

Permanent Resident or Foreign National?	
Elements – what must be proven	Evidence – how to prove it
Individual is a PR	<ul style="list-style-type: none"> <li>Record of landing</li> <li>PR Card</li> <li>Confirmation of Permanent Residence</li> </ul>
Individual is a FN: Not a CC Not a PR	<ul style="list-style-type: none"> <li>Copy of passport or birth certificate indicating birth abroad</li> <li>Certificate from CIC's Case Processing Centre in Sydney (CPC Sydney) of no citizenship</li> <li>Declaration from CIC's Query Response Centre (QRC) of no record of permanent residence</li> </ul>
A34(1)(a) Engaging in an act of espionage that is against Canada or contrary to Canada's interests	
What must be proven	How
1. Engaged in act of espionage	1. A77(1) Certificate
2. Espionage was against Canada or contrary to Canada's interests	2. Police/intelligence reports, stat decs supported by evidence of statements made to an officer plus media articles, expert evidence
A34(1)(b) Engaging in or instigating the subversion by force of any government	
What must be proven	How
1. Engaged in or instigated subversion by force	1. A77(1) Certificate
2. Committed against any government	2. Police/intelligence reports, stat decs supported by evidence of statements made to an officer plus media articles, expert evidence
A34(1)(b.1) Engaging in an act of subversion against a democratic government, institution or process as they are understood in Canada	
1. Engaged in an act of subversion	1. A77(1) Certificate
2. Subversion was against a democratic government, institution or process as understood in Canada	2. Police/intelligence reports, stat decs supported by evidence of statements made to an officer plus media articles, expert evidence

A34(1)(c) Engaging in terrorism	
What must be proven	How
1. Engaged in terrorism	1. A77(1) Certificate 2. Police/intelligence reports, stat decs supported by evidence of statements made to an officer plus media articles, expert evidence
A34(1)(d) Being a danger to the security of Canada	
What must be proven	How
1. They are or will engage in acts that will endanger the lives or safety of persons in Canada	1. A77(1) Certificate 2. Police/intelligence reports 3. Stat decs supported by evidence of statements made to an officer plus media articles, expert evidence 4. Weapons or documentation in the person's possession indicating planned violence 5. Available public writings that establish that the person has a propensity for violent acts
A36(1)(a) Conviction in Canada – more than six months imprisonment has been imposed	
What must be proven	How
1. Convicted in Canada	1. Conviction certificate
2. Received more than six months	2. Warrant of committal
A36(1)(a) Conviction in Canada – punishable by a term of imprisonment of at least 10 years	
What must be proven	How
1. Convicted in Canada	1. Conviction certificate
2. Offence under Act of parliament, punishable by at least 10 years	2. Copy of relevant section of <i>Criminal Code</i> or of other federal statute

**A36(1)(b) Conviction outside Canada – equates to offence in Canada punishable by a term of imprisonment of at least 10 years**

What must be proven	How
1. Convicted outside Canada	1. Conviction certificate
2. Foreign offence equates to Canadian offence	2. Statute-to-statute comparison
3. Canadian offence under Act of Parliament punishable by at least 10 years	3. Copy of relevant section of <i>Criminal Code</i> or of other federal statute

**A36(1)(c) Committed act outside Canada – equates to offence in Canada punishable by a term of imprisonment of at least 10 years**

What must be proven	How
1. Act committed outside Canada	1. Indictment, warrant, police report
2. Act is offence where committed	2. Same as above
3. Foreign offence equates to Canadian offence	3. Statute-to-statute comparison
4. Canadian offence under Act of Parliament punishable by at least 10 years	4. Copy of relevant section of <i>Criminal Code</i> or of other federal statute

**A36(2)(a) Conviction in Canada – punishable by indictment, punishable by less than 10 years**

What must be proven	How
1. Convicted in Canada	1. Conviction certificate
2. Indictable offence under Act of parliament, punishable by less than 10 years	2. Copy of relevant section of <i>Criminal Code</i> or of other federal statute

**A36(2)(a) Convictions in Canada – two summary offences, not arising out of same incident**

What must be proven	How
1. Convicted in Canada of two offences	1. Conviction certificates
2. Not arising out of same occurrence	2. Police reports

