IRPA Part 2 Refugee Protection & IRPR Part 8 Refugee Classes

IRPA Part 2 Division 1 – Refugee Protection, Convention Refugees & Persons in Need of Protection

- IRP Foundation of Refugee Protection
  - (1) Refugee protection is conferred on a person when ... (disjunctive list of 3 ways)
    - IRPR3
    - (a) the person
      - under a visa application is determined to be ...
        - Convention refugee, OR
        - person in similar circumstances
      - AND becomes ...
        - PR under the visa, OR
        - TR under TP or protection requests
      - Resettlement as refugee from abroad
    - (b) the Board determines the person to be ...
      - Convention refugee, OR
      - person in need of protection
      - Refugee claim processed by IRB
    - (c) the Minister allows an application for protection (via PRRA application)*
      - — except for — A112(3) (which only offers stay of removal if successful)
      - Stay
  - (2) Protected person — is a person ...
    - on whom refugee protection is conferred under IRPR3, AND
    - whose claim or application has NOT been rejected under ...
      - "Cessation clause" — A108(2)
      - "Vacation clause"
        - A109(1), OR
        - A114(4)
        - decision to allow a claim for refugee protection (A108(2)) or to vacate a decision to confer refugee protection is a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter
    - IRPR3(2)
    - (a) the Minister allows an application for PR
      - Refugee claim processed by IRB
      - (i) PR OR
      - (ii) person in favour of which a removal order has been stayed in accordance w A114(4)
      - Stay
    - (b) the person is a member of the Convention refugees abroad class, Financial Assistance Class or other class prescribed by governmental assistance programs is available in CA for the PR and the Minister approves the person's application for protection, OR
    - (c) PR has sufficient financial resources to provide for the lodging, care and maintenance, and for the resettlement in CA of persons who are in the class prescribed in the application for protection
    - IRPR3(3)
    - (a) whether there is evidence that raises serious issue of applicant's credibility and is related to factors in A97 & A98
    - (b) whether evidence is central to decision in PRRA application; AND
    - (c) whether the evidence, if accepted, would justify allowing PRPA application.
- IRPR3(4)
- IRPR3(5)
- IRPR3(6)
- IRPR3(7)
- IRPA Inclusion: 3 Bases for Refugee Protection (1) Convention refugees (2) Members of a class, Refugees, Persons in need of protection
  - 1. Convention refugees (IRPA 96)
    - is a person ...
    - IRPR3(2)
    - IRPR3(3)
    - IRPA 96 Convention refugees (Inclusion Article 1A)
    - (a) the person
      - under a visa application is determined to be ...
        - Convention refugee, OR
        - person in similar circumstances
      - AND becomes ...
        - PR under the visa, OR
        - TR under TP or protection requests
      - Resettlement as refugee from abroad
    - (b) the Board determines the person to be ...
      - Convention refugee, OR
      - person in need of protection
      - Refugee claim processed by IRB
    - (c) the Minister allows an application for protection (via PRRA application)*
      - — except for — A112(3) (which only offers stay of removal if successful)
      - Stay
    - on whom refugee protection is conferred under IRPR3, AND
    - whose claim or application has NOT been rejected under ...
      - "Cessation clause" — A108(2)
      - "Vacation clause"
        - A109(1), OR
        - A114(4)
        - decision to allow a claim for refugee protection (A108(2)) or to vacate a decision to confer refugee protection is a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter
    - by reason of well-founded fear of persecution
      - 3 criteria of persecution
        - subjective
        - objective
        - serious harm
        - repetition & persistence
        - not always required
      - may overlap with
        - race
        - religion
        - nationality
        - citizenships
        - ethnic groups
        - linguistic groups
      - 5 Convention grounds of persecution (A 6.4, "Hence")
        - membership in a group (5 Convention grounds, 5 sub-categories)
          - 5 groups defined by an innate or unchangeable characteristic
          - 5 groups where members voluntarily associate for reasons so fundamental to their identity that they should not be forced to change it
          - 5 groups associated by a former voluntary status, unalterable due to its historical permanence
          - This class was initially added as a Cold War reaction aimed at ensuring a lower for Communist dissidents, but was quickly encountered in Eastern Bloc regimes after WWII.
