identification number, name(s), gender, date and place of birth, marital status, address, destination and occupation;
- a brief case summary, including the removal date, Stage 1 approval date, immigration category and, if applicable, sponsorship information;
- if applicable, the results of background checks (e.g. security, criminal and medical); and
- specific details on the payment of fees (e.g. receipt number, amount paid).

Process for the visa office

1. Verify that identity, security, criminal and medical checks have been completed and are valid. If they are not completed or are expired the visa office will proceed with these verifications.
2. Proceed, when necessary, with the Authorization to Return to Canada and/or the TRP application (the visa office does not proceed with the PR visa issuance as the requirement to hold a PR visa has already been waived).
3. Provided exemptions have been granted for all inadmisibilities, if client does not meet an eligibility criteria (e.g. a CSQ has not been issued yet for a Quebec applicant), the visa office:
   - may issue a TRP and, if required, grant Minister's consent;
   - notifies the local CIC or CPC-V once a permit has been issued; and
   - informs the client to contact their local CIC or CPC-V upon return to Canada so that processing can resume.
4. If the applicant is found inadmissible or the visa office is concerned about issuing a TRP, the visa office informs the local CIC or CPC-V and together they come to a mutually agreed upon decision.

The applicant is responsible for any travel expenses, cost recovery fees and, if applicable, repayment of removal costs. The visa office collects the fees (see chapter IR 5 for cost recovery information).

Note: The visa office does not re-evaluate the original Stage 1 assessment.

15.6. Applicant leaves Canada after a positive Stage 1 assessment

The fact that the applicant has travelled outside Canada after approval at Stage 1 may have an impact on the processing of their application.

There is no requirement to re-admit applicants who have received a positive Stage 1 H&C assessment and who seek to return to Canada to finalize the application. Re-admission is therefore at the discretion of the port of entry officer and depends on the case (e.g. applicant's circumstances may have changed, new inadmissibility etc.). Applicants are advised in the positive Stage 1 assessment letter that ~~"~~**If you leave Canada, there is no guarantee that you will be re-admitted to continue with this application.**"

See ENF 4 for complete guidelines.

16. Procedures: Stage 2 assessment

After a positive Stage 1 assessment, processing of the application for permanent residence (IMM 5001) begins. This determines whether the applicant is otherwise admissible and meets all other requirements of IRPA.

Applicants and their family members listed on the IMM 5001 must undergo medical, security and criminal checks as part of the admissibility assessment.

For family members abroad, the same verifications are performed by the appropriate visa office.

16.1. Concurrent processing of family members

Amendments to R69, which took effect on August 11, 2004, clarify that family members who are in Canada may become permanent residents concurrently with the principal applicant in Canada. They also clarify that family members who are outside Canada cannot be processed for permanent resident visas concurrently with the principal

applicant in Canada. This maintains the original policy intent of limiting exceptional provisions to foreign nationals and their family members who are in Canada. Family members outside Canada do not require an exemption from applying outside Canada. They can be processed as members of the family class supported by a sponsorship.

Transitional guidelines clarify that applicants in Canada can still benefit from the ability to concurrently process family members overseas if their H&C application was received at a CIC office prior to the implementation date of the amendments to the *Regulations*. This benefit applies whether or not assessment of the H&C application has yet started. Applications received at a CIC office on or after August 11, 2004, will not benefit from concurrent processing.

Note: R10 requires that an application be accompanied by evidence of payment of the applicable fees, if any. Therefore, evidence of payment of fees for the accompanying family member(s) abroad must have been included in the application prior to August 11, 2004 in order to be considered.

16.2. Applicants residing in Quebec

Upon being approved in principle (i.e. positive Stage 1), the application is forwarded to the MICC for them to render a decision and issue a CSQ, if approved. See Section 13.2, *Request for CSQ*.

16.3. Statutory requirements

Background verifications – Criminal and security checks

The Canadian Security Intelligence Service (CSIS) performs security screening and the Royal Canadian Mounted Police (RCMP) conducts screening for criminal records on behalf of CIC. The *Request for Screening Action* (IMM 0703B) is the form used to initiate both of these screening procedures. Instructions for submission of the IMM 0703 are found in chapter IC 1 and include addresses where applicants may write to obtain police certificates.

Family members abroad

Background verifications for the applicant's family members abroad are initiated by the appropriate visa office (see OP 24, Section 13).

Medical examination

If medical examinations have not been completed, officers should provide the applicant and any family members in Canada with a letter directing them to report to a Designated Medical Practitioner for a medical examination. The results of the examinations are then forwarded to CIC medical officers for evaluation and entry in FOSS.

The medical officer's opinions are considered extrinsic information. When an applicant or any family member is the subject of a medically inadmissible opinion, the applicant should be informed and given an opportunity to make submissions (see OP 15, Section 13). See Sections 16.6, *Health inadmissibility* and 16.7, *Inadmissibility of a family member (A42)* if the applicant is found inadmissible at Stage 2.

Family members abroad

Background verifications for the applicant's family members abroad are initiated by the appropriate visa office (see OP 24, Section 13).

Validity of the results

Requirement	Validity
Criminal checks	No specific validity date.

	Officers should check FOSS for information about recent charges or convictions. If one year has elapsed from the time of the criminal check, or whenever warranted, a new Canadian Police Information Centre (CPIC) check is recommended.
Security checks	Results are valid for 18 months. Case-by-case extensions may be requested by returning the file copy of the IMM 0703B. See chapter IC 1.
Medical checks	Medical results are valid for 12 months from the examination date or date of the chest x-ray, whichever took place first. More details on in-Canada medicals are available in Section 6.1 of OP 15 and, for details on extension requests, Section 7 of IR 3. For medical results abroad refer to Section 9 of OP 15.

16.4. Applicant and family members appear to be admissible

After the results of the statutory requirements have been received and where no inadmissibility (for which the applicant has not been granted an exemption) is apparent, officers should follow procedures in Section 17, *Finalizing a case after Stage 2 assessment*.

16.5. Suspected inadmissibility – Criminal charges formally laid yet still outstanding

Where criminal charges against the applicant or any family member are outstanding and a final decision has not yet been made legal, officers should delay scheduling an appointment for confirmation of permanent residence until there is a final disposition of the criminal charges.

Guidelines are available in Section 5.25, *Inadmissible applicants*.

16.6. Health inadmissibility (A38) – Discovered at Stage 2

As a general rule, all known inadmissibilities are assessed during the Stage 1 assessment, resulting in either an exemption to overcome the inadmissibility or a refusal. Quebec cases are an exception (see Section 13.3, *Application involves health inadmissibility*).

In certain situations, the health inadmissibility will be discovered after a positive Stage 1 decision. Officers may refuse the permanent residence application or they may choose to forward the application to the Director of Case Review at NHQ **if** they are of the opinion that the H&C factors outweigh the health inadmissibility (see Section 10, *Referral to NHQ*).The application should be forwarded to NHQ once health inadmissibility is confirmed if:

- the applicant received a positive Stage 1 assessment and afterwards became inadmissible on health grounds (either due to new circumstances or because they were unaware of an existing medical condition); or
- in Quebec cases, the applicant received a positive Stage 1 notwithstanding a suspected health inadmissibility (see Section 13, *Applicants residing in Quebec*).

If the decision-maker at NHQ determines that there are insufficient H&C grounds to grant an exemption to overcome A38, the application for permanent residence should be refused. See also Section 10, *Referrals to NHQ*.

16.7. Inadmissibility of a family member (A42)

All family members must be examined even if they are not being processed for permanent residence with the principal applicant. Family members who are not

examined, are excluded from the family class as per R117(9)(d) and may not be sponsored at a later date (See OP2 Section 5.12)

Officers must be satisfied that family members are not inadmissible for medical, security or criminal reasons as a prerequisite to approval of the principal applicant's application for permanent residence in Canada. In the case of family members abroad these verifications are performed by the appropriate visa office after a positive Stage 1.

If an inadmissibility is identified **after** a positive Stage 1 assessment, officers may refuse the application for permanent residence. Officers may also consider granting an exemption to overcome the A42 inadmissibility if they are of the opinion that it is justified by H&C considerations.

Normally, an inadmissible family member, whether accompanying or not, renders the principal applicant inadmissible (A42 and R23). However, as per R23, this is not the case where:

- The relationship between the spouse and the foreign national has broken down in law or in fact (e.g. separated spouse); or
- The applicant or accompanying family member of the applicant does not have legal custoday or is not empowered to act on behalf of a dependent child or a dependent child of a dependent child.

Although the inadmissibility of these family members does not render the applicant inadmissible, they must be examined in order to ensure that in the future, the applicant has the right to sponsor them in the family class (if for example, circumstances change).

There may be cases in which the principal applicant is unable to make a family member outside Canada available for examination e.g. if an ex-spouse refuses to allow a child to be examined or a dependent child, over the age of majority, refuses to be examined.

When appropriate, officers have the delegated authority to waive the requirement under R30(1)(a) that family members be medically examined and R68(c) that family members not be inadmissible in order for a foreign national to become a permanent resident in A25(1) cases. This authority should be used in exceptional circumstances when the officer is satisfied:

- that the family member is unavailable to be examined; or
- where it would be unreasonable to require examination in light of the circumstances of the case.

It should not be used to overcome a known or suspected inadmissibility of a family member abroad.

Example: An H&C applicant has shared custody of his non-accompanying dependent child, but his ex-spouse, who has physical custody, refuses to submit the child to a medical examination. In such situations, where there is little risk that the applicant would be inadmissible due to the non-accompanying child, officers could consider waiving the examination of the child. However, the unexamined family member will be excluded from sponsorship as a member of the family class by virtue of R117(9)(d). Therefore, it is criticial that the officer advise the principal applicant of the consequences of not having their non-accompanying family member examined.

16.8. Financial inadmissibility (A39) – Social assistance

There may be occasions when an applicant receives a positive Stage 1 assessment notwithstanding reliance on social assistance, or becomes dependent upon social assistance after Stage 1.

The dependency on social assistance could be a temporary situation or a result of not having been authorized to work in Canada. By the time the application for permanent residence is processed, the applicant may have become self-sufficient.

Sample letters at the end of this chapter advise applicants at every opportunity that receipt of social assistance may result in refusal of the application for permanent residence.

When all other admissibility criteria are met, officers should verify A39 either by scheduling an examination interview and making a final determination in person or by asking the applicant to provide evidence that they are no longer in receipt of social assistance (Appendix F, Annex 5).

If the applicant is still in receipt of social assistance after all other processing has been concluded, permanent residence may be refused unless H&C consideration justifies an exemption.

Delaying the inadmissibility decision

In these cases, **officers should not necessarily refuse the application immediately**. If it appears that the applicant may become self-supporting in the near future, the permanent residence decision may be delayed for a short period of time until evidence of self-sufficiency can be provided.

The time allotted by officers should be sufficient to allow applicants to remedy their situation. It should not, however, result in an indefinite or unreasonable delay of a final decision on the application. If it is evident after a few months that an applicant is unlikely to become self-supporting in the near future, a final decision should be made.

16.9. Waiver of passport requirement [R72 (1)(e)(ii)]

R72(1)(e)(ii) requires all foreign nationals to be in possession of a valid passport to become permanent residents. It is expected that all foreign nationals will be **in possession of a valid passport** and exemptions from this requirement should occur infrequently. Applicants who are unable to obtain a passport should provide evidence that they have applied for one and have been refused. To facilitate this, officers should give applicants a letter to send to their embassy or other representative office that requests written reason(s) for refusing to issue a passport. Applicants should have the letter to their embassy registered to ensure it is received. This may discourage persons seeking a passport waiver because they are wanted in their country for criminal or other activities.

