

# HUMANITARIAN AND COMPASSIONATE CLAIMS FOR PERMENENT RESIDENCE

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## Who can apply?

This is an application to get landed status in Canada. It can be used for anyone who is *already in Canada* and does not have status. This application is often used by people who failed their refugee claims or overstayed visitor's visas and have become settled in Canada.

## How much does it cost?

The application costs \$550 per adult and \$150 per child. This is non-refundable.

## How long does it take to get a decision?

It varies. In Toronto right now it often takes 2 to 3 years to get a decision.

## Can I be deported before the make a decision on my H&C?

Technically yes. Immigration can try to deport you before deciding your case.

## What do I have to show to win my application?

To win an H&C you need to convince Immigration that you would face *undue and/or disproportionate hardship* if you had to go back to your home country to apply for a VISA to try to come back to Canada legally.

## Where do I get the application forms?

You can get an application package by calling the Immigration Infoline, or by ordering one on the internet at [www.cic.gc.ca](http://www.cic.gc.ca). The package includes a guide for completing the forms, as well as 1) A standard form with your name, employment, address, etc. 2) Supplementary information on your risk in returning to your country of origin, and establishment in Canada, 3) Checklist of documents to include 4) Police record-check. This can be done after the H&C is accepted. 5) Form for used of a representative to release personal information to a lawyer.

It is very important that the information you give on the forms is accurate and does not contradict information you've given to Immigration in the past. If you do have to give contradictory info be prepared to explain why.

The forms ask for you to list where you have worked in the last 10 years. A lot of people worry that they should not list any work in Canada that was not legal. This is a decision for you to make, but it is very important to understand that Immigration generally places a huge amount of importance on "financial self-sufficiency". Also, if you say that you weren't working and Immigration knows you weren't getting social assistance or other support they may assume that you must have been involved in criminal activity in order to survive. When you fill in this section of the form you have to account for every single month during the last 10 years, even if you weren't working. For example:

06/03 – 07/03	Bob's Construction	Construction Worker
05/03	Unemployed	
03/03 – 04/03	Microsoft Skills Centre	Student

The forms also ask for a list of where you have lived in the last 10 years. This list also has to account for every single month. There are a few questions on the forms that ask for detailed answers like: "Why do you want to stay in Canada?" You can write "Submission to Follow" in any of these spaces and send the forms in. Because it takes so long to process these applications, if you need to, you can send in the forms and then send your more detailed arguments and documentation in as a separate package later on.

### **How do I write up a submission for an H&C?**

There is no one right way to do this. The important thing is to be very clear and well organized in your arguments and to provide as much legitimate support for them as you possibly can. Always keep a copy of your submissions for yourself and make sure you have proof that you sent them in. (e.g. Send them by registered mail or get them stamped at the office in person). The H&C application is based on the following grounds: I) Significant degree of establishment in Canada, and II) The unusual, undeserved and disproportionate hardship that you would face if required to return to your country of origin to apply for permanent residence.

### **What should I include in my background information?**

Include information about your childhood and life in your country of origin (work, school, family life, siblings, etc), details as to why you left, what you witnessed, etc. The backgrounder is purely narrative and can be supported by any letters of affidavits that have been collected for your IRB hearing or PRRA, such as police reports, doctor's reports, or letters from neighbours in your country of origin. This information must be supported by human rights reports/news articles/journal articles with specific evidence to support your refugee claim (i.e. must be from the specific city, must relate to the specific type of claim you are making – religious persecution, political persecution, etc.

### **What arguments can I use in my H&C?**

The following is a list of major arguments commonly used in H&Cs. If you have valid arguments that aren't listed here don't hesitate to use them.

#### 1) SPONSORSHIP

You can include a spousal/conjugal sponsorship as part of your H&C. An H&C with this type of sponsorship generally has a much greater chance of success than other H&C arguments. A conjugal sponsorship can be done between same sex partners or any couple who are in a relationship but are not married. Keep in mind that Immigration will closely scrutinize the relationship to see whether they believe it's "bona fide" (real and not for the purposes of getting status). If the couple is not married or living together they need to provide very strong reasons for this.