<b>A36(2)(b) Conviction outside Canada – equates to an indictable offence in Canada punishable by less than 10 years</b>	
<b>What must be proven</b>	<b>How</b>
1. Convicted outside Canada	1. Conviction certificate
2. Foreign offence equates to Canadian offence	2. Statute-to-statute comparison
3. Canadian offence under Act of Parliament punishable by less than 10 years	3. Copy of relevant section of <i>Criminal Code</i> or of other federal statute
<b>A36(2)(b) Two convictions outside Canada not arising out of a single occurrence – equate to offences in Canada</b>	
<b>What must be proven</b>	<b>How</b>
1. Two convictions outside Canada	1. Conviction certificates
2. Not out of single occurrence	2. Police reports
3. Foreign offences equate to Canadian offence	3. Statute-to-statute comparison
4. Canadian offence under Act of Parliament	4. Copy of relevant section of <i>Criminal Code</i> or of other federal statute
<b>A36(2)(c) Committed act outside Canada that is an offence in that country – equates to an indictable offence in Canada</b>	
<b>What must be proven</b>	<b>How</b>
1. Act committed outside Canada	1. Indictment, warrant, police report
2. Act is offence where it is committed	2. Same as above
3. Foreign offences equate to Canadian offence	3. Statute-to-statute comparison
4. Canadian offence indictable, under Act of Parliament, punishable by less than 10 years	4. Copy of relevant section of <i>Criminal Code</i> or of other federal statute

**Note for A36(2)(d) – POE application only**

In keeping with Canada's continuing efforts to protect Canadian society and to prevent criminals from accessing Canada, paragraph A36(2)(d) is intended to enhance the ability of officers at a port of entry (POE) to efficiently remove foreign nationals where the commission of an offence occurs at the POE, regardless of a local policing authority decision or practice not to lay charges.

**A39 Unable to support self**

What must be proven	How
1. FN (not a CC, not a PR)	1. Birth Certificate, QRC info, CPC Sydney info, individual's statements
2. Unable to support self	2. Individual's statements re: amount of money, resources, related to stay and to departure from Canada
3. No adequate arrangements made	3. Individual's statements re: people that the person can rely on for support in Canada or outside Canada

**Note:** Does not apply to refugee claimants or protected persons. See R22.

**A40(1)(a) Direct misrepresentation**

What must be proven	How
1. Misrepresentation occurred	1. Documentary or verbal evidence of incorrect fact presented, combined with evidence of correct fact
2. Done by individual him/herself	2. Documentary or verbal evidence that incorrect fact was given by individual
3. Facts misrepresented are material	3. Submission by a Hearings Officer (HO) that fact is material
4. Induced or could have induced error in administration of the Act	4. Evidence of the context in which the misrepresentation took place, i.e., during POE examination, on application

**Note:** Policy requires that the misrepresentation must still "be alive." In other words that the individual is still benefiting from what was gained by the misrepresentation.

**A40(1)(b) Sponsored by person inadmissible for misrepresentation**

What must be proven	How
1. Is being or has been sponsored	1. Copy of approved sponsorship
2. Sponsor determined to be inadmissible for misrepresentation	2. Copy of removal order showing A40(a, b, c, or d) as basis of decision

**Note:** Case Management approval required. See A40(2)(b).

**A40(1)(c) Vacated decision to allow refugee protection**

What must be proven	How
1. Refugee protection decision vacated	1. Copy of decision letter from Refugee Protection Division (RPD) of the IRB
2. Final determination	2. Submissions that time frames to apply for judicial review have passed or evidence that applications for leave have been denied

**A40(1)(d) Ceasing to be citizen after gaining PR status by misrepresentation**

What must be proven	How
1. Citizenship revoked as a result of the application of 10(2) of the <i>Citizenship Act</i>	1. Decision of Citizenship Court showing decision based on application of 10(2)

**10(2) of the *Citizenship Act*:** A person shall be deemed to have obtained citizenship (improperly) if the person was lawfully admitted to Canada for permanent residence by false representation or fraud or by knowingly concealing material circumstances and, because of that admission, the person subsequently obtained citizenship.

