



Citizenship and
Immigration Canada

Citoyenneté et
Immigration Canada

OP 10

Permanent Residency Status Determination

Canada

OP 10 Permanent Residency Status Determination

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Updates to chapter

Listing by date:

2015-01-23

This chapter has been updated as follows:

Section 6.5 has been revised to include additional criteria for permanent residents to meet residency obligations while working abroad.

2013-05-17

This chapter has been updated as follows:

Section 5.4 has been revised to incorporate updates to the Designation and Delegation Instrument.

2013-04-26

This chapter has been updated as follows:

Section 13 has been revised to incorporate instructions on processing requests for voluntary relinquishment of PR status.

2013-05-17

This chapter has been updated as follows:

Section 5.4 clarifies that only delegated persons can make a Humanitarian and Compassionate decision whether positive or negative on a residency determination under A28.

Section 14 clarifies the role of the Manager when assessing humanitarian and compassionate concerns.

Section 15 "officer" changed to manager for consistency and clarification.

Section 16 clarifies the role of the Manager when refusing a humanitarian and compassionate permanent resident status determination.

2006-08-18

This chapter has been updated as follows:

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- The IRB document titled "Important Instructions for Residency Obligation Appeal" has been updated. Appendix C, where these instructions were formerly found, has been removed. It is to be noted in particular that with the closing of the Winnipeg office, individuals who reside in Manitoba or in Saskatchewan should in future communicate with the Registry Office in Vancouver.
- The "Notice of Appeal – Residency Obligation Appeal, subsection 63(4) of the *Immigration and Refugee Protection Act* has also been updated to reflect additional information contained in the paragraph relevant to those individuals who wish to return to Canada to appear in person at their hearing. It specifies that the IAD will decide on the application based on whether it is necessary for the person to be present at their hearing.

2005-09-22

OP 10 has been revised to show the change to the level of delegation overseas for A28 (residency determination) which previously rested solely with the Immigration Program Manager. This authority may now be exercised by Deputy Program Managers. Deputy Program Manager means those positions formally designated as Deputy Program Manager or Operations Manager by International Region/Personnel. This supersedes the message below of 2003-07-22 which addresses the role of the Immigration Program Manager.

The beginning of section 5 has been amended to add clarifications to authorities.

Section 5.2 has been updated to add clarification concerning applicants providing a contact address in Canada in the event that further information or a personal interview is required in connection to the PR card application.

Section 5.3 has been updated to reflect the coming into force of R259(a) and R259(e).

In section 16, there is further instruction when a client does not provide additional information to enable an officer to render a decision on residency determination.

In section 16.2, it is now specified that the CBSA hearings office will request the overseas file when an appeal has been filed.

Appendix A and Appendix B have been amended slightly to clarify the letters to applicants concerning appeal rights. Some paragraphs that addressed transitional measures have been deleted.

2005-01-19

Appendix B has been updated to clarify the notification to permanent residents regarding their right to appeal a negative residency determination.

The document titled "Important Instructions for Residency Obligation Appeal" has been added as Appendix C.

2004-05-12

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Section 16.3 has been added to reflect the procedures regarding "Permanent Resident Status Determination and Issuance of Permanent Resident Travel Documents."

2004-05-12

Section 16.3 has been added to reflect the procedures regarding "Permanent Resident Status Determination and Issuance of Permanent Resident Travel Documents."

2004-05-12

Section 16.3 has been added to reflect the procedures regarding "Permanent Resident Status Determination and Issuance of Permanent Resident Travel Documents."

2003-09-03

The Internet address concerning the Important Instructions for Residency Obligation Appeal mentioned in Appendix C has been amended.

2003-07-22

A revision of OP 10 (Permanent Residency Status Determination) has been done to clarify the role of the Immigration Program Manager in the process of determination of permanent residency status as follows:

- Section 14 and Section 16 — The role of the Program Manager in reviewing all H & C considerations apparent in an application is clarified and notes that all negative decisions on PR status determination can be made only by the Program Manager and that the refusal letter can be signed only by them.
- The refusal letter sample, at Appendix A, has been modified to reflect the above-noted clarifications.
- Section 16.1 expands the guidelines in regard to the best interests of the child.
- Section 16.2 was created to clearly outline the appeal rights of permanent residents. It indicates that a refusal letter with related instructions and a Notice of Appeal form must accompany all PR status determination refusals.

2002-12-17

Loss of Residency Status Procedures amended.

- See ENF 23, Section 5 and Section 7.6 as well as Appendix C.
- See OP 10, Section 5.1 and Section 13 as well as Appendix D.
- Forms IMM 5539B and IMM 5538B are available electronically.

1 What this chapter is about

This manual chapter explains:

- who may apply for a status document;
- when and why determinations of residency status are required;
- what to take into consideration when making a determination of residency status;
- what to do if an applicant has been deemed to have fulfilled the residency obligation and maintained residency status;
- what to do if an applicant has been deemed to have lost residency status;
- what to do if an applicant wishes to relinquish their permanent resident status; and
- when to issue a travel document for permanent residents to a person who has undergone a residency status determination.

2 Program objectives

The *Immigration and Refugee Protection Act* (IRPA) establishes residency requirements and obligations with respect to each five-year period after the granting of permanent residency status. The intent of the Regulations governing the residency obligations of permanent residents is:

- to prescribe flexible, clear and objective rules and criteria for establishing and determining compliance with the residency obligation provisions of IRPA;
- to assist decision makers in assessing factors related to determinations of residency status as well as to enhance transparency and consistency in decision making; and
- to prescribe rules for calculating days of physical presence in Canada for the purpose of determining compliance with the residency obligation under A28.

3 The Act and Regulations

For legislation regarding the residency obligations of permanent residents, the permanent resident card and the travel document for permanent residents, please refer to:

| | |
|--|--------|
| Right of permanent residents | A27(1) |
| Conditions pertaining to permanent residents | A27(2) |
| Residency obligation | A28(1) |

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| Provisions governing residency obligation | A28(2) |
| Status document | A31(1) |
| Effect of status document | A31(2) |
| Travel document | A31(3) |
| Regulations relating to application of A27 to A31 | A32 |
| Loss of permanent resident status | A46 |
| Right of appeal – Residency obligation | A63(4) |
| Transportation companies – Obligation of operators of vehicles and facilities | A148(1) |
| Presence of permanent resident at appeal hearing | A175(2) |
| Exclusion under Transitional Provisions | A200 |
| Documents – Permanent residents | R50(1) |
| Document indicating status – Permanent resident card | R53 |
| Period of validity – Permanent resident card | R54 |
| Delivery – Permanent resident card | R55 |

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| Issuance of new permanent resident card | R59 |
| Revocation – Permanent resident card | R60 |
| Residency obligation -- Canadian business | R61(1) |
| Exclusion – Canadian business | R61(2) |
| Employment outside Canada | R61(3) |
| Accompanying outside Canada | R61(4) |
| Compliance with residency obligation | R61(5) |
| Child – Definition | R61(6) |
| Calculation – Residency obligation | R62(1) |
| Exception | R62(2) |
| Prescribed documents – Transportation | R259 |
| Transitional Provisions – Permanent residents | R328(1) |
| Transitional Provisions – Returning resident permit | R328(2) and R328(3) |

3.1 Forms

The forms required are shown in the following table.

| Form title | Form number |
|--|-------------|
| Immigrant Visa and Record of Landing | IMM 1000B |
| Generic Document - Confirmation of Permanent Residence | IMM 5292B |
| Application for a Travel Document (Permanent Resident Abroad) | IMM 5524E |
| Declaration - Voluntary Relinquishment of Permanent Resident Status / Residency Obligation Not Met | IMM 5538B |
| Declaration - Relinquishment of Permanent Resident Status / Residency Obligation Met | IMM 5539B |
| Confiscated or Voluntary Surrendered IMM 1000B | IMM 1342B |

4 Instruments and delegations

Pursuant to A6(1) and A6(2), the Minister has designated persons or class of persons as officers to carry out any purpose of any provision, legislative or regulatory, and has specified the powers and duties of the officers so designated. The delegations with respect to this chapter can be found as follows:

IL 3, Annex F, Module 8, Column 1, Item No. 48.

IL 3, Annex F, Module 8, Column 1, Item No. 52.

IL 3, Annex F, Module 9, Column 1, Item No. 67.

5 Departmental policy

The Minister of Citizenship and Immigration is responsible for the administration of the *Immigration and Refugee Protection Act* (IRPA).

The Minister of Public Safety Canada is responsible for the administration of IRPA as it relates to:

- examination at ports of entry;
- the enforcement of IRPA, including arrest, detention and removal;
- the establishment of policies respecting the enforcement of IRPA and inadmissibility on grounds of security, organized criminality or violating human or international rights; or
- determinations under any of A34(2) , A35(2) and A37(2).

The permanent resident status determination is a CIC policy responsibility.

5.1 Legislative basis – Residency obligation

IRPA establishes residency requirements and obligations with respect to each five-year period after the granting of permanent residency status. The provisions governing the residency obligation under the Act and Regulations are based primarily on the requirement of “physical presence” or on prescribed linkages to Canadian institutions outside Canada. These provisions are substantially different from those contained in the former *Immigration Act*, where retaining residency was largely dependent on a satisfactory demonstration of a person’s “intent” not to abandon Canada as their place of permanent residence.

Pursuant to A28(2), a permanent resident complies with the residency obligation provisions with respect to a five-year period if, for at least 730 days in that five-year period, the permanent resident is physically present in Canada, or:

- is outside Canada accompanying a Canadian citizen who is their spouse or common-law partner or is a child accompanying a parent;
- is outside Canada employed on a full-time basis by a Canadian business or in the public service of Canada or of a province;
- is an accompanying spouse, common-law partner or child of a permanent resident who is outside Canada and is employed on a full-time basis by a Canadian business or in the public service of Canada or of a province.

In determining whether a permanent resident meets the residency test of physical presence for at least 730 days in a five-year period, A28(2)(b)(i) and (ii) state that:

28.(2)(b) it is sufficient for a permanent resident to demonstrate at examination

(i) if they have been a permanent resident for less than five years, that they will be able to meet the residency obligation in respect of the five-year period immediately after they became a permanent resident;

(ii) if they have been a permanent resident for five years or more, that they have met the residency obligation in respect of the five-year period immediately before the examination [of their residency status by a visa officer].

For the purposes of determining the date of the examination of residency status, a visa officer shall use the date that an application is officially received in the visa office. By stipulating that the examination of residency status begins on the day that the application is received in the

visa office, the applicant is not disadvantaged in any way if the formal assessment of an application is delayed for any period of time following receipt of the application.

For persons who have been permanent residents of Canada for more than five years, the only five-year period that can be considered in calculating whether an applicant has met the residency obligation is the one immediately before the application is received in the visa office. A28(2)(b)(ii) precludes a visa officer from examining any period other than the most recent five-year period immediately before the date of receipt of the application.

Even if a person had resided away from Canada for many years, but returned to Canada and resided there for a minimum of 730 days during the last five years, that person would comply with the residency obligation and remain a permanent resident. An officer is not permitted to consider just any five-year period in the applicant's past, but must always assess the most recent five-year period preceding the receipt of the application.