If an embassy refuses to provide reasons for not issuing a passport, the individual facts of the case should be considered:

- Is the officer satisfied that there is a legitimate reason the applicant does not have a valid passport?
- Is the applicant in possession of another acceptable identity document that pre-dates their arrival in Canada?

If so, an officer may waive the passport requirement when applicants cannot obtain a passport from their government and the officer is satisfied of their identity.

Before deciding that the applicant cannot obtain a passport, officers should consult with their local CBSA removals unit or with the CBSA Inland Enforcement Investigations and Removals section at NHQ. They might know whether it is possible for a person in the applicant's situation to obtain a passport.

If an exemption from the passport requirement is warranted, officers should insert the following remarks in FOSS/CPS and send a letter to the applicant containing the following statement: *"I hereby grant an exemption from subparagraph 72(1)(e)(ii)* of the *Immigration and Refugee Protection Regulations on behalf of [name of person(s)]."*

Note: While Convention refugees and protected persons applying for permanent residence may submit a national passport, officers are not to advise, counsel or instruct these applicants to approach their embassy or other representative office to obtain a passport or other document. Refer to PP4, Section 10.4.

17. Procedures: Finalizing a case after Stage 2 assessment

17.1. Negative Stage 2 assessment – Applicant is inadmissible

If it is determined that the applicant or a family member **is** inadmissible and/or does not meet all **other** requirements of the *Act* and *Regulations* (that were not already exempted), the application should be refused:

- send refusal letter (see sample letters in Appendix E); and
- when applicable, an A44(1) report should be completed and sent to the Minister's delegate with a recommendation for its disposition.

If issuance of a TRP is considered

- the officer refers to the guidelines outlined in IP 1. The coding entered on the permit must be the code for ~~"r~~refused" and not for ~~"u~~nder application".

If the officer has reason to believe that the applicant provided false information in response to questions asked in section D of the IMM 5001 (i.e. background information), the Stage 1 assessment could be revisited. See Section 5.23, *Reconsideration of inland H&C decsions*.

17.2. Positive Stage 2 assessment – Verification prior to creating the Confirmation of Permanent Residence

Before creating the *Confirmation of Permanent Residence* (IMM 5292) for the applicant and any accompanying family member(s), officers should verify that:

- criminal, security and medical results are still valid (see Section 16.3, *Statutory requirements*); and
- CSQ, if required, is on file and valid.

17.3. Right of Permanent Residence Fee (RPRF) – R303

Regardless of the age of the principal applicant, H&C applicants must pay the RPRF, except:

- protected persons and their family members;
- a principal applicant who is a "de~~p~~endent child" of a Canadian citizen or permanent resident; and
- dependent children of the H&C principal applicant.

For applications processed in Canada, payment of the RPRF is required before permanent residence status is granted.

Non-payment of the RPRF

When an applicant meets the requirements but is unwilling or unable to pay the RPRF, officers should inform the applicant in writing that the application will be held in abeyance until the RPRF or loan approval is received. The letter should also advise the applicant of the time period for a response and the consequences of not responding within the specified period.

The time allotted by officers should be sufficient to allow applicants to remedy their situation. It should not, however, result in an indefinite or unreasonable delay of a final decision on granting permanent residence.

If it is evident after a few months that an applicant is unlikely to pay the RPRF in the near future, a final negative decision for non-compliance should be made.

See template letter in Appendix F, Annex 6: Ready for permanent residence but RPRF not paid.

17.4. Final examination interview

At the final mandatory interview, these steps must be followed:

- verification that the applicant's passport has not expired (unless exemption was granted);
- verification of identity documents if this has not already been done (verify that personal details are correct);
- validation that all of the principal applicant's family members have been examined;
- verification that the applicant and any family members in Canada do not rely on social assistance (provided they have not already been granted an exemption for such);
- applicant(s) must be asked the required questions concerning criminality and war crimes and other statutory questions; and
- applicant(s) must sign and date their Confirmation of Permanent Residence (IMM 5292); and
- interviewer must sign and date each part of the IMM 5292.

Concurrent applications

If permanent residence status is granted and the applicant has a pending refugee claim or a pending application for judicial review of a negative PRRA or Refugee Protection Division decision, officers should inform the:

- Refugee Protection Division of the IRB (in the case of a refugee claim); or
- Department of Justice (in the case of a judicial review application).

Outstanding criminal charges

When information regarding outstanding criminal charges comes to light at the interview, officers should note the information and postpone or reschedule the interview until there is a final disposition of the criminal charges. Such delays are justifiable and prudent as a conviction may make the applicant criminally inadmissible or ineligible for permanent residence.

Refer to Section 5.25, *Inadmissible applicants*, for more information on outstanding criminal charges.

17.5. Final examination interview – No show

When an applicant does not attend their confirmation of permanent residence interview, CIC must, nonetheless, conclude the case so that they do not remain outstanding.

The instructions in Section 9.4, *Loss of contact with the applicant*, should be followed.

If there is loss of contact with the applicant, the appropriate decision letter should be sent; Appendix E, Annex 3: Application to remain in Canada as a permanent resident refused – No show for final examination interview.

18. Procedures: Coding H&C applications

The purpose of this section is to identify the different category codes for applications processed in Canada under A25(1).

Pursuant to A94(2)(e), the Minister is required to report to Parliament each year on the number of persons granted permanent resident status under A25(1). Therefore, all H&C

applications must be clearly identified for this purpose and to allow for quality assessment and control. Codes are as follows:

Immigration category codes (see also FOSS coding manual)

Code	For	Description
HC1	H&C application (without sponsorship)	H&C applications processed within Canada pursuant to A25(1) will normally be coded as HC1. However, the category code HC2 will be used when a sponsorship has been submitted in support of the H&C application.
HC2	H&C application (with sponsorship)	H&C applicants are not members of the family class. **Note:** If a sponsorship has been submitted but is withdrawn or not approved, the H&C application should be coded as HC1.
FCH	Public policy on in-Canada spouses and common-law partners without status	The category code FCH is used for in-Canada applications under the public policy (effective February 18, 2005) for spouses and common-law partners in Canada who do not have legal immigration status. These applications are processed under the spouse or common-law partner in Canada class *Regulations*, see chapter IP 8.
PP1	Public policy cases	The category code PP1 should be used when an application is processed pursuant to A25.2(1) (public policy considerations), in accordance with a public policy initiated by the Minister.

Note: Accompanying family members should be given the same code as the principal applicant.

18.1. Special category codes

Where the immigrant category is HC1 or HC2, a special category code must be entered on the APR screen in FOSS and the CPC system.

Officers should choose the special category code that best describes the H&C application.

For H&C applications without sponsorship – HC1:

CODE	DESCRIPTION
SNF	Spouse not sponsored as a member of the family class
DNF	Dependent child not sponsored as a member of the family class
PNF	Parent/Grandparent not sponsored as a member of the family class
SOF	Separation of parents and dependent children outside the family class
DFM	*De facto* family members
PIL	Prolonged inability to leave Canada has led to establishment
PZR	Personalized risk (allegations of risk in the country of origin)
RAL	Refugees who apply for permanent resident status after the 180-day
FMV	Family violence
FCC	Former Canadian citizens
OCS	Other cases

For H&C applications with sponsorship – HC2:

Note: The special category codes below describe the family relationship between the applicant and the sponsor.

CODE	DESCRIPTION
SPO	Sponsored spouse

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CHI	Sponsored dependent child
PGP	Sponsored parent/grandparent

19. Table of appendices

Consult the table below for a listing of the various appendices and for a list of the H&C template letters that include, when required, specific information on when to use them.

Appendix A – Administrative law principles to guide H&C decision-making

Appendix B – Guidelines for note-taking

Appendix C – Case summary form

Appendix D – Stage 1 assessment template letters

Annex	Title	When to use
1	Negative Stage 1	
2	Positive Stage 1	No known permanent residence barriers
3	Positive Stage 1	Request for exemption related to an inadmissibility has been granted
4	Positive Stage 1	Specific to protected persons
5	Positive Stage 1 but submissions required	To simultaneously inform applicant of extrinsic evidence indicating that admissibility requirements will not be met
6	Request for further information	Prior to Stage 1 assessment
7	Negative Stage 1 based on file information	After ―No response/No show" to Annex 6
8	Positive Stage 1	After response received after Annex 6

Appendix E – Stage 2 assessment template letters

Annex	Title	When to use
1	Negative Stage 2	Based on a new or newly discovered inadmissibility
2	Notice to appear	Invitation to final examination interview
3	Negative Stage 2	After ―No show" to Annex 2
4	Request for further information	
5	Negative Stage 2 based on file information	After ―No response/No show" to Annex 3
6	Submissions required on extrinsic information indicating inadmissibility barrier	Prior to making a decision based on extrinsic information
7	Submissions received – Negative Stage 2	After review of submissions following Annex 5 result in a refusal
8	Submissions received – Resume normal processing	After review of submissions following Annex 5 result in ―no admissibility barrier"
9	Submissions received – Invitation to final examination interview	After review of submissions following Annex 5 result in positive assessment

Appendix F – Miscellaneous template letters

Annex	Title	When to use
1	Submission required on extrinsic information suggesting misrepresentation	Extrinsic information regarding misrepresentation of H&C factors is received after positive Stage 1
2	Reopen Stage 1 decision based on file information – Negative assessment	After ―No response/No show" to Annex 1
3	Submission received – Resume normal processing	After review of submissions following Annex 1 result in insufficient evidence of

		misrepresentation
4	Submission received – Reopen Stage 1 decision – Negative assessment	After review of submissions following Annex 1 result in sufficient evidence of misrepresentation
5	Appears PR application will be refused for A39	
6	Ready for PR but RPRF not paid	
7	Request to withdraw sponsorship refused	
8	Request to withdraw sponsorship approved	
9	Applicant is ineligible to submit H&C application	Client is Canadian citizen or PR OR foreign national is ineligible to submit multiple H&C applications
10	Applicant is ineligible for H&C application	Client's PR status has not been re-determined yet, currently on TR status
11	Confirmation of client request to withdraw H&C application	When client withdraws their application
12	Submissions received after refusal – case not reopened	When client sends in submissions after the application has been refused
13	Submissions received after refusal – case reopened	When client sends in submissions after the application has been refused

Appendix A Administrative law principles to guide H&C decision-making

Before processing an H&C application, officers should review the administrative law principles that are summarized below. The summary explanations are only overviews of each principle and do not constitute an exhaustive presentation of legal principles applicable to the H&C assessment.

List of administrative law principles

1. Delegated authority	6. The ~~C~~case to be met"
2. Duty to consider	7. Bias: The right to a fair and impartial decision
3. Onus on applicant	8. Right to a decision
4. All the evidence	9. Right to reasons
5. The right to be ~~H~~heard"	

1. Delegated authority

As holders of decision-making authority delegated from the Minister, officers cannot exceed the scope of the delegation granted. Refer to Section 4 – *Instruments and Delegations* for details on authority to grant exemptions on H&C grounds.

2. Duty to consider

Officers are obliged to consider formal applications for an exemption under A25(1) on H&C grounds on behalf of the Minister when the applicant has satisfied the requirements of R10 and R66.

The onus is on the applicant to satisfy an officer that there are grounds for an exemption.

3. Onus on applicant

Officers do not have to elicit information on H&C factors and are not required to satisfy applicants that such grounds do not exist. The onus is on applicants to put forth any H&C factors that they feel exist in their case.

4. All the evidence

An officer should consider and weigh all the relevant evidence and information, including what the applicant and the officer consider to be important. Officers must not ignore evidence or place too much emphasis on one factor to the exclusion of all other factors. They must look at the whole picture. Any information or evidence that is not relevant or should not be given much weight should be documented appropriately.

