

# Chapter Twelve

## Consent to Return to Canada

### Introduction

In the *Immigration Act* (the former Act) there existed inadmissible classes of persons described in s. 19(1)(i) and s. 27(2) (h) who sought to come into or entered Canada without the consent of the Minister when it was required by s. 55 of that Act. It followed that if a person being sponsored had been issued one of the three removal orders that person may be found by a visa officer to be inadmissible to Canada and form the basis of a lawful refusal of the sponsored application.

Under IRPA a similar scheme is enacted by s. 41 of IRPA:

s. 41 A person is inadmissible for failing to comply with this Act  
(a) in the case of a foreign national, through an act or omission which contravenes, directly or indirectly, a provision of this Act;

Note that s. 2(2) of IRPA states that unless otherwise indicated, references in this Act to "this Act" include regulations made under it.

What then is the "act or omission" giving rise to inadmissibility? Simply put, it is the return to Canada without written authorization as required under each type of removal order.

S. 223 of the IRP Regulations continues the three types of removal orders, namely departure orders, exclusion orders, and deportation orders. Each type of order has attached conditions as to its duration and effect on admissibility.

S. 52(1) of IRPA says that 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.

As well, s. 25 of the IRP Regulations prohibits a visa officer from issuing a visa to a foreign national who is subject to an unenforced removal order.

### Departure Orders - no time period if enforced in compliance with requirements

S. 224(1) IRP Regulations relieves a person subject to an enforced **departure order** from the requirement to obtain authorization to return to Canada provided they had met the departure requirements in s. 240(a) to (c) within 30 days of the order becoming enforceable. If the person failed to meet those requirements the order is deemed to be a deportation order.

This means a person is admissible who complied with the procedure for executing a departure order within the timeframes in the regulations. If the person did not comply they are inadmissible and require written authorization to return.

### **Exclusion Orders - One year or Two years for Misrepresentation**

S. 225(1) IRP Regulations requires a person subject to an **exclusion order** to obtain the written authorization of an officer to return to Canada during the **one-year period** after the order was enforced. If the order was based on **misrepresentation** s. 225(3) a **two-year period** applies. An exception for accompanying family members of a foreign national found to be inadmissible and given an exclusion order is provided in s. 225(4) of IRP Regulations.

### **Deportation Order - requires Written Authorization**

S. 226(1) of IRP Regulations makes it a requirement of those who were issued a **deportation order** to obtain the written authorization to return to return to Canada **at any time** after the order was enforced. An exception for accompanying family members of a foreign national found to be inadmissible and given a deportation order is provided in s. 226(2) of IRP Regulations.

### **Who shall provide the written authorization?**

The IRPA in s. 52(1) specifies an officer may grant the written authorization to return to Canada. The Regulations do not appear to prescribe the criteria for issuing an authorization. In an application to return to Canada there is a duty of fairness on the officer assessing the application to provide an opportunity to address the officer's concerns. Of particular relevance should be the reasons why the person delayed in leaving Canada after a departure order and thus converting it to a deportation order and the reasons for first coming to Canada.<sup>1</sup>

### **Removal Costs are to be Reimbursed**

The Regulations<sup>2</sup> specify certain removal costs must be paid before a person is allowed to return to Canada if that person was removed at government expense and was not reimbursed by a transporter. These costs are fixed at \$750 for removal to contiguous territory or \$1500 for any other country of removal.

### **Discretionary relief**

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<sup>1</sup> *Sahakyan, Sergey v. M.C.I.* (F.C., no. IMM-9934-03), Harrington, November 2, 2004; 2004 FC 1542.

<sup>2</sup> S. 243 IRP Regulations.

The IRPA in s. 63(1) provides an appeal to sponsors whose family class relatives are refused an immigrant visa. It is a condition precedent before considering special relief on humanitarian and compassionate grounds that the applicant is found a member of the family class and the sponsor meets the definition of “sponsor” found in s. 130 of the Regulations. Once those findings have been made, or are not in issue at the appeal, the IAD may apply s. 67(1) and take into account the best interests of a child directly effected by the decision and determine if sufficient humanitarian and compassionate considerations warrant special relief in light of all the circumstances of the case.

**CASES**

*Sahakyan, Sergey v. M.C.I.* (F.C., no. IMM-9934-03), Harrington, November 2, 2004; 2004 FC  
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