

# Haiti & Zimbabwe: measures after lifting of moratoria

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Canadian Council for Refugees



Conseil canadien pour les réfugiés  
Canadian Council for Refugees

# Overview

- Who is eligible and what are the special measures?
- Calculating 6 month period
- Applying for H&C
- Role of Quebec
- Resources

# Special measures - eligibility

Haitians and Zimbabweans who:

- Were in Canada on December 1, 2014.
- Do not have permanent residence in Canada.
- Had made a refugee claim before December 1, 2014 OR were benefitting from the Haiti Special Measures (introduced to respond to the 2010 earthquake).
- Are not inadmissible to Canada on criminal or certain other grounds.

# Eligibility: Haiti Special Measures

Who is considered to be benefitting from the Haiti Special Measures (post-2010 earthquake)?

Haitians who:

- Were legally present in Canada prior to January 13, 2011
- Made an application for a work permit after Jan 13, 2011
- Benefitted from exemptions based on the Haiti Special Measures public policy on 1 December 2014

Note – it is not entirely clear what the situation is for Haitians who didn't apply for a work permit (e.g. too old)

# Eligibility – Exclusions

Haitians and Zimbabweans do NOT benefit from the new special measures if they were:

- Were found ineligible to make a refugee claim;
- Are inadmissible on criminal or security grounds;
- Were excluded from refugee protection by the IRB (exclusion clauses of the Refugee Convention);
- Face an outstanding criminal warrant.

# Special measures: what are they?

- Six months to apply for permanent residence on humanitarian and compassionate (H&C) grounds.
- Suspension of removal continues until a decision on their H&C application.

In the meantime, they are eligible for:

- A work permit
- Interim Federal Health Program (if they were eligible before 1 December 2014).

# Calculating the six months

People whose refugee claim was rejected before Dec 1, 2014, and Haitians benefitting from the Haiti Special Measures:

- Starts 1 Dec 2014 and ends **1 June 2015**.

Estimated 3,500 persons (3,200 from Haiti and 300 from Zimbabwe).

People who were in the refugee claim process on Dec 1, 2014:

- Starts on the **date of the rejection** by the Refugee Protection Division.

211 Haitian and 48 Zimbabwean claims pending 30 Nov 2014

Note: it is irrelevant if there is an appeal to RAD or Fed Court

# Applying for H&C

- Complete all the required CIC forms
- Pay the fees (\$550 per adult, \$150 per dependent child)
- Send the application to CIC – Backlog Reduction Office in Vancouver (mark: Haiti/Zimbabwe special measures).

Need to include detailed submissions on either or both of:

- Integration factors
- Hardship



# Applying for H&C: special cases

- People can make another application if H&C previously refused (learn from the past experience)
- People cannot make an application if the refugee claim is still pending (i.e. no decision yet from Refugee Protection Division)
- People who have an H&C application pending can add submissions (and won't face removal until a decision comes)

... and

# H&C: special cases (cont'd)

- People who are being sponsored in Spouse or Common-Law Partner in Canada Class
  - This does NOT by itself count as an H&C application, so there is no stay of removal accompanying the application.
  - While the spousal sponsorship application is ongoing, they can file H & C under the special program in order to benefit from the stay of removal.
  - But if they included, in the sponsorship application, a waiver from inadmissibility (e.g. criminality, misrepresentation) – the situation may be different and we are awaiting clarification.

# Applying for H&C: processing

H&C is a **two-step process**:

1. Approval in principle (means that CIC agrees that there are sufficient humanitarian reasons to accept)
2. Admissibility (includes medical exam, criminal and security review)

How long does it take?

- 30-42 months (current processing times). CIC has said it will try to process cases in the special program more quickly

# Applying for H&C: family overseas

People with immediate family member (spouse, common law partner or dependent child) who is NOT in Canada:

- Must list all family members in application
- Family members overseas will be examined (medical, criminality) later on, if the H&C is accepted in principle.
- Family members cannot come to Canada until the principal applicant is granted permanent residence and THEN submits a sponsorship application for the family members.

# H&C factors

- See CIC's online manual for H&C:

<http://www.cic.gc.ca/english/resources/tools/perm/hc/processing/index.asp>

- "Unusual and undeserved or disproportionate hardship"

To emphasize:

- Best interests of the child

- Access to adequate health or medical care

- Establishment in Canada (Positive H&C consideration may be warranted when the period of inability to leave Canada due to circumstances beyond the applicant's control is of considerable duration and when there is evidence of a significant degree of establishment in Canada.)

NB not refugee factors.



# H&C applications

Get an experienced lawyer!

It is complicated.

# Collecting evidence in support of H&C applications

Examples:

Best interests of the child:

- Birth certificates of children (whether born in Canada or outside)
- Doctor's letter/other reports re. any physical or mental health issues
- Documentation about Haiti/Zimbabwe as it would affect the child

Establishment in Canada

- Proof of employment
- Proof of educational or training courses
- Proof of volunteer activities

# Role of Quebec

People who were living in Quebec on 1 December 2014 will also have their case reviewed by the Quebec government. They must complete an extra form: **Demande d'examen de parcours** (and send it with the H&C application to CIC)

(If H&C filed before 1 Dec 2014, CIC is supposed to contact the applicant to inform them about the form).

CIC will send the application for review to Quebec.

Quebec will give an opinion, based on **integration** factors (employment history, training, children's schooling, participation in civil society, respect for laws)



# If no H&C

For people who:

- Are not eligible for the special measures
- Don't make an H&C application within the 6 months
- Make an H&C application but it is refused

They may be called in for removal by the Canada Border Services Agency (CBSA).

They may be eligible for a Pre-Removal Risk Assessment (PRRA) = evaluation of whether at personal risk if removed to Haiti/ Zimbabwe.

# Resources

- Information updates at:  
<http://ccrweb.ca/en/moratoria-lifted-haiti-zimbabwe-practical-information>
- List of organizations for support
- Submission templates for H&C submissions
- Collection of documentation

Suggestions welcome!