Persons who became permanent residents of Canada less than five years prior to the date of receipt of the application are governed by A28(2)(b)(i). This subsection of the Act allows new permanent residents to qualify under the residency obligation provided that they can potentially meet the 730-day criteria during the first five-year period immediately after their arrival in Canada. Even if a person resides away from Canada for up to three years following the date of first arrival in Canada, that person will retain permanent resident status as long as they still have the possibility of complying with the 730-days-in-Canada rule.

An officer is not permitted to exclude the possibility that an applicant who has resided abroad for three years may still be able to comply with the residency obligation during the remaining two years of the five-year period.

The Regulations pertaining to the residency obligation provide definitions and further describe situations, in addition to those outlined in A28, in which time spent away from Canada can be deemed to be time in Canada for the purpose of retaining permanent resident status [R61].

The Regulations allow permanent residents a significant degree of flexibility to engage in a wide range of long-term employment opportunities abroad provided that they maintain ties to Canada by means of a continuing connection to the Canadian public service or a business in Canada. The Regulations also specify circumstances in which close family members who are permanent residents can maintain their status while accompanying a Canadian citizen abroad, or a permanent resident employed abroad [R61(4)].

Under the former *Immigration Act*, it was practice to allow persons to voluntarily relinquish permanent resident status when they declared they had ceased to be a permanent resident in accordance with the criteria in A24 of IRPA (they had remained outside of Canada with the intention of abandoning Canada as their place of permanent residence).

Unlike the *Immigration Act*, the criteria in IRPA for loss of status require that an officer conduct a determination of the residency obligation under A28 before loss of status can occur. Outside of Canada, the loss of status occurs when the appeal period of 60 days expires, in the case of a person who does not challenge a negative residency obligation determination [A46(1)(b)].

At ports of entry or inland, loss of status occurs when the period of 30 days to file an appeal against the removal order expires and the order comes into force [A46(1)(c), A49(1)(c)]. In addition, the Department has decided to allow voluntary relinquishment of permanent resident status in limited circumstances.

Persons are no longer permanent residents for all purposes under IRPA once a determination is made that they have lost permanent resident status due to previous relinquishment (signing an IMM 1342B under the former Act), voluntary relinquishment under IRPA, a determination under A28 and expiry of the appeal period, or a waiver of appeal rights following a negative determination under A28 made abroad.

5.2 The permanent resident card as a status document

A31(1) provides for permanent residents of Canada, as a matter of right, to be issued a document indicating their status. The Regulations further define the term "status document" by designating the permanent resident card as the document issued to permanent residents to indicate their status under R53(1). After June 28, 2002, a status document in the form of a new permanent resident card began to be issued to permanent residents in Canada, in compliance with R53(1)(a). The permanent resident card provides holders with a convenient document that facilitates their return to and entry into Canada.

The requirement in A31(1) to provide permanent residents and protected persons with a document indicating their status is new in law, as is the presumption that a person in possession of such a document is a permanent resident unless an officer determines otherwise. Also new is the presumption that a person outside Canada who is not in possession of a permanent resident document is not a permanent resident [A31(2)(b)]. For many years, the Department provided permanent residents with proof of landing in the form of an Immigrant Visa and Record of Landing (IMM 1000B). Legally, the IMM 1000B served only as evidence of the fact of landing, as possession of a record of landing was not regarded as presumptive proof of status. The IMM 1000B was issued as a matter of administrative procedure and did not require its own regulations.

For the first time, Canada is issuing a secure status document in the form of a permanent resident card, which is valid for up to five years. The Regulations governing the permanent resident card establish that persons who became permanent residents under IRPA will be provided with the card after their entry into Canada. Permanent residents who obtained that status prior to the entry into force of IRPA may apply for a permanent resident card. To qualify for the permanent resident card, applicants must meet the residency obligation outlined in A28 .

The permanent resident card is not issued to permanent residents who apply for it outside Canada [R55]. Rather, permanent residents must submit their applications for a permanent resident card in Canada. However, nothing prevents a permanent resident residing abroad from travelling to Canada to submit an application and providing a contact address in Canada where they can be reached in the event that further information or a personal interview is required. To be provided with their PR card, applicants must attend at the time and place

specified in a notice within 180 days of receiving notification that the card is available [R58(3)].

5.3 The travel document and determination of residency status

There is no provision within IRPA for an applicant to apply directly for a formal determination of residency status. An applicant seeking a determination of status must first submit an Application for a Travel Document (Permanent Resident Abroad) (IMM 5524E). Processing applicants for a travel document involves a series of steps, including an assessment against each of the residency obligation provisions of A28. If an applicant meets any of the provisions of the residency obligation, a travel document is issued, both to enable travel to Canada as well as to confirm status as a permanent resident. There are also circumstances in which an officer is obliged to issue this travel document even if the applicant does not meet the residency obligation criteria of A31(3). The various elements of the process are discussed in greater detail in section 12, section 14 and section 15 below.

Persons who received their permanent resident status before June 28, 2002, do not have a right to the status document mentioned in A31(1), as A200 makes void the operation of A31(1) in this instance. They cannot show up at a visa office and demand a permanent resident card. Nor can they demand to be issued a travel document for permanent residents, as they must first demonstrate that they are in compliance with the residency obligation before receiving the travel document. Since the coming into force of R259(a) and R259(e) in December 2003, a PR card or PRTD is required for return travel to Canada by a commercial carrier.

5.4 What is meant by humanitarian and compassionate grounds?

A28(2)(c) specifically requires consideration of humanitarian and compassionate factors before a determination can be made that a person has lost their permanent resident status. Only an Immigration Program Manager, Deputy Program Manager, or Operations Manager is delegated to make a determination of loss of status and to refuse an application. A Manager or an immigration officer (but not a designated immigration officer) may make a determination that humanitarian and compassionate considerations justify the retention of permanent resident status and therefore approve an application on humanitarian and compassionate grounds.

Designated immigration officers can still assess humanitarian and compassionate factors on PRTD applications and make recommendations, but pursuant to the Designation and Delegation Instruments, cannot make a determination on humanitarian and compassionate factors. If a positive determination on humanitarian and compassionate factors has been made by a manager or an immigration officer, a designated immigration officer can complete the processing of the application and issue the PRTD.

In evaluating humanitarian and compassionate factors, the manager or immigration officer must take into account the best interests of the children directly affected by any determination of their residency status or that of their parents.

A28(2)(c) provides a wide degree of flexibility to the manager or immigration officer to determine whether permanent residents meet the residency obligation, even under circumstances that are not specifically outlined in the situations referred to in A28(2)(a) or R61. Humanitarian and compassionate grounds are taken into account in many other types of immigration cases where there is a need to provide an exceptional response to a particular set of circumstances. Humanitarian and compassionate considerations are present in many of the situations involved in a prolonged absence from Canada. Assessing them normally includes an examination of supporting evidence presented by a permanent resident concerning events and circumstances that have occurred in the five-year period immediately preceding an examination. While "intent" is no longer the determinative factor that it was under the former *Immigration Act*, the applicant's intent will be taken into consideration as an element of the humanitarian and compassionate assessment.

Permanent residents bear the onus of satisfying the manager or immigration officer that there are compelling humanitarian and compassionate factors in their individual circumstances that justify retention of permanent resident status. They also bear the onus of explaining why they were not able to comply with the residency obligation. It is their responsibility to describe the hardship that a loss of residency status may cause to them or to family members, who would be directly affected by the decision. The hardship resulting from a decision that an individual or a family has lost permanent resident status may be *unusual and undeserved, or disproportionate* (see definitions of hardship, section 6.6 and section 6.7 below).

Managers and immigration officers should not limit the exercise of their discretion only to cases of unusual and undeserved hardship. They should consider approving cases on humanitarian and compassionate grounds wherever the hardship of losing residency status would have a disproportionate impact on the permanent residents or on their family members, taking into account personal circumstances.

6 Definitions

6.1 Accompanying outside of Canada

A28(2)(a) (ii) and (iv) provide that each day a permanent resident is outside of Canada accompanying a Canadian citizen spouse, common-law partner or, in the case of a child, a parent with whom they ordinarily reside, it is deemed a day of physical presence in Canada. Each day a permanent resident is outside Canada, accompanying a spouse, common-law partner or, in the case of a child, a parent who is also a permanent resident and with whom they ordinarily reside, is also deemed a day of physical presence in Canada provided the

spouse, common-law partner or parent of the other permanent resident is employed on a full-time basis by a Canadian business or in the public service of Canada or of a province.

6.2 Canadian business

The definition applies to both large and small businesses and includes:

- federally or provincially incorporated businesses that have an ongoing operation in Canada;
- other enterprises that have an ongoing operation in Canada, are capable of generating revenue, are carried out in anticipation of profit and in which a majority of voting or ownership interests is held by Canadian citizens, permanent residents or Canadian businesses; and
- enterprises which have been created by the laws of Canada or a province.

Note: It does not include businesses that have been created primarily for the purpose of allowing a permanent resident to satisfy their residency obligation while residing outside of Canada [R61(2)].

6.3 Child

For the purposes of A28(2)(a)(ii) and (iv), a "child" is defined as a child of a Canadian citizen or permanent resident, including an adopted child, who is not and has never been a spouse or common-law partner and is less than 22 years of age.

6.4 Day

Section 27(2) of the *Interpretation Act* governs the calculation of time limits in federal statutes. Where a statute refers to a number of days between two events (and precedes the number of days with the words "at least"), both the day of occurrence of the first event as well as the day of occurrence of the second event are to be counted in calculating the number of days. For the purpose of calculating the number of days to comply with the residency obligation in IRPA A28(2)(a), a day includes a full day or any part of a day that a permanent resident is physically present in Canada. Any part of a day spent in Canada, or otherwise in compliance with A28(2)(a), is to be counted as one full day for the purpose of calculating the 730 days in a five-year period.

6.5 Employment outside of Canada

The Regulations enable permanent residents to comply with the residency obligations while working abroad, provided that:

- they are under contract to or are full-time employees of a Canadian business or in the public service, where the assignment is controlled from the head office of a Canadian business or public institution in Canada;
- they are assigned on a full-time basis as a term of their employment or contract to a position outside Canada with that business, an affiliated enterprise or a client;
- they maintain a connection to a Canadian business;
- they are assigned on a temporary basis to the work assignment; and
- they will continue working for the employer, in Canada, after the assignment.

6.6 Hardship: Disproportionate

Humanitarian and compassionate grounds may exist in cases that would not meet the unusual and undeserved criteria but where the hardship (of losing residency status) would have a disproportionate impact on the applicant due to personal circumstances.

6.7 Hardship: Unusual and undeserved

In most cases, the hardship (of losing residency status) faced by the applicant should be unusual. In other words, a hardship not anticipated by the Act or Regulations, and the hardship (of losing residency status) that the applicant would face should be, in most cases, the result of circumstances beyond the person's control.

7 What is the “travel document” referred to in A31(3)?

An applicant seeking a formal determination of residency status must first submit an application for a travel document under A31(3) (IMM 5524E). This travel document allows permanent residents of Canada to return home and to resume their residency in Canada [A31(3)]. It is printed on the same key control form (IMM 1346-A) as the temporary resident and permanent resident visas, and it is distinguished from the other types of visas printed on the counterfoil by the coding (see section 19 below).

The travel document referred to in A31(3) is not a status document. Rather, it is a Canadian immigration document issued in lieu of a status document—the status document in this case being the permanent resident card. (For more on the travel document and its relationship to the permanent resident card, see section 5.3 above.) It is also important not to confuse the travel document referred to in A31(3) with those travel documents referred to in R50(1), which are issued by foreign governments to their citizens in lieu of a passport or other identity document.

