

HUMANITARIAN & COMPASSIONATE APPLICATION (H&C) DO-IT-YOURSELF KIT

This kit aims to help people living with precarious status in Canada write and submit their application for permanent residence on humanitarian and compassionate grounds (otherwise known as an “H&C application”).

It is definitely helpful to consult a trustworthy immigration lawyer about an H&C. But that is not always possible for financial reasons. This kit can help you to put together your own application. You can then try to find a trustworthy lawyer to review it. Organizations like Just Solutions and Solidarity Across Borders can try to help you find a lawyer who will review the file without cost to you (see Section A-5 below).



THIS KIT INCLUDES:

- A /** Introduction (basic information about an H&C and where to go for more help) / **page 1**
- B /** Frequently Asked Questions / **page 7**
- C /** Checklist (documents to gather in order to get started) / **page 11**
- D /** Guidelines for Letters of Support (tips for people writing letters to support your application) / **page 14**
- E /** H&C Template (examples of arguments that you can use in the main part of your H&C) / **page 16**

STEP-BY-STEP CHECKLIST FOR AN H&C APPLICATION

- Determine whether you are currently eligible to apply for an H&C (see section A-1)
- Read this ENTIRE kit and chose the strongest arguments for your case
- With your strongest arguments in mind, gather the relevant material on our Checklist
- Download and print the forms you need at www.cic.gc.ca/english/information/applications/handc.asp
- Put the application together! (see “Parts of an H&C Application”, section A-3)
- If possible, ask a lawyer to review your H&C (see “Sources of Support”, section A-5)
- Pay the application fees at www.cic.gc.ca/english/information/applications/handc.asp
- Mail the application (see “Sending, Updating and Following Progress”, section A-4)

A / INTRODUCTION



1 / ELIGIBILITY: WHO CAN SUBMIT AN H&C APPLICATION?

The **general rule** is that anyone in Canada can file an H&C application. However, there are some exceptions:

➔ You **cannot** file an H&C application if you are waiting for a decision on your refugee claim from the Immigration and Refugee Board;

➔ You **cannot** file an H&C application if you have already submitted an H&C application and no decision has yet been made on that application;

➔ You **cannot** file an H&C application if you are a “designated foreign national” and a decision on your refugee claim or PRRA¹ was made in the last **five years**. (Normally, you would have received a specific notice from CIC² indicating that you are a “designated foreign national” - so, unless you have received such a notice, it is safe to assume that you are not a “designated foreign national”);

➔ You **cannot** file an H&C application if your refugee claim (including the appeal to the Refugee Appeal Division) was **decided** or has been abandoned or withdrawn in the last **twelve months, unless:**

(a) you would be deported to a country that is unable to provide you with adequate health care for your specific health care needs; or

(b) your deportation would have a negative effect on **any** child’s best interests, whether or not they are included in the H&C (this applies to: adults who would have to leave children in Canada if they were deported; adults who would have to bring

Filing an H&C less than a year after your refugee claim is denied

➔ indicate on the IMM 5283 “Supplementary Information” form that you are invoking a child’s best interest or a risk to your health;

➔ submit evidence to back up these claims (for example, if you are arguing that you won’t have adequate healthcare, you should include a doctor’s report about your condition and evidence that the treatment you need is not available in your country of citizenship; if you are arguing that your deportation is not in the best interests of a child, include evidence of your role in the life of the child – see the H&C Template, section E for more information).

1 Pre-Removal Risk Assessment.

2 Citizenship and Immigration Canada

3 Sections 34, 35 and 37 of Immigration and Refugee Protection Act (IRPA).

their children with them if deported; adults who have children living abroad; and to children presenting the H&C application).

➡ You **cannot** file an H&C application if you have been found to be “inadmissible” for permanent residence on grounds of national security, human rights violations, or organized crime³ (**HOWEVER**: if you are or may be inadmissible on grounds of criminality or serious criminality⁴ or on medical⁵ or on financial⁶ grounds, **you can in most cases still apply** for an H&C but must ask for an exemption – see the H&C Template, section E, for details).

2 / WHAT DOES CIC LOOK FOR IN AN H&C APPLICATION?



In general, CIC looks for evidence of any form of **hardship** that you will suffer by being forced to leave Canada. This includes, for example, the best interests of a child or children, strong integration in Canada and the hardship that would therefore result from being uprooted, and conditions in the country to which you would be deported.

CIC says the following factors can be considered:

- that the inability to leave Canada has led to establishment;
- ties to Canada;
- the best interests of any children affected by the application;
- factors in your country of origin (this includes, but is not limited to: inadequate medical care, discrimination that does not amount to persecution, harassment and other hardships);
- health considerations;
- family violence considerations;
- consequences of family separation;
- any other relevant factor you wish to include.