          - 5 groups associated by a shared past or present voluntary status, unalterable due to its historical permanence
          - cohesive group NOT always articulate beliefs
          - need NOT necessarily conform the claimant's true beliefs
          - from persecutor's perspective
        - political opinion
        - OUTSIDE scope of citizenship or nationality
        - does NOT include persecution based persons (no viable PSG)
        - must reduce presumption of state protection
        - Factors of rebutting presumption of state protection ...
          - nature of human rights violation
          - profile of alleged human rights abuser
          - efforts that the victim took to seek protection from authorities
          - response of authorities to requests for their assistance, AND
          - available documentary evidence
    - shortage & unavailability of state protection
      - (a) unable or, by reason of that fear, unwilling to avail herself of the protection of each of those countries
      - OR
      - (b) NOT having country of nationality
      - OR
      - (b) OUTSIDE country of former habitual residence
      - unable or, by reason of that fear, unwilling to return to that country
    - No requirements of
      - subjective fear
      - "NEXUS"
      - requirements will
    - (a) danger, believed on substantial grounds to exist, of torture within the meaning of the Convention Against Torture Article 1
      - OR
      - (b) risk to life or risk of cruel & unusual treatment or punishment if ...
      - (i) whose removal to countries of nationality or country of former habitual residence would subject them personally to
        - intentional infliction of considerable pain or suffering
        - physical or mental
        - inflicted by or with
          - involvement of public official, OR
          - other person acting in official capacity
        - Torture must emanate from the state; consequences of torture does NOT have to; torture includes; include claims are often accepted under IRB.
        - PA
      - (ii) person is unable or, because of that risk, unwilling to avail themself of the protection of that country
        - OR
        - (iii) risk would be faced by person in every part of that country and is NOT faced generally by other individuals in or from that country
        - OR
        - (iv) risk is NOT inherent or incidental to lawful sanctions, unless imposed in disregard of accepted int'l standards, AND
        - (v) risk is NOT caused by inability of that country to provide adequate health or medical care.
        - PA
        - Internal Flight Alternative (Fleing Test)
        - On a balance of probabilities, there is no serious possibility of the claimant being persecuted in the proposed IFA
        - Conditions in the proposed IFA must be such that it would not be unreasonable, in the circumstances, including the personal circumstances of the claimants, for the claimants to seek Refuge there.
    - (b) person is a member of a class of persons prescribed by the regulations as being in need of protection
      - (i) the class is a class of persons that is recognized by competent authorities of the country in which he has taken residence as being in need of protection based on the possession of nationality of that country
      - Complete Home is only one class "Country of asylum class"
      - Article 31 means the person already has a complete form of national protection
  - 2. Members of a class, Refugees
  - 3. Persons in need of protection
    - (a) the person would be faced by a danger in every part of that country and is NOT faced generally by other individuals in or from that country
    - (b) the danger is of the kind to which paragraph (a) applies
    - (c) the danger is NOT a risk inherent or incidental to lawful sanctions, unless imposed in disregard of accepted int'l standards, AND
    - (d) the danger is NOT caused by inability of that country to provide adequate health or medical care.
- IRP Exclusion (Refugee Convention)
  - Article E "You Don't Need Protection."
    - (a) commission "crime against peace war crime, OR crime against humanity"
      - test of complicity (can be used to test for inadmissibility under A35(1))
      - (i) whether claimant had no realistic choice but to participate in crime
      - (ii) method of recruitment & any opportunity to leave organization
      - (iii) whether a defence (e.g. duress) is applicable
      - (iv) nature of the association: mere association or passive acquiescence will not justice
      - (v) nature of activities in question:contribution does not have to be intended to specifically identifiable crimes but can be directed to general aims of the organization, or to the accomplishment of an organization's purpose
      - (vi) degree of contribution: must be significant
      - (vii) claimant's awareness (intent, knowledge or recklessness) of the group's crime or criminal purpose
      - (viii) claimant's awareness that their conduct will aid the commission of the crime or criminal purpose
      - voluntary contribution
      - significant contribution
      - knowing contribution
      - Article E means those who are responsible for that transaction which creates refugees should NOT enjoy the benefits of a system designed to protect these refugees.