8 Who is entitled to apply for a travel document?

Before accepting an application for a travel document, the first step is to determine if the applicant is entitled to a document indicating status, as set out in the legislative provisions under A31(1) and A200.

8.1 Holders of permanent resident cards

The permanent resident card is a status document as defined in the R53(1). A person who is in possession of a permanent resident card is presumed to be a permanent resident of Canada under A31(2)(a) and may travel back to Canada on the strength of the card, in conjunction with a passport or other travel document issued by a foreign government, as may be required.

If a person is the rightful holder of a valid permanent resident card, no application for a travel document may be accepted. Where it is determined that an application has been submitted by a person who holds a valid permanent resident card, the application and fee are to be returned unprocessed with an explanation that there is no provision to issue a travel document to a person holding a valid status document.

Where an application has been submitted by a person who holds a permanent resident card that is no longer valid, the visa office must undertake a determination of residency status of that person in conjunction with the processing of that application for a travel document. A new permanent resident card cannot be applied for at a visa office outside Canada, but must be applied for from within Canada [R56(2)].

8.2 Holders of records of landing

There may be occasions where a visa office discovers in the course of screening an application for a travel document that an applicant holds a record of landing but appears not to have complied with the requirements of the residency obligation under IRPA. An officer may counsel that person regarding the residency obligation, but must not attempt to seize or revoke the record of landing as the officer has no authority to do so in the absence of a final determination that the person has failed to comply with the residency obligation [A46(1)(b)]. In any case, the record of landing is not a status document and, therefore, its holder carries no presumption of being a permanent resident of Canada. If there is evidence that the holder of a record of landing has been out of Canada for more than three out of the past five years, and if it appears that the holder may not meet the requirements of the residency obligation, a visa office should accept the application for a travel document and undertake a determination of residency status.

8.3 Holders of returning resident permits (RRP)

Where a permanent resident holds an RRP valid for any period spent outside Canada within the two years following the coming into force of the IRPA, this time period is counted as time spent in Canada during the applicable five-year period under examination [R328(3)].

8.4 No Canadian immigration document proving residency status

Persons who are outside Canada, and who lack Canadian immigration documentation to substantiate their claim to residency status, may apply at a visa office to obtain a prescribed document to enable them to be carried by a transportation company back to Canada [A148(1)]. In most cases, these persons will have to apply at a visa office for a travel document in order to return to Canada (except for persons in these circumstances who can reach a Canadian port of entry overland via the United States).

The visa office will undertake an evaluation of the documentation submitted to confirm the identity of the person concerned and to establish whether that individual ever held residency status in Canada. If it can be established that the individual was at any time a permanent resident of Canada, the visa office can then undertake a determination of residency status to verify whether that person has complied with the residency obligation under IRPA.

In assessing an application for a travel document submitted without documentation of residency status from Canadian immigration authorities, an officer begins with the presumption that the applicant is not a permanent resident [A31(2)(b)]. The burden of proof rests on the applicant to demonstrate that they are a permanent resident of Canada.

The officer is expected to scrutinize closely any supporting documentation presented that might demonstrate that an applicant physically resides in Canada. Documents that support an applicant's claim to having met the residency obligation should also be closely examined. An applicant may submit any kind of documentation that might serve to demonstrate a claim to permanent resident status.

8.5 Persons applying for “facilitation visas”

Prior to the coming into force of the IRPA, permanent residents outside Canada who had lost their documentation indicating permanent resident status would often apply for “facilitation visas” to enable them to be carried by a transportation company back to Canada. Under IRPA, the “facilitation visa” is no longer issued to permanent residents. Applicants lacking documentation of their status in the form of an original record of landing or permanent resident card are required to apply for the travel document and to undergo a determination of their residency status.

Facilitation visas will continue to be issued, on occasion, to Canadian citizens who hold dual nationality and who require assistance in returning to Canada on their non-Canadian passport.

9 Procedure: Receiving the application

Upon receiving an Application for a Travel Document (Permanent Resident Abroad) (IMM 5524E), the processing office must stamp the application with the date on which it was delivered to the office. During initial review, if the application is found not to meet the requirements of R10 because it is incomplete, it shall not be processed but will be returned to the applicant in accordance with R12.

A separate form must be completed for each applicant, regardless of age. In the case of a child under the age of 14, the application form must be filled out and signed by a parent or legal guardian of the child. The application of a child who is 14 years of age or more, but less than 18 years of age, must be signed by the applicant as well as by one of their parents. If someone other than the parents is legally responsible for the child, that person must co-sign the application.

Although a separate form is required for each applicant, it is generally desirable to process a family unit on a single file in CAIPS. Processing spouses and children together on the same file facilitates easy comparison of the information provided. Should some family members meet the residency obligation while others do not, the latter should be removed from the common file and processed individually on separate files.

It must be ensured that the application is checked against FOSS and against the Enforcement Information Index. If the applicant is a non-resident of the country of application, a record check from the visa office responsible for the country in which the applicant is normally resident must be requested.

10 Procedure: Reviewing the documentation

10.1 Required documentation

When an application form IMM 5524E is received, it will be reviewed to ensure that:

- it is properly completed and signed by the applicant;
- recent passport-size photographs of the principal applicant and of each accompanying family member have been attached (the name and date of birth of each applicant are to be printed on the back of each photograph);
- all required fees and documents have been submitted, including the cost-recovery fee for the application for a travel document (\$50.00); and
- a passport or travel/identity document as defined by R50(1), valid for travel to Canada (passport should guarantee re-entry to the country that issued it) is included.

Note: Applications that do not include these essential elements and accompanying documents are to be returned to the applicant.

10.2 Other documentation which may be requested to determine residency status

Other documentation that may be required to determine residency status includes:

- record of landing (if an applicant declares that their record of landing or permanent resident card was lost or stolen, a local police report may be requested);
- returning resident permit;

- permanent resident card;
- employment documents or personal services contract;
- records of personal services;
- financial documents;
- Revenue Canada Notice of Assessment forms;
- evidence of receipt of benefits from Canadian government programs;
- rental agreements;
- club memberships;
- annual report of a business (incorporated under the laws of Canada or of a particular province);
- articles of incorporation of a business with which the applicant is employed;
- report of the voting interests or ownership of a business, where it is necessary to determine if the majority ownership of the business is Canadian.

10.2 Other documentation which may be requested to determine relationship

Other documentation that may be required to determine the relationship includes:

- marriage licence;
- birth certificate;
- baptismal documents;
- adoption or guardianship documents;
- school records;
- documents demonstrating cohabitation.

Note: Children under 16 years of age who are travelling alone must have information about the person who will be responsible for them. If the child is the subject of a custody order or is travelling with one parent, proof of custody and/or the other parent's consent for the trip must also be provided. Minors travelling without their parents require a letter of permission to travel from the non-accompanying parent(s). The officer's first duty when children are travelling with only one parent or with a relative/friend is to ensure that they are not being abducted from their lawful guardian.

Note: Permanent residents seeking a document to enable them to re-enter Canada can present any documentation that serves to demonstrate their claim to permanent residency status, and which is acceptable to the officer.

11 Procedure: Undertaking a determination of residency status

If it is established that an applicant is entitled to apply for a status document indicating permanent residence, the visa office must process the application for a travel document. In

assessing whether a travel document can be issued to an applicant, a determination of residency status must be carried out by an officer.

This assessment is an objective process, evaluated against each of the provisions of the residency obligation as defined in A28. An applicant may need to be interviewed to clarify aspects of an application, but interviewing is by no means required to make an assessment if an applicant clearly meets the time-in-Canada provisions set out in A28(2)(a). In many cases, the time in Canada can be verified by comparing the dates of entry into Canada with the dates of entry into other countries recorded in an applicant's passport. In other cases, an officer may have to examine documents from a spouse or common-law partner or, in the case of children, of their parents.

If the information provided on the application form and the accompanying documentation clearly demonstrates that an applicant meets the residency obligation, an interview is not required. However, where there is doubt concerning the validity or accuracy of facts or information that are germane to the determination of residency status, an interview may be required.

Factors that should be considered in carrying out a determination of residency status are detailed in section 12 below.

12 Procedure: Guidelines for examining the residency obligation

The following general guidelines are designed to assist officers who are examining compliance with residency obligations and making decisions on retention and loss of permanent residency status. The guidelines are not meant to be all-inclusive or limiting.

| Section of the Act/Regulations | Examining the Act | Suggested information and documentary evidence |
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| <p>A28(2)(a)(i): Whether a permanent resident has been physically present in Canada with respect to a five-year period for at least 730 days in that five-year period.</p> | <p>A permanent resident may be away from Canada for three years in every five-year period, for any reason, and be in compliance with the residency obligation. Accordingly, if the applicant satisfies an officer that they have been physically present in Canada for at least 730 days in the five-year period being examined, it is not necessary to examine or assess other factors regarding the reason for the absence. If the absence was due to employment abroad, there is no need to further examine if the employment was with a "Canadian business." The person would simply be found to have satisfied their residency obligation pursuant to A28(2)(a)(i).</p> | <p>There is no one document that can definitively establish a person's physical presence in Canada. However, documents will tend to confirm and support the person's declarations concerning residence, employment, and other aspects of daily life. Officers should consider all information and supporting documentation that could serve to provide sufficient evidence that the permanent resident was physically present in Canada for at least 730 days in the five-year period under examination.</p> <p>Supporting documentary evidence, as applicable, may include: proof of employment, attendance at school, banking activity, financial records and statements, receipt of government benefits, records of personal services, community involvement, memberships, etc. Also to be considered are RRP's issued to the applicant under previous legislation that pertain to the five-year period under examination.</p> |
| <p>A28(2)(b)(i): If a permanent resident for less than five years, must demonstrate that they will be able to meet the residency obligation during the five-year period immediately following</p> | <p>A permanent resident who has had the status less than five years qualifies under the residency obligation, even if away from Canada for up to three years</p> | <p>Supporting documentary evidence, as applicable, may include: proof of employment, attendance at school, banking activity, financial records and</p> |

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| <p>their becoming a permanent resident.</p> | <p>following the date of arrival in Canada, provided they can <i>potentially</i> meet the 730-day criteria during the five-year period immediately after arrival in Canada.</p> | <p>statements, receipt of government benefits, records of personal services, community involvement, memberships, etc. Also to be considered are RRP's issued to the applicant under previous legislation that pertain to the five-year period under examination.</p> |
| <p>A28(2)(b)(ii): If a permanent resident for five years or more, must demonstrate that they have met the residency obligation during the five-year period immediately before the examination of their residency status by an officer.</p> | <p>An officer is precluded from examining any period other than the most recent five-year period immediately before the date the application is received in the visa office. As long as a permanent resident can meet the 730-day criteria during the most recent five-year period, earlier absences are not considered in the calculation of days.</p> | <p>Evidence such as entry and exit stamps in a passport would indicate periods of time that an applicant was physically present in Canada.</p> |
| <p>R62(1) and R62(2) :The five-year period does not include any day after a decision is made outside of Canada that the permanent resident has failed to comply with the residency obligation, unless the permanent resident is subsequently determined to have complied.</p> | <p>Once an officer has made a determination that an applicant has not met the residency obligation, the calculation of days does not include any day after the decision. If the applicant wins on appeal, the calculation of days reverts to include the days during which the decision was under appeal.</p> | |
| <p>R328(2) and R328(3): Time spent outside Canada on a returning resident permit is counted as time spent in Canada for the purpose of satisfying the</p> | <p>In the case where a permanent resident is a holder of an expired returning resident permit, the time period during which the permit was valid</p> | |

