

Eligibility for immigration and refugee law services



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Certificate services in immigration and refugee law are available to financially eligible individuals and are subject to an initial and ongoing assessment of merit, including consideration of whether a reasonable client of modest means would pursue the matter having regard to legal fees and likely outcome of the case, as well as the potential consequences, including risk of deportation and potential physical harm.

Merit for certificate services in immigration and refugee law is presumed where the individual seeking legal aid services requires assistance with the following:

- basis of claim (BOC) form preparation and initiation of a claim for refugee protection
- detention review proceedings before the Immigration Division of the Immigration and Refugee Board (IRB)
- danger opinion proceedings under section 115(2) of the *Immigration and Refugee Protection Act* (IRPA)
- an appeal of a removal order under section 63(2) or 63(3) of the *IRPA*
- responding to a Minister's appeal under section 63(5) of the *IRPA*
- an appeal of a sponsorship refusal under section 63(1) of the *IRPA*

Merit for certificate services is not presumed and a merit assessment is required where the individual requires assistance with the following matters:

- representation in refugee claim proceedings before the Refugee Protection Division (RPD)
- cessation and vacation proceedings before the RPD
- applications to reopen proceedings before the RPD, Refugee Appeal Division (RAD) or the Immigration Appeal Division (IAD)
- pre-removal risk assessments, where there is no legal impediment to filing the pre-removal risk assessment under section 112(2) of the *Immigration and Refugee Protection Act*

- federal court motion for a stay of execution of a removal order
- interviews with or submissions to Immigration, Refugees and Citizenship Canada (IRCC), Canada Border Services Agency (CBSA) or the Canadian Security Intelligence Service (CSIS). Note that a determination of merit with respect to these matters also includes a consideration of the capabilities of the individual, as determined by LAO

Additional factors

Provision of certificate services for certain matters requires an assessment of merit pursuant to certain factors, as follows:

- Admissibility hearings where the individual seeking legal aid services:
 - is a permanent resident of Canada or protected person, the inadmissibility allegations in the underlying section 44 report must include further allegations than those under s. 36(1)(a) of the *IRPA*
 - is a refugee claimant, the inadmissibility allegations in the underlying section 44 report must include those under ss. 34, 35, 36(1)(b), 36(1)(c) and 37 of the *IRPA*; and
 - is a foreign national who is not a refugee claimant or protected person, and demonstrate exceptional circumstances
- In-Canada applications for permanent residence on Humanitarian and Compassionate grounds, where the individual does not face a statutory impediment barring the examination of the application by the Minister under section 25 of the *IRPA*, or such a barrier will resolve within two months after the date of the application for legal services, and the individual seeking legal aid services:
 - experienced domestic violence in Canada
 - has a serious medical condition for which adequate treatment is not available in the country of origin
 - will experience serious human rights violations in their country of origin
 - is experiencing significant mental health or cognitive issues
 - has a serious health condition and cannot receive adequate treatment in the country of origin
 - has important family connections in Canada and no or few family connections in the country of origin
 - is a stateless person who is unable to return to a country of previous habitual residence

- is a minor with no parent or legal guardian in Canada
 - is from a country on the Temporary Suspension of Removals list or the Administrative Deferral of Removals list
 - has very significant establishment in Canada
 - has a connection to a child such that the child will be directly affected by the outcome of the individual's legal matter and it is in the best interests of child that the individual remain in Canada; or
 - demonstrates any other factor considered relevant by LAO
- Requests for a deferral of removal, where the request is linked to an outstanding proceeding, which would permit the individual to remain permanently in Canada, and:
 - there is evidence of risk to a client's interests under section 7 of the *Charter of Rights and Freedoms* that has not been assessed
 - removal would be contrary to the best interests of a child directly affected
 - removal would cause significant hardship due to separation of dependent family members
 - there is an outstanding meritorious Humanitarian and Compassionate grounds application; or
 - demonstrates any other factor considered relevant by LAO
- Services for a Pre-Removal Risk Assessment (PRRA):
 - Where the individual has never had a substantive risk assessment (neither a decision of the RPD, nor a previous PRRA), and has been given notice of their right to apply under section 160(1) of the *Immigration and Refugee Protection Regulations*
 - Where the client has had a previous risk assessment (either a decision of the RPD or a previous PRRA), any legal impediment to filing the PRRA under section 112(2) of the *IRPA* must be expected to resolve within two months after the date of the application for legal services

Certificate services are available for only one proceeding where a client is eligible for two or more types of proceedings to achieve the same outcome. LAO may issue only one certificate to a family where the family members are joint applicants or claimants whose matter will be heard together.