

IP 10 Refusal of National Security Cases/Processing of National Interest Requests

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Updates to chapter

Listing by date

Date: 2012-04-30

Among the changes to this chapter, the highlights include:

- Delete the portion in section 1 about Ministerial relief.
- Delete the portion in section 4 about Ministerial relief.
- Delete the portion of section 5 that addresses Ministerial relief.
- Delete all of the text in section 6, **except** for the portion titled National security. Specifically, the portions titled Ministerial relief and National interest would be deleted.
- Delete the portion in 7.2 about Ministerial relief.
- Delete the portion of 8.6 about Ministerial relief
- Delete the portion of 8.8 about Ministerial relief.
- Delete all of the text in section 9
- Delete most of section 10. Specifically, delete the last sentence of the first paragraph and the last sentence of the second paragraph. Plus, delete the third, fourth and fifth paragraphs.
- Delete the text in appendices B, D, and E

Date: 2005-10-24

Among the many changes to this chapter, the highlights include:

- Section 8.3 “Procedures at inland CIC” was renamed “Guidance to officers” to provide more accurate information on information sources where officers may consult when processing these types of cases.
- Section 8.4 was updated to reflect updated information for officers regarding the purpose of security interviews
- Section 8.7 “Exceptions to interview” was added.
- Section 8.8 was clarified to include additional information for officers relying on a previous finding of inadmissibility or exclusion by an independent tribunal as a conclusive finding of fact.
- Section 8.9 “Suspending the application for investigative purposes” was added to clarify procedures for CIC officers who are not in a position to render a decision on a case due to lack of open source information or require further investigation. In such instances, the file may have to be transferred to the CBSA for further research and investigation.
- Sections 9.2 and 9.4 were amended to include the new address for the CIC officer’s report to the CBSA.

1. What this chapter is about

In addition to the general procedures for processing applications for permanent residence in Canada this chapter outlines procedures to be applied in cases involving possible inadmissibility on grounds of national security. These guidelines are issued to ensure consistency in the application of procedural fairness requirements.

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2. Program objectives

The program objectives addressed by these procedures are:

- to protect the safety and security of Canadians;
- to deny access to Canada to persons who are security risks or involved in organized crime;
- to ensure that Canada does not become a safe haven for persons who have been involved in war crimes or crimes against humanity.

3. The Act and Regulations

For information about:	Refer to:
Inadmissibility on security grounds	A34
Inadmissibility on grounds of human or international rights violations	A35
Inadmissibility on grounds of organized criminality	A37
Report on inadmissibility	A44(1)

4. Instruments and delegations

CIC officers with the delegated authority to process an application for permanent residence have the authority to make a finding of inadmissibility and refuse an application if an applicant is described in A34(1), A35(1) and A37(1). See IL 3, Module 1, items 20, 32 and 34.

5. Departmental policy

An officer must be satisfied that a foreign national is not inadmissible before granting an application for permanent residence. One of the objectives of IRPA is to deny access to Canadian territory to persons who are criminals and security risks. In keeping with this objective, officers must refuse an application for permanent residence if the applicant is inadmissible on grounds of security [A34], human or international rights violations [A35], and organized criminality [A37]. This chapter applies to all applications for permanent residence in Canada.

6. Definitions

National security

Refers to grounds of inadmissibility which pertain to the above program objectives. These are contained in sections A34, A35, and A37.

7. Procedure - Procedural fairness

7.1. General requirements

Procedural fairness is a broad concept which applies in various ways to all facets of processing. A general overview of procedural fairness may be found in OP 1, section 8. Applications for permanent residence are normally decided on the basis of the information provided by the applicant, not on extrinsic or third party information.

However, if the finding of inadmissibility is based on extrinsic information, the applicant is entitled to be made aware of this information and to present evidence and submissions in response to this information.

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Classified information must never be disclosed to the applicant. In cases involving classified information, officers are required to contact the National Security Division, Intelligence Directorate, CBSA for guidance. Refer to Appendix G for contact information.

7.2. Specific requirements

The procedural fairness requirements when assessing inadmissibility are as follows:

- The decision-maker must make the decision on complete information. All documents provided by the applicant must be considered by the decision-maker. It is not acceptable that the contents of such documentation be summarized for the decision maker without attaching the primary documentation.
- The applicant is entitled to be provided with all the relevant information that will be considered by the decision-maker to challenge the information and to present evidence and submissions. This entitlement is limited where disclosure of the information would be injurious to national security or to the safety of any person.
- The applicant is entitled to be made aware of concerns raised by the officer and to respond to those concerns.