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| <p>residency obligation.</p> | <p>is counted as time spent in Canada during the applicable five-year period under examination. Where a permanent resident holds an RRP valid for a period following the coming into force of the new Act, this time period is counted as time spent in Canada during the applicable five-year period under examination. See definitions for "day," and "Canadian business" in section 6 above.</p> | |
| <p>R61(1): Whether the employment abroad is being conducted on behalf of a provincial or federal government or a "Canadian business".</p> | <p>R61(1)(a) Any corporation, whether federally or provincially incorporated, would satisfy the definition provided that the business has an ongoing operation in Canada.</p> | <p>A letter of declaration signed by an authorized officer of the "Canadian business" employer/contractor that states the position and title of the signing officer and indicates the following:</p> <ul style="list-style-type: none"> • that the said business is incorporated under the laws of Canada or a particular province, as applicable; • that the business has an ongoing operation in Canada; • the nature of the business, length of time in operation in Canada and number of employees in Canada; • details of the permanent resident's assignment or contract abroad, such as: duration of the assignment; confirmation that the permanent resident is a full-time employee of the "Canadian business" working |

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| | | <p>abroad on a full-time basis as a term of their employment, or that the person is on contract working on a full-time basis abroad as a term of their contract; or a description or copy of the position profile regarding the assignment or contract abroad;</p> <ul style="list-style-type: none"> • details about the nature of the relationship between the "Canadian business" and the business abroad indicating if it is to a position with the "Canadian business" office abroad, or with an affiliated enterprise, or a client; • confirmation that the "Canadian business" has not been created primarily for the purpose of allowing a permanent resident to satisfy their residency obligation while residing outside of Canada. <p>Supporting documentary evidence, as applicable, may include the following: articles of incorporation; business licence; corporate annual reports; Canadian Income Tax Notice of Assessment; financial statements; copy of the employee assignment agreement or contract; or a copy of any agreement or arrangement between the "Canadian business" and the business or client</p> |
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| | | <p>abroad concerning the permanent resident's assignment to that client or business.</p> |
| | <p>R61(1)(b) An enterprise may be a legal entity other than a corporation. Examples include a proprietorship, partnership, joint-partnership, etc. Many small businesses and professional businesses such as law and engineering firms and some banks would be included in this category. Some banks and other financial institutions could also be described in R61(1)(a). In order to qualify under this definition, these businesses must also have an ongoing operation in Canada that is capable of generating revenue and is carried out in anticipation of profit. Canadian citizens, permanent residents or Canadian businesses must hold the majority of voting or ownership interests in the business.</p> | <p>A letter of declaration signed by an authorized officer of the "Canadian business" employer/ contractor that states the position and/or title of the signing officer and indicates the following:</p> <ul style="list-style-type: none"> • whether the said business is a proprietorship, partnership, joint partnership, etc., as applicable; • the name, citizenship or residency status of the proprietor or, in the case of partnerships, of each partner; • a breakdown of voting or ownership interests of each partner in the business; • that the business has an ongoing operation in Canada; • the nature of the business, length of time in operation in Canada, number of employees in Canada; • details of the permanent resident's assignment or contract abroad, such as duration of the assignment; confirmation that the permanent resident is a full-time employee of the "Canadian business" working |

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| | | <p>abroad on a full-time basis as a term of their employment, or that the person is on contract working on a full-time basis abroad as a term of their contract; or a description or copy of the position profile regarding the assignment or contract abroad;</p> <ul style="list-style-type: none"> • details about the nature of the relationship between the "Canadian business" and the business abroad indicating if it is a position abroad with the "Canadian business" office abroad, or with an affiliated enterprise or a client; • confirmation that the "Canadian business" has not been created primarily for the purpose of allowing a permanent resident to satisfy their residency obligation while residing outside of Canada. <p>Supporting documentary evidence, as applicable, may include the following: partnership agreement; business licence; Canadian Income Tax Notice of Assessment for the business; financial statements; a copy of the employee assignment agreement or contract; or a copy of any agreement or arrangement between the "Canadian business" and the business or client abroad concerning the permanent resident's</p> |
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| | | assignment to that business or client. |
| | <p>R61(1)(c) An organization or enterprise that is created by the laws of Canada or a province may include Crown corporations, municipal bodies, certain agencies, universities, hospitals, etc. These organizations do not necessarily operate in anticipation of profit or are not necessarily capable of generating revenue.</p> | <p>A letter of declaration signed by an authorized officer of the "Canadian business" employer/contractor that states the position and title of the signing officer and indicates the following:</p> <ul style="list-style-type: none"> • that the said business has been created by the laws of Canada or a particular province; • the nature of the business, length of time in operation in Canada and number of employees in Canada; • details of the permanent resident's assignment or contract abroad, such as duration of the assignment; confirmation that the permanent resident is a full-time employee of the "Canadian business" working abroad on a full-time basis as a term of their employment or that the person is on contract working on a full-time basis abroad as a term of their contract; a description or copy of the position profile regarding the assignment or contract abroad; • details about the nature of the relationship between the "Canadian business" and the business abroad indicating if it is a |

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| | | <p>position abroad with the “Canadian business” office abroad, or with an affiliated enterprise or a client;</p> <ul style="list-style-type: none"> confirmation that the “Canadian business” has not been created primarily for the purpose of allowing a permanent resident to satisfy their residency obligation while residing outside of Canada. <p>Supporting documentary evidence, as applicable, may include the following: articles of association; articles of incorporation; business licence; annual reports; financial statements; a copy of the employee assignment agreement or contract; or a copy of any agreement or arrangement between the “Canadian business” and the business or client abroad concerning the permanent resident’s assignment to that client or business.</p> |
| <p>R61(3): Whether the employment abroad is full-time and pursuant to an assignment or contract as a term of the applicant’s employment with the public service of Canada or of a province by a Canadian business as defined and provided for in R61(1).</p> | <p>The burden of proof rests with the applicant to provide information and evidence to satisfy an officer that their employment abroad is in compliance with the regulatory description of the R61(3) qualifying criteria for employment abroad and the R61(1) definition of a “Canadian business”. See definitions for “Employment outside of Canada” and</p> | <ul style="list-style-type: none"> A letter of declaration and supporting documentation from the Canadian government or “Canadian business” employer/contractor indicating compliance with the definitions and provisions of R61(1) and R61(3). Pay statements, Canadian Income Tax Notice of Assessment, T4 slips |

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| | <p>“Canadian business” in section 6 above.</p> | <p>For further details, refer to the above guidelines for examining documentary evidence under R61(1)(a),(b) and (c).</p> |
| <p>R61(4), R61(5) and R61(6): Whether the permanent resident has satisfied their residency obligation through compliance with the criteria specified in R61(4), (5) and (6) for those permanent residents who are accompanying either a Canadian citizen or another Canadian permanent resident outside of Canada.</p> | <p>The burden of proof rests with the applicants to provide the necessary information and evidence to satisfy an officer that they are in compliance with the provisions of R61(4), (5) and (6). Examinations would typically address the following factors:</p> <ul style="list-style-type: none"> • whether the applicant is a <i>bona fide</i> spouse, common-law partner or “child” of the person they are accompanying abroad; • whether the applicant normally resides with the person they are accompanying abroad; • whether the person the applicant is accompanying is a Canadian citizen or a permanent resident of Canada; <p>if the applicant is accompanying a permanent resident, whether that permanent resident is in compliance with their residency obligation.</p> | <p>Officers should consider all information and supporting documentation that could serve to provide satisfactory evidence that the applicant has complied with the legislative provisions for satisfying residency obligations while accompanying a Canadian citizen or permanent resident spouse, common-law partner or parent outside of Canada. Supporting documentary evidence, as applicable, may include the following: a marriage licence; child’s birth certificate; baptismal documents; adoption or guardianship documents; school records; employment records; association or club memberships; passport or other travel documents; employment letters and employment documents of the permanent resident being accompanied which indicate that the permanent resident is in compliance with their residency obligation; or documents indicating the status of the person being accompanied.</p> |

13. Procedure: Voluntary relinquishment of PR status

If a person was granted Permanent Resident (PR) status and has never lost that status due to relinquishment under the former *Immigration Act* or pursuant to any of the enumerated grounds of A46 of IRPA, the person may still be a PR. As a result, an officer must complete a PR status determination under A28 before issuing almost any type of visa to such a person.

If a person who had PR status requests the relinquishment of that status without any other concurrent application, relinquishment cannot be accepted before the person's actual PR status is determined.

There is no legal mechanism under IRPA to relinquish PR status.

Processing

For almost any case requiring a PR status determination (see exceptions in Quick Reference tables), a Travel Document (Permanent Resident Abroad) (PRTD) application must be created in GCMS to record the assessment and the delegated decision-maker's decision on the PR status determination.

In the absence of a PR status determination recorded in a PRTD record, if the person applies again for a PRTD or applies for a PR card, it can be difficult to establish whether and when a prior PR status determination occurred and whether there was a final determination resulting in loss of PR status, particularly if the decision appears only in the notes of another application.

In addition, if the decision is captured only in the case notes of another application, CIC's systems will not capture the effort. The processing office will not get credit for the effort for purposes such as Cost Management and determining resource requirements.

Completion of a PRTD application form may be required even if the person is not applying for a PRTD if the information needed is not available from the information already on file.

13.1. PRTD Applications from persons who previously relinquished PR status

If a person wants to obtain a PRTD but he or she voluntarily relinquished status by signing an IMM 1342B under the former *Immigration Act* or a voluntary relinquishment under IRPA, the person must make an application for a PRTD. An officer must then complete a residency status determination. The IMM 1342B *Voluntary Declaration of Abandonment of Status* has no legal effect; neither does a voluntary relinquishment under IRPA. If the applicant meets the requirements of A28, a PRTD can be issued notwithstanding the prior relinquishment. The applicant's intent in completing a *Voluntary Declaration* or relinquishment should only be taken into consideration if the residency status determination requires an assessment of humanitarian and compassionate considerations. As stated in section 5.4, intent will be taken into consideration as an element of the humanitarian and compassionate assessment.

13.2 Permanent Resident Visa Applications

13.2.1. Processing for a person who is applying for a new PRV who did not sign an IMM 1342B relinquishing status under the former *Immigration Act* and who has not otherwise lost PR status under former Act or IRPA

A person may be treated as a foreign national for the purpose of issuing a new Permanent Resident Visa (PRV) if:

- the determination under A28 is negative; and either
 - the person consents in writing to the residency decision and the person waives their right to appeal the decision, in writing; or
 - the appeal period expires without an appeal of the determination being filed.

The template for the consent and waiver is attached as Appendix C.

For PRV applications processed in CAIPS, the new PRV can be issued in CAIPS after a consent and waiver are obtained from the applicant or after the appeal period expires without an appeal being filed, whichever comes first. If a consent and waiver are obtained, a scanned copy should be attached to the client's record in GCMS. If the PRV is issued in CAIPS, there is no need to notify Query Response Centre (QRC) and no action is required by QRC.