5. The right to be "heard"

One of the fundamental components of natural justice or fairness is the right to be heard. This means that applicants must have a fair opportunity to present their case. For the purpose of assessing an H&C application, the applicant's written submissions may contain the information an officer needs to make a decision.

The right to be heard does not require an absolute right to a personal interview or hearing and, if an interview is held, **there is no legal right for the applicant's representative to attend** the H&C interview. However, when available, representatives are welcome to attend on the date set for the interview. The presence of a representative should not impede the interview process.

A representative does not necessarily mean a lawyer or other legal representative. A representative may be a friend, relative or any other interested person who is there with the permission of the applicant.

Regulations state that paid representatives must be authorized to:

- conduct business on behalf of clients when dealing with the Government of Canada in immigration and refugee matters; or

- provide advice or assistance.

R2 provides a definition of "authorized representative". For further information see IP 9.

If the applicant is given a period of time within which to provide information or make further submissions, officers should not make a decision on the application until after this time period has elapsed.

6. The "case to be met"

There is no particular "case to be met." Applicants determine what they believe are the H&C factors for their particular circumstances and make submissions on them. Situations may arise where an officer has information or evidence from a source other than the applicant (i.e. extrinsic information – see definition in Section 6). If the information will be used when making the Stage 1 or Stage 2 assessment, officers must share the information with the applicant and allow submissions to be made on this information.

In instances where the source of the information is confidential, the obligation remains to share the gist of the information with the applicant so that they are aware of the case to be met. There is no need to release the identity of a confidential source. This is a sensitive situation in which an officer must exercise discretion. If required, officers should seek advice from the regional program specialist.

In cases where the information on file is not relevant to the decision, officers should make a note in the file to this effect.

7. Bias: The right to a fair and impartial decision

In addition to the "right to be heard", the second major component of natural justice or fairness is the right to have a fair and impartial decision-maker. In other words, officers should approach the case with an open mind and be free to come to a decision in light of all the facts known and the submissions made. Decision-making must be carried out in an impartial and objective manner.

Failure to approach the case with an open mind could be a result of:

- too much reliance on the factors set out in the H&C guidelines, to the exclusion of any other submissions made by the applicant; or
- "pre-judgement" by the decision-maker. Rather, each individual case must be determined on its own merits.

Officers may consult with colleagues and supervisors in relation to cases under consideration but the final decision must be that of the officer responsible for the case.

8. Right to a decision

Decisions must be rendered within a reasonable time period and applicants must be informed of the decision in writing.

9. Right to reasons

The rationale for an H&C assessment should be recorded and noted in the file. In addition, the reasons for refusal should be made available to the applicant upon request.

Appendix B Guidelines for note-taking

General guidelines for note-taking

When assessing a request for humanitarian and compassionate considerations, it is very important that case notes reflect that the totality of the evidence has been considered.

FOSS notes should represent a complete record of all action taken in the case. To the greatest extent possible, there should be no information that appears only on the paper file. Any notes that appear in FOSS should be accurate and consistent with what appears in the paper file and should not undermine or contradict the written decision.

Officers may use point form in most cases but sometimes they will need to record their notes more fully (e.g. using Q&A format). For example, the following situations may require more complete notes:

- strong reactions by the applicant at the interview;
- interference from others present at the interview; and
- issues which are crucial to the decision and considered particularly important, etc.

General guideline for note-taking during case assessment and decision-making

Be clear and concise	• Use common language and avoid jargon. • Use complete words. • Avoid extraneous comments.
Be objective	• Record the facts. • Do not record opinions or interpretations of the facts.
Organize notes with explanatory headings so readers can follow the case history	• Examples of explanatory headings include: ♦ Paper file review; ♦ Representation; ♦ Interview; ♦ Pending or outstanding information; ♦ Decision.
Record notes at the first available opportunity	• Record notes after any interaction with the client (whether by phone or in person) to make sure that they are clear and accurate. • When required, revisions should be done as soon as possible.
Record the interview	• Specify the start and finish times. • Indicate who was present. • If an interpreter was used, include the name of the interpreter and their relationship to the applicant, language of interpretation and instructions given to the interpreter. • Make it clear who said what. • Point out the tone of the interview (e.g. was the applicant angry or upset?). • If the interviewing officer left the office during the interview, record this and provide an explanation.
Notes should include	• A summary of correspondence and communication; • The contents of all non-routine correspondence and/or the form numbers of routine correspondence sent; and • The date the note is added to file and the note-taker‘s initials.

Note: Officers are free to conduct interviews as they deem appropriate as long as the basic principles of natural justice are respected (refer to Appendix A). For example, while it is within the discretion of the officer to deny an applicant's request to tape an interview, to respect the principles of natural justice a summary of the conversation between the officer and the applicant should still be made available if there are issues raised that go beyond mere information gathering (e.g. a Privacy Act request).

Recording reasons for the decision

When assessing a request for H&C considerations, it is very important that case notes reflect that the totality of the evidence has been considered and has been included in the recorded decision.

When recording their notes, officers must:

- indicate all factors considered in the decision-making (including any arguments raised with respect to the ~~b~~best interest of a child"), both positive and negative, in simple, straight-forward and dispassionate language;
- indicate that all factors have been analysed and explain the weight given to each of these factors and why;
- indicate that they have conducted a balancing exercise between the positive H&C factors identified and the facts that weigh against granting an exemption;
- explain the thought process behind the decision and demonstrate that assumptions have not been made (i.e. officer must fill in the gap between the facts listed and the decision made); and
- identify which exemptions, if any, have been granted. This can be noted in the following format: ~~I~~hereby grant an exemption from requirement or inadmissibility under [provide details] of the IRPA for [name of person(s)]".

Furthermore, officers should:

- avoid absolute statements like —there~~s~~ no evidence" or ~~t~~here would be no hardship". In these situations, what is usually meant is that ~~t~~here is insufficient evidence" or ~~in~~sufficient hardship";
- use neutral terms. For example, it is preferable to say ~~c~~lient states" rather than ~~c~~lient claims" or ~~c~~lient admitted";
- where possible, avoid strong comments on the credibility of the information. For example, if an officer writes ~~I~~ do not believe", this suggests that the officer is questioning credibility. In this case, the officer should demonstrate that the issue has been fully investigated (e.g. the applicant was interviewed) and the phrase —I am~~n~~ot satisfied" should be used. It is less contentious and it acknowledges that the onus is on the applicant to satisfy the officer;
- comment on the evidence rather than the inference drawn from the evidence. Once officers are satisfied that an issue has been adequately addressed, they need not go any further to try to reinforce the decision; and
- record how the applicant was given the opportunity to be heard (e.g. the applicant was provided with an opportunity to satisfy the officer of the H&C grounds in relation to the case).

Appendix C Case Summary Form

Case Summary
for Minister's Delegate
H&C Application – Request for Exemption

FILE:
FOSS ID:

DATE OF REFERRAL TO NHQ:

DATE APPLICATION RECEIVED:

REQUIRES PRIORITIZATION: ❒ YES ❒ NO
If YES, please explain _____

PRINCIPAL APPLICANT'S INFORMATION

GIVEN NAME:
SURNAME:
DATE OF BIRTH:
COUNTRY OF BIRTH:
CITIZENSHIP:

APPLICANT'S IMMIGRATION HISTORY including the applicant's date of arrival in Canada and any other relevant dates that could provide a better understanding of the applicant's case (e.g. Dates on which previous applications or refugee claims were made and or decisions rendered.):

IMMIGRATION CATEGORY:

- ❒ **HC1**
- ❒ **HC2**
- ❒ **OTHER (specify):_____**

IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds

DEPENDANTS INSIDE CANADA:

- ❒ **NO**
- ❒ **YES If so, how many:_____**

For each: Surname, Given name:
Date of birth / Country of birth:
Citizenship:
Accompanying ❒ Non-accompanying ❒

DEPENDANTS ABROAD:

- ❒ **NO**
- ❒ **YES If so, how many:_____**

For each: Surname, Given name:
Date of birth / Country of birth:
Citizenship:

RISK ALLEGATIONS IN THE APPLICATION: ❒ YES ❒ NO

STAGE ONE DECISION TAKEN: ❒ YES ❒ NO
Date of decision: _____

EXISTING INADMISSIBILITIES (mark "X" where applicable):

Inadmissibility	Principal applicant	Family member
Security A34		
Human and international rights violations A35		
Serious criminality A36(1)		
Criminality A36(2)		
Organized criminality A37		
Health A38		
Financial reasons A39		
Misrepresentation A40		
Non-compliance with the *Act* A41		
Inadmissible family member A42		

IF MEDICALLY INADMISSIBLE:

Date of medical notification:

Type of health inadmissibilty (excessive demand on social services/medical services, danger to public health, etc..?):

Date procedural fairness letter sent:

Was a declaration of intent and ability sent to client?

Rebuttal submissions received on:

IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds

New medical information (if any) forwarded to HMB on:

If applicable, HMB confirmed inadmissibility on:

If a declaration of intent and ability was received, was medical inadmissibility finding maintained? (Rationale should be included in the summary):

IF CRIMINALLY INADMISSIBLE:

Date of procedural fairness letter (if client was unaware):

Date of client's most recent submissions/interview:

Does CBSA have a file on client? If, yes, were the relevant documents obtained?

Are all available documents related to the client's criminality included with the referral?

IF EXCLUDED BY THE REFUGEE PROTECTION DIVISION:

Has client been informed that the exclusion may equate to inadmissibility under IRPA?

Date of most recent submissions/interview:

Has an analysis of the inadmissibility been provided in the case summary (equating the exclusion to an inadmissibility under IRPA)?

Has the National Security Screening Division of CBSA already been contacted for an opinion on the inadmissibility?

CASE SUMMARY
Include relevant factors submitted by client. Do not include a recommendation or opinion on whether you think the H&C consideration warrants an exemption.

DOCUMENTS ATTACHED TO THIS CASE SUMMARY	Mark ~~X~~" where applicable
H&C application form, dated:	
Update(s) of application form, dated:	
Applicant's submissions (i.e. supporting documents), dated:	
Medical reports (i.e. Health Management Branch documents and FOSS printout)	
Opinion from provincial health authorities	
Conviction certificate	
Police/Intelligence certificate	
Expert evidence	
Relevant FOSS printout (if not available elsewhere)	
List on the additional lines below, all other documents attached (e.g. refugee claimant decision letter, PRRA submissions and decision letter, employment letter, etc.).	

Appendix D Stage 1 assessment template letters

Annex 1 – Negative Stage 1

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds.

H&C factors are assessed for the purpose of determining whether to grant an exemption from certain legislative requirements to allow your application for permanent residence to be processed from within Canada.