      - standard of proof: Serious reasons to consider
      - Significant consequence: NO humanitarian protections and NO protections from refoulement
    - (b) committed a serious NON-POLITICAL crime outside the sporting of refuge prior to his admission to that country as a refugee
      - "serious"
        - elements of crime
        - mode of prosecution
        - penalty prescribed
        - facts
        - the mitigating & aggravating circumstances underpin the conviction
      - "non-political"
        - existence of a political disturbance related to a struggle to modify or abolish either a government or a government policy
        - rational nexus between the crime committed and the potential accomplishment of the political objective sought
        - 2 categories
    - (c) been guilty of acts contrary to the purposes and principles of UN
      - (i) where a widely accepted international agreement or UN resolution declares that such acts are contrary to the purposes and principles of UN
      - (ii) those which a court is able, for itself, to declare to be such, on the basis of clear, systemic violations of fundamental human rights constituting persecution
      - To exclude those individuals responsible for serious, sustained or systemic violations of human rights, whether or not such acts occur in peacetime in a non-war setting
      - May include non-state actors.
  - Article F "You Don't Deserve Protection."
- IRP Role and Where to Make a Refuge Claim
  - (1) outside CA
    - must be made by making application for visa as Convention refugee or person in similar circumstances
  - (2) inside CA
    - granted by Part 1
    - must be made to an officer
    - person must NOT be subject to removal order
    - will be issued a conditional removal order (subject to inadmissibility for non-compliance)
    - A20(1)(a)
    - A4(a)
    - stream of refugee claims processing
    - granted by Part 2
    - will be issued a conditional removal order (subject to inadmissibility for non-compliance)
    - within time limits (R159(1))
    - inland refugee claim processing procedures
  - if NOT at POE
  - (3) inside CA not at POE
    - must provide officer with docs & info including BOC
    - within time limits (R159(1))
    - inland refugee claim processing procedures
    - (1.1) Burden of proof is on claimant.
    - (3) RPD may NOT consider claim until it is satisfied that ...
    - (a) A7(B): docs & info including BOC must be provided within time limits (R159(2))
- A100 Referral to RPD
  - (a) refugee protection conferred
  - (b) refugee claim rejected by PR
  - (c) person claim to be a refugee ineligible to be referred to RPD, or to have been withdrawn or abandoned
  - CACID: By a LIFETIME claim
  - Withdrawal & abandonment: By a LIMITED time period
  - Withdrawal occurs when claimant chooses to: 1) pursue claim and formally withdraws it; 2) abandon it
  - Abandonment is a determination by RPD or RAD that claimant is in default in their proceedings, including by failing to appear at a hearing, failing to provide information in response to a lack of progress.
  - governed by ...
    - A108
    - RPD Rules r. 59
    - RPD Rules r. 48
    - RAD Rules r. 47
    - RAD Rules r. 48
  - (1) (a) (i) (ii) ★ A.k.a. "The Claim Ineligibility" provision, or the "Ineligibility" provision under this ground may apply for PRRA and are assisted by mandatory PRRA hearings
  - (b) claimant recognized as Convention refugee by a country other than CA & can be granted status in that country
  - (c) claimant came directly or indirectly to CA from country designated by regulations, other than country of nationality or former habitual residence
  - ★ 2 STCA applies to refugee claimants who are seeking entry to CA from US ...
    - at CA-US land border crossings
    - after crossing left PoE and making refugee claim (US: Takes IN DAYS after day of entry
    - by train, OR
    - or airports, ONLY if person seeking refugee protection in CA ...
    - has been refused refugee status in US, AND
    - is in transit thru CA after being deported from US
    - regular found inadmissible under "CCA may NOT apply for PRRA"
  - (2) claimant determined inadmissible on grounds of security, violating human or int'l rights, serious criminality or organized criminality, EXCEPT if NP granted under A25 or A25.1 on grounds of A35(b)
  - (3) if inadmissible by reason of conviction in CA, the conviction is for an offence punishable by a maximum term of imprisonment of at least 10 yrs, OR
  - (4) if inadmissible by reason of conviction outside CA, the conviction is for an offence that, if committed in CA, would constitute an offence punishable by a maximum term of imprisonment of at least 10 yrs
  - A101(1) writes into or stay in CA is ineligible to RPD to claim/hold refugee status in their country
  - (1) ineligible to be referred to RPD if ...