For PRV applications processed in GCMS, before a visa office can issue a PRV to an applicant who previously had PR status, a 'Lost/Relinquishment' date must be entered in the client's record. QRC users are the only designated GCMS users with the authority to enter this information. QRC can enter this data once a consent and waiver are obtained from the applicant or after the appeal period expires without an appeal being filed, whichever comes first.

For QRC to enter this date, a scanned copy of the consent and waiver must be attached to the client's record in GCMS. An email can then be sent to QRC requesting that a 'Lost/Relinquishment' date be entered in the client's record. QRC will enter the date the person's PR status was lost based on the residency determination date. The service standard for action by QRC on this type of request is five business days from the day the request is received in QRC. QRC will confirm by email to the requester once the request is complete.

Once the 'Lost/Relinquishment' date is entered in GCMS, the new PRV can be issued.

If a person is determined to have retained his or her PR status, regardless of whether the PRV application is in CAIPS or GCMS, the PRV application must be withdrawn, the PRV processing fee must be refunded, the PRTD fee must be collected and a PRTD must be issued.

For procedural information outside of GCMS on refund and collection of fees, refer to Sections 5.10 and 7.3 respectively in the *Cost Recovery Manual for missions*. For GCMS cases, all refund and fee transactions must be initiated in GCMS. Refer to the content "Immigration Specific" and select "Fees" from the *GCMS User Guide* for detailed system procedures.

The Quick Reference table sets out which documents and which fees are required.

13.2.2. Processing for a person who voluntarily relinquished PR status by signing an IMM 1342B under the former *Immigration Act* and is applying for a new PRV

A person who voluntarily relinquished her or his PR status under the former *Immigration Act* may be treated as a foreign national if she or he:

- formally signed a document (usually an IMM 1342B *Confiscated or Voluntary Surrendered IMM 1000B* form) voluntarily declaring abandonment of PR status (this is normally indicated by Field Operations Support System (FOSS) Non-Computer-Based Entry (NCB) Code 10: vol relinq of status); and
- acknowledges that in signing the IMM 1342B she or he was abandoning PR status. This should be recorded in the officer's notes and retained on the file.

If there is already a record of the loss of status in FOSS or GCMS, a new PRTD record is not required.

For PRV cases processed in CAIPS, the voluntary relinquishment record should be noted and the new PRV can then be issued.

For PRV cases processed in GCMS, an email must be sent to QRC asking QRC to enter in GCMS the date the person's PR status was relinquished. The service standard for action by QRC on this type of request is five business days from the day the request is received in QRC. QRC will confirm by email to the requester once the request is complete. Once the date is entered, the visa office can issue the new PRV.

If there is no electronic record that QRC can use to date the relinquishment, the procedure in 13.2.1 must be followed.

The Quick Reference table sets out which documents and which fees are required.

13.2.3. Processing for a person who lost PR status under the former *Immigration Act* or IRPA by other means and who is applying for a new PRV

If a person lost PR status through the operation of the former *Immigration Act* or IRPA (e.g., through deportation), the system record should show that the person is no longer a PR and no special processing should be required.

If the system has not recorded the person's loss of status, officers should follow the procedures in 13.2.2 to have QRC make the appropriate entries and to issue the new PRV, ensuring that any additional requirements (like Authorization to Return to Canada) are met.

The Quick Reference table sets out which documents and which fees are required.

Quick Reference table: Person is applying for PRV

| Applicant | PR Status Determination required? | Fee Applicable | Can relinquishment be granted? | Application required | Supporting documents required | Document to be issued to applicant |
|--|--|---|---------------------------------------|-----------------------------|--------------------------------------|--|
| Relinquished under old Act | No | PRV fee | N/A | PRV application | PRV documents | PRV |
| Otherwise lost PR status | No | PRV fee | N/A | PRV application | PRV documents | PRV, any additional required documents |
| Doesn't meet A28 requirement, never lost or relinquished | Yes | PRV fee; use fee exemption code for PRTD file | Yes | PRV application | Consent and Waiver | PRTD refusal and appeal rights letter, PRV |
| Meets A28 requirements, never lost or relinquished | Yes | PRTD fee; PRV fee to be refunded | N/A | PRTD application | Evidence of meeting A28 requirements | PRTD |

13.3. Relinquishment and Temporary Resident Visa Application Processing

13.3.1. Person did not sign an IMM 1342B relinquishing status under the former *Immigration Act* and is requesting a Temporary Resident Visa

If a person was landed under the former *Immigration Act* or obtained PR status under IRPA and the person has never lost PR status, the person shall be treated as a PR. An officer must therefore complete a determination of residency status under A28 before issuing a Temporary Resident Visa (TRV) to such a person.

A person may be treated as a foreign national for the purpose of applying for a Temporary Resident Visa (TRV) if:

- the determination under A28 is negative;
- the person signs a statement consenting to the decision; and
- the person signs a waiver of the right to appeal the decision.

The template for the consent and waiver is attached as Appendix C.

The Quick Reference table sets out which documents and which fees are required.

13.3.2. Person voluntarily relinquished their status by signing an IMM 1342B under the former *Immigration Act* and is requesting a Temporary Resident Visa

A person who voluntarily relinquished his or her PR status under the former *Immigration Act* may be treated as a foreign national if he or she:

- formally signed a document (usually an IMM 1342B Confiscated or Voluntary Surrendered IMM 1000B form) voluntarily declaring abandonment of permanent resident status (this is normally indicated by FOSS NCB code 10: vol relinq of status);
- is now seeking to enter Canada as a temporary resident; and
- acknowledges that in signing the IMM 1342B they were abandoning permanent resident status. This should be recorded in the officer's notes and retained on the file.

If all of the above conditions are met and the officer is satisfied the person otherwise qualifies for a TRV, a TRV may be issued. Applicants who have previously voluntarily relinquished their status and now wish to enter Canada as temporary residents should be notified that they have lost their PR status.

If there is no system record of a relinquishment under the *Immigration Act*, or if the person does not acknowledge that he or she abandoned PR status, the procedure in 13.3.1 must be followed.

In all circumstances where a consent and waiver is obtained, a scanned copy must be attached to the client's GCMS record. If no action is required by QRC, there is no need to notify QRC.

Even if a client consents to the decision and waives his or her appeal rights, or submits a relinquishment declaration, a PRTD refusal and appeal rights letter must be issued to inform the client that a residency determination has been made that may affect his or her rights under IRPA. If the client consents to the decision and waives her or his appeal rights, there is no need to wait until the appeal period expires before issuing a TRV.

If the client declines to consent to the negative residency decision and refuses to waive the appeal rights, this may be taken into account in assessing the bona fides of her or his

temporary intent. A PRTD refusal and appeal rights letter must still be issued to inform the client of her or his rights under IRPA. A TRV may be issued if the visa officer is satisfied that the applicant meets the R179 requirements for a TRV, including being satisfied that the applicant will leave Canada by the end of the period authorized for her or his stay. If the visa officer is satisfied that the applicant meets the requirements for a TRV notwithstanding the refusal to sign the consent and waiver, there is no need to wait until the appeal period expires before issuing a TRV.

The Quick Reference table sets out which documents and which fees are required.

13.4. Person satisfies the residency obligation in A28 but has approached the visa office to relinquish status

13.4.1. When to accept relinquishment

In exceptional circumstances, and provided the person is truly voluntarily relinquishing status and fully understands the consequences, the person may be allowed to complete form IMM 5539B (Declaration: Relinquishment of Permanent Resident Status/Where the Residency Obligation is Met) and can then be treated as a foreign national. A copy of the IMM 5539B should be attached to the client’s GCMS record. Officers should always conduct an in-person interview when accepting voluntary relinquishment of PR status from a person who meets residency requirements.

Examples of circumstances where this may be allowed include eligibility for diplomatic or other official assignments, eligibility for PR status in another country or other employment related requirements.

13.4.2. When not to accept relinquishment

If exceptional circumstances of the type described above are not present, relinquishment should not be accepted from a PR who meets residency requirements. The request to relinquish can be refused on the grounds that IRPA does not provide for relinquishment of PR status.

The relinquishment procedure is not to be used instead of completing a residency determination where the person is seeking to come to Canada only temporarily.

Quick Reference Tables

| Person does not want any type of TRV or is a national of a visa-exempt country | | | | | | |
|---|--------------------------------|-----------------------|------------------------------|-----------------------------|-----------------------------|---------------------------------|
| Applicant | PR Status Determination | Fee Applicable | Can relinquishment be | Application required | Supporting documents | Document to be issued to |
| | | | | | | |

OP 10 Permanent Residency Status Determination

| | required? | | granted? | | required | applicant |
|--|------------------|----------|-----------------|------------------|--|---|
| Meets A28 requirements but wants to relinquish, no special circumstances | Yes | PRTD fee | No | PRTD application | Evidence of meeting A28 requirements | PRTD |
| Meets A28 requirements but wants to relinquish, special circumstances | Yes | PRTD fee | Yes | PRTD application | IMM 5539B (Declaration: Relinquishment of Permanent Resident Status/Where the Residency Obligation is Met) | Copy of IMM 5539B completed by Delegated PR status decision-maker (IPM) |
| Doesn't meet A28 requirements, wants to relinquish | Yes | PRTD fee | Yes | PRTD application | Consent and Waiver | PRTD refusal and appeal rights letter |
| Meets A28 requirements, doesn't want to relinquish | Yes | PRTD fee | N/A | PRTD application | Evidence of meeting A28 requirements | PRTD |
| Doesn't meet A28 requirements, doesn't want to relinquish | Yes | PRTD fee | N/A | PRTD application | Evidence of meeting A28 requirements | PRTD refusal and appeal rights letter |

Person requires TRV to travel to Canada

| Applicant | PR Status Determination required? | Fee Applicable | Can relinquishment be granted? | Application required | Supporting documents required | Document to be issued to applicant |
|--|--|-----------------------|---------------------------------------|-----------------------------|--|---|
| Applying for TRV, doesn't meet A28 requirements, wants to relinquish | Yes | TRV fee | Yes | TRV application | Consent and Waiver | PRTD refusal and appeal rights letter, TRV |
| Applying for TRV, doesn't meet A28 requirements, doesn't want to relinquish | Yes | TRV fee | N/A | TRV application | Evidence of meeting A28 requirement; TRV documents | PRTD refusal and appeal rights letter, TRV; TRV if officer satisfied applicant meets TRV requirements |
| Applying for PRTD, meets A28 requirements, doesn't want to relinquish | Yes | PRTD fee | N/A | PRTD Application | Evidence of meeting A28 requirements | PRTD |
| Applying for PRTD, doesn't meet A28 requirements, doesn't want to relinquish | Yes | PRTD fee | N/A | PRTD application | Evidence of meeting A28 requirements | PRTD refusal and appeal rights letter |

14 Procedure: Factors to be considered when assessing humanitarian and compassionate concerns

Managers cannot be restricted by guidelines; they are obliged to consider all the information they have. Humanitarian and compassionate applications must be reviewed on a case-by-case basis. Applicants are free to make submissions on any aspect of their personal circumstances that they feel would justify retention of their permanent residency status even though they have breached their residency obligation prior to the determination. Whatever is apparent on the file must be considered by the manager before a determination is made. In practical terms, given the high level of importance given by Parliament to the loss of permanent resident status, it is recommended that the manager give a fair chance to the applicant to expose any possible humanitarian and compassionate grounds for consideration.