On [insert date], [if refusal was made by a delegated authority at NHQ, insert their name and title], a representative of the Minister of Citizenship and Immigration Canada (CIC) reviewed the circumstances of your request and decided that an exemption will not be granted for your application.

or

If applicant is already at the IRB waiting for a RPD, RAD or PRRA decision:

Your application is based, in part, upon risks that you claim you would face if you are returned to your country of origin: Specifically risks relating to fear of being persecuted, tortured, or facing a risk to your life or a risk of cruel and unusual treatment or punishment as described in Sections 96 and/or 97 of the *Immigration and Refugee Protection Act* (IRPA). This office does not have the legislated authority to assess claims described in Sections 96 and 97 of IRPA. Such claims can only be addressed by the Immigration and Refugee Board (IRB) or a PRRA officer. Our information is that you have a case pending at that tribunal. If you have not already done so, you may present the information regarding your fears to the IRB before a final decision is made in your case. Other non-risk hardships that you have cited have been considered but are not sufficient for you to be granted an exemption on humanitarian and compassionate grounds. Therefore, your application for permanent residence on humanitarian and compassionate grounds is refused.

or

If applicant has been through the IRB and definitively been refused (RAD or PRRA)

Your application is based, in part, upon risks that you claim you would face if you are returned to your country of origin: Specifically risks relating to fear of being persecuted, tortured, or facing a risk to your life or a risk of cruel and unusual treatment or punishment as described in Sections 96 and/or 97 of the *Immigration and Refugee Protection Act* (IRPA). Such claims can only be addressed by the Immigration and Refugee Board (IRB). Our information is that these fears have been addressed by the IRB and your refugee claim and/or pre-removal risk assessment has/have been refused. This office does not have the legislated authority to re-assess claims of fear of persecution, danger of torture or risk of serious harm as outlined in Sections A96 and A97 of IRPA. Other non-risk hardships that you have cited have been considered but are not sufficient for you to be granted an exemption on humanitarian and compassionate grounds. Therefore, your application for permanent residence on humanitarian and compassionate grounds is refused.

or

Multiple, concurrent H&C applications

Our records indicate that you have a pending application for humanitarian and compassionate (H&C) consideration (insert file #) on which a decision has not been made. As per Section A25(1.2) of IRPA, we cannot examine a request for H&C consideration if the applicant has already requested H&C consideration and has not yet received a decision further to that request. We are, therefore, returning your most recent application along with the applicable fees (or, fees will be refunded at a later date).

or

Multiple, concurrent H&C applications

Our records indicate that you have a pending application for humanitarian and compassionate consideration (insert file #) on which a decsion has not been made. As per Section A25(1.2) of IRPA we cannot examine multiple, concurrent applications on H&C grounds. We are, therefore, returning your most recent application along with the applicable fees (or, fees will be refunded at a later date).

[Closing for applicants with legal immigration status]

Your temporary resident status expires on [insert date]. If you do not leave Canada on or before this date OR if you do not apply for and receive an extension of your temporary resident status, you will be in Canada without legal status which may result in enforcement action to remove you from Canada.

[If applicable, also add] You are/will be the subject of a report as a person described in Subsection (Act reference).

[Closing for applicants without legal immigration status]

You are presently in Canada without status. [Include instructions concerning departure and/or confirmation of departure, directions for further inquiries, reporting for A44 report, etc.]

If you require clarification or additional information, visit the CIC website at http://www.cic.gc.ca or contact the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

Annex 2 – Positive Stage 1

(To use when there are no known barriers to permanent residence.)

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds.

Humanitarian and compassionate factors are assessed for the purpose of determining whether to grant an exemption from certain legislative requirements to allow your application for permanent residence to be processed from within Canada. On [insert date], a representative of the Minister of Citizenship and Immigration Canada (CIC) **approved** your request for an exemption from these requirements for the purpose of processing this application.

You must meet all other statutory requirements of the *Immigration and Refugee Protection Act,* such as medical, security, passport and arrangements for your care and support. As your application is processed, separate decisions will be made about whether you meet these other requirements. If more information is required, you will be sent a letter and asked to provide a reply within 30 days from the date the letter is sent to you.

Please note that your application for permanent residence could be refused if:

- you and your family members do not meet all other statutory requirements of the *Immigration and Refugee Protection Act* for which you have not been granted an exemption;
- you receive a letter asking for a reply within 30 days and you do not respond within that period;
- you fail to advise this office of any changes to your address. You may inform this office of changes by writing to the address shown in the upper corner of this letter, by contacting the CIC Call Centre or online at http://www.cic.gc.ca; or
- you are not self-supporting and have not been granted an exemption from the requirement to be self-supporting. Persons in receipt of social assistance or welfare benefits, either directly or indirectly, are defined in the *Immigration and Refugee Protection Act* as inadmissible persons.

If preliminary information indicates that you probably meet all statutory requirements of the *Immigration and Refugee Protection Act*, you will receive a letter asking you to attend

an interview at the Canada Immigration Centre in your area. A final determination on your application for permanent residence will be made at this interview. **If you do not attend this interview, it could be interpreted as a lack of interest in permanent residence and your application could be refused.**

If you wish to work or study in Canada while awaiting finalization of your application for permanent residence, you must request and receive an employment or student authorization. You will need the application kit titled –Application to Change Conditions or Extend My Stay in Canada" which can be obtained by visiting our website at http://www.cic.gc.ca or contacting the CIC Call Centre.

If your marital status or personal situation changes, please write to this office immediately or contact the CIC Call Centre.

If you leave Canada before your application is finalized, there is no guarantee that you will be re-admitted to continue with this application. [See Section 15.3 of this chapter for an additional paragraph]

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address in the upper corner of this letter, visit the CIC website at http://www.cic.gc.ca or contact the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

[If the applicant is subject to a removal order, the following wording should be added to the positive Stage 1 letter]:

As you are the subject of a deportation/exclusion order, please note that the removal order is now stayed until a decision is made on your permanent residence application. However, if you leave Canada you may not be able to return.

Annex 3 – Positive Stage 1

(To use when a request for an exemption related to an inadmissibility has been granted.)

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds.

Humanitarian and compassionate factors are assessed for the purpose of determining whether or not to grant an exemption from certain legislative requirements to allow your application for permanent residence to be processed from within Canada. On [insert date], a representative of the Minister of Citizenship and Immigration Canada **approved** your request for an exemption from these requirements for the purpose of processing this application. In addition, you have been granted an exemption from the following requirement of the *Immigration and Refugee Protection Act*:

- [list the inadmissibility for which the applicant has requested an exemption]

You must meet all other statutory requirements of the *Immigration and Refugee Protection Act* for which you are not exempted, such as medical, security, passport and arrangements for your care and support. As your application is processed, separate decisions will be made about whether you meet these other requirements. If more information is required, you will be sent a letter and asked to provide a reply within 30 days from the date the letter is sent to you.

Please note that your application for permanent residence could be refused if:

- you and your family members do not meet all the statutory requirements of the *Immigration and Refugee Protection Act* other than those for which you have already been granted an exemption;
- you receive a letter asking for a reply within 30 days and you do not respond within that period;
- you fail to advise this office of any changes to your address. You may inform the office of changes by writing to the address shown in the upper corner of this letter, through the online services at http://www.cic.gc.ca or by contacting the CIC Call Centre; and
- you are not self-supporting and have not been granted an exemption from the requirement to be self-supporting. Persons in receipt of social assistance or welfare benefits, either directly or indirectly, are defined in the *Immigration and Refugee Protection Act* as inadmissible persons [leave this bullet out if the applicant has been granted an exemption from A39].

If preliminary information indicates that you probably meet all the statutory requirements of the *Immigration and Refugee Protection Act*, you will receive a letter asking you to attend an interview at the Canada Immigration Centre in your area. A final determination on your application for permanent residence will be made at this interview. **If you do not attend this interview, it could be interpreted as a lack of interest in permanent residence and your application could be refused.**

If you wish to work or study in Canada while awaiting finalization of your application for permanent residence, you must request and receive an employment or student authorization. You will need the application kit titled "Application to Change Conditions or Extend My Stay in Canada" which can be obtained by contacting the CIC Call Centre or visiting our website at http://www.cic.gc.ca.

If your marital status or personal situation changes, please write to this office immediately or contact the CIC Call Centre.

If you leave Canada before your application is finalized, there is no guarantee that you will be re-admitted to continue with this application. [See Section 15.3 of this chapter for an additional paragraph]

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address in the upper corner of this letter, visit the CIC website at http://www.cic.gc.ca or contact the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

[If the applicant is subject to a removal order the following wording should be added to the positive Stage 1 letter]:

As you are the subject of a deportation/exclusion order, please note that the removal order is now stayed until a decision is made on your permanent residence application. However, if you leave Canada you may not be able to return.

Annex 4 – Positive Stage 1

(Letter specific to protected persons who applied after the 180-day prescribed period.)

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds.

Humanitarian and compassionate factors were assessed for the purpose of determining

whether to grant an exemption from certain legislative requirements to allow processing of your application for permanent residence from within Canada. On [insert date], a representative of the Minister of Citizenship and Immigration Canada **approved** your request for an exemption from these requirements for the purpose of processing this application.

You must meet all other statutory requirements of the *Immigration and Refugee Protection Act* for which you are not exempted. As your application is processed, separate decisions will be made about whether you meet these other requirements. If more information is required, you will be sent a letter and asked to provide a reply within 30 days from the date the letter is sent to you.

Please note that your application for permanent residence could be refused if:

- you and your family members do not meet all other statutory requirements of the *Immigration and Refugee Protection Act* for which you have not been granted an exemption;
- you receive a letter asking for a reply within 30 days and you do not respond within that period;
- you fail to advise this office of any changes to your address. You may inform this office of any changes by writing to the address shown in the upper corner of this letter, by contacting the CIC Call Centre or online at http://www.cic.gc.ca.

If preliminary information indicates that you probably meet all statutory requirements of the *Immigration and Refugee Protection Act*, you will receive a letter asking you to attend an interview at the Canada Immigration Centre in your area. A final determination on your application for permanent residence will be made at this interview. **If you do not attend this interview, it could be interpreted as a lack of interest in permanent residence and your application could be refused.**

If you wish to work or study in Canada while awaiting finalization of your application, you must request and receive an employment or student authorization. You will need the application kit titled –Application to Change Conditions or Extend My Stay in Canada" which can be obtained by visiting our website at http://www.cic.gc.ca or by contacting the CIC Call Centre.

If your marital status or personal situation changes, please write to this office immediately or contact the CIC Call Centre.

If you leave Canada before your application is finalized, there is no guarantee that you will be re-admitted to continue with this application.

PLEASE NOTE: You are a person who was determined to be a Protected Person or Convention refugee by the Refugee Protection Division of the Immigration Refugee Board of Canada on [insert date]. You did not submit your application for permanent residence as a Convention refugee within 180 days of [insert date], so as a result your application must be processed under the guidelines for humanitarian and compassionate cases.

You are not, however, required to pay the Right of Permanent Residence Fee.

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address in the upper corner of this letter, visit the CIC website at http://www.cic.gc.ca or contact the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

Annex 5 – Positive Stage 1 but submissions required

(To simultaneously inform the applicant of extrinsic evidence indicating that admissibility requirements will not be met.)

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds.

Humanitarian and compassionate factors are assessed for the purpose of determining whether to grant an exemption from legislative requirements to allow processing of your application for permanent residence from within Canada. On [insert date], a representative of the Minister of Citizenship and Immigration Canada **approved** your request for these exemptions for the purpose of processing this application.

You must meet all other statutory requirements of the *Immigration and Refugee Protection Act* for which you have not been granted an exemption such as medical, security, passport and arrangements for your care and support. As your application is processed, separate decisions will be made about whether you meet these other requirements.

Please note that your application for permanent residence could be refused if:

- you and your family members do not meet all other statutory requirements of the *Immigration and Refugee Protection Act* for which you have not been granted an exemption;
- you receive a letter asking for a reply within 30 days and you do not respond within that period;
- you fail to advise this office of any changes to your address. You may inform this office of changes by writing to the address shown in the upper corner of this letter, by contacting the CIC Call Centre or online at http://www.cic.gc.ca; or
- you are not self-supporting and have not been granted an exemption from the requirement to be self-supporting. Persons in receipt of social assistance or welfare benefits, either directly or indirectly, are defined in the *Immigration and Refugee Protection Act* as inadmissible persons.

New information suggests that your Application to Remain in Canada as a Permanent Resident may have to be refused as it appears that [you are a person described in (indicate section of Act and provide details) / you cannot comply with (indicate section of Act and provide details)].

