Authorization to Return to Canada (ARC)

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Definition

• If you have been the subject of a removal order from Canada you will probably need an Authorization to Return to Canada (ARC) if you want to return. Whether you need one depends on the type of removal order that was issued.

• IRPA 52. (1) If a removal order has been enforced, the foreign national shall not return to Canada, unless authorized by an officer or in other prescribed circumstances.
Overarching Principles

• For cases where an officer considers the issuance to be justifiable based on the facts of the case

• Applicants must demonstrate:
  – Compelling reasons to consider an ARC when weighed against the circumstances that necessitated the issuance of a removal order
  – They pose a minimal risk to Canadians and to Canadian society
Overarching Principles

• Merely meeting eligibility requirements for the issuance of a visa is not sufficient to grant an ARC

• The decision to grant an ARC should be consistent with the objectives of the legislation as defined in 3(1)(h) of IRPA

• An ARC can be granted for:
  – permanent residency
  – a one-time visit
  – occasional entries for a specified purpose over a prescribed period
Applicability

• Under A52(1), a foreign national must obtain a written ARC after the enforcement of any of the following removal orders:
  – a deportation order (lifetime ban from returning to Canada) [R226]
  – a departure order that becomes a deportation order (lifetime ban from returning to Canada) [R224(2)]
  – an exclusion order:
    • one-year ban [R225(1)]
    • two-year ban [R225(3)]
Before you Apply

• Consider the reason for the enforcement order and the current situation
  
  – If the circumstances that lead to the removal order have not changed, it is less likely they will be given permission to return

• Consider the type of removal order
Types of Removal Orders

**Departure Order**

- IRPR 224, form number IMM 5238
- An ARC is *not* required
- If the applicant has received a departure order and
  - Failed to leave Canada within the required 30 days or
  - Failed to verify their departure with a Canadian immigration officer at the port of exit

→ The departure order automatically becomes a deportation order and **an ARC is required**
Types of Removal Orders

**Exclusion**

- IRPR 225, on form IMM 1214B
- ARC is required if the required waiting time has not expired yet – 1 year for regular exclusion and 2 years for misrep.
- ARC is not required if:
  - the applicant was issued an Exclusion Order and the time has expired
  - AND the applicant has a Certificate of Departure (IMM 0056B) showing the date they left Canada
Types of Removal Orders

Deportation Order

- IRPR 226, on form IMM 5238B
- An ARC is required
  - Exception: Inadmissible family member under A42 (b)

Security Certificate

- IRPR 226(3)
- An ARC is required

- All removal orders require the person concerned to confirm his / her departure from Canada with the CBSA
Refugee Claimants

- If a person files a claim for refugee protection and is issued a conditional departure order, the order is not in force until the claim has been decided.
- If the claim for protection is accepted, the removal order is cancelled.
- Unsuccessful claimants must leave Canada within 30 days of the final determination of the claim or the order becomes enforceable.
How to Apply

• If the applicant is applying to come to Canada for any reason (i.e. visiting, studying, working or immigrating)
  – No separate application
  – ARC will be dealt with in the context of that application

• If the applicant is **not** applying to come to Canada for any reason (i.e. you do not need a visa to enter)
  – Submit a separate application
How to Apply

Separate Application

• Some visa offices have their own forms
• If the visa office does not have its own forms, you must include:
  – a Temporary Resident Visa application form, fully completed and validated
  – 2 passport size photos taken within the last 6 months
  – a copy of your passport
  – a written letter (in English/French) explaining the reasons you feel you should be allowed to return to Canada
  – the processing fee ($400 CAD)
How to Apply

Additional Requirements

• If inadmissible on grounds other than those cited in the previous removal order, they must apply for and obtain a temporary resident permit (TRP)

• If criminally inadmissible, a rehabilitation decision (or deemed rehabilitation) or a pardon will also be necessary

• A TRP does not overcome the need for an ARC
Test for obtaining ARC

When an officer assesses an application, they will consider, among other things:

• The severity of the IRPA violation that led to the removal order
  – the possibility of repeat the behaviour that caused the order to be issued

• The applicant’s history of cooperation with CIC
  – Previous immigration warrants
  – Fail to appear for a hearing/removal
  – Pay for removal costs
  – Removed under escort
Test for obtaining ARC

• The reasons for the applicant’s request to return to Canada
  – Exceptional circumstances or compelling reasons why you want to enter Canada
    • i.e. bona fide marriages, attendance at the funeral of a family member or acceptance under a provincial nominee program
  – Best interests of the children
  – Financial independence
  – Length of time since the order was issued
  – Length of intended stay in Canada
  – Tangible/intangible benefits that accrue to Canada/person concerned

• No one factor should override concerns of security/safety of Canadians
Practice Tips

• Keep in mind that ARC is not automatic, no matter how compelling are the circumstances
• Evidence of compliance and addressing the underlying issues is very helpful
• Bare statements are not great unless corroborated by evidence
• Make sure to really reinforce any mitigating or compelling circumstances
After Receiving an ARC

• The applicant will still need to satisfy any other requirement of IPRA in order to enter Canada

• Reasons why the person was subject to a removal order may still exist and may still render the person inadmissible regardless of ARC

• If the applicant was deported because of criminal admissibility, they will need to apply for criminal rehabilitation first
Scenario #1

- A husband, wife and kids, citizens of India, illegally entered Canada after failed attempts to obtain visitor visas
- Their refugee claim was denied & JR was denied
- The claimants received a conditional departure order which came into force after the JR was refused
- They left Canada voluntarily 1 year after JR denied
- Prior to leaving they applied to the Provincial Nominee Program of PEI and were accepted

See: Khakh v Canada
Exercise

Scenario #2

• The claimant is an Iranian citizen and failed refugee claimant
• She has been married to a Canadian citizen for 4 years
• The claimant had previously applied for a US green card
• Following the failed refugee claim, the removal order came into force
• The claimant then travelled to the US after her green card was approved

See: Afsaneh Amin Akbari v Canada
Exercise

Scenario #3

• The claimant entered Canada in 2002 as a temporary resident
• His study permit was valid until 2007
• During his studies, he worked part time in odd jobs including delivery, bussing tables, and construction
• As his permit was set to expire, under the advice of Excellent Immigration Company, the applicant applied for refugee status
• The claimant missed his hearing as the IRB sent the letters to Excellent, who did not inform him of the hearing date
Exercise

Scenario #3 continued

• Excellent did not inform him that there was a departure order against him
• The claimant received notification from the IRB that the removal order was in force
• The claimant left Canada in compliance with the removal order
• He has no criminal record
Scenario #3 continued

• He was married in 2010
• His wife is a chemistry PhD student at Western University
• His wife is applying for PR under the Canadian Experience Class and Federal skilled worker classes. The application is still in progress.
Changes to Federal Skilled Worker

Temporary Pause

• No new application accepted on or after July 1, 2012 excluding:
  
  – PhD eligibility stream - annual 1000 cap ending October 31

  – qualifying offer of arranged employment