Certain factors are not considered in an H&C application: persecution⁷ and personalized risks of death, torture or cruel and unusual punishment⁸.

What is meant by 'hardship'?

CIC defines the kind of hardship that you must prove as either “unusual and undeserved” or “disproportionate”. “Unusual” means that it is outside of ordinary circumstances and “undeserved” generally means that it arises from circumstances beyond your control. For CIC, “disproportionate” means that “the hardship of not being granted the requested exemption would have an unreasonable impact on the applicant due to their personal circumstances”.

These are very vague definitions that give the immigration officer deciding your case a great deal of discretion!

⁴ Section 36 of IRPA.

⁵ Section 38 of IRPA

These factors are supposed to be considered in a refugee claim and in a Pre-Removal Risk Assessment (PRRA). Therefore, your H&C application should not be based on those types of problems. However, it is often difficult to make these distinctions. When in doubt, include evidence about what you fear, and simply describe what you are afraid could happen if you are deported without saying that it amounts to persecution or personal risk. For example, say that you are afraid that you will not be able to find work because of your ethnicity, but do not qualify that as persecution on the basis of your ethnicity.



3 / PARTS OF AN H&C APPLICATION

There are three main parts of an H&C application:

A) FORMS

You can download these from CIC website at this link:
www.cic.gc.ca/english/information/applications/handc.asp

There is a manual at this same link that can help you fill in the form. **Note:** *some information on this part of the CIC website is misleading. For example, it says that you can submit an H&C from outside Canada – but in practice, H&C applications from outside Canada do not get processed. It also suggests that if you have a criminal record you should try to clear your record before applying - but in fact, it can take many years to try to clear your record and you may be deported long before you succeed (see section A-1 above for a better approach).*

B) COVER LETTER

See H&C Template (section E below) for details on how to write this. This is where you will provide detailed answers to questions 7-14 on the IMM5283 "Supplementary Information" form - on the form itself, you can write "See attached submissions" for questions 7-14. Make sure that you address all of these questions in your letter.

C) DOCUMENTS (including evidence)

You can see a list of documents that CIC requires at this link:
www.cic.gc.ca/english/information/applications/handc.asp

You will need to back up every statement that you make in the cover letter with evidence: letters, medical or psychological assessments, reports, bank receipts, photographs, etc. If you are applying less than a year after your refugee claim is re-

fused, you also have to provide evidence to show best interests of a child or medical risk (see above, box under section A-1).

Note: *You may wish to wait before submitting police certificates (the requirement is police checks from any country where you have lived for at least 6 months since you were 18), even though this is on CIC's list of required documents. They can be costly and you can submit them once you have received first stage acceptance. On the CIC document checklist, instead of checking this box off, write "To follow". However, if you wish to submit these right from the start, there's no harm in doing so.*



4 / SENDING, UPDATING AND FOLLOWING PROGRESS OF YOUR APPLICATION

A) COPY AND SEND

Photocopy your entire package before sending and keep the photocopied file in a safe place. In addition, the package and updates should be sent by registered mail.

Send your application package to:

Citizenship and Immigration Canada
Backlog Reduction Office
1148 Hornby Street
Vancouver, BC V6Z 2C3

B) UPDATES

It is very important to keep your file updated by sending any new information that becomes available after your original submission. Updates can be sent to the office that is processing your application (unless you are otherwise notified, you should send updates to the office where you initially sent your application). You can also send small updates and submissions by email: cic-vancouver-bro-bra@cic.gc.ca, fax 1-604-666-1116 or by post.

C) FOLLOWING PROGRESS

If you don't want to contact CIC directly (for example, calling the CIC call centre), the only way to track the progress of your application is to use the "verify the status of your application" section of the CIC website at www.cic.gc.ca/english/my_application/status.asp. Unfortunately, this online tool does not always work, and when it does, it does not give very detailed information. It is possible to ask a third party (such as a lawyer or a community organization) to submit an access to information request to CIC at different points in the application to get a copy of the internal notes in your file, which sometimes can give an indication of how the application is progressing.



5 / SOURCES OF SUPPORT

A) HELP WRITING H&C APPLICATION

➡ **Solidarity Across Borders** runs monthly Mutual Aid Nights where basic information about the H&C process is shared and, resources permitting, support provided for writing an application. Find out the date of the next Mutual Aid Night by emailing solidaritesansfrontieres@gmail.com, calling 438-933-7654 or going to the website, www.solidarityacrossborders.org.