[When further information is to be sent in]

Before a decision is made on this matter, you have the opportunity to provide any information you would like to be considered. Please write to this office **within thirty (30) days of the date of this letter**. **If you do not reply within 30 days**, the decision about your application for permanent residence will be made based upon the information on your file which may result in the refusal of your application.

If you need more than 30 days to provide the information requested, please write to this office and explain why and how much more time you require.

[When further information is to be provided at an interview]

Before a decision is made on this matter, you have the opportunity to provide any information you would like to be considered at an interview with you [and your sponsor]. Please come to the Canada Immigration Centre located at [insert address] on [insert date and time].

If you do not attend this interview, the decision about your application for permanent residence will be made based upon the information on your file which may result in refusal of your application. If you cannot attend this interview, please write to this office immediately, explaining why.

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address in the upper corner of this letter, visit the CIC website at http://www.cic.gc.ca or contact the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

Annex 6 – Request for further information

(To request information prior to the Stage 1 assessment.)

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds.

Humanitarian and compassionate factors are assessed for the purpose of determining whether to grant an exemption from certain legislative requirements to allow your application for permanent residence to be processed from within Canada. You must also meet, or be exempted from meeting, all other statutory requirements of the *Immigration and Refugee Protection Act*, for which you are not exempted, for example, medical, security, passport and arrangements for your care and support.

[In case of a medical inadmissibility]

Medical notification stating that [you/dependant's name] have the following medical condition or diagnosis: [insert name of disease or condition and diagnosis from IMM 5365B], which in the opinion of a medical officer: [enter narrative from IMM 5365B].

For this reason, it appears that you are a person described in [indicate section of the IRPA and provide details].

[In case of other inadmissibilities]

It appears that [you are a person described in (indicate section of the IRPA and provide details)/that you cannot comply with (indicate section of the IRPA and provide details)].

[When further information is to be sent in]

Before a decision can be made about exempting you from the requirements of the *Immigration and Refugee Protection Act*, further information is required, specifically: (explain)

Please send the requested information to this office **within thirty (30) days of the date of this letter**. **If you do not reply within 30 days**, the decision about your exemption will be made based upon the information on your file which may result in refusal of your application.

If you need more than 30 days to provide the information requested, please write to this office and explain why and how much more time you require.

[When further information is to be provided at interview]

You have the opportunity to provide any information you would like to be considered at an interview with you [and your sponsor] to assess humanitarian and compassionate factors and determine whether an exemption is warranted. Please come to the Canada Immigration Centre located at [insert address] on [insert date and time].

If you do not attend this interview, the decision about your exemption will be made based upon the information on your file, which may result in refusal of your application.

If you cannot attend this interview, please write to this office immediately explaining why.

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address in the upper corner of this letter, visit the CIC website at http://www.cic.gc.ca or contact the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

Annex 7 – Negative Stage 1 based on file information

(To use when there was "no response/no show" following Appendix A - Annex 6.)

Via registered mail

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds and our recent letter to you dated [insert date] . . .

[When further information was to be sent in]

. . . asking you to send information to this office within thirty (30) days from the date of that letter.

No response was received from you.

[When further information was to be provided at an interview]

. . . asking you to attend an interview at this office on [insert date and time].

You did not appear for this interview.

As indicated in our previous letter, a decision about exempting you from certain legislative requirements has been made based upon information on your file. On [insert date], a representative of the Minister of Citizenship and Immigration Canada reviewed the circumstances of your request and decided that an exemption will not be granted for your application.

[Closing for applicants with legal immigration status]

Your temporary resident status expires on [insert date]. If you do not leave Canada on or before this date OR if you do not apply for and receive an extension of your temporary resident status, you will be in Canada without legal status which may result in enforcement action to remove you from Canada.

[Closing for applicants without legal immigration status]

You are presently in Canada without status. [Include instructions concerning departure and/or confirmation of departure, directions for further inquiries, reporting for A44 report, etc.]

If you require clarification or more information, visit the CIC website at http://www.cic.gc.ca or telephone the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

Annex 8 – Positive Stage 1

(To use after receipt of submissions following Appendix A - Annex 6.)

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds and our recent letter to you dated [insert date] . . .

[When further information was to be sent in]

. . . asking you to send information to this office within thirty (30) days of the date of that letter.

[When further information was to be provided at interview]

. . . asking you to attend an interview at this office on [insert date and time].

Humanitarian and compassionate factors are assessed to decide whether to grant an exemption from certain legislative requirements to allow processing of your application from within Canada. On [insert date], a representative of the Minister of Citizenship and Immigration Canada **approved** your request for an exemption from certain legislative requirements for the purpose of processing this application.

You must meet all other statutory requirements of the *Immigration and Refugee Protection Act* for which you have not been exempted, for example, medical, security, passport and arrangements for your care and support. As your application is processed, separate decisions will be made about whether you meet these other requirements. If more information is required, you will be sent a letter and asked to provide a reply within 30 days from the date the letter is sent to you.

Please note that your application for permanent residence could be refused if:

- you and your family members do not meet all statutory requirements of the *Immigration and Refugee Protection Act* for which you have not been granted an exemption;
- you receive a letter asking for a reply within 30 days and you do not respond within that period;
- you fail to advise this office of any changes to your address. You may inform this office of changes by writing to the address shown in the upper corner of this letter, by contacting the CIC Call Centre or online at http://www.cic.gc.ca; or
- you are not self-supporting and have not been granted an exemption from the requirement to be self-supporting. Persons in receipt of social assistance or welfare benefits, either directly or indirectly, are defined in the *Immigration and Refugee Protection Act* as inadmissible persons.

If preliminary information indicates that you probably meet all statutory requirements of the *Immigration and Refugee Protection Act*, you will receive a letter asking you to attend an interview at the Canada Immigration Centre in your area. A final determination on your application for permanent residence will be made at this interview. **If you do not attend this interview, it could be interpreted as a lack of interest in permanent residence and your application could be refused.**

If you wish to work or study in Canada while awaiting finalization of your application, you must request and receive an employment or student authorization. You will need the application kit titled ~~–~~Application to Change Conditions or Extend My Stay in Canada" which can be obtained by visiting our website at http://www.cic.gc.ca or contacting the CIC Call Centre.

If your marital status or personal situation changes, please write to this office immediately or contact the CIC Call Centre.

If you leave Canada before your application is finalized, there is no guarantee that you will be re-admitted to continue with this application. [See Section 15.3 of this chapter for an additional paragraph]

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address in the upper corner of this letter, visit the CIC website at http://www.cic.gc.ca or contact the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

Appendix E - Stage 2 assessment – Template letters

Annex 1 – Negative Stage 2

(To use at Stage 2 following new or newly discovered inadmissibility.)

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds.

Humanitarian and compassionate factors were assessed for the purpose of determining whether to grant an exemption from certain legislative requirements to allow processing of your application for permanent residence from within Canada. On [insert date], a representative of the Minister of Citizenship and Immigration Canada approved your request for an exemption from these requirements for the purpose of processing this application. **This decision, however, does not exempt you from the second step of the process, which is meeting all other statutory requirements of the *Immigration and Refugee Protection Act* for which you have not been exempted**, such as medical, security, passport and arrangements for your care and support.

A separate decision has been made regarding your ability to meet other statutory requirements and it appears that you are inadmissible to Canada. Specifically, [provide details]. **As a result, your application for permanent residence is refused and the exemption previously granted has no further effect.**

[Closing for applicants with legal immigration status]

Your temporary resident status expires on [insert date]. If you do not leave Canada on or before this date OR if you do not apply for and receive an extension of your temporary resident status, you will be in Canada without legal status, which may result in enforcement action to remove you from Canada.

[If applicable, also add] You are/will be the subject of a report as a person described in subsection (Act reference).

[Closing for applicants without legal immigration status]

You are presently in Canada without status. [Include instructions regarding departure and/or confirmation of departure, direction to inquiry, reporting for an A44(1) report, etc.]

If you require clarification or more information, visit the CIC website at http://www.cic.gc.ca or contact the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

Annex 2 – Notice to appear to the final examination interview

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds.

In previous correspondence, you were informed that you had been granted an exemption from certain legislative requirements and that you must meet all other statutory requirements of the *Immigration and Refugee Protection Act*. A final determination on whether you meet statutory requirements can only be made at an examination interview.

[For the Case Processing Centre in Vegreville]

Your application has been referred to the Canada Immigration Centre in [city/town]. You will receive a letter from this office when they have scheduled your examination interview.

[For the inland local CIC offices]

An examination interview has been scheduled for you on [insert date and time] at the Canada Immigration Centre, [insert address].

- If you cannot attend this interview, please write to this office immediately, explaining why.
- Failure to appear for this interview may be perceived as lack of interest in permanent residence and your application could be refused.
- If you are currently in receipt of welfare or social services benefits, please write to this office as soon as possible explaining your situation.

Please note:

- if you are currently employed but were receiving welfare or social services benefits when you submitted your application for permanent residence, please bring proof of employment and income and termination of benefits with you to the above-noted interview;
- if you have received welfare or social services benefits at any time since applying for permanent residence, please bring proof of employment and income and termination of benefits with you to the above-noted interview;
- if you believe that you will require the services of an interpreter, you are responsible for hiring/finding an interpreter and ensuring that they attend the interview with you; and
- [**If required**, add the following text: Please ensure that your sponsor attends the interview with you as there may be a requirement to question them.]

Please bring with you:

- a valid passport, identity or travel document or, if you were previously advised that you are exempt from a travel document, other documents establishing your identity;
- the Right of Permanent Residence Fee;
- a photograph meeting the following specifications:
  - shows a full front-view of your head and shoulders showing full face centred in the middle of the photograph
  - has a plain white background
  - has a view of your head that is at least 25 mm (one inch) and at most 35 mm (1.375 inches) in length
  - shows your face un-obscured by sunglasses or any other object
  - is between 25 mm and 35 mm (1” and 1 3/8”) from the chin to the top of the head and have an overall size of 35 mm x 45 mm (1 3/8” x 1 ¾”)
- one photograph is required for each person in your family that is being processed for permanent residence in Canada.

You may wish to bring these instructions to the photographer.

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address in the upper corner of this letter, visit the CIC website at http://www.cic.gc.ca or contact the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

Annex 3 – Negative Stage 2

(To use after "No show" to Appendix E - Annex 2, final examination interview.)

Via registered mail

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. In previous correspondence, you were informed that you had been granted an exemption and that processing of your application would continue to determine whether you met all other statutory requirements.

A recent letter invited you to attend an examination interview at this office for that purpose. You did not appear for this interview nor did you contact this office to explain why. The letter scheduling your examination interview informed you that failure to appear for this interview could be perceived as lack of interest in permanent residence and your application could be refused.

Failure to appear for your examination interview scheduled on [insert date and time], has been interpreted as non-compliance with Section 15(1) of the Immigration and Refugee Protection Act, making you inadmissible under Section 41 of the Act. **As a result, your application for permanent residence is refused and the exemption previously granted has no further effect.**

[Closing for applicants with legal immigration status]

Your temporary resident status expires on [insert date]. If you do not leave Canada on or before this date OR if you do not apply for and receive an extension of your temporary resident status, you will be in Canada without legal status which may result in enforcement action to remove you from Canada.

[If applicable, also add] You are/will be the subject of a report as a person described in subsection [Act reference].

[Closing for applicants without legal immigration status]

You are presently in Canada without status. [Include instructions regarding departure and/or confirmation of departure, direction to inquiry, reporting for an A44 (1) report, etc.]

If you require clarification or more information, visit the CIC website at http://www.cic.gc.ca or contact the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

Annex 4 – Request for further information

(To use during the Stage 2 assessment.)

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. A letter dated [insert date] informed you that on [insert date] a representative of the Minister of Citizenship and Immigration Canada approved your request for an exemption from certain legislative requirements to allow processing of your application for permanent residence from within Canada.