The following are only examples of the kinds of factors or combinations of factors a manager might consider in determining whether humanitarian and compassionate grounds justify the retention of status. Managers should remember that they are not assessing "intent." They are examining circumstances and events that occurred in the last five-year period which led to the particular individual's breach of residency obligations. The manager is also taking into account the best interests of a child directly affected by the determination and the degree of hardship that may be caused as a result of a determination that an individual or family has lost their status.

14.1 Examples of factors to weigh and consider

The extent of the non-compliance:

- How long beyond three years in the last five-year period was the person outside of Canada?
- Was the person employed outside Canada by other than a "Canadian business" as described in the Regulations? If so, why and for what length of time?
- Was the person outside of Canada for more than three years in the last five-year period because of a medical condition or the medical condition of a close family member?
- Could alternative arrangements have been made or was it the applicant's choice to remain outside Canada?

Circumstances beyond the person's control:

- Are the circumstances that led to the person's remaining outside of Canada compelling and beyond their control?
- Was the person prevented from returning to Canada? Why? By whom or by what event?
- Are they now returning to Canada at the earliest possible opportunity?
- Did the person leave Canada as a child accompanying a parent?
- Are they now over 22 years of age and are returning at the earliest opportunity since becoming 22 years of age?
- Is the person over 22 years of age dependent on the parent they are accompanying because of a mental or physical disability?

Establishment outside Canada:

- Is the person a citizen or permanent resident of a country other than Canada?
- Has the person taken steps to establish permanently in a country other than Canada?
- To what degree has the person established in Canada?
- What linkages has the person maintained to Canada?

Presence and degree of consequential hardship: A loss of permanent resident status may have the consequence of leading to a person's eventual removal from Canada. The removal of a status-less person may have an impact in relation to family members (i.e., permanent residents or Canadian citizens) who have the legal right to remain in Canada. The person's degree of hardship in relation to their personal circumstances (i.e., the impact on family members, especially children) should be considered.

15 Procedure: General factors to be considered in assessing compliance with the residency obligation under A28

The policy surrounding the residency obligation is designed to be fair and generous to permanent residents. The legislation provides a variety of means to satisfy the residency obligation under A28. Beyond this, the inclusion of humanitarian and compassionate considerations as an enumerated ground for overcoming any breach of the residency obligation indicates that Parliament intended officers to exercise discretion and flexibility in approving deserving cases not anticipated in the specific provisions of the legislation.

The legislation provides every opportunity to persons who have been granted permanent resident status to present evidence as to why they should retain that status. All permanent residents have the right of appeal against any decision made by a manager relating to their failure to meet the residency obligation. Even in cases where permanent residents are unable to meet any of the requirements of A28, the legislation provides the opportunity to many of these persons to return to Canada to present their case before the Immigration Appeal Division.

Taken as a whole, the legislation contains provisions that favour the retention of residency status, even for persons who have been abroad for considerable periods of time. Even though the onus is on the applicant to present evidence that justifies the retention of residency status, the flexibility of the provisions of A28 allows a manager to exercise discretion in favour of the applicant in circumstances where a reasonable explanation is provided for prolonged absence from Canada.

Humanitarian and compassionate considerations are present in many of the situations involved in a prolonged absence from Canada. It is expected that managers will not limit the exercise of their discretion with respect to the application of humanitarian and compassionate considerations only to cases of "unusual and undeserved hardship." Managers are encouraged to exercise their discretion wherever the hardship of losing residency status would have a disproportionate impact on the permanent resident or on their family members, taking into account personal circumstances.

Note: There are scenarios where A28 will oblige officers to issue travel documents to permanent residents in circumstances where officers would have previously refused to issue documents under the former Immigration Act, for example, the case of a permanent resident who resided in Canada for two years before returning to their country of origin for the past three years. This person has been refused a returning resident permit because an officer determined that the applicant had the intent to abandon Canada as a place of residence. Under IRPA, this same applicant would qualify for a travel document to return to Canada provided the residency obligation had been met. The IRPA provisions are applicable to all permanent residents who were not finally determined to have lost their residency status under the former Immigration Act, whether or not they were refused a returning resident permit.

Note: It is important that officers not take the illegal or immoral conduct of a permanent resident as a justifiable reason to refuse an application for a travel document. For example, consider the case where an officer has reason to believe that a permanent resident who applied for a travel document was recently convicted of a serious crime abroad. The applicant's passport indicates that he has been residing in Canada for more than 730 days during the past five years. Under the former Immigration Act, an officer was not obliged to issue a facilitation visa to a permanent resident with a criminal conviction to enable that person's return to Canada. But under IRPA, an officer does not have the discretion to refuse to issue a travel document in these circumstances, as the applicant complies with the residency obligation on the basis of the time they have spent in Canada during the previous five years. Despite the fact that the applicant would be inadmissible to Canada in accordance with A36(1), they remain a permanent resident of Canada until an inadmissibility report and a removal order are made against them. The correct procedure under these circumstances is for the officer to issue a travel document to the applicant with the criminal conviction and to inform National Headquarters of the details of the case in conformity with the guidelines relating to high profile or contentious cases. For procedures related to high profile and contentious cases, see OP 1, section 15. A "Watch For" is also to be entered into CAIPS to alert ports of entry to the fact of the permanent resident's inadmissibility. Upon arrival in Canada, the permanent resident may be subject to an admissibility hearing under A44(2).

16 Procedure: Refusing the application

If it is determined that an applicant does not meet the residency obligation—even after consideration of the humanitarian and compassionate factors connected to the application—the application should be refused. The reasoning behind the determination, including the consideration of the humanitarian and compassionate factors, must be included in the CAIPS notes pertaining to the file. As the CAIPS notes will serve as the principal source of the reasons for the decision, it is very important that notes include a summary of all the correspondence and communication that took place on the file.

The CAIPS notes must provide sufficient detail as to how the decision was reached and all refusals must be made by the Immigration Program Manager, Deputy Program Manager or

Operations Manager. The managers must review all the facts, decide upon them and record their own decision. The CAIPS notes might read:

I considered all the facts on this application. The 730 days/five years residency obligation test is not met. I also considered all available humanitarian and compassionate considerations. [If the applicant has children, identify and define what is in the children's best interest and indicate that these interests were considered in the decision].

The applicant must be provided with a letter outlining the grounds for the refusal. The manager must inform the applicant in a clear and transparent manner why the application is refused and advise the applicant of the circumstances under which the application was considered. This principle should be followed even in cases that are closed due to a lack of response from the applicant, as permanent residents are entitled to appeal rights in all cases involving residency determination. A model refusal letter is contained in Appendix A.

The letter outlining the grounds for the refusal should, in all cases, indicate that consideration was given to humanitarian and compassionate factors. If the manager determines that humanitarian and compassionate factors do not justify the retention of status, the written decision (refusal letter) need only refer to the fact that consideration was given to the humanitarian and compassionate factors presented and that the manager is not satisfied that the factors are sufficient to warrant retention of the status. The detailed reasons for the refusal must be documented in CAIPS notes.

In the case where additional information is requested and the client does not provide the information, managers should provide the person with a notice and give them 30 days to provide submissions that relate to A28. If no submissions are received, the manager should make a negative determination decision based on the information that is available. If the manager believes on a balance of probabilities that the person does not satisfy the residency requirements of A28, it should be coded as refused.

16.1 Best interests of the child

In cases where a child is directly affected by a refusal decision, the manager should indicate both in the refusal letter as well as in the CAIPS notes that they actively considered the best interests of the child. It would likely be insufficient to simply state in the refusal letter that "I have considered the best interests of the children affected by the decision," if there is nothing further in the CAIPS notes.

In the *Legault* case (*Legault v. MCI*, 2001 FCT 315) it is made clear that the best interests of the child do not "outweigh" all other factors; in other words, it is not the case that the children's best interests should prevail unless there are "gravest countervailing grounds." What the manager has to do is demonstrate somewhere on the record that they have carefully considered the interests of the children and that these interests have been "identified and defined" in a manner beyond mere mention. An indication on the record of what is in the children's interest and the reasons for this opinion would be the minimum required to demonstrate that the manager was sensitive to the children's interest. This would

mean including in the notes a brief analysis of whether (and why) it would be in the children's interest if the applicant were to be granted humanitarian and compassionate consideration.

16.2 Appeal rights

The refusal letter must also be accompanied by instructions clearly outlining the appeal rights of the permanent resident (see Appendix B) as well as by a Notice of Appeal form from the IAD.

As in the case of appeals of family class applications, the permanent resident whose rights are affected by a residency status determination has the right to appeal to the IAD against the refusal of their application. To file an appeal to the IAD, the permanent resident must provide a notice of appeal and the written reason for refusal to the IRB registry within 60 days of being informed of the reasons for the refusal of the application. The IAD will notify the applicable CBSA hearings office that will request the overseas file and inform that applicable visa office that an appeal has been filed. Once the visa office has received notice of an appeal, it will send its file to the applicable hearings office within four weeks. The appeal record and proof of compliance must be received by the IAD no later than 120 days after the Minister receives notice of the appeal. (For more on the procedures to prepare the record for appeals of determinations of residency status, consult OP 21, section 8.3).

16.3 Permanent resident status determination and issuance of permanent resident travel documents

As a first step, the processing of a travel document requires an assessment against the residency obligation of A28(2). While A28(2) is clear, it should be remembered that applicants who acquired permanent resident status less than five years ago but who can meet the two-out-of-five-year standard in the five years immediately after they become permanent residents are considered to have met the residency test.

In cases where the residency obligation is not met, it is required, as a next step, that officers consider any evidence of humanitarian and compassionate grounds. This consideration must take into account the best interests of a child directly affected by a negative determination. Favourable humanitarian and compassionate considerations overcome any breach of the residency obligation prior to the determination (see section 5 above).

Only a manager can refuse permanent resident status determinations and sign the letter advising the applicant. Detailed reasons for the negative residency determination, including humanitarian and compassionate consideration, must be documented in the CAIPS notes. A negative residency determination triggers a letter advising the applicant of the outcome.

The requirement to issue a travel document is not contingent on a positive residency determination. There are five scenarios that generate a travel document (see section 17 below). Of most operational relevance is the requirement imposed by A31(3)(c) that a permanent resident outside Canada be issued a travel document if the officer is satisfied that

they were physically present in Canada at least once within the 365 days before the examination and they made an appeal within 60 days that has not been finally determined; or the period for filing a notice of appeal has not yet expired.

Similarly, a travel document must be issued to an applicant, even if the request is made after the 60-day period, if the applicant filed a notice of appeal with the IAD within 60 days of the negative residency determination.

Should applicants voluntarily declare that they have failed to comply with the A28 residency obligations, that they concur with the manager's negative determination and voluntarily waive their right to appeal under A63(4), they still have 60 days to reconsider, change their mind and file an appeal.

Applicants who have received a negative residency determination but are entitled to a travel document under A31(3) are not subject to a second processing fee. *Since these individuals have already submitted an application for a permanent resident document, the document must be issued without waiting for a second request from the applicant. Officers do not have the discretion to refuse applications for travel documents as long as the person meets the requirements of A31(3).*

CAIPS coding indicates that a negative residency determination has been made (see section 18.2below). When issued, the travel document is coded RX to alert ports of entry. The coding for travel documents in general is important as it flags for ports of entry and inland offices the residency determination that has been made overseas (see section 19 below).