➡ **Just Solutions** is a legal information clinic specializing in immigration law. They sometimes prepare H&C applications for free, but due to limited resources, they can only take on cases of people whose lives would be in danger due to lack of medical treatment or in which the best interests of a child with a physical or mental challenge are at risk if the applicant had to leave Canada. They can give basic information about H&C applications to everyone, regardless of whether they fit the criteria mentioned above. Contact by e-mail (js@montrealcitymission.org or solutions.justes@gmail.com) or by telephone: 514-844-9128, ext. 201 or 204.

➡ Solidarity Across Borders maintains a list of immigration lawyers whom our network has found to be reliable and who accept legal aid mandates without asking for extra fees. Email solidaritesansfrontieres@gmail.com or call 438-933-7654 and ask for the list.

B) FINANCIAL SUPPORT

The government Legal Aid program is available to low income people, even if they don't have legal status in Canada. Legal Aid can pay for a lawyer and cover the cost of a psychological assessment for an application. To access Legal Aid, go to a lawyer who accepts Legal Aid and they will arrange to see if you qualify.

Contact solidaritesansfrontieres@gmail.com for more ideas.

C) FORMAL COLLECTIVE PROCESS

The **Canadian Council for Refugees (CCR)** is working on behalf of people whose refugee claim was refused less than a year ago, but who are still eligible to submit an H&C because of the best interests of a child or a medical situation (see section A -1 above, Eligibility: who can submit an H&C application?) and have been called in by CBSA for deportation. If you are in this situation, you can contact CCR at jdensch@ccrweb.ca. They can speak directly to CBSA and request that your H&C be studied before you are deported.

B/ FREQUENTLY ASKED QUESTIONS



What if I have I am “illegally” in Canada, can I apply? What happens if I am accepted?

Yes, you can apply. If a person is accepted while underground with an arrest warrant hanging over their head, then the deportation order is suspended ("stayed"). However this does not automatically cancel the arrest warrant. You will still have to go into CBSA to have it "executed" - that is, be formally arrested - but you should then be released, because the deportation order has been stayed.

This stay remains in effect while the final steps (medical exam, police check, etc.) are carried out. If everything is okay, you will be granted permanent residence and the deportation order will be cancelled. If you are refused permanent residence (for example, you have a criminal record and the government refuses to grant a waiver), then the stay ends and your deportation order is active again.



What happens after I send my application? Is there a hearing?

After you send your application, you will receive an acknowledgement by mail. Applicants often then receive requests for updates to their file, including requests for employment, tax, school registration documents, etc.

However, you cannot count on being invited to update your file, so if there is any change in your situation (eg new job, birth of child, spouse or address), it is YOUR responsibility to inform Immigration Canada (and important that you do so, if it is a positive factor) – see section A-5 above on updating your file.

There is not normally a hearing although rarely an officer may decide to call you in to ask questions.

A single immigration officer will then consider your application and make a decision to accept it in principle or reject it. You will either receive a letter with the decision or be called in to CBSA to receive it.

If you are accepted in principle, then you still have to undergo a police check

If you are called in, it is a good idea to speak to someone with experience and knowledge of the process, like a lawyer you trust, especially if you are in Canada without legal papers, because you can be detained.

and medical check. If these are positive (that is, you are clear or are granted a waiver), then you are granted permanent residence in Canada.



If I have no legal status in Canada, will applying for an H&C make me more visible to the government or more likely to be picked up?

If you are here after a deportation date, the government already knows you are here. As long as you are careful not to give an address where the CBSA can find you (see next question), simply applying for status will probably not increase risk to you. However, we don't know if the unit that processes H&Cs takes note of the status of applicants or what it does with this information. On the other hand, we have never noticed any connection between H&C applications and people being picked up by CBSA⁹.



If I have no legal status in Canada, what addresses should I give to protect my safety?

If you do not want to risk being found by CBSA, you should not put your address or the address of your current place of work or current school anywhere in the application.

However, the government does need an address where they can reach you with questions and responses to your application. You should use the address of a lawyer or a trusted community organization who will not disclose your whereabouts if contacted by CIC or CBSA⁹, and who you trust to inform you if their address changes or if they receive correspondence on your behalf.

In the IMM5669 (Schedule A) form, you are asked to list your addresses and activities for the past 10 years (for example, name of the company you are currently working for). If you don't want CBSA to find you, you could mark your current address and company name as "N/A" = not applicable. Also, it is important to make sure that people who write support letters for you do not indicate or refer to your current address, school or workplace.



How do I get letters of support if I have to use a different name (at work, school, community centre, etc)?

It is important that support letters use your real name. If an employer cannot write a letter in your true name, it is better not to include a letter from them. Sometimes a trusted colleague can be asked to write a letter instead of your boss.