#### *Possible Documentation to Include:*

- Sponsorship forms
- Affidavits from each partner talking about how they came to be in a relationship, how important the relationship is to them, details of their shared life together, and a description of how difficult it would be for them to be separated from each other.
- Originals of wedding pictures (don't send a videotape)
- Copies of letters and cards sent between partners
- Copies of pictures of the couple (especially with family and friends) showing their time together (put dates on the backs)
- Copies of envelopes if couple has lived together (showing both names and same address)
- Copies of joint bank account statements or credit card bills
- Copies of wills or company benefits packages naming partner as a beneficiary
- If pregnant, copies of Doctor's letter
- If they have children from another relationship, copies of letters from children about how much they love the new partner
- Copies of letters from family, friends, and neighbours about the relationship
- Copies of lease showing both partner's names
- Copies of letters from religious and/or community leaders about the relationship
- Copies of the marriage certificate

## 2) ESTABLISHMENT IN CANADA

This is a good argument for people who have any of the following:

- Been in Canada for several years
- Family in Canada who have status (especially close family members)
- A history of being employed in Canada
- Community involvement in Canada
- Education upgrading in Canada
- Canadian friends and supporters

Contrast your establishment in Canada with your lack of connection to your country of origin. Some things to emphasize might be:

- length of time away from country of origin with out return visits
- hardships that would be encountered if forced to return (e.g. Poverty, lack of family support..)
- lack of language skills (e.g. For kids who've grown up in Canada)
- lack of family there or lack of contact with family remaining in country of origin

*Possible Documentation to Include:*

- Copy of bank statement of savings (if you have any substantial savings)
- Copies of letters from employers
- Copies of letters from Canadian friends
- Copies of letters for volunteer work
- Copies of letters from church/mosque/temple
- Copies of proof of attending upgrading courses
- Copies of T-4s or Notice of Assessment (taxes)
- Copies of mock income tax forms (to show intention to pay tax if landed, if you have a substantial income)
- Copies of proof of landing of any relatives who have status in Canada
- Copies of your family tree if it shows that you have close relatives in Canada and few in your country of origin
- Copies of letters of intention to support (from grandchildren or other relatives who do not qualify to sponsor you)
- Copies of deeds
- If you are self-employed, copies of business registration and/or letters from clients
- Affidavits from applicants as well as close family members who have status
- Copies of letters from employers giving promise of employment if landed)

## 3) RISK IN COUNTRY OF ORIGIN

A word of caution: If you have already lost a Refugee claim on the basis of perceived lack of credibility, it can be a little dangerous to argue risk in your H&C as this argument may at best be dismissed or at worst be seen as another lie. It is also difficult to argue the same risks that were presented in a failed Refugee claim (even if you didn't lose because of credibility issues), or a Pre-Removal risk Assessment (PRRA).

Some situations where risk might be an important H&C argument are:

- Country conditions have worsened making it more likely you'll be personally at risk due to race, ethnicity, political affiliations, gender..
- A child in the family facing deportation will face risks not previously considered (e.g. Female genital mutilation)
- You have been involved in activities in Canada that will put you at renewed risk if deported (e.g. activism against a repressive regime in your country of origin)
- Something about your circumstances has changed and this will put you at risk (e.g. you changed your religion, came out as queer.)

*Possible Documentation to Include:*

- Reports from recognized human rights organizations
- Copies of letters from academics or professionals with expert knowledge on the situation
- Copies of letters or affidavits from people currently living in the country of origin who have direct knowledge of people being persecuted recently for issues you are raising
- Reports from Immigration's own internet research service, "REFINFO" located at: [www.irb.gc.ca](http://www.irb.gc.ca)

#### 4) PSYCHOLOGICAL OR EMOTIONAL HARDSHIP IF RETURNED

This is a useful argument if:

- You or other family members are under severe stress because you are so worried about being deported (e.g. Panic attacks or stress-induced diabetes)
- Forcing you to re-enter an environment where you experienced trauma will have a severe negative psychological impact (e.g. post traumatic stress disorder)
- You have a medical condition that prevents you from flying
- You have a medical condition cannot be adequately treated in the country of origin

*Possible Documentation to Include:*

- Copies of letters from Doctors, counsellors
- Copies of psychological reports
- Relevant academic research
- Copies of Doctor's letter saying applicant is not well enough to fly and describing consequences of forcing them to fly
- Copies of letters from medical experts saying treatment is not available in country of origin

#### 5) OTHER HARDSHIP IF RETURNED TO COUNTRY OF ORIGIN

This could include things like:

- Lack of home or support system to return to
- Lack of any ability to support yourself there
- Being exposed to extremely bad country conditions (e.g. civil war, absolute poverty)
- Discrimination you will face due to your gender, race, ethnicity, religion, politics, being a single mom, being married to some one of a different ethnicity, being divorced, being a returnee...