Misrepresentation or fraud found in the application and the inadmissibility provisions of IRPA, including criminal activity, are not relevant to the issuance of a travel document so long as one of the A31(3) requirements has been met. For example, where documents demonstrating two years of residency in Canada are fraudulent but the officer is satisfied the applicant was in Canada for any time in the past year, a travel document must be issued and the fraud must be noted in FOSS.

In such cases, a "Watch For" posted in FOSS will alert ports of entry and, if appropriate, generate an admissibility hearing when the person arrives in Canada. When the case has the potential to be high profile or contentious, National Headquarters should be informed (see OP 1, section 15). Officers do not have the authority to seize or revoke records of permanent residence unless it is clear that the person has lost status in accordance with A64.

Visa offices are reminded that the issuance of a permanent resident (PR) card in Canada does not impact on the determination of permanent resident status overseas. Decisions at visa offices are taken on the basis of the facts available. These facts may not be consistent with those provided at the time of the PR card application.

Advising in-Canada offices

At present, CIC information systems are not fully supportive of the need to share information in the client continuum from overseas determination of resident status to the grant of a permanent resident card and, ultimately, the grant of Canadian citizenship.

Offices should use the "Watch For" capacity in CAIPS/FOSS and coding on the counterfoil to alert ports of entry, CPC-Sydney and Citizenship of a negative determination. Permanent resident card units do check FOSS records and will interview applicants if they are aware that the A28 provisions may not have been met.

Citizenship applications

When officers determine that applicants do not comply with the residency obligations of A28(2), but that, nevertheless, they have applied for citizenship, they should advise Case Review at the latter's generic e-mail address:
NHQ-Citizenship-Case-Review.

17 Procedure: When to issue the travel document for permanent residents

A travel document is normally issued to a principal applicant and to each of the applicant's accompanying family members by means of a single final decision. The application of a family is generally considered as a whole, and there is only a single processing screen with "STATUS RETAINED" fields for any given family. But the determination of each family member's compliance with the residency obligation should be undertaken individually. If any of the accompanying family members do not meet the residency obligation, they are to be removed from the application of the principal applicant and processed on a separate file.

There are five cases in which a visa officer will issue a travel document to a permanent resident following a determination of residency status:

1. Where a permanent resident meets the residency obligation, as provided for in A28(2)(a) and (b) and A31(3)(a).
2. Where humanitarian and compassionate considerations overcome the breach of the residency obligation, as provided for in A28(2)(c) and A31(3)(b).
3. Where an officer has determined that neither 1) or 2) apply, but where the permanent resident
 - a. has been physically present in Canada at least once within the 365 days before the date of application; AND
 - b. has made an appeal to the Immigration Appeal Division of the Immigration and Refugee Board under A63(4) that has not been finally determined; OR
 - c. the period for making such an appeal (60 days from the date of the decision of the residency determination) has not yet expired [A31(3)(c)].
4. Where an officer has determined that neither 1) nor 2) applies, but where the Immigration Appeal Division has ordered a permanent resident to physically appear at an appeal hearing in Canada [A175(2)].
5. Where an officer has determined that neither 1) nor 2) applies, but where the Immigration Appeal Division has allowed the appeal of an appellant who is outside Canada and the appellant requires a travel document to return to Canada.

18 Procedure: Steps involved in issuing the travel document

There are five steps involved in issuing the travel document. For more information, see:

- Step 1 – Completion of the “Status Retained” fields, section 18.1 below.
- Step 2 – Completion of the “Final Decision” code, section 18.2 below.
- Step 3 – If application is approved, issue the travel document, section 18.3 below.
- Step 4 – If an application is refused, issue a refusal letter to the applicant, section 18.4 below.
- Step 5 – If an applicant requests issuance of a travel document subsequent to the receipt of a refusal letter, section 18.5 below.

For more on the processing of applications for travel documents in CAIPS, consult the *CAIPS User Guide*, Permanent Resident Determination Processing, section 3.

For more on appeals of determinations of residency status, consult OP 21, section 9.

For more on port-of-entry procedures concerning the treatment of permanent residents returning to Canada on travel documents to pursue appeals of a negative decision relative to the determination of their residency status, consult ENF 23, section 8.

18.1 Step 1. Completion of the “Status Retained” fields

Upon completing the documentation concerning the reasons for a determination of residency status in the CAIPS notes, an officer must enter a final decision in the Permanent Residency Determination module of CAIPS. To do so, the officer must enter the Case Processing Screen in this module and complete the “STATUS RETAINED” fields. These fields correspond to sections A28(2)(a) and A28(2)(c), which provide for retention of permanent resident status; they prompt the officer to enter the reason why an applicant retained permanent resident status.

For a case to be finalized with a positive decision on initial assessment of an application, the officer must enter a “YES” in one of the lines in the “STATUS RETAINED” fields. If an applicant is found to have complied with the residency obligation on the basis of time spent in Canada, a “YES” must be entered only in that field. None of the other fields need to be entered. If none of the reasons apply, a “NO” entry must be entered in each of the “STATUS RETAINED” fields. Where none of the “STATUS RETAINED” fields has a positive entry, the applicant is determined not to have complied with the residency obligation under A28, and the application for a travel document is refused.

18.2 Step 2. Completion of the “Final Decision” code

Valid entries for the “Final Decision” field in the Permanent Resident Determination module of CAIPS are:

1. Passed – meets the residency obligation under one of the provisions of A28(2)(a);
2. Passed (H&C) – humanitarian and compassionate considerations overcome the breach of the residency obligation, as provided for in A28(2)(c);
3. Passed (365 days/appeal) – meets neither the residency obligation nor humanitarian and compassionate grounds but
 - a. has been physically present in Canada at least once within the 365 days before the date of application; AND
 - b. has made an appeal to the Immigration Appeal Division of the Immigration and Refugee Board under A63(4) that has not been finally determined OR
 - c. the period for making such an appeal (60 days from the date of the decision of the residency determination) has not yet expired;
4. Refused;
5. Withdrawn;
6. Passed (appeal hearing) – meets neither the residency obligation nor humanitarian and compassionate grounds but the Immigration Appeal Division has ordered appellant to appear in person at the hearing.

Note: The "Final Decision" codes 1, 2, 4 or 5 can be entered when a case is first considered, or when it has been reopened to correct a decision that has been entered in error. The "Final Decision" codes 3 and 6 can be used only after the reopening of a case which was refused in CAIPS by a "Final Decision" code of 4. Reopening of a case to enter a 3 or 6 in the "Final Decision" screen should be done only after a refusal letter has already been communicated to the applicant and where the applicant has responded by requesting the issuance of a travel document to pursue their appeal rights in Canada, or where the IAD has ordered that the Minister allow the appellant to appear physically at a hearing in Canada.

18.3 Step 3. If application is approved, issue the travel document

In most cases, the travel document is to be issued for a single entry with a validity of six months. Occasionally, there may be cases where a permanent resident of Canada is unable to apply for a permanent resident card due to their long-term residency abroad. In these rare cases, where a permanent resident is unable to apply for the card from within Canada because of the shortness of their occasional stays in Canada, a multiple-entry travel document may be issued for a period of validity not exceeding five years. The category to be printed on the travel document counterfoil is R-1. A separate counterfoil will be printed for each person included in the application that meets the criteria for issuance.

In those cases where an applicant was approved on humanitarian and compassionate grounds, the category to appear on the travel document counterfoil is RC-1.

18.4 Step 4: If an application is refused, issue a refusal letter to the applicant

If a refusal letter is issued to an applicant, that applicant will be provided with 60 days to file an appeal of the decision to the IAD. The applicant loses their status if an appeal of the decision is not filed with the IAD within the 60-day time period allowed pursuant to A46(1)(b).

18.5 Step 5. If an applicant requests the issuance of a travel document subsequent to the receipt of a refusal letter

There will be situations where a travel document may be issued with a validity date of less than six months if a tighter control of the issuance of the document is warranted. One such situation is when permanent residents do not meet the residency requirement but have been in Canada at least once in the past 365 days. Permanent residents in this situation are allowed to enter Canada during the 60-day appeal period even if they have not yet filed an appeal. In these cases, the officer should reopen the case and enter a Final Decision of 3. The travel document must be issued, normally with a short validity not exceeding 60 days, to correspond with the period allowed for submitting the appeal in Canada. The travel document is to be coded with a different category in this type of case (RX-1, in place of the standard R-1 coding), to signal to the port of entry that the permanent resident has been allowed to return to submit an appeal in Canada.

In the case above, where an appellant is not eligible for a travel document under A31(3), the appellant must make an application to the IAD requesting to be physically present at the hearing of the case in Canada. Applications must be filed with the IAD and with the Minister no later than 60 days after the notice of appeal is filed. If the IAD is satisfied that the presence of the permanent resident is necessary, it will order the Minister to permit the appellant to go forward to Canada to attend the hearing. Where the IAD has made such an order, an officer shall issue a travel document for that purpose [A175(2)]. When the IAD agrees to hold a hearing, it issues a document called NOTICE TO APPEAR (form 06c). This document gives the time and place of the hearing. In many cases, it will indicate that the applicant does not need to appear in person, and may instead participate via teleconference. If the IAD agrees that the physical presence is required, this will be done with a document called NOTICE OF DECISION containing the following text:

“The application made by the Appellant pursuant to Immigration Appeal Division Rule 46(1), to physically appear for his/her hearing on _____ is granted”.

Visa offices should request both of these documents before agreeing to reopen a refused PRTD file, to be certain that the IAD is both aware that the applicant is outside of Canada and in agreement that physical presence is required.

In these cases, the officer should reopen the case and enter a Final Decision of 6. The travel document is to be coded with a different category in this type of case (RA-1, in place of the standard R-1 coding), to signal to the port of entry that the permanent resident has been allowed to return by virtue of an order of the IAD to attend an appeal hearing in Canada.

Where the Immigration Appeal Division has allowed the appeal of a permanent resident who has remained outside Canada, the visa officer should reopen the case and enter a Final Decision of 1. The travel document is to be coded with the standard R-1 coding.

19 Procedure: Categories on the travel document counterfoil

| | |
|----|---|
| R | Passed with a Final Decision of 1 |
| RC | Passed (H&C) with a Final Decision of 2 |
| RX | Passed (365 days/appeal) with a Final Decision of 3 |
| RA | Passed (appeal hearing) with a Final Decision of 6 |

20 Procedure: Transitional issues

Note: For more on transitional procedures in CAIPS regarding the conversion from "Returning Resident" to "Permanent Resident Determination," consult section 1 of "Permanent Resident Determination" in the CAIPS User Guide.

20.1 R328(1) – Permanent residents

Permanent residents, who have not lost their status by way of a final determination under the former *Immigration Act*, maintain their status as permanent residents under IRPA. Even if individuals have been refused applications for returning resident permits under the former *Immigration Act*, they have the right to a final determination under the residency obligation provisions of IRPA before their status can be revoked under A46.

20.2 R328(2)– Returning resident permit prior to the coming into force of the IRPA

Permanent residents who were issued a returning resident permit under the former *Immigration Act* are entitled to have the time period during which the permit was valid counted as time spent in Canada during the applicable five-year period under examination for the purposes of determining compliance with the residency obligation.