⁹ Canadian Border Services Agency, the government agency in charge of enforcing deportation orders.



How much does it cost?

When you apply, you have to pay the government \$550 for each adult and \$150 for each child included in the application.

In addition, if your application is accepted, the principal applicant and, if applicable, their spouse or common-law partner, must pay a \$490 “Right of permanent residence fee” before they receive their permanent resident status.



I don't have any money, how can I apply for an H&C?

If you are unable to pay for or borrow money to pay for the application fees, joint fundraising initiatives with family and friends is sometimes possible. Contact Solidarity Across Borders or other migrant justice organizations for ideas or be put in touch with campaigns already underway.



How long will it take before I get an answer?

The current processing time for H&C applications is 30-42 months. Check the CIC website for updates.



Once I have submitted my H&C, can I still be deported?

Yes. Simply applying for an H&C does *not* automatically stop a deportation order. An application does not in itself protect you from deportation.

However, in certain rare cases, it might be possible to get an administrative stay from your CBSA officer or a judicial stay from the Federal Court until your H&C is decided. Ask lawyers or others with knowledge in this area about these options (see Section A-5 for places to get free legal advice).



What happens to my H&C application if I am deported before it is decided?

If you are deported before your H&C application is decided, the application will continue to be processed while you are outside Canada. However, experience shows that the chances of acceptance after a deportation are very, very, very small.



If we are a family, do we make separate applications, or a joint application?

If you have a spouse, common-law partner or dependent children residing in Canada who are not accepted refugees in the process of applying for permanent residence and are not permanent residents or citizens, you should be part of the same H&C application.



My spouse or common-law partner resides in Canada and is a permanent resident or citizen. Can they sponsor me if I have stayed beyond my deportation date or visa expiry?

A spouse or common-law partner can no longer sponsor you through an H&C application, they can only provide a letter of support or affidavit explaining the importance of the relationship and that they would have sponsored you if it is possible.

However, if your spouse or common-law partner is a Canadian citizen or permanent resident, a spousal sponsorship in Canada may be a possibility. This is different from an H&C. If you have no papers, it is important to discuss this option with a lawyer, because it can be complicated (see Section A – 5 above for sources of free legal advice.)



Can I include family members who live abroad in my H&C application?

No. However, if your application is accepted and you become a permanent resident, you can then apply to sponsor your eligible family members (for example, spouse or common-law partner, dependent children, etc. – see the CIC website for a complete list).



If I have new information that will help my H&C, can I add it after I have already submitted the application?

Yes. It is very important to continually update your H&C application with any relevant information. (See section A-4 above.) You can try to find a lawyer to help you with this even if you made the original submission without a lawyer.

C / CHECKLIST

This list is to help you gather all the basic information you will need to write your H&C application. Depending on your situation, there may be additional information or evidence that is not included on this list. It is important to read through this entire guide and decide on your strongest arguments before you begin gathering this material.

➔ **Personal Story:**

Detail the experiences leading up to your arrival in Canada, and what you have done since. It is important to show that you have put down roots in Canada. The more details you provide, the better. This is best done in the form of an affidavit and notarized (you can ask any legal aid office to notarize it for you – this is normally free).

➔ **Copy of refugee claim and other file history:**

Gather your basis of claim (BOC, formerly PIF), your decision by the Immigration and Refugee Board (IRB), and all other claims filed by yourself or your lawyer (e.g. to Federal Court). (It may not be necessary to include these documents with your application, but it is helpful to have them as you prepare the application.)

➔ **Support letters from friends and relatives, employers, religious and community organizations** in support of your application (for a template, see section D below, Guidelines for Letters of Support)

➔ **Family Tree:**

If you have a lot of family members in Canada, prepare a complete family tree, showing all of the relatives in Canada and including information about their status, employment, their relationship to you, etc.

➔ **Community involvement:**

Any information about your community activities and volunteer work in Canada

➔ **Photographs:**

- Photographs of family and friends in Canada that help to tell the story of your connections to Canada.
- Any photographs of you at community events and doing volunteer work.

- Include captions with the date and place each photo was taken and a description of who appears in the photograph and what they/you are doing.

➔ **Education:**

Obtain copies of certificates for any Canadian courses, transcripts, letters from teachers, information about awards you have received in Canada, photographs of graduation in Canada, etc.

Any language classes you have attended since you arrived in Canada are also important to include.