This letter also informed you that you were required to meet all other statutory requirements of the *Immigration and Refugee Protection Act* for which you have not been granted an exemption, for example, medical, security, passport and arrangements for your care and support.

[When further information is to be sent in]

Before a decision can be made about whether you meet the admissibility requirements of the *Immigration and Refugee Protection Act* [provide details], further information is required, specifically: [explain].

Please send the requested information to this office **within thirty (30) days of the date of this letter**. **If you do not reply within 30 days**, the decision about whether you meet statutory requirements will be made based upon the information in your file. If you need more than 30 days to provide the information requested, please write to this office and explain why and how much more time you require.

[When further information is to be provided at interview]

An interview with you [and your sponsor] is required to assess whether you meet the requirement [provide details]. Please come to the Canada Immigration Centre located at [insert address] on [insert date and time]. **If you do not attend this interview**, the decision about whether you meet statutory requirements will be made based upon the information on your file which may result in refusal of your application.

If you cannot attend this interview, please write to this office immediately explaining why.

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address in the upper corner of this letter, visit the CIC website at http://www.cic.gc.ca or contact the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

Annex 5 – Negative Stage 2 based on file information

(To use after "No response/No show" to Appendix E - Annex 4.)

Via registered mail

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds and our recent letter to you dated [insert date] . . .

[When further information was to be sent in]

. . . asking you to send information to this office within thirty (30) days from the date of that letter.

No response was received from you.

[When further information was to be provided at interview]

. . . asking you to attend an interview at this office on [insert date and time].

You did not appear for this interview.

As indicated in our previous letter, a decision about whether you meet all requirements of the *Immigration and Refugee Protection Act* has been made based upon information on your file. On [insert date], a representative of the Minister of Citizenship and Immigration Canada reviewed your file and decided to refuse your Application to Remain in Canada as a Permanent Resident. Your application was refused because there was insufficient information to make a proper decision about whether you met all the admissibility requirements of the *Immigration and Refugee Protection Act* due to your lack of response to the request for more information on this matter.

[Closing for applicants with legal immigration status]

Your temporary resident status expires on [insert date]. If you do not leave Canada on or before this date OR if you do not apply for and receive an extension of your temporary

resident status, you will be in Canada without legal status which may result in enforcement action to remove you from Canada.

[If applicable, also add] You are/will be the subject of a report as a person described in subsection [Act reference].

[Closing for applicants without legal immigration status]

You are presently in Canada without status. [Include instructions regarding departure and/or confirmation of departure, direction to inquiry, reporting for an A44 (1) report, etc.]

If you require clarification or more information, visit the CIC website at http://www.cic.gc.ca or contact the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

Annex 6 – Submissions required on extrinsic information indicating inadmissibility barrier

(To use prior to making a decision based on extrinsic information.)

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. In previous correspondence, you were informed that an exemption had been granted and that your application for permanent residence would continue to be processed to determine whether you met all other statutory requirements of the *Immigration and Refugee Protection Act*, such as medical, security, passport, etc.

New information suggests that your Application to Remain in Canada as a Permanent Resident may have to be refused as it appears you are a person described in subsection (Act reference) of *the Immigration and Refugee Protection Act.* Persons described in this subsection are inadmissible to Canada. Specifically, [provide details] – [Suggested wording for medically inadmissible cases: a medical notification has been received stating that (you are/dependent‘s name is) suffering from (disease/condition and diagnosis from IMM 1014)]. This leads me to believe that you/your family member [may be a danger to public health/will cause excessive demands on health or social services in Canada], which is cause for refusal of your application for permanent residence.

[When further information is to be sent in]

Before a decision is made on this matter, you have the opportunity to provide any information you would like to be considered. Please write to this office **within thirty (30) days of the date of this letter. If you do not reply within 30 days**, a decision will be made based upon information on your file.

If you need more than 30 days to provide the information requested, please write to this office and explain why and how much more time you require.

[When further information is to be provided at interview]

Before a decision is made on this matter, you have the opportunity to provide any information you would like to be considered at an interview with you [and your sponsor]. Please come to the Canada Immigration Centre located at [insert address] on [insert date and time].

If you do not attend this interview, a decision will be made based upon information in your file. If you cannot attend this interview, please write to this office immediately, explaining why.

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address in the upper corner of this letter, visit the CIC website at http://www.cic.gc.ca or contact the CIC Call Centre**:**

Anywhere in Canada (toll-free) 1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

Annex 7 – Submissions received – Negative Stage 2

(To use when a review of the submissions following Appendix E-Annex 6 result in refusal.)

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. A recent letter invited you to respond to new information that had been received suggesting that you were a person described in an inadmissible category.

The information you provided [**when further information was to be sent in:** in your letter of (insert date) OR **when further information was to be provided at interview:** at the interview on (insert date)] has been carefully reviewed together with all other information in your application.

It appears that you are a person described in subsection [Act reference], that is, a person who [provide details]. As a result, your application for permanent residence is refused and the exemption previously granted has no further effect.

[Closing for applicants with legal immigration status]

Your temporary resident status expires on [insert date]. If you do not leave Canada on or before this date OR if you do not apply for and receive an extension of your temporary resident status, you will be in Canada without legal status which may result in enforcement action to remove you from Canada.

You are/will be the subject of a report as a person described in subsection [Act reference].

[Closing for applicants without legal immigration status]

You are presently in Canada without status. [Include instructions regarding departure and/or confirmation of departure, direction to inquiry, reporting for an A44 (1) report, etc.]

If you require clarification or additional information, visit the CIC website at http://www.cic.gc.ca or contact the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

Annex 8 – Submissions received – Resume normal processing

(To use when a review of the submissions following Appendix E-Annex 6 result in finding of "no admissibility barrier".)

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. A recent letter invited you to respond to new information that had been received suggesting that you were a person described in an inadmissible category.

The information you provided [**when further information was sent** in your letter of (insert date) OR **when further information was provided at the interview** on (insert date)] has been carefully reviewed together with all other information in your application.

It has been determined that you are not a person described in subsection [Act reference]. Your application for permanent residence will continue to be processed to determine

whether you meet all other statutory requirements of the *Immigration and Refugee Protection Act*. If more information is required, you will be sent a letter and asked to provide a reply within 30 days from the date the letter is sent to you.

Please note that your application for permanent residence could be refused if:

- you and your family members do not meet all statutory requirements of the *Immigration and Refugee Protection Act* for which you have not been granted an exemption;
- you receive a letter asking for a reply within 30 days and you do not respond within that period;
- you fail to advise this office of any changes to your address. You may inform this office of changes by writing to the address shown in the upper corner of this letter, by contacting the CIC Call Centre or online at http://www.cic.gc.ca; or
- you are not self-supporting and have not been granted an exemption from the requirement to be self-supporting. Persons in receipt of social assistance or welfare benefits, either directly or indirectly, are defined in the *Immigration and Refugee Protection Act* as inadmissible persons.

If preliminary information indicates that you probably meet all statutory requirements of *the Immigration and Refugee Protection Act*, you will receive a letter asking you to attend an interview at the Canada Immigration Centre in your area. A final determination on your application for permanent residence will be made at this interview. **If you do not attend this interview, it could be interpreted as a lack of interest in permanent residence and your application could be refused.**

If you wish to work or study in Canada while awaiting finalization of your application, you must request and receive an employment or student authorization. You will need the application kit titled "Application to Change Conditions or Extend My Stay in Canada" which can be obtained by visiting our website at http://www.cic.gc.ca or by contacting the CIC Call Centre.

If your marital status or personal situation changes, write to this office immediately or contact the CIC Call Centre.

If you leave Canada before your application is finalized, there is no guarantee that you will be re-admitted to continue with this application.

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address in the upper corner of this letter, visit the CIC website at http://www.cic.gc.ca or contact the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

Annex 9 – Submissions received – Notice to appear at the final examination interview

(To use when a review of the submissions following Appendix E-Annex 6 result in a positive assessment.)

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. A recent letter invited you to respond to new information that had been received suggesting that you were a person described in an inadmissible category.

The information you provided [**when further information was to be sent in:** in your

letter of (insert date) OR **when further information was to be provided at interview:** at the interview on (insert date)] has been carefully reviewed together with all other information in your application.

It appears that you are not a person described in subsection [Act reference].

Previous correspondence advised that you had been granted an exemption from certain legislative requirements of the *Immigration and Refugee Protection Act* and that you must meet all other statutory requirements of the Act. A final determination on whether you meet statutory requirements can only be made at an examination interview.

An examination interview has been scheduled for you on [insert date and time] at the Canada Immigration Centre, [insert address].

Please note:

- if you are currently in receipt of welfare or social services benefits, please write to this office as soon as possible explaining your situation;
- if you are currently employed but were receiving welfare or social services benefits when you submitted your application for permanent residence, please bring proof of employment and income and termination of benefits with you to the above noted interview;
- if you have received welfare or social services benefits at any time since applying for permanent residence, please bring proof of employment and income and termination of benefits with you to the above noted interview;
- if you cannot attend this interview, please write to this office immediately, explaining why;
- **failure to appear for this interview may be perceived as lack of interest in permanent residence and your application could be refused;**
- if you believe that you will require the services of an interpreter, you are responsible for hiring/finding an interpreter and ensuring that they attend the interview with you; and
- [**If required**, add the following text: please ensure that your sponsor attends the interview with you as there may be a requirement to question them.]

Please bring with you:

- a valid passport, identity or travel document or, if you were previously advised that you are exempt from a travel document, other documents establishing your identity;
- the Right of Permanent Residence Fee;
- a photograph meeting the following specifications:
  - ♦ shows a full front-view of your head and shoulders showing full face centred in the middle of the photograph;
  - ♦ has a plain white background;
  - ♦ has a view of your head that is at least 25 mm (one inch) and at most 35 mm (1.375 inches) in length;
  - ♦ shows your face un-obscured by sunglasses or any other object; and
  - ♦ is between 25 mm and 35 mm (1” and 1 3/8”) from the chin to the top of the head and have an overall size of 35 mm x 45 mm (1 3/8” x 1 ¾”); and
- one photograph for each person in your family that is being processed for permanent residence in Canada.

IP 5 Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds

You may wish to bring these instructions to the photographer.

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address in the upper corner of this letter, visit the CIC website at http://www.cic.gc.ca or contact the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

Appendix F Miscellaneous – Template letters

Annex 1 – Submission required on extrinsic information suggesting misrepresentation

(To use when extrinsic information suggesting misrepresenation of H&C factors is received after a positive Stage 1 assessment.)

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. A letter dated [insert date] informed you that on [insert date] a representative of the Minister of Citizenship and Immigration Canada approved your request for an exemption from certain legislative requirements. The exemption decision was made based upon information you provided in your application [and at an interview on (insert date)], specifically, [provide details].

New information has been received that could be material to the exemption decision made previously. This means, if this information is correct and had it been known at the time the exemption decision was being made, it is possible that an exemption would not have been granted in your application. **As a result, the original decision to exempt you from the requirement may have to be reopened and all factors may have to be re-examined taking into account the new information received.**

Specifically, it has come to light that [describe new information]. This differs from the information you provided to the extent that it could be considered to be misrepresentation or fraud related to a material fact.

[When further information is to be sent in]

Before a decision is made on this matter, you have the opportunity to provide any information you would like to be considered. Please write to this office **within thirty (30) days of the date of this letter**. **If you do not reply within 30 days**, a decision will be made based upon the information in your file.

If you need more than 30 days to provide the information requested, please write to this office and explain why and how much more time you require.

[When further information is to be provided at interview]

Before a decision is made on this matter, you have the opportunity to provide any information you would like to have considered at an interview with you [and your sponsor]. Please come to the Canada Immigration Centre located at [insert address] on [insert date and time].