  - (2) Limitation
  - A102(1) Appeals may be brought by either (1)party or Minister on a question of law, of fact, or of mixed law and fact.
  - A102.1: Minister may satisfy any requirement in the manner in which an officer of the Board may, in writing, give notice of appeal & any copies (reg 84.1)
  - (a) decision of RPD allowing or rejecting refugee claim of a party
  - (b) determination that refugee claim has been withdrawn or abandoned
  - (c) decision of RPD rejecting refugee claim that states that the claim has no credible basis or is manifestly unfounded
  - (1) claimant came directly or indirectly to CA from country of which claimant is a citizen or in which claim is made, designated by regulations made under A102(1) & party to document referred to in A102(2)(a), AND
  - (2) the claim — by virtue of regulations made under A102(1) & party to document under A102(2)(a) to be referred to RPD
  - DCO policy struck down as unconstitutional
  - (d) ★ ★ STCA: subject to regulations
  - decision of RPD to refugee claim ★
  - (e) 2 DCO's: decision of RPD allowing or rejecting a claim made by a citizen of a country that was, on the day on which the claim was made, a country designated under A109.1(1)
  - (f) "Cessation": decision of RPD allowing or rejecting an application by Minister to determine that refugee protection has ceased
  - (f.1) "Vacation": decision of RPD allowing or rejecting an application by Minister to receive a decision to allow refugee claim
  - A102(2.1) Appeal must be filed & perfected within time limits set out in regulations (R159 R52)
  - A102(3) RAD must proceed without a hearing by default.
  - "New" evidence that may be presented (ONLY applies to claimants)
    - A110(4) On appeal, subject may be presented only if, in the opinion (S.panel.hearing.disjunctive list)
    - does NOT apply to ...
    - A110(5) Exception: evidence presented in response to Ministerial evidence.
    - arose after rejection of claim, OR
    - was not reasonably available, OR
    - at the time of rejection, person could not reasonably have been expected in the circumstances to have presented
    - Substantial must be new
    - Relevant to claim for some decision
    - Relevant is important
    - Means for consideration
    - Meant to render inadmissible evidence only of those pre-existing events of which the claimant was aware or should have been aware at the time of the hearing
    - Implicit Base factors (Must also be met)
    - Newness: duplicative of first prong of A110(4)
    - Credibility
      - Looking to circumstances in which the evidence came to be and the source of the evidence.
      - Is it from a credible source? AND
      - Was it obtained in a manner that is credible / consistent with country evidence?
    - Relevance: does it go to proving / disproving a detail at issue in the case?
    - Materiality
      - ONLY has to be satisfied where asking for an RH(S) hearing
      - Not requiring that an individual piece of evidence is determinative in or of itself, but it must be assessed in light of all the evidence, an impact on the outcome of the RAD decision if it had been available.
  - A110(6) RAD may hold oral hearing if there is documentary evidence referred to in A110(2) that ...
    - (a) raises serious issue about credibility of evidence
    - (b) is central to decision about the claim, AND
    - (c) if accepted, would justify allowing or rejecting the claim
    - "Materiality"
    - (a) confirm RPD's determination
    - (b) set aside determination & substitute its own, OR
    - (c) refer matter to PRB for re-determination, giving directions.
    - (2) Referrals: RAD may make referral under A110(3) ONLY if it is of the opinion that ...
    - (a) RPD's decision is wrong in law, in fact or in mixed law & fact, AND
    - (b) it cannot make decision under A110(3) or (b) with hearing evidence presented to RPD
- A108(2) "Cessation"
  - (1) Claim shall be rejected, and person is not a Convention refugee or person in need of protection if ...