➔ **Employment:**

- Detailed reference letters from past or present employers in Canada (if you have worked without a permit, see section B, Frequently Asked Questions, and section E, H&C Template, on potential ways of handling this)
- Letters of potential job offers
- Any evidence of exceptional talents (for example, colour photocopies of your work if you are a photographer, an artist, a designer, a craftsperson or an architect)
- If possible, evidence that you would not be able to work (or work in your field) in your country of origin.

➔ **Income:**

- If you have been working and saving money, include a photocopy of your bank statement, to show you have savings and are skilled at managing your financial affairs.
- Copies of your income tax records: T-4 slips (if applicable), Tax declarations and Notices of Assessment
- If you are providing financial support to family outside the country, proof of this

➔ **Medical evidence (if applicable):**

NOTE: *If you are applying within 12 months of your refugee claim being refused, and wish to apply on the basis of the exemption that you would not receive adequate medical care if deported, you must include medical evidence.*

- Letters from a doctor and specialist about your particular medical condition and the treatment you require
- Evidence that treatment is not available in country of origin.

➔ **Children (if applicable):**

NOTE: *If you are applying within 12 months of your refugee claim being refused, and wish to apply on the basis of the exemption for the negative impact on a child or children, you must include evidence relating to the children.*

If the child or children in question would leave Canada with you (even if they are Canadian citizens):

- Proof of children’s involvement in Canadian society, in school, in community associations, sports, and/or with other family members or friends who are Canadian, etc (e.g. report cards, school photos, letters from teachers, participation in extra-curricular activities such as sports or theatre, photos documenting the child’s involvement, etc.)
- Letters from a doctor or specialist about any particular medical or developmental condition your child has and the treatment the child requires for this condition.
- Evidence that deportation would have a negative impact on a traumatized child. This could take the form of a psychological evaluation.
- Older children can write out their own personal statement as to why they would like to stay in Canada. Younger children can provide a drawing or photo.

If the child or children in question would remain in Canada but would be adversely affected by your deportation.

Proof of your involvement in the child’s life and upbringing (proof of financial, material and/or emotional support is important). You can collect letters from the child’s other parent, family members, teacher(s), day-care workers, doctor, social workers, psychologists, the child herself, etc. that speak to your role in the child’s life.

If the child or children in question are overseas but would be adversely affected by your deportation.

Proof of material or financial support for the child that you will no longer be able to provide if you are deported (e.g. financial support sent overseas).

➡ Identification:

- Photocopies of your passport, travel documents, visa, birth certificate;
- Photocopies of marriage certificate (if applicable), death certificate (if family members have died), children’s birth certificate (if applicable);
- 2 passport size photos.

D/ GUIDELINES FOR LETTERS OF SUPPORT

Letters from individuals (e.g. family members or friends) must include: the date; their home address; signature of the author; and a photocopy of the author's photo I.D. (preferably proof of permanent residence or citizenship in Canada and if possible showing address).

Letters should be very personalized (no form letters). All letters should include: personal details of the writer (their job, citizenship status, etc.); their relationship to the person applying and how they know them, and the reasons why they believe the individual should be allowed to remain in Canada. The writer should explain, in as much detail as possible, the individual's attachments and contributions to friends, family, and community in Canada.

Letterhead (if applicable)

Address

Date

To whom it may concern,

 **Introductory paragraph:** Identify yourself, how you know the individual and for how long you have known the individual.

 **Letter from employer:**

- specify whether the person works full-time or part-time/the number of hours they work per week;
- how long have they worked there, the hourly wage (applicant should also include pay stubs);
- outline the person's specific tasks and how this serves the employer;
- indicate their performance level on these tasks;
- give reasons why the individual should remain in Canada (what does the person contribute to Canadian society and specifically to your business).

 **Letter from relatives:**

- specify your relationship to the person and how close you are;
- how often you see each other and what role you have in each other's lives (e.g. share childcare, emotional support, etc.);
- what you do together and the role the person has with other family members (e.g. your children, husband/wife/partner, etc.);

- why separating you from the person would cause you hardship, and what the individual contributes to your life, and more broadly to other friends, family, community and Canadian society.

 **Letter from friends:**

- describe how you met the person and how long you have been friends;
- describe what you do together;
- describe what this person contributes to your life and what role they play in your life (e.g Do they play a support role? Are they like a brother or sister? Etc.);
- why should the individual remain in Canada (what does the person contribute to Canadian society).

 **Letter from religious or community organizations:**

- how long has the person been involved in your organization and how they got involved;
- what is your relationship to the individual;
- what is their role in the organization/group – what tasks do they do, what is their level of involvement, what are their responsibilities, what they contribute and why this contribution is important to the organization;
- how do they interact with others involved in the organization;
- any other reasons why the person should remain in Canada.