If you do not attend this interview, a decision will be made based upon the information on your file which may result in refusal of your application.

If you cannot attend this interview, please write to this office immediately, explaining why.

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address in the upper corner of this letter, visit the CIC website at http://www.cic.gc.ca or contact the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

Annex 2 – Reopen Stage 1 decision based on file information – Negative Stage 1

(To use when "No response/No show" following Appendix F Annex 1 results in a negative assessment.)

Via registered mail.

This refers to your application for permanent residence from within Canada on

humanitarian and compassionate grounds.

A recent letter indicated that new information, different from the information you previously provided, had been received and that this could result in reopening the decision to approve your exemption.

[When further information was to be sent in]

You were invited to send any information that you wished to be considered to this office within thirty (30) days from the date of that letter. No response was received from you.

[When further information was to be provided at an interview]

You were asked to attend an interview at this office on [insert date and time]. You did not appear for this interview.

As indicated in our previous letter, a determination about reopening the decision to approve your exemption has been made based upon information on your file. On [insert date], a representative of the Minister of Citizenship and Immigration Canada decided that there is evidence suggesting misrepresentation or fraud related to a material fact and, had this information been known at the time of the original decision, an exemption would not have been granted in your case. **As a result, the exemption previously granted has no further effect and processing of your application will not continue.**

[Closing for applicants with legal immigration status]

Your temporary resident status expires on [insert date]. If you do not leave Canada on or before this date OR if you do not apply for and receive an extension of your temporary resident status, you will be in Canada without legal status which may result in enforcement action to remove you from Canada.

You are/will be the subject of a report pursuant to subsection A44 (1) as a person who has remained in Canada by reason of fraudulent or improper means or misrepresentation of a material fact. [Include additional instructions if required]

[Closing for applicants without legal immigration status]

You are presently in Canada without status. [Include instructions regarding departure and/or confirmation of departure, direction to inquiry, reporting for an A44(1) report, etc.]

If you require clarification or more information, visit the CIC website at http://www.cic.gc.ca or contact the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

Annex 3 – Submissions received – Resume normal processing

(To use when a review of the submissions following Appendix F-Annex 1 results in finding of insufficient evidence of misrepresentation.)

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. A recent letter indicated that new information, different from the information you previously provided, had been received and that this could result in reopening the decision to approve your exemption.

The information you provided [**when further information was to be sent in:** in your letter of (insert date) OR **when further information was to be provided at interview:** at the interview on (insert date)] has been carefully reviewed together with all other information in your application.

It has been determined that there is insufficient information regarding misrepresentation or fraud related to a material fact. **As a result, the exemption previously granted**

remains in effect and normal processing of your application has resumed.

Your application for permanent residence will continue to be processed to determine whether you meet all other statutory requirements of the *Immigration and Refugee Protection Act*, such as, medical, security, passport and arrangements for your care and support. If more information is required, you will be sent a letter and asked to provide a reply within 30 days from the date the letter is sent to you.

Please note that your application for permanent residence could be refused if:

- you and your family members do not meet all statutory requirements of the *Immigration and Refugee Protection Act* for which you have not been granted an exemption;
- you receive a letter asking for a reply within 30 days and you do not respond within that period;
- you fail to advise this office of any changes to your address. You may inform this office of changes by writing to the address shown in the upper corner of this letter, by contacting the CIC Call Centre or on-line at http://www.cic.gc.ca; or
- you are not self-supporting and have not been granted an exemption from the requirement to be self-supporting. Persons in receipt of social assistance or welfare benefits, either directly or indirectly, are defined in the *Immigration and Refugee Protection Act* as inadmissible persons.

If preliminary information indicates that you probably meet all statutory requirements of *the Immigration and Refugee Protection Act*, you will receive a letter asking you to attend an interview at the Canada Immigration Centre in your area. A final determination on your application for permanent residence will be made at this interview. **If you do not attend this interview, it could be interpreted as a lack of interest in permanent residence and your application could be refused.**

If you wish to work or study in Canada while awaiting finalization of your application, you must request and receive an employment or student authorization. You will need the application kit titled ―Application to Change Conditions or Extend My Stay in Canada" which can be obtained by visiting our website at http://www.cic.gc.ca or contacting the CIC Call Centre.

If your marital status or personal situation changes, please write to this office immediately or contact the CIC Call Centre.

If you leave Canada before your application is finalized, there is no guarantee that you will be re-admitted to continue with this application. [See Section 15.3 of this chapter for an additional paragraph.]

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address in the upper corner of this letter, visit the CIC website at http://www.cic.gc.ca or contact the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

Annex 4 – Submissions received – Reopen Stage 1 decision – Negative assessment

(To use when a review of the submissions following Appendix F-Annex 1 results in finding of sufficient evidence of misrepresentation.)

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. A recent letter indicated that new information, different from the information you previously provided, had been received and that this could result in reopening the decision to approve your exemption.

The information you provided [**when further information was to be sent in:** in your letter of (insert date) OR **when further information was to be provided at interview:** at the interview on (insert date)] has been carefully reviewed together with all other information in your application. On [insert date], a representative of the Minister of Citizenship and Immigration decided that there is evidence suggesting misrepresentation or fraud related to a material fact and, had this information been known at the time of the original decision, an exemption would not have been granted in your case. **As a result, the exemption previously granted has no further effect and processing of your application will not continue**.

[Closing for applicants with legal immigration status]

Your temporary resident status expires on [insert date]. If you do not leave Canada on or before this date, OR if you choose to remain in Canada and do not apply for and receive an extension of your temporary resident status, you will be in Canada without legal status. This may result in enforcement action to remove you from Canada.

You are/will be the subject of a report pursuant to Subsection A44 (1) as a person who has remained in Canada by reason of fraudulent or improper means or misrepresentation of a material fact. [Include additional instructions if required.]

[Closing for applicants without legal immigration status]

You are presently in Canada without status. [Include instructions regarding departure and/or confirmation of departure, direction to inquiry, reporting for an A44(1) report, etc.]

If you require clarification or more information, visit the CIC website at http://www.cic.gc.ca or contact the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

Annex 5 – Appears application will be refused based on A39

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds. In previous correspondence, you were informed that an exemption had been granted and that your application for permanent residence would continue to be processed to determine whether you met all other statutory requirements of the *Immigration and Refugee Protection Act*, such as medical, security, passport, etc.

You were also advised that your application for permanent residence could be refused if you are not self-supporting, that is, in receipt of social assistance or welfare benefits, either directly or indirectly and you have not been granted an exemption from the requirement to be self-supporting. If so, this means that you are a person described in Section 39 of the *Immigration and Refugee Protection Act* and persons described in this Subsection are inadmissible to Canada. Specifically, [provide details - e.g. you are currently in receipt of welfare benefits which you have been receiving since (insert date)].

[When further information is to be sent in]

Before a final decision is made on this matter, you have the opportunity to provide any information you would like considered. Please write to this office **within thirty (30) days of the date of this letter**. **If you do not reply within 30 days**, a decision will be made based upon information on your file.

If you need more than 30 days to provide the information requested, please write to this

office and explain why and how much more time you require.

[When further information is to be provided at interview]

Before a final decision is made on this matter, you have the opportunity to provide any information you would like considered at an interview with you [and your sponsor]. Please come to the Canada Immigration Centre located at [insert address on [insert date and time].

If you do not attend this interview, a decision will be made based upon information in your file. If you cannot attend this interview, please write to this office immediately, explaining why.

If you require clarification, more information, wish to provide a change of address or other information, please write to us at the address in the upper corner of this letter, visit the CIC website at http://www.cic.gc.ca or contact the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

Annex 6 – Ready for permanent residence but RPRF not paid

(To use when client did not pay the RPRF at the final interview.)

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds.

You attended an examination interview at this office on [insert date]. At that time, you did not pay for the Right of Permanent Residence Fee nor did you show proof of a loan approval for this fee. As indicated at the interview, your application will be held open until such time as you make arrangements for a loan or payment of the fee.

Because you are not a permanent resident of Canada, please ensure that you apply for an extension of your temporary resident, student or employment authorizations. If you require an application kit to extend your status in Canada or wish to apply for a Right of Permanent Residence Fee loan, please contact the CIC Call Centre or visit our website at http://www.cic.gc.ca.

If you require clarification, more information, wish to provide a change of address or arrange another examination interview when you are able to pay the Right of Permanent Residence Fee or have obtained loan approval, please write to us at the address in the upper corner of this letter, visit the CIC website at http://www.cic.gc.ca or contact the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

Annex 7 – Request to withdraw sponsorship refused – Letter to sponsor

(To use when sponsor requested to withdraw their undertaking.)

This refers to the Undertaking of Assistance you submitted in support of the application for permanent residence from within Canada on humanitarian and compassionate grounds made by [name of principal applicant].

We have received your correspondence of [insert date] indicating your desire to withdraw or cancel this Undertaking.

On [insert date] a representative of the Minister of Citizenship and Immigration Canada

granted your relative's request for an exemption from certain legislative requirements of the *Immigration and Refugee Protection Act*. This exemption was granted, in part, on the basis of the Undertaking you submitted. At this stage, the assessment is final. **As a result, your request to withdraw or cancel the Undertaking cannot be accepted and fees paid in relation to the application for permanent residence are not refundable.**

As a sponsor, you have signed a promise to provide for the lodging, care and support of your relative(s) as may be required. You must support your relative(s) for [x] years from the date they become permanent resident(s). Your obligations to provide adequately for your relative(s) during the entire sponsorship period, as required, are to provide the following:

- a place to live;
- food, clothing, other living expenses; and
- financial assistance to ensure that they do not require support from any federal or provincial assistance program, or welfare or social assistance from a municipal program.

If payments are made to your relative(s) from any federal, provincial or municipal assistance program, you will be in breach of the agreement made when you signed the Undertaking to support your relatives in Canada.

If you require clarification, more information or wish to provide a change of address or other information, please write to us at the address in the upper corner of this letter, visit the CIC website at http://www.cic.gc.ca or contact the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

Annex 8 – Request to withdraw sponsorship approved – Letter to sponsor

(To use when sponsor requested to withdraw their Undertaking.)

This refers to the Undertaking of Assistance you submitted in support of the application for permanent residence from within Canada on humanitarian and compassionate grounds made by [name of principal applicant].

We have received your correspondence of [insert date] indicating your desire to withdraw or cancel this Undertaking.

[For application received - no decisions made on undertaking or H&C application]

Although the application and Undertaking were received, no decisions were made on either matter at the time you contacted this office. We are returning the Undertaking to you with the notation ~~-n~~ot processed at request of sponsor" and have updated our records to reflect your wish to withdraw or cancel your sponsorship.

[For application received - undertaking approved but no H&C decision made]

Your Undertaking in support of your relative's application was approved on [insert date]. No decision, however, has been made on your relative's application for permanent residence.

As a result, your request to withdraw or cancel the Undertaking of Assistance on behalf of [name of principal applicant] can be accepted, however, there is no entitlement to a refund of any fees paid in relation to the undertaking or application. We will review your relative's application for permanent residence with the knowledge that it is not supported by a sponsorship undertaking. You may wish to keep this letter as confirmation that you do not have a sponsorship obligation to [name of

principal applicant].

If you require clarification, more information or wish to provide a change of address or other information, please write to us at the address in the upper corner of this letter, visit the CIC website at http://www.cic.gc.ca or contact the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

Note: c.c. Applicant for permanent residence.