The individual reverts to being a FN in these circumstances. See A46(2)

**A40.1 Refugee protection has ceased**

What must be proven	How
1. Refugee protection has been cessated	1. Copy of decision letter from Refugee Protection Division (RPD)
2. Final determination	2. Submissions that time frames to apply for Judicial Review (JR) have passed or evidence that leave applications have been denied

<b>A41(a) and A29(2) Non-compliance – overstay of visitor</b>	
<b>What must be proven</b>	<b>How</b>
1. Individual became a TR	1. Individual's statement or documents indicating that: 1) individual was examined (when, where, by whom) and 2) officer was satisfied, i.e., made a positive decision (verbal entry, stamp in passport, status document)
2. Period authorized	2. Individual's statement or documents indicating length of time visitor authorized to remain in Canada
3. Individual has not left and has remained continuously since becoming a TR as outlined in #1	3. Individual's statement confirming these facts
4. Individual has not received an extension of status and no application for extension of status is pending	4. Individual's statement and QRC declarations
<b>A29(2)</b> – requirement to leave; <b>A22(1)</b> – outlines how FN becomes TR; <b>R183(5)</b> – authorized period does not end while application pending	

<b>A41(a) and A18(1) Non-compliance – entered at POE but failed to appear for examination</b>	
<b>What must be proven</b>	<b>How</b>
1. Individual entered Canada at POE	1. Individual's statement containing details about how they came into Canada (when, where, how)
2. Individual did not appear without delay for examination	2. Individual's statement that they did not do this ( e.g. was concealed in the trunk of a car)
3. Has remained in Canada continuously since entry outlined in #1	3. Individual's statement that they have not re-entered Canada since coming into Canada as described in #1
<b>A18(1)</b> Requirement to appear for examination <b>R27(1)</b> Requirement to appear without delay when entering at POE	

**A41(a) and A18(1) Non-compliance – entered at place other than POE and failed to appear without delay for examination at nearest POE**

What must be proven	How
1. Individual entered Canada at place other than POE	1. Individual's statement containing sufficient details about how they came into Canada (when, where, how) to establish that the place was not a POE
2. Individual had opportunity to appear at nearest POE	2. Individual's statement containing sufficient details about what they did since coming into Canada to establish that there was an opportunity to report to the nearest POE
3. Individual did not appear at nearest POE without delay	3. Individual's statement that they did not do this or that they delayed in doing this
4. Has remained in Canada continuously since the entry outlined in #1	4. Individual's statement that they have not re-entered Canada since coming into Canada as described in #1

A18(1) Requirement to appear for examination

R27(2) Requirement to appear at nearest POE without delay when not entering at POE

**A41(a) and A20(1)(a) Non-compliance – no visa**

What must be proven	How
1. Individual seeks to enter or to remain	1. Individual's statement that they are seeking to enter or to remain
2. Individual does not have a Permanent Resident (PR) visa	2. Individual's statement that they have no valid PR visa combined with individual's passport showing the absence of a valid PR visa
3. Individual has come to Canada in order to establish permanent residence	3. Individual's statement that they would like to establish permanent residence in Canada, which may include the making of a refugee claim



**A41(a) and A20(1)(b) Non-compliance – no passport**

What must be proven	How
1. Individual seeks to enter (or to remain, if they have already entered at a place other than a POE and are now appearing for examination)	1. Individual's statement that they are seeking to enter (or remain if they are already in Canada)
2. Individual has not become a Temporary Resident (TR) [as outlined in A22(1) and A24(1) & (2) and A29]	2. Individual's statement that they have not yet been examined and authorized to enter and remain as either a visitor or a Temporary Resident Permit (TRP) holder
3. Individual is not in possession of a document described in R52(1)	3. Individual's statement
4. Individual is not exempt as outlined in R52(2)	4. Individual's statement outlining their circumstances such that none of the exemptions outlined in R52(2) apply

**Note:** As a consequence of element #1, this allegation applies at the POE only.

**A41(a) and A30(1) Non-compliance – working without authorization**

**(Engaging in an activity for which wages are paid)**

What must be proven	How
1. Individual has engaged in an activity for which wages are paid	1. Evidence of payment received for an activity: Individual's or employer's statement outlining the activity in detail, when it was done, how much was paid for it; copies of pay stubs
2. Individual requires a work permit	2. A person described in A30(2) or in R186 is authorized to work without a permit. Evidence that these exemptions do not apply comes from the individual's statement about their circumstances.
3. Individual is not in possession of a work permit	3. Individual's statement and/or QRC declaration
4. Individual has remained in Canada continuously since beginning to engage in the activity described in element #1	4. Individual's statement

**Note:** See definition of work in R2.

**A41(a) and A30(1) Non-compliance – working without authorization****(Engaging in an activity for which commission is earned)**

<b>What must be proven</b>	<b>How</b>
1. Individual is engaged in an activity for which commission is earned	1. Evidence of commission earned for an activity: individual's or employer's statement outlining the activity in detail, when it was done, commission earned; copies of receipts issued
2. Individual is not in possession of a work permit	2. Individual's statement and/or QRC declaration
3. Individual has remained in Canada continuously since beginning to engage in the activity described in element #1	3. Individual's statement
<b>Note:</b> See definition of work in R2.	