 **Letter from school or community group for a minor child:**

- what year and subject the child is in (or was in when you were teaching them);
- the level of integration the child has achieved (to establish the child is well-integrated);
- fluency in French (and/or English);
- any other positive information (e.g. the child is doing exceptionally well in their studies, the child is very appreciated by classmates, the child is very creative, etc.).

 **Letter from doctor/health specialist**

- specify why you are following the person
- What treatments and care are needed
- How long do the treatments need to be followed
- Your opinion of the prospect for recovery
- If applicable, the potential consequences if the person does not have access to this treatment in their country of origin

Sincerely,

Signature

Full name

Address

Phone number

E/ H&C TEMPLATE

Note: All comments or suggestions are in *italics*. Actual sample text is non-italicized.

date

Citizenship and Immigration Canada

Backlog Reduction Office

1148 Hornby Street

Vancouver, BC V6Z 2C3

Fax: 604-666-1116

E-mail: cic-vancouver-bro-bra@cic.gc.ca

RE: Submission in support of an application for permanent residence on humanitarian and compassionate (H&C) grounds of (*your names*) (ID: xxxx-xxxx)

Introductory paragraph, usually something like:

To Whom It May Concern

Attached you will find the completed IMM0008, IMM5283, IMM5669, IMM5406 and IMM 5476 forms, receipt of fee payment and other supporting documentation. **The present submissions are to serve as the answers to questions 7 to 14 of form IMM5283.**

The present submissions will be organized as follows: (*Note: this is not a mandatory list or order – some may not be applicable and the order of arguments should depend on their relative strength – always put your strongest argument first.*)

- I. Background Information
- II. Comments on the IRB decision
- III. Establishment in Canada
- IV. Best interests of the child
- V. Threat to health due to inadequate medical treatment in country of origin
- VI. Hardship faced in country of origin
- VII. Request for an exemption from potential inadmissibility
- VIII. Conclusion



I / BACKGROUND INFORMATION

This section typically includes:

- Your history (including birthday, marital status, children, education, etc.)
- The reasons you came to Canada
- How you came to Canada
- Any relevant details about your life in Canada (e.g. contact with home country, becoming pregnant in Canada, having children, marrying, etc.)
- Brief history of immigration decisions rendered in the case (dates rendered, decisions)



II / COMMENTS ON THE IRB DECISION

This section is not always necessary or advisable. The purpose of an H&C application is not to re-argue the same points that were made in the refugee claim. If the arguments you present in your H&C application have little connection to the original refugee claim (eg. H&C based on establishment in Canada, best interests of the child and/or on a medical condition for which there is no treatment in the home country), there is probably no point commenting on the IRB decision.

However, if the IRB made a manifest error, or if they were confused on a particular issue, it may be worthwhile to comment on this in the H&C and to try to clarify the facts that posed difficulties in previous immigration decisions or may have led to a finding that you were not credible.

If the IRB accepted your identity as established, and found you and your story to be credible, but found your situation did not meet the definition of “persecution”, this can be very helpful in the H&C arguments. If the hardship was found to be established, but not to constitute persecution, then it should be argued that this hardship must be considered in the H&C application.

Similarly, if the IRB found that you do face a risk of violence upon return but that the risk is generalized and therefore did not justify accepting your refugee claim, you should argue that those risks must be considered as hardship in the context of the H&C application.



III / ESTABLISHMENT IN CANADA

The following headings can be used as guidelines

A) The period of residence in Canada was for reasons beyond the applicant's control

For example, because there was a moratorium on deportations to your country, because you cannot get a passport to travel, because you are at risk in your country, because you cannot travel for medical reasons, etc.

Note: *Even if you cannot establish that your stay in Canada was for reasons beyond your control, you should still address the rest of this section (B, C & D below), and just eliminate this point.*

B) Stable Employment History / Sound Financial Management

Set out employment history and include references to bank records, tax records, etc.

If you have relied on social assistance, you should explain why it was necessary in your circumstances. If you didn't have barriers to employment (such as young children or a medical condition) but could not find a job, document your efforts to find work in detail.

Working without a permit ("black market"): don't indicate the name of the company where you currently work. For previous black market work, you must decide whether or not to include it; there is a risk that CIC may investigate a company that hires people without a work permit, which could put others at risk. There is no easy answer: for some immigration agents, black market work is seen as negative, others will see it as positive.

If it is impossible to get a letter from current or past employers in your true name, you can simply state something like, "I am economically self-sufficient and have not relied on social assistance." In some cases, you can describe your work as self-employment, saying "I am self-employed as a ..." (e.g. construction worker, childcare worker, cleaner, translator, etc.).