Annex 9 – Applicant is ineligible to submit H&C application

(Foreign National applicant is ineligible to submit multiple H&C applications)

We are returning your application for permanent residence from within Canada based on humanitarian and compassionate (H&C) considerations, along with a refund of the cost recovery processing fees. Our records indicate that an H&C application was received from you on (insert date) and is pending a decision. In accordance with Section 25(1.2) of the *Immigration and Refugee Protection Act*, you are not eligible to make another request for H&C consideration while you have a request outstanding.

an H&CIf you require clarification, please write to us at the address in the upper corner of this letter, visit the CIC website at http://www.cic.gc.ca or contact the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

[Specific to Canadian citizens or permanent residents closing for applicants when it is determined that they have CC or PR status at time application is received.]

We are returning your application for permanent residence from within Canada based on humanitarian and compassionate (H&C) considerations, along with a refund of the cost recovery processing fees. As a [permanent resident/Canadian citizen], you are not eligible for H&C consideration as you currently have permission to reside in Canada.

[Specific to Canadian citizens or permanent residents – closing for applicants when it is determined that they did not have CC or PR status when application was received, but after file was assigned to officer it was determined that applicant has obtained CC or PR status.]

We are returning your application for permanent residence from within Canada based on humanitarian and compassionate (H&C) considerations. The cost recovery processing fees that you paid are non-refundable. If you have paid the Right of Permanent Residence Fee, it will be refunded in eight to ten weeks. As a [permanent resident/Canadian citizen], you are not eligible for H&C consideration as you currently have permission to reside in Canada.

[Specific to Canadian citizens or permanent residents – closing for applicants where Permanent Residence Determination (PRD) or loss of status process is underway/not concluded when application is received by CIC officer]

Specifically, I note that you are [describe client's situation, e.g. in the process of examination of possible loss of status]. If it is ruled that you have not lost/should not lose your [permanent residence/Canadian citizenship], there is no need for you to apply for H&C consideration. If, however, the ruling concludes that there is a loss of status, you would be eligible to submit an H&C application at that time.

If you require clarification, please write to us at the address in the upper corner of this letter, visit the CIC website at http://www.cic.gc.ca or contact the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

Annex 10 – Applicant is ineligible for H&C application

(Specific to clients whose PR status has not been re-determined yet and are currently in Canada with a temporary resident status.)

We are returning your application for permanent residence from within Canada based on humanitarian and compassionate (H&C) factors, including cost recovery processing fees. As a person who was a permanent resident and who has been re-admitted to Canada as a temporary resident, we cannot consider a request for permanent residence until you attend a **re-determination interview** at the Canada Immigration Centre closest to where you reside.

This re-determination interview will be conducted at the Canada Immigration Centre to examine the reasons and length of your absence from Canada and is for the purpose of determining whether you have, in fact, lost your permanent resident status in Canada. If it is decided that you have not lost or should not lose your permanent resident status, there is no need for an H&C application. If, however, the ruling concludes that there is a loss of status and you agree with this ruling, you would then be eligible to submit an H&C application. If you do not agree and you challenge this ruling, you will not be eligible to submit an H&C application until a final determination is made with respect to your permanent resident status.

Until there is a final determination on your permanent resident status, please ensure that you apply for extensions of your temporary resident status that expires on [insert date]. If you require an application kit to extend your status in Canada, please visit our website at http://www.cic.gc.ca or contact the CIC Call Centre.

If you require clarification, please write to us at the address in the upper corner of this letter, visit the CIC website at http://www.cic.gc.ca or contact the CIC Call Centre:

Anywhere in Canada (toll-free) 1-888-242-2100

By copy of this letter, we are notifying the Canada Immigration Centre in your area of the need for a re-determination interview.

You may wish to contact that office, quoting the client number in the upper right corner of this letter. This is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

cc. Canada Immigration Centre - ATT: Manager

Annex 11 – Confirmation of client request to withdraw H&C application

This refers to your application for permanent residence from within Canada on humanitarian and compassionate grounds.

Following your request to withdraw your application received on [insert date], your application has been withdrawn.

Please note that processing fees submitted for this application are non-refundable. If you have also paid the Right of Permanent Residence fee, a refund request will be made on your behalf to the Receiver General for Canada. You will receive a separate letter regarding the refund at a later date.

The client number in the upper right corner of this letter is your personal identification number and it provides access to information on your file. For your own protection, do not allow any other person to use this number.

Annex 12 - Submissions received after refusal – Case not reopened

This letter is in response to the receipt of additional submissions dated (date), pertaining to your Humanitarian and Compassionate (H&C) application for permanent residence in Canada.

Your H&C application was considered on its substantive merits and has been refused. You were provided with the decision in person on (date), thereby fully concluding your application. After considering the additional submissions, the initial decision to refuse your H&C application remains unchanged.

Should you have different or additional information, you may wish to submit a new H&C application for permanent residence in Canada, including fees to the Case Processing Centre in Vegreville, Alberta.

Annex 13 – Submissions received after refusal – case reopened

This letter is in response to your letter of [insert date] regarding your application for permanent residence from within Canada on humanitarian and compassionate grounds made by [insert name].

[Insert name]‘s application for permanent residence in Canada was considered on its substantive merits and [if applicable, for possible humanitarian and compassionate grounds] was refused. [Insert name] was provided with the decision containing the reasons for refusing their application for permanent residence in Canada by letter addressed to them dated [date], thereby concluding their application.

I have reviewed the additional information, provided after the decision to refuse the application, for its significance in terms of the decision that was rendered and I have decided to reopen the case. You will be advised whether the original decision is confirmed or changed.

Appendix G: Medical inadmissibility - Excessive demand on social services

See also OB 063 dated September 24, 2008, and OB 063B dated July 29, 2009.

Procedural fairness letter

[*INSERT LETTERHEAD*]

Our Ref.:

[INSERT ADDRESS]

Dear **[*INSERT NAME]***:

This letter concerns your application for an immigrant visa [or: application for permanent residence in Canada]. Based on a review of your file, it appears that you or your family member may not meet the requirements for immigration to Canada.

I have determined that you/your family member, **[*name*]**, are/is a person whose health condition might reasonably be expected to cause excessive demand on social services in Canada. An excessive demand is a demand for which the anticipated costs exceed the average Canadian per capita health and social services costs, which is currently set at $5,505[i] per year. Pursuant to Subsection 38(1) ***[and pursuant to Section 42 in the case of a family member]*** of the *Immigration and Refugee Protection Act*, it therefore appears that you may be inadmissible on health grounds.

You/your family member, **[*name*],** have/has the following medical condition or diagnosis: **[*Insert name of disease or condition and diagnosis from IMM 5365*.]** In particular:

[Insert narrative from IMM 5365 – excluding the list of social services required and cost implications.]

In consultation with the Health Management Branch of Citizenship and Immigration Canada, I have determined that the following social services will be required:

[Insert list of social services required, cost implications and period indicated by the medical officer from IMM 5365.]

Before I make a final decision, you have the opportunity to submit additional information that addresses any or all of the following:

- the medical condition(s) identified;
- social services required in Canada for the period indicated above; and
- your individualized plan to ensure that no excessive demand will be imposed on Canadian social services for the entire period indicated above and your signed Declaration of Ability and Intent.

You must provide any additional information **within 60 days of the date of this letter**. If you choose not to respond, I will make my decision based on the information before me, which may result in your application being refused.

In order to demonstrate that you/your family member will not place an excessive demand on social services, if permitted to immigrate to Canada, you must establish to the satisfaction of the assessing officer that you have a reasonable and workable plan, along with the financial means and intent to implement this plan, in order to offset the excessive demand that you would otherwise impose on social services, after immigrating to Canada. The Sections of the *Immigration and Refugee Protection Regulations* that define the meanings of "social services" and "excessive demand" are included for your reference.

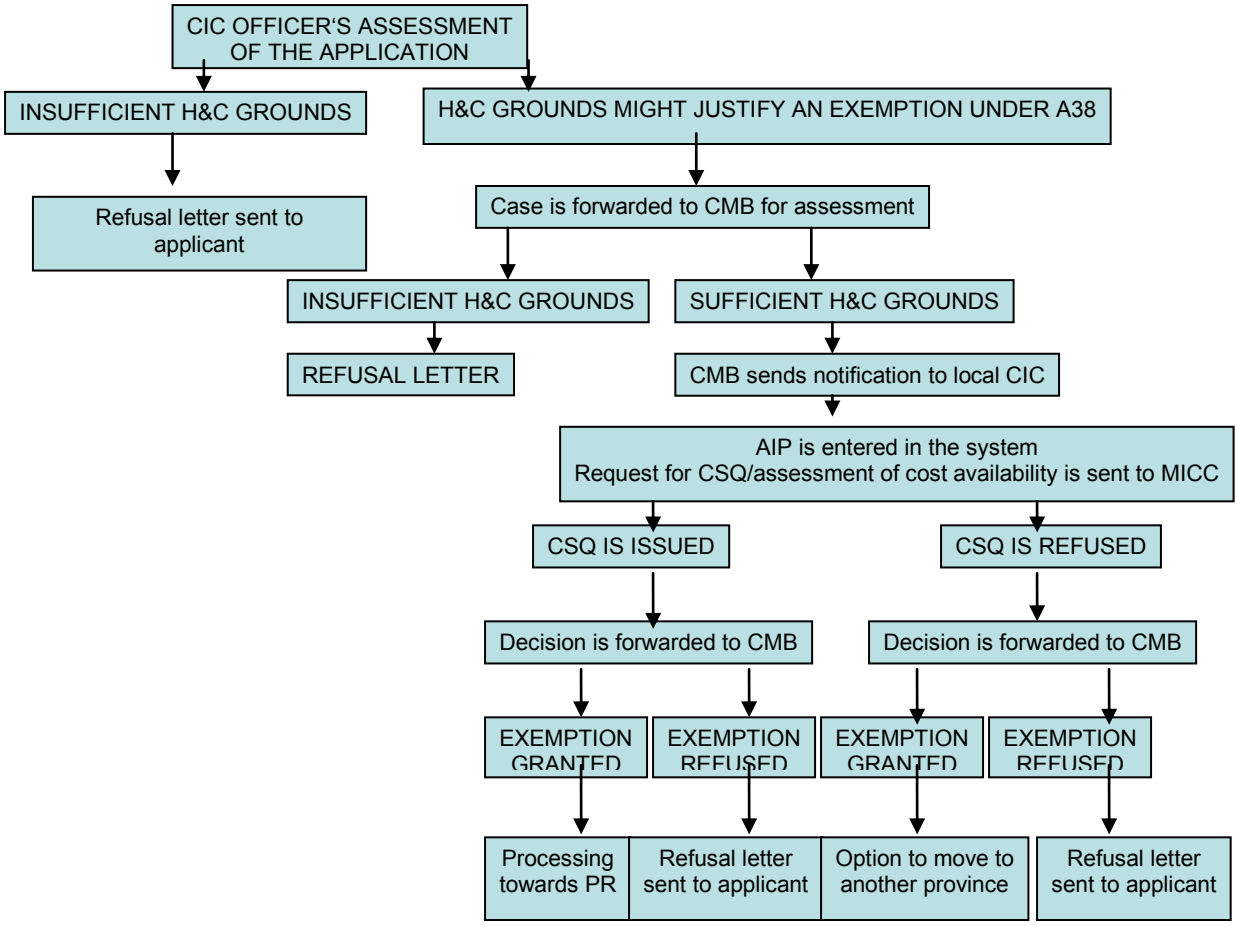
Please ensure that you quote the file number indicated in the upper corner of this letter on any information you submit.

Yours truly,

Officer
[Appropriate Signature Block].

[1] This amount is updated annually in April. This figure is for 2010.

Appendix H Health inadmissibility known by CIC prior to Stage 1 decision – Process for Quebec region



Appendix I Health inadmissibility known by CIC after positive Stage 1 decision – Process for Quebec Region