  - (a) person has voluntarily reacquired nationality
  - (b) person has acquired new nationality and enjoys its protection
  - (d) person has voluntarily become re-established in the country that the person left or outside of which the person remained of which the person claimed refugee protection in CA, OR
  - (e) reasons for which the person sought refugee protection have ceased to exist
  - "Serious reason" (d) (precedes) (e), (b) or (d) only applies to claimants
  - "voluntary" (d) (precedes) (e), (b) or (d) only applies to claimants
  - voluntary acts: Voluntary assessing risk assessment
  - A108(2) does NOT apply ...
  - Can be applied against Convention refugees
  - (2) Cessation of refugee protection
  - (3) Claim rejected
  - (4) Exception: A108(2)(e) does NOT apply in case of COMPELLING REASONS arising out of previous persecution, torture, treatment or punishment for refusing to avail themselves of the protection of the country which they left, or outside of which they remained, due to such previous persecution, torture, treatment or punishment.
  - does NOT apply if ...
  - (1) RPD may, on application by Minister, vacate a decision to confer refugee protection obtained as a result of directly or indirectly misrepresenting or withholding material facts
  - (2) RPD may reject application if other sufficient evidence is available for the rest of first determination to justify refugee protection
  - Two-step analysis
  - "other sufficient evidence" means evidence untainted by misrep
  - (3) If application is allowed, claim is deemed rejected and decision that led to conferral of refugee protection is nullified
  - (1) Minister may designate country for purposes of A108(2) & A4.1
  - DCO policy suspended as of May 2019
  - (2) Limitation
  - A102(1) Appeals may be brought by either (1)party or Minister on a question of law, of fact, or of mixed law and fact.
  - A102.1: Minister may satisfy any requirement in the manner in which an officer of the Board may, in writing, give notice of appeal & any copies (reg 84.1)
  - Minister has more leeway despite RAD Rules r. 5 & r. 6
  - (a) decision of RPD allowing or rejecting refugee claim of a party
  - DCI has not used designation power since 2012
  - (b) determination that refugee claim has been withdrawn or abandoned
  - in accordance w A46.1 ★
  - (c) decision of RPD rejecting refugee claim that states that the claim has no credible basis or is manifestly unfounded
  - (1) claimant came directly or indirectly to CA from country of which claimant is a citizen or in which claim is made, designated by regulations made under A102(1) & party to document referred to in A102(2)(a), AND
  - (2) the claim — by virtue of regulations made under A102(1) & party to document under A102(2)(a) to be referred to RPD
  - DCO policy struck down as unconstitutional
  - (d) ★ ★ STCA: subject to regulations
  - decision of RPD to refugee claim ★
  - (e) 2 DCO's: decision of RPD allowing or rejecting a claim made by a citizen of a country that was, on the day on which the claim was made, a country designated under A109.1(1)
  - (f) "Cessation": decision of RPD allowing or rejecting an application by Minister to determine that refugee protection has ceased
  - (f.1) "Vacation": decision of RPD allowing or rejecting an application by Minister to receive a decision to allow refugee claim
  - A102(2.1) Appeal must be filed & perfected within time limits set out in regulations (R159 R52)
  - A102(3) RAD must proceed without a hearing by default.
  - "New" evidence that may be presented (ONLY applies to claimants)
    - A110(4) On appeal, subject may be presented only if, in the opinion (S.panel.hearing.disjunctive list)
    - does NOT apply to ...
    - A110(5) Exception: evidence presented in response to Ministerial evidence.
    - arose after rejection of claim, OR
    - was not reasonably available, OR
    - at the time of rejection, person could not reasonably have been expected in the circumstances to have presented
    - Substantial must be new
    - Relevant to claim for some decision
    - Relevant is important
    - Means for consideration
    - Meant to render inadmissible evidence only of those pre-existing events of which the claimant was aware or should have been aware at the time of the hearing
    - Implicit Base factors (Must also be met)
    - Newness: duplicative of first prong of A110(4)
    - Credibility
      - Looking to circumstances in which the evidence came to be and the source of the evidence.
      - Is it from a credible source? AND
      - Was it obtained in a manner that is credible / consistent with country evidence?
    - Relevance: does it go to proving / disproving a detail at issue in the case?