C) Integration in the Community

- describe your involvement in community organizations, your volunteer work, or other activities (athletic, artistic, cultural, etc.)*
- include, if applicable, any professional, linguistic or other study that shows integration into Canadian society*

- *if applicable, note your good civil record in Canada (i.e. no arrests or criminal charges, no default on child or spousal support, etc.)*

D) Family separation

- *If your deportation would force you to be separated from your family members (spouse/partner, children, siblings, parents, etc.), you should (a) provide evidence of your family's residence and status in Canada and of your relationship with them and (b) explain how you will be affected by a forced separation.*
- *Note that if you have a spouse or common-law partner who is a Canadian citizen or permanent resident, that person may be able to sponsor you and you could consider submitting an inland sponsorship instead of an H&C. If you are alleging hardship as a result of separation from a spouse/partner, then you must explain why a sponsorship application is not being filed (for example, your partner is not eligible to sponsor you).*

Note: *it is important to provide written detail about the above points, without assuming that anything will be taken for granted. Provide and refer to documentary evidence to support your claims (e.g. letters from employers, pay stubs, tax slips, confirmation of community work, photos, education certificates, etc.). Be creative!*



IV / BEST INTERESTS OF THE CHILD

For children in Canada:

➡ *The child's integration in Canada (knowledge of French/English); doing well in school, sports or cultural activities. Evidence can include letters from teachers, fellow students, report cards, etc. Older children can write out their own personal statement describing why they would like to stay in Canada. Younger children can provide a drawing or photo.*

➡ *The child's special needs. The clearest case is a medical need (of the child or parent) that cannot be met in the parents' country. However, if there is no medical need, if the child was subjected to trauma, they may have achieved some stability in Canada and be at risk of re-traumatization if returned to their country. Just the fact of having been displaced and having achieved some stability in Canada (which they would lose, if uprooted) can be a strong factor. Arguments based on the psychological impact of being uprooted from life in Canada and being returned to the parents' country should, if possible, be supported by a psychological evaluation or expert report. For this, you can try contacting the Clinique pour les demandeurs d'asile et réfugiés (PRAIDA, at the CLSC Cote-des-Neiges, 5700, Chemin de la Côte-des-Neiges, tel. 514 731 8531).*

➤ *In cases of family separation, the nature of the child's relationship to the parent (for example, if they are especially dependent, young, have a close relationship with you), or their dependency/links with other family in Canada (for example, grandparents, uncles, aunts, cousins who are permanent residents or citizens).*

➤ *Absence of links to home country (for example, the child has never learned or no longer speaks or reads the language used in the parents' country; there is no family in home country, all relatives have left – especially if all are in Canada).*

➤ *Child's life prospects in home country (e.g. education, health, access to special services, standard of living). UNICEF provides annual country statistics at www.childinfo.org and you can compare the basic indicators in home country and Canada. Of course, children who are well-off, even in very poor countries, may have much better life prospects than these averages, so it is important to highlight why your family would be no better off (or even worse off) than most others in the country (e.g. if you are a single mother with young children returning to a country in which women face discrimination; a parent is suffering from mental or physical health problems for which they would receive limited care or support, your family was previously displaced within the country due to war or natural disaster and cannot return home, etc.).*

For children outside Canada

It is also possible to invoke the best interests of children who are outside Canada, if a negative H&C decision would have a negative impact on their well-being. One common example is that of a parent in Canada who is supporting children left behind overseas. Some description of the child's living situation is necessary (for example, living with an elderly grandmother who is unable to work and depends on the parent in Canada for support).

The argument is that, by removing the parent from Canada, the child will lose their sole (or an important) means of support -- particularly in a county where UNICEF statistics show that children who are not well off suffer from a variety of life-threatening situations. It is also important to show (as in the previous section) that the parent would have poor earning prospects if removed from Canada.

It is also essential to prove the ongoing financial support by providing receipts from regular fund remittances (Western Union, etc.). There is no problem in producing a few dozen copies of receipts stretching back several years.



V / THREAT TO HEALTH DUE TO INADEQUACY OF MEDICAL TREATMENT IN (COUNTRY OF ORIGIN)

This will be relevant if you or a family member faces a serious or life-threatening medical condition, for which there is effective (or at least partial) treatment available in Canada, but not in your country of origin. The essential elements to prove are:

- 1. The existence of the medical condition*
- 2. The serious consequences of being deprived of treatment*
- 3. The fact that effective (or at least some) treatment is available in Canada*
- 4. The fact that treatment is unavailable in the public health sector in the country in question*
- 5. The fact that treatment is also unavailable in the private sector or, if available, is so costly that a person with your potential earning profile could not afford it*

Points 1,2 & 3 can usually be established with one or more letters from your doctors in Canada.