20.3 R328(3) – Returning resident permit following the coming into force of the IRPA

Where a permanent resident holds an RRP valid for any period of time within the two years immediately following the coming into force of the new Act, this time period is counted as time spent in Canada during the applicable five-year period under examination. A person determined to be a permanent resident under the former Act continues to be a permanent resident under IRPA.

Appendix A Refusal letter – Residency status determination

INSERT LETTERHEAD

Our Ref.:

INSERT ADDRESS

Dear:

This letter refers to the determination of your status as a permanent resident of Canada.

After careful and thorough consideration of all aspects of your application and of the supporting information provided, I have determined that you have not complied with the requirements of the residency obligation under section 28 of the *Immigration and Refugee Protection Act*.

Pursuant to subsection 28(2) of the Act, a permanent resident complies with the residency obligation provisions with respect to a five-year period if, for at least 730 days in that five-year period, the permanent resident is:

- (i) physically present in Canada;
- (ii) is outside Canada accompanying Canadian citizen who is their spouse or common-law partner or is a child accompanying a parent;
- (iii) is outside Canada employed on a full-time basis by a Canadian business or in the public service of Canada or of a province;
- (iv) is an accompanying spouse, common-law partner or child of a permanent resident who is outside Canada and is employed on a full-time basis by a Canadian business or in the public service of Canada or of a province.

For the purposes of determining whether you have met the residency obligation, I have examined the five-year period immediately before **(the date of receipt of the application)**. I have also examined all of the documentation that you have provided in support of your application for a travel document. I have concluded that you have not complied with the residency obligation for at least 730 days in the five-year period immediately before **(the date of receipt of the application)**. I have exercised my discretion in reviewing the humanitarian and compassionate considerations connected to your personal circumstances that you have presented with your application.

(If the applicant has children) I have also taken into account the best interests of the child (or children) directly affected by the determination of your residency status.

(For all applicants) Having considered all of the evidence that you have presented, I am not satisfied that your personal circumstances involve humanitarian and compassionate considerations that justify the retention of permanent resident status.

A person loses permanent resident status only on a final determination of a decision made outside of Canada that the person has failed to comply with the residency obligation under

section 28 of the Act. The appeal provisions under subsection 63(4) provide a permanent resident the right to appeal to the Immigration Appeal Division of the Immigration and Refugee Board against a decision made outside of Canada on the residency obligation under section 28 of the Act.

Under the *Immigration Appeal Division Rules*, an appellant must provide it with a copy of this letter as well as a completed Notice of Appeal form and a copy of the Letter Notifying Applicant of Appeal Rights (see enclosures). The completed forms must be received by the registry office of the Immigration Appeal Division for the region in Canada where you, the appellant, last resided no later than **SIXTY (60) DAYS** after having received the written decision.

Should you choose to submit an appeal of this decision concerning your non-compliance with the residency obligation under section 28 of the Act, your appeal will take place in Canada before the Immigration Appeal Division of the Immigration and Refugee Board. If you wish to return to Canada for the hearing of the appeal you must state this in the Notice of Appeal that you send to the Immigration Appeal Division.

If you have been in Canada at least once during the past 365 days, you are entitled to a travel document to enable your return to Canada.

If you have not been in Canada at least once during the past 365 days, you must apply to the Immigration Appeal Division for authorization to be physically present at the hearing of your appeal in Canada. To be granted authorization to do this, you must first file your appeal with the Immigration Appeal Division no later than **SIXTY (60) DAYS** from the date you receive this letter.

Your request to be present at your appeal hearing may be submitted on the "Notice of Appeal" form that is attached to this letter. However you submit your request to attend the appeal hearing, your request must be submitted no later than **SIXTY (60) DAYS** after you file the Notice of Appeal. If the Immigration Appeal Division is satisfied that your presence is required at the hearing, a travel document will be issued to enable you to return to Canada. You will be asked to present your passport and appeal documents to this office before the travel document is issued.

Should you choose not to submit an appeal of this decision to the Immigration Appeal Division in Canada, this decision concerning your non-compliance with the residency obligation under section 28 of the Act will become a final determination of your residency status. You will be inadmissible to Canada as a permanent resident for failing to comply with section 28. You will be considered to have lost your status as a permanent resident of Canada, in accordance with paragraph 46(1)(b). You will not be allowed to enter Canada as a permanent resident, in accordance with subsection 19(2).

Please attach a copy of this letter with any Notice of Appeal or correspondence that you may direct to an office of the Immigration Appeal Division or to a Canadian immigration office overseas.

Yours sincerely,

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Immigration Program Manager

Appendix B Letter notifying applicant of appeal rights

This letter refers to the determination of your permanent resident status in Canada.

I regret to inform you do not meet the requirements of the residency obligation contained in section 28 of the *Immigration and Refugee Protection Act*. I have attached a copy of the letter explaining the reason(s) for refusal.

Subsection 63(4) of the Act allows permanent residents who have been determined to have lost their permanent resident status the right to appeal to the Immigration Appeal Division (IAD). The appeal may be submitted on the following grounds:

- a question of law or fact, or mixed law and fact;
- a principle of natural justice has not been observed; and
- there exist humanitarian and compassionate considerations that warrant the granting of special relief in light of all the circumstances of the case.

You may commence an appeal by completing the enclosed Notice of Appeal and mailing it with a copy of this letter and the officer's written decision to the address of the Immigration Appeal Division registry office for the region in Canada where you last resided. The address of the IAD registry offices may be found on the attachment entitled "Important Instructions." (Officer: Please attach "Important Instructions").

In addition, one of the following applies to you:

Based on the information you provided, you are entitled to a travel document pursuant to paragraph 31(3)(c) of the *Immigration and Refugee Protection Act*, which states:

31.(3) A permanent resident outside Canada who is not in possession of a status document indicating permanent resident status shall, following an examination, be issued a travel document if an officer is satisfied that

(c) they were physically present in Canada at least once within the 365 days before the examination and they have made an appeal under subsection 63(4) that has not been finally determined or the period for making such an appeal has not yet expired.

Based on the information you provided, under the *Immigration and Refugee Protection Act* you are NOT entitled to a travel document. However, you may apply to the Immigration Appeal Division for permission to travel to Canada for your appeal hearing.

Subsection 175(2) of the Act reads as follows:

175. (2) In the case of an appeal by a permanent resident under subsection 63(4), the Immigration Appeal Division may, after considering submissions from the Minister and the permanent resident and if satisfied that the presence of the permanent resident at the hearing is necessary, order the permanent resident to physically appear at the hearing, in which case an officer shall issue a travel document for that purpose.

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If you wish to return to Canada for the hearing of the appeal, you must make an application to the Immigration Appeal Division. Information stating how to apply to return to Canada for your hearing can be found on the attachment entitled "Important Instructions."

If you do not wish to return to Canada, your appeal may be conducted through telecommunication with the Immigration Appeal Division.

You must attach two copies of this letter and two copies of the refusal letter with your Notice of Appeal. The completed form and attachments must be received by the IAD within **SIXTY (60) DAYS** from the date of this letter.

Appendix C Consent to decision on residency obligation and waiver of appeal rights resulting in loss of status under A46(1)(b)

Name of Office:

File No:

Date:

Subject:

Subject's Record of Permanent Residence No:

Part 1 – Voluntary consent to determination of failure to comply with residency obligations

I, _____, voluntarily declare that I have failed to comply with the residency obligations under section 28 of the *Immigration and Refugee Protection Act* and I consent to the officer's decision on the residency obligation under section 28.

Pursuant to subsection 28(1) of the Act, a permanent resident must comply with a residency obligation with respect to every five-year period.

Pursuant to paragraph 28(2)(a) of the Act, the following provisions govern the residency obligation under subsection 28(1):

28. (2)(a) a permanent resident complies with the residency obligation with respect to a five-year period if, on each of a total of at least 730 days in that five-year period, they are

- (i) physically present in Canada,
- (ii) outside Canada accompanying a Canadian citizen who is their spouse or common-law partner or, in the case of a child, their parent,
- (iii) outside Canada employed on a full-time basis by a Canadian business or in the public service of Canada or of a province,
- (iv) outside Canada accompanying a permanent resident who is their spouse or common-law partner or, in the case of a child, their parent and who is employed on a full-time basis by a Canadian business or in the public service of Canada or of a province, or
- (v) referred to in regulations providing for other means of compliance.

Section 328 of the *Immigration and Refugee Protection Regulations* reads:

328. (1) A person who was a permanent resident immediately before the coming into force of this section is a permanent resident under the *Immigration and Refugee Protection Act*.

(2) Any period spent outside Canada within the five years preceding the coming into force of this section by a permanent resident holding a returning resident permit is considered to be a period spent in Canada for the purpose of satisfying the residency obligation under section 28 of the *Immigration and Refugee Protection Act* if that period is included in the five-year period referred to in that section.

(3) Any period spent outside Canada within the two years immediately following the coming into force of this section by a permanent resident holding a returning resident permit is considered to be a period spent in Canada for the purpose of satisfying the residency obligation under section 28 of the *Immigration and Refugee Protection Act* if that period is included in the five year period referred to in that section.

In making this declaration, I fully acknowledge the nature and consequences of my decision.

I am signing this declaration of my own volition, not due to force or the influence of any other person and I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

Signed at _____, in the country of _____

On the _____ day of _____ of the year _____.

Signature of person _____

Witnessed by _____

Part 2 - Voluntary waiver of right to appeal a decision on the residency obligation under section 28 of the *Immigration and Refugee Protection Act*.

I hereby acknowledge that I have the right under subsection 63(4) of the *Immigration and Refugee Protection Act* to appeal the officer's decision under section 28 to the *Immigration Appeal Division*, within 60 days after receiving the written decision.

Subsection 63(4) of the Act reads:

63. (4) A permanent resident may appeal to the Immigration Appeal Division against a decision made outside of Canada on the residency obligation under section 28.

Notwithstanding my right under subsection 63(4) of the Act, I hereby voluntarily waive my right to appeal this decision, effective immediately.

In so doing, I fully acknowledge the consequences of my decision. Namely, a final determination will have been made that I have failed to comply with the residency obligation under section 28 of the Act, resulting in the loss of my permanent resident status pursuant to paragraph 46(1)(b) and all the rights attached to that status. I fully understand the consequences of my decision, including that I will no longer have the right to enter and remain in Canada on a permanent basis without first obtaining a permanent resident visa, that I will not be eligible to sponsor a family member to come to Canada, that I will not have the right to work and study in Canada unless authorized to do so under the Act, that I will not be eligible to apply for Canadian citizenship, and that I will not be eligible for certain provincial benefits such as health coverage and social assistance.

Paragraph 46(1)(b) of the Act reads:

46. (1) A person loses permanent resident status

OP 10 Permanent Residency Status Determination

(b) on a final determination of a decision made outside of Canada that they have failed to comply with the residency obligation under section 28.

I am signing this waiver of my own volition, not due to force or the influence of any other person and I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

Signed at _____, in the country of _____,

On the ____ day of _____ of the year _____.

Signature of person _____

Witnessed by _____

Part 3 – Interpreter’s Declaration

I, _____, solemnly declare that I have faithfully and accurately interpreted in the _____ language the information provided above. I make this declaration conscientiously believing it to be truth and knowing that it is of the same force and effect as if made under oath.

Signature of Interpreter _____

Part 4 – Declaration of Minister’s Delegate

Declared before me _____ at _____.

This __ day of _____ of the year _____.

Signature of Delegate _____