    - Materiality
      - ONLY has to be satisfied where asking for an RH(S) hearing
      - Not requiring that an individual piece of evidence is determinative in or of itself, but it must be assessed in light of all the evidence, an impact on the outcome of the RAD decision if it had been available.
  - A110(6) RAD may hold oral hearing if there is documentary evidence referred to in A110(2) that ...
    - (a) raises serious issue about credibility of evidence
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    - "Materiality"
    - (a) confirm RPD's determination
    - (b) set aside determination & substitute its own, OR
    - (c) refer matter to PRB for re-determination, giving directions.
    - (2) Referrals: RAD may make referral under A110(3) ONLY if it is of the opinion that ...
    - (a) RPD's decision is wrong in law, in fact or in mixed law & fact, AND
    - (b) it cannot make decision under A110(3) or (b) with hearing evidence presented to RPD
- A109(1) "Vacation"
  - (1) Claim shall be rejected, and person is not a Convention refugee or person in need of protection if ...
  - (a) person has voluntarily reacquired nationality
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  - "Serious reason" (d) (precedes) (e), (b) or (d) only applies to claimants
  - voluntary acts: Voluntary assessing risk assessment
  - A109(2) does NOT apply ...
  - Can be applied against Convention refugees
  - (2) Vacation of refugee protection
  - (3) Claim rejected
  - (4) Exception: A109(2)(e) does NOT apply in case of COMPELLING REASONS arising out of previous persecution, torture, treatment or punishment for refusing to avail themselves of the protection of the country which they left, or outside of which they remained, due to such previous persecution, torture, treatment or punishment.
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  - (1) RPD may, on application by Minister, vacate a decision to confer refugee protection obtained as a result of directly or indirectly misrepresenting or withholding material facts
  - (2) RPD may reject application if other sufficient evidence is available for the rest of first determination to justify refugee protection
  - Two-step analysis
  - "other sufficient evidence" means evidence untainted by misrep
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  - in accordance w A46.1 ★
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  - (1) claimant came directly or indirectly to CA from country of which claimant is a citizen or in which claim is made, designated by regulations made under A102(1) & party to document referred to in A102(2)(a), AND
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    - A110(4) On appeal, subject may be presented only if, in the opinion (S.panel.hearing.disjunctive list)
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    - arose after rejection of claim, OR
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    - Substantial must be new
    - Relevant to claim for some decision
    - Relevant is important
    - Means for consideration
    - Meant to render inadmissible evidence only of those pre-existing events of which the claimant was aware or should have been aware at the time of the hearing
    - Implicit Base factors (Must also be met)
    - Newness: duplicative of first prong of A110(4)
    - Credibility
      - Looking to circumstances in which the evidence came to be and the source of the evidence.
      - Is it from a credible source? AND
      - Was it obtained in a manner that is credible / consistent with country evidence?
    - Relevance: does it go to proving / disproving a detail at issue in the case?
    - Materiality
      - ONLY has to be satisfied where asking for an RH(S) hearing
      - Not requiring that an individual piece of evidence is determinative in or of itself, but it must be assessed in light of all the evidence, an impact on the outcome of the RAD decision if it had been available.
  - A110(6) RAD may hold oral hearing if there is documentary evidence referred to in A110(2) that ...
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    - "Materiality"
    - (a) confirm RPD's determination
    - (b) set aside determination & substitute its own, OR
    - (c) refer matter to PRB for re-determination, giving directions.
    - (2) Referrals: RAD may make referral under A110(3) ONLY if it is of the opinion that ...
    - (a) RPD's decision is wrong in law, in fact or in mixed law & fact, AND
    - (b) it cannot make decision under A110(3) or (b) with hearing evidence presented to RPD
- A110(3) "Vacation"
- A110(4) "Cessation"
- A110(5) "Vacation"
- A110(6) "Cessation"
- A110(7) "Vacation"
- A110(8) "Cessation"
- A110(9) "Vacation"
- A110(10) "Cessation"
- A110(11) "Vacation"
- A110(12) "Cessation"
- A110(13) "Vacation"
- A110(14) "Cessation"
-