8. Procedure - Adverse information

8.1. File transfer from CPC

Protected persons and other prescribed classes of foreign nationals can apply to become permanent residents from within Canada. They must meet the requirements of the Act and Regulations and not be inadmissible.

Foreign nationals may also apply to become permanent residents from within Canada based on humanitarian and compassionate considerations pursuant to A25. These guidelines must be read in conjunction with IP 5 when making a decision on the applicant's admissibility.

Applications for permanent residence will normally be processed by the CPC unless there are known or suspected grounds of inadmissibility such as serious criminality or national security reasons. In these cases, the file is transferred to the local CIC for continued processing.

8.2. Role of inland CIC

The officer at the inland CIC office must review the available information, obtain any further information that may be required and make a determination on admissibility. If the officer determines that the person is not inadmissible, the officer will conclude the case to the granting of permanent residence. If the officer determines that the person is inadmissible, the application for permanent residence will be refused and the file transferred to the appropriate CBSA enforcement unit. The A44(1) report will be prepared after the file transfer in cases of national security.

8.3. Guidance to officers

These cases are usually complex and often require the input of an Intelligence Analyst, in particular, where adverse information is received from another agency. For functional direction and guidance in applying the inadmissibility provisions of the *Immigration and Refugee Protection Act* (IRPA), consult ENF 1 Inadmissibility. It is a requirement that the CIC officer contact the National Security Division Intelligence Directorate, CBSA. An analyst will be assigned as a resource person to assist the officer.

The CBSA analyst will provide the following assistance:

- suggestions and guidance for processing of the case;

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- development of a strategy for interview and assistance in developing interview questions;
- clarification of the adverse information and whether it could result in a finding of inadmissibility on national security grounds;
- request for additional information from sources that may not be available to the officer;
- guidance on disclosure where the information could be injurious to national security or to the safety of any person.

When appropriate, CIC officers may also seek guidance from Regional Intelligence and Enforcement Units, CBSA.

For additional information on processing individuals alleged to have committed war crimes and/or crimes against humanity, consult ENF 18 War crimes and crimes against humanity.

8.4. Interview required

Where it appears that information may render the applicant inadmissible on national security grounds, the applicant should be invited by letter to attend an interview with CIC. The content of the letter may be discussed with the CBSA NHQ analyst, but should always include section A34, A35, or A37 in their entirety. (Refer to Appendix A for a sample invitation letter). The purpose of the interview is:

- to apprise the applicant of the extrinsic information that will be taken into account in rendering a decision on admissibility;
- to apprise the applicant of concerns about their admissibility to Canada;
- to allow the applicant to address concerns regarding fraud or misrepresentation, if applicable;
- to provide the applicant with an opportunity to address the extrinsic information as well as the officer's concerns and to provide any additional information or submissions relating to their admissibility;
- to enable the officer to obtain sufficient information from the applicant for the purpose of assessing potential inadmissibility.

Note: It is important that officers inform applicants prior to the commencement of the interview that it is not an admissibility hearing, where immediate enforcement action may follow, but rather, it is for fact-finding purposes to enable the officer to assess the client's application for permanent residence.

8.5. Preparation for interview

Preparation is critical for a successful interview. It is essential that all extrinsic information and concerns are presented to the applicant in a structured manner without revealing classified information or third party sources. Interview strategy and interview questions should be developed in consultation with the CBSA NHQ analyst assigned to the case. The issue of what information can be disclosed and how it may be presented should be developed in consultation with the NHQ analyst. If the applicant provided misleading information or omitted relevant information on the application, the issue of misrepresentation should be addressed. It is recommended that such interviews be conducted by experienced officers or officers specialized in national security cases.

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8.6. Conduct of interview

The applicant must be advised that the purpose of the interview is to discuss the concerns relating to admissibility and to provide the applicant with an opportunity to address these concerns.

The officer must advise the applicant of any additional information of which they may not be aware that will be considered in rendering a decision on admissibility. The exact content of what can be disclosed and how it should be presented will have been predetermined through consultation with the CBSA NHQ. If the officer has additional concerns that will be used in rendering a decision, they must also be disclosed to the client. The client must be permitted to respond to all of the information and concerns.

It is important that detailed notes be placed on file documenting what was disclosed at the interview and the applicant's responses. These notes will constitute the record of what transpired at the interview and will assist the officer in rendering a final decision. If the decision is to refuse the application, the notes will be of assistance when preparing the letter of refusal. The notes will also be of assistance in any future litigation to demonstrate that procedural fairness was provided to the applicant. Upon completion of the interview, the applicant should be informed that a letter will be issued advising of the decision.