Points 4 and 5 must be researched. Some common sources are Médecins sans frontières, the UK Country of Origin Information Service, Unicef, World Health Organization and UNAIDS (for HIV cases) – you can google these to find their websites. Where country information is lacking, you could try and obtain a letter from a national medical association or a continental medical association that would have direct knowledge of the availability of services in one of their member countries. Comments from local (Canadian) doctors as to the unavailability of treatment in the country of origin won't usually carry any weight unless the doctor him/herself has visited the country in question or carried out their own personal research, in which case this should be explained in their letters.



VI / UNUSUAL AND UNDESERVED OR DISPROPORTIONATE HARDSHIP IN COUNTRY OF ORIGIN

The particular contents of this section, or even the need for it, will depend heavily on the facts of the case.

This section could include, among other things:

- Evidence of discrimination towards a particular group (e.g. women, religious minorities etc)*
- Evidence of generalized violence in the country to which you or your family could be subjected*

- *If either of the above affect only one part of the country, you must be able to explain and prove why you would have to reside in that particular part of the country*
- *Evidence of widespread poverty in your country of origin (that would affect you); for example, you could include the high rate of unemployment or very low average salary*
- *Other hardship of return, for example, psychological anguish of returning to a country where you were traumatized, or have reason to fear for your well-being.*

Because the law¹⁰ says that persecution and risk to life or risk of torture or cruel and unusual punishment¹¹ cannot be considered in an H&C, it is very important that the evidence and arguments you present about the hardship you will face in your country of origin remain distinct from those factors. Very strong evidence of certain types of serious risks will not be considered. It is important to present your arguments in such a way that the hardships you will face will be taken into account. In general, this means that you must show that the discrimination or mistreatment you will suffer exists (but is not severe enough to constitute persecution), or that the risk of violence is generalized (not just directed at you).



VII / REQUEST FOR AN EXEMPTION FROM POTENTIAL IN-ADMISSIBILITY

There are various grounds¹² on which someone can be determined to be “inadmissible” for permanent residence in Canada. However, in an H&C application, it is possible to ask for an exemption from some of these, arguing that the humanitarian factors you are presenting outweigh the potential or known inadmissibility. The primary grounds of inadmissibility that will come up in an H&C application are:

- ➡ *Medical – If you have a medical condition that could pose a risk to public health or could pose an “excessive burden” on health and social services;*
- ➡ *Criminality – If you have a criminal record in Canada or abroad, you should consult a lawyer to determine whether you are inadmissible and discuss your options and whether you need to take additional steps;*
- ➡ *Financial – If you are receiving social assistance.*

If you know or fear that you are inadmissible on medical, financial or criminal grounds, you should:

- *clearly ask for an exemption from the potential or known inadmissibility; and*

¹⁰ Section 25(1.3) of IRPA.

¹¹ Factors described under section 96 and section 97 of IRPA.

¹² These are outlined in Articles 34 to 43 of IRPA. Exemptions *cannot* be requested for 34 (national security), 35 (human rights) or 37 (organized crime).

- *argue that the humanitarian factors outweigh this inadmissibility, describing and providing evidence of your situation. For example, medical documents or, in the case of a criminal inadmissibility, any information about the circumstances of the criminal charges that is favourable to the humanitarian arguments in your application. In the case of financial inadmissibility, you could explain why you are receiving social assistance and, if this is a temporary situation, your plan to leave social assistance when your circumstances (such as childcare responsibilities or medical condition) change. If you are able to work but haven't been able to find a job, describe and give evidence of your efforts to find work. If you are on social assistance but doing volunteer or unpaid work, you can explain how your volunteer work is contributing to society/the economy.*

Normally, the grounds for the exemption are essentially the same as the H&C grounds set out in the rest of the application, so you can either summarize these briefly in this section (even at the risk of repetition) or focus on the most relevant grounds (e.g. lack of medical services).

This section, if required, could look like this:

Given all of the compelling humanitarian factors detailed above, notably XX and XX, I respectfully request that I be granted a waiver from potential *medical (or financial or criminal)* inadmissibility.



VIII / CONCLUSION

Provide a brief summary of the reasons that the application should be granted. Or simply state:

For all the above reasons, we respectfully submit that the present application contains extremely compelling humanitarian and compassionate considerations and should be granted. We thank you in advance for your consideration of this application and remain available to provide any clarifications or further information you might require.

Yours truly,



This kit was produced by Solidarity Across Borders based on Information from Just Solutions, Comité d'aide aux réfugiés and volunteer immigration lawyers.

www.solidarityacrossborders.org