**A41(a) and A30(1) Non-compliance – working without authorization****(Engaging in an activity that is in direct competition with the activities of Canadian citizens (CCs) or PRs in the Canadian labour market)**

<b>What must be proven</b>	<b>How</b>
1. Individual is engaged in an activity that is in direct competition with the activities of CCs or PRs in the Canadian labour market	1. This allegation is used when there is no evidence available to prove that wages were earned or commission paid. No information is available as to what the evidence for this might be.
2. Individual requires a work permit	2. A person described in A30(2) or in R186 is authorized to work without a permit. Evidence that these exemptions do not apply comes from the individual's statement about their circumstances.
3. Individual is not in possession of a work permit	3. Individual's statement and/or QRC declaration
4. Individual has remained in Canada continuously since beginning to engage in the activity described in element #1	4. Individual's statement
<b>Note:</b> See definition of work in R2.	

**A41(a) and A52(1) Non-compliance – deportation order**

<b>What must be proven</b>	<b>How</b>
1. Individual was subject to a deportation order	1. Copy of the deportation order
2. Individual's removal order has been enforced	2. Copy of the properly completed certificate of departure
3. Individual has not been authorized by an officer to return	3. QRC declaration that no authorization to return to Canada (ARC) pursuant to A52(1) has been issued

**A41(a) and A52(1) Non-compliance – exclusion order**

<b>What must be proven</b>	<b>How</b>
1. Individual was subject to an exclusion order	1. Copy of the exclusion order
2. Individual's removal order has been enforced	2. Copy of the properly completed certificate of departure
3. Applicable period of exclusion was in effect at the time individual returned to Canada	3. Consideration by Minister's Delegate (MD) of R225 and date order enforced as per certificate of departure
4. Individual has not been authorized by an officer to return	4. QRC declaration that no ARC pursuant to A52(1) has been issued

**A41(a) and A52(1) Non-compliance – deemed deportation order**

<b>What must be proven</b>	<b>How</b>
1. Individual was subject to a deemed deportation order	1. Copy of the departure order combined with: <ul style="list-style-type: none"><li>• QRC declaration that no completed certificate of departure exists 30 days after order issued</li><li>• Completed certificate of departure showing 30-day requirement of R224(2) not met, i.e., IMM0056 with "type 5 departure order becomes deportation order" selected</li></ul>
2. Individual's removal order has been enforced	2. Copy of the properly completed certificate of departure
3. Applicable period of exclusion was in effect at the time individual returned to Canada	3. Consideration by MD of R225 and date order enforced as per certificate of departure
4. Individual has not been authorized by an officer to return	4. QRC declaration that no ARC pursuant to A52(1) has been issued

**Note:** 30-day period suspended for detention and stays. See R224(3)

**Note:** The following enforced removal orders do not require authorization to return.

1. A departure order enforced within 30 days of becoming enforceable
2. An exclusion order if the one- or two-year period has passed [R225(3)]
3. An exclusion or deportation order issued for A42(b) inadmissibility (family member accompanying inadmissible person)

**A41(a) and A44(3) Non-compliance – failure to appear for admissibility hearing**

What must be proven	How
1. Individual is subject to a condition that they appear at an admissibility hearing	1. Copy of the form BSF536 Entry for Admissibility Hearing or IMM1262 Acknowledgement of Conditions, showing condition to appear
2. Individual failed to attend admissibility hearing	2. Stat dec from Hearings Officer that individual failed to appear

**Note:** Conditions imposed pursuant to R43(1), A44(3), A56, or A58.

**A41(a) and A44(3) Non-compliance – failure to appear for further examination**

What must be proven	How
1. Individual is subject to a condition that they appear for further examination	1. Copy of the form BSF536, Entry for Further Examination, showing condition to appear
2. Individual failed to appear for further examination	2. Stat dec from BSO that individual failed to appear

**Note:** Conditions imposed pursuant to R43(1), A44(3), A56, or A58.