*Possible Documentation to Include:*

- Research from recognized human rights organizations, the US State Department, or agencies in your country of origin
- Copies of letters from remaining family/friends in the country or origin describing how difficult life will be there
- Research from Immigration's "REFINFO" service at: [www.irb.gc.ca](http://www.irb.gc.ca)
- Copies of letters from relevant experts

#### 6) RIGHTS OF THE CHILD

Children's best interests are supposed to be taken into account when making an H&C decision (based on the Baker decision) and Children should not be forced to separate from their parents (based on the International Convention on the Rights of the Child to which Canada is a signatory).

If possible separation from one or both parents is an issue emphasize:

- Emotional/psychological/financial support provided by the parent(s) and the potential impact of separation
- How hard it will be for child to maintain contact with parent(s) if applicants are removed

Other things to emphasize:

- Child's integration in Canadian society (e.g. Goes to school here, plays sports, participates in community activities, was very young on arrival, speaks the language..)
- Fears or anxiety expressed by the child regarding possibility of being deported (especially from "experts" like teachers, counselors, psychologists)
- Lack of access to current quality of life if they are forced to leave (e.g. Poorer quality schooling, corporal punishment in schools, impacts of poverty, particular hardships for girls)
- Child's attachment to Canadian relatives or other important adults in their lives and negative impacts of separation
- Any other hardships children might face if forced to return to country of origin. (e.g. forced military services for boys etc)
- Additional hardships they might experience because of their particular situation (e.g. Lack of support for kids with special needs, lack of medical treatment for a condition they have, cultural ostracization of children who've been raised outside country of origin)

*Possible Documentation to Include:*

- Copies of children's report cards and letters from their teachers
- Copies of letters from the children about why they want to stay in Canada and how hard it would be to leave
- Copies of letters from guidance counsellors, ministers/imams.. about fears and anxiety expressed by the child and closeness to any family members they would be separated from
- Relevant human rights or academic research
- Copies of letters from adults in Canada who play an important role in the child's life and would be separated from them if the H&C is lost
- Copies of letters from child's Canadian friends

## 7) SPONSORSHIP BREAKDOWN DUE TO SPOUSAL ABUSE

This means you were being sponsored, or were going to be sponsored, by a spouse but the relationship broke up due to abuse and the sponsorship was withdrawn as a result. The argument here is that if the H&C is refused you are in effect being punished for leaving an abusive relationship.

*Possible Documentation to Include:*

- Affidavit from you (the applicant) about the abuse
- Affidavits from people who witnessed or knew about the severity of the abuse and its impact on you
- Proof that a sponsorship was filed or was going to be filed
- Copy of marriage certificate to the abusive partner
- Copies of police reports, medical reports, psychological reports, Family Court or Children's Aid documentation that supports your claim

### **Why is it important to ask for a face-to-face interview before a decision is made?**

We think it's really important for people to get an interview with the person who will be deciding their case. We believe this for a few reasons: Less than 10% of these applications are successful. People with gut-wrenching situations lose H&C's all the time. The more a decision-maker has to see you as a human being the harder it may be for them to make callous decisions. An interview gives you and your family a final chance to make arguments about why you should be allowed to stay in Canada. You can bring your children to the interview. You can also bring supporters so that the officer can see that you are not isolated and have made strong ties in Canada. It is highly unlikely that your supporters will be allowed to come into the interview with you but it's still important that they are visible. If you want to have an interview before your H&C is decided you should send Immigration this request in writing.

**What should I do if I lose my H&C?**

You will have very little time to try to appeal the decision so don't wait!! Call a lawyer or legal clinic immediately! If you were not given the reasons why your application was denied, make a written request to the officer you made the decision asking for the written reasons why your application was denied. Make this request immediately. Send it by fax or deliver it to the Immigration office in person. Keep proof that you submitted this request.

**How many times can I apply for an H&C?**

There's no limit to the number of times you can apply but you need new or expanded argument each time you make a new h&c application.