Where the applicant requests additional time to prepare a written submission, they should be provided with a reasonable time (e.g., 15 days) to do so. It should be made clear that, if written submissions are not received by that time, a final decision will then be rendered.

8.7. Exceptions to interview

An interview is always considered preferable to an exchange of documents. It allows the officer to observe the non-verbal behaviour of the applicant, which may provide insights into credibility, and provides an opportunity for continuous exchange and clarification. It also allows an opportunity for the applicant to ask additional questions and seek clarification.

There will be situations where an interview is not practical due to distance, security, or other considerations. In such situations, the disclosure may be done in writing. This will require that the additional extrinsic information that would otherwise be given at an interview be provided to the applicant in writing, subject to the limits on disclosure mentioned above. The letter should be prepared in consultation with the CBSA NHQ analyst, as required, and be delivered by courier. The person should sign the acknowledgment of receipt. See Appendix C for a sample disclosure letter.

8.8. Rendering a decision

The results of the interview may be discussed with the CBSA NHQ analyst. However, the analyst must exercise caution in providing information and advice to the officer to ensure that their decision is not fettered. Notwithstanding any advice that may be provided, officers are expected to exercise their independent judgement in deciding whether a person is inadmissible.

It should be noted that officers processing an application for permanent residence may rely on a previous finding of inadmissibility or exclusion by an independent tribunal such as the IRB or the Federal Court as a conclusive finding of fact. However, an A44(1) report, which was not the subject of an admissibility hearing, does not constitute, in itself, a conclusive finding of fact concerning the person's inadmissibility.

Procedural fairness requires that the officer must render a decision in a timely manner. Where the officer determines that the person is not inadmissible on grounds of national security, the person should be advised accordingly and informed that the processing of the application will continue. Where the officer determines that the person is inadmissible,

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a letter refusing the application for permanent residence should be sent to the applicant. While it is not necessary to provide detailed reasons to the client, the officer must record the reasons for their decision in notes on the file. The content of the letter may be discussed with the CBSA NHQ analyst. See Appendix F for a sample refusal letter.

After the application for permanent residence has been refused, the file should be transferred to the appropriate CBSA enforcement unit. The enforcement unit will determine the appropriate action to take, including whether to prepare an A44(1) report and refer it to the Immigration Division for an admissibility hearing.

8.9. Suspending the application for investigative purposes

Following the interview, there may be some instances where the CIC officer is not in a position to make a determination on the applicant's admissibility due to the lack of open source information and/or the requirement for further investigation. The CIC officer, with concurrence of their supervisor, may hold processing of the application for permanent residence in abeyance and transfer the file to the CBSA.

The CBSA will complete the investigation as required and determine whether it is appropriate to prepare a section 44 report and proceed with an admissibility hearing. The CIC officer will resume processing of the application for permanent residence if the CBSA determines that the case does not require referral to the Immigration Division or when a decision has been made by the Immigration Division concerning the applicant's admissibility. For further information in this regard, refer to section 10 entitled "Cases under enforcement action" .

As the application for permanent residence cannot remain in abeyance indefinitely, CIC and the CBSA should remain in regular contact throughout this process until the case has been finalized.

The circumstances of the case will dictate the appropriate course of action. It is expected that the CIC officer will refuse the application for permanent residence where there is evidence supporting the inadmissibility. Examples include senior officials (described in R16) in a designated regime, persons previously determined to be inadmissible by the Immigration Division or excluded pursuant to Article 1 F of the 1951 *Convention Relating to the Status of Refugees* (<http://www.ufsia.ac.be/~dvanheul/migration/genconv.html>) by the Refugee Protection Division, persons who come forward and admit membership in terrorist organizations, etc. In such instances, referral to the CBSA for further investigation or an admissibility hearing will only prolong processing needlessly and may trigger litigation and court costs.

9. Procedure - Requests for relief

"The content of this section is currently under review. In the interim, please send any inquiries to the CBSA Ministerial Relief Unit at the following email address: Ministerial_Relief.Exemptions_Ministerielles@cbsa-asfc.gc.ca"

10. Procedure - Cases under enforcement action

A person making an application for permanent residence may also be the subject of enforcement action. To ensure a coordinated approach, there should be regular communication between the inland CIC office processing the application for permanent residence and the CBSA office pursuing enforcement action.

