



# Information for people considering making a refugee claim in Canada entering from the USA

*Warning: The following is general information only. For details, check the [law](#) or consult legal counsel.*

## Cautions

- If you apply at an official border crossing and you do not meet one of the exceptions to the Safe Third Country Agreement, you will not be allowed to make a refugee claim in Canada. You will be immediately returned to the USA where you may be detained and put into removal proceedings.
- If you are found ineligible to make a refugee claim for other reasons (e.g. you made a previous claim in Canada, or you are inadmissible for serious criminality or security), you will immediately face deportation to your country of origin (not the USA). You may be held in immigration detention. There will be very little opportunity to show that you are at risk.
- If you are found eligible to make a refugee claim in Canada, you will need to show that you face persecution in your country of origin. If you do not face persecution, your claim is likely to be rejected and you will face deportation to your country of origin (not the USA).
- It is often difficult to show that you face persecution if you have been outside your country of origin and living in the USA for several years.
- Do not expect to have an immediate right to work in Canada. If your claim is eligible, you may apply for a work permit but processing takes months. Claimants from **Designated Countries of Origin** must wait 180 days before they can apply.

## Making a refugee claim at an official border crossing: Safe Third Country Agreement

A person who makes a refugee claim at an official border crossing (a Port of Entry) is subject to the Safe Third Country Agreement and therefore generally CANNOT make a refugee claim in Canada. When a person is found ineligible to make a refugee claim based on Safe Third Country:

- The person is returned to the USA the same day (generally under a removal order which bars the person from returning to Canada without authorization for 12 months);
- Canadian authorities notify US authorities at US Port of Entry;
- The person can never make another refugee claim in Canada.

## Exceptions

There are some exceptions to the general rule. Despite the Agreement a person may be able to make a refugee claim in Canada at a Port of Entry if the person:

- Has a qualifying family members physically present in Canada (see below);
- Is an unaccompanied minor and neither parent (or legal guardian) is in either USA or Canada;
- Has a valid Canadian visa;
- Is a national of a country where visas are not required to enter Canada but are to enter the USA (e.g. Mexican nationals); or
- Is subject to the death penalty.

### Qualifying family members are:

- a spouse or common-law partner; a legal guardian; a child; a father or mother; a brother or sister, a grandfather or grandmother; a grandchild; an uncle or aunt; a nephew or niece; AND
- Must be a Canadian citizen, permanent resident, protected person or Convention refugee, a person subject to a stay of removal, or a holder of a work permit or study permit (subject to some exceptions), or - **if the family member in Canada is 18 years or more** - a refugee claimant; AND
- Must be physically present in Canada.

In order to decide if a person meets one of the exceptions, Canadian officials will interview the person (and family member), examine any documents provided and consult Canadian government databases.

 [www.cbsa-asfc.gc.ca/agency-agence/stca-etps-eng.html](http://www.cbsa-asfc.gc.ca/agency-agence/stca-etps-eng.html)  
[www.jrchc.org/vive/information-for-asylum-seekers/](http://www.jrchc.org/vive/information-for-asylum-seekers/)

### Entering Canada and then making a refugee claim

The Safe Third Country Agreement does not apply to people who make a refugee claim inside Canada after having entered from the USA. People who cross into Canada irregularly are often arrested by Canadian officials close to the border. If they say that they want to make a refugee claim, they are taken to a Port of Entry to see if they are eligible to make a claim.

**Note:** A person can only make ONE refugee claim in Canada in a lifetime. If a person goes to a Port of Entry and is sent back to the USA because of the Safe Third Country Agreement, and then crosses the border into Canada irregularly, that person CANNOT make a refugee claim.

### Is the claim eligible?

Apart from Safe Third Country, a person may still not be eligible to make a refugee claim if the person:

- Has been recognized as a refugee by another country [such as the USA] and can be returned there;
- Made a previous refugee claim in Canada (whether the claim was refused, accepted, withdrawn, abandoned or determined to be ineligible);
- Is inadmissible to Canada on grounds of security, serious criminality, organized crime or violation of human rights.

### Eligible claims: determination of refugee status

Eligible claimants are referred to the Immigration and Refugee Board for a hearing. In most cases, the hearing is scheduled within 60 days. The claimant will be given a Basis of Claim form which they must complete. This form is very important and should be completed with the assistance of experienced legal counsel.

At the hearing the Immigration and Refugee Board will determine if the person meets the refugee definition or faces in their country of origin torture, cruel and unusual treatment or punishment, or a risk to their life.

Claimants entering from the USA should be aware that the following factors will be considered and may have a negative impact:

- Lengthy residence in USA without making an asylum claim;
- Delay in making an asylum claim in the USA;
- Abandonment of pending US asylum claim;

- Refused asylum application in the USA.
- Successful asylum claim in the USA.
- Delay in making a refugee claim in Canada.



[www.cic.gc.ca/english/refugees/inside/apply-who.asp](http://www.cic.gc.ca/english/refugees/inside/apply-who.asp)  
[refugeclaim.ca/preparation-guide/](http://refugeclaim.ca/preparation-guide/)

## Resources

CCR, *Refugees entering from US and Safe Third Country: FAQ* [ccrweb.ca/en/refugees-entering-us-and-safe-third-country-faq](http://ccrweb.ca/en/refugees-entering-us-and-safe-third-country-faq)

CCR, Safe Third Country page: [ccrweb.ca/en/safe-third-country](http://ccrweb.ca/en/safe-third-country)

Vive Shelter (Buffalo) information for claimants [www.jrchc.org/vive/information-for-asylum-seekers/](http://www.jrchc.org/vive/information-for-asylum-seekers/)

*Canadian refugee determination process*

CCR webpage with links: [ccrweb.ca/en/refugee-reform](http://ccrweb.ca/en/refugee-reform)