A44 reports include a reference to the relief provision in IRPA, where applicable. Where a person who is the subject of an A44 report referred to the Immigration Division requests

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information on how to apply for relief, the National Interest Information Sheet (see Appendix B) will be issued to that person.

"The content of this section is currently under review. In the interim, please send any inquiries to the CBSA Ministerial Relief Unit at the following email address: Ministerial_Relief.Exemptions_Ministerielles@cbsa-asfc.gc.ca"

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Appendix A Interview convocation letter

(Insert letterhead)

Our Ref:

(Insert address)

Dear:

This refers to your application for permanent residence in Canada.

Information available suggests that your application for permanent residence may have to be refused as it appears you may be inadmissible to Canada, pursuant to section ____ of the Immigration and Refugee Protection Act. Therefore, we are requesting that you attend an interview at our office on (insert date) at (insert time).

The purpose of the interview will be to discuss our concerns and to provide you with an opportunity to respond. The information that we have obtained indicates that you _____ (exact content to be developed in consultation with NHQ). Please note that under Canadian immigration legislation it is your responsibility to demonstrate that you are not a member of an inadmissible class. A copy of some inadmissible classes is attached. (The attachment will include sections A33-A37 in their entirety.)

Should you not attend this interview, your application for permanent residence may be considered to have been abandoned.

Sincerely,

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Appendix B National interest information sheet

"The content of this section is currently under review. In the interim, please send any inquiries to the CBSA Ministerial Relief Unit at the following email address:
Ministerial_Relief.Exemptions_Ministerielles@cbsa-asfc.gc.ca"

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Appendix C Disclosure letter in lieu of interview

(To be used when an interview is not practical)

(Insert letterhead)

Our Ref:

(Insert address)

Dear:

This is further to your application for permanent residence in Canada.

Information available suggests that your application for permanent residence may have to be refused as it appears you may be inadmissible to Canada, pursuant to section ____ of the *Immigration and Refugee Protection Act*. Before rendering a final decision in this matter, we wish to provide you with an opportunity to respond to this information and to address our concerns.

The information that we have obtained indicates that you *(exact content to be developed in consultation with NHQ)*. Please note that under Canadian immigration legislation it is your responsibility to demonstrate that you are not a member of an inadmissible class. A copy some inadmissible classes is attached. *(The attachment will include sections A33 to A37 in their entirety.)*

Should you wish to address these matters, we must receive your submissions by *(enter date - 30 days suggested)*. If we receive nothing from you by then, your application for permanent residence may be considered abandoned.

Sincerely,

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Appendix D Preparing the request for relief report

"The content of this section is currently under review. In the interim, please send any inquiries to the CBSA Ministerial Relief Unit at the following email address:
Ministerial_Relief.Exemptions_Ministerielles@cbsa-asfc.gc.ca"

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Appendix E Final disclosure letter

"The content of this section is currently under review. In the interim, please send any inquiries to the CBSA Ministerial Relief Unit at the following email address:
Ministerial_Relief.Exemptions_Ministerielles@cbsa-asfc.gc.ca"

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Appendix F Refusal letter (Application for permanent residence refused based on A34, A35 or A37; request for ministerial relief denied)

(Insert letterhead)

Our ref:

(Insert address)

Dear:

This refers to your application for permanent residence. A letter dated *(insert date)* was sent to you inviting you to respond to concerns about your admissibility. The information you provided *(in your letter of ____ or at the interview on ____)* has been carefully reviewed together with all other information in your application.

It appears that you are a person described in section *(34, 35 or 37)* of the *Immigration and Refugee Protection Act*. I have come to the conclusion that you are inadmissible to Canada based on *(provide details concerning individual circumstances as they relate to the finding of inadmissibility. Exact content may be developed in consultation with NHQ)*.

When client has requested ministerial relief and the Minister has not granted relief, officers should insert the following paragraph:

Furthermore, you have not satisfied the Minister of Public Safety and Emergency Preparedness that your presence in Canada would not be detrimental to the national interest. As a result, your application for permanent residence is refused.

Sincerely,

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Appendix G Contacts at the National Security Division, CBSA

For persons described in A34(1) contact:

Security Review Division by e-mail at Nat-Security-Review@cic.gc.ca

For persons described in A35(1) contact:

Modern War Crimes Division by e-mail at Nat-WarCrimes@cic.gc.ca

For persons described in A37(1) contact:

Organized Crime Division by e-mail at Nat_Organized_Crime@cbsa-asfc.gc.ca