



Know your rights: Migrant Rights and Immigration Laws

Humanitarian & Compassionate (H&C) Applications

WHAT IS AN H&C APPLICATION?

- A Humanitarian & Compassionate (H&C) application is an application for permanent residency that is considered an option of last resort. In order to succeed, you must provide sufficient and compelling reasons to allow you to stay within the country. Each application is assessed on a case-by-case basis.
- Example of these reasons may include: hardship in having to leave Canada (e.g. physical and mental health concerns), risk (i.e. of torture) in your home country, ties to or establishment in Canada, impact of family violence, and children's best interests, etc.

WHO MAY APPLY?

- You can make an H&C application if you believe there are sufficient humanitarian and compassionate reasons (see below for factors) that your application will be accepted.
- Generally, H&C applicants do not have any other options to get permanent status and so have to rely on the H&C as a last resort.

HOW MUCH IS IT?

The fees for an H&C application are:

- Processing fee (\$550) and
- Right of permanent residence fee (\$500)

(There will be additional costs for an accompanying child.)



HOW LONG WILL IT TAKE?

- H&C applications are generally quite long. The process—between submitting an application and getting a decision from Immigration, Refugees, and Citizenship Canada (IRCC)—takes, on average, around 1.5 years but could take longer depending on the complexity of the case.

DISCRETIONARY NATURE

- The H&C process is discretionary. This means there are no exact rules about when IRCC has to accept or reject a claim. Though IRCC must take into account relevant evidence and the case law, no claim is certain, and the decision is up to the officer. It is the applicant's responsibility to prove that their application should be accepted. Applications are often rejected because of a lack of evidence, so it is very important to prepare your documents carefully.



WHAT CAN YOU DO TO PREPARE YOUR APPLICATION?



The more evidence you can submit, the more helpful it will be for your application.

You will want to begin gathering evidence of the following factors:

Establishment and ties in Canada

- That you have been living and working in Canada for several years or more and have roots here;
- Your work history (employment, job letters, tax information, evidence you run your own business);
- Assets, savings, and investments in Canada;
- Skills, training, and education history in Canada;
- Ability to speak different languages, particularly English or French;
- Community ties (e.g. volunteering, religious/cultural groups, medical and social supports);
- Family and friends (letters of support are very helpful);
- Any children born in Canada who themselves have ties to the country.

Note: if you have received social assistance (e.g. Ontario Works) in Canada, you should explain why you needed it.

Hardship in leaving Canada

- difficulties and risks facing you in your home country (e.g. medical issues, discrimination, gang violence, harassment);
- physical and mental health conditions that require medical or caregiving supports in Canada;
- no home, family or friends left to return to in your home country;
- consequences of family separation.

Best interests of children

- having children born in Canada who are integrated into Canadian society;
- you/your children do not speak the language or aren't used to the culture in your home country;
- conditions of the home country and potential impact on child (e.g. if child was born outside of family planning regulations);
- medical issues or special needs;
- impact on the child's education and development;
- impact on matters related to the child gender.

Other considerations

- family violence and abuse.

Factors that may **negatively affect** an H&C application include: a criminal record, lack of financial stability, or few/no family ties in Canada.

Evidence: The goal will be to provide proof that supports every claim in your application.

Put all of these documents together in a folder (either physically or digitally) and make copies of them before giving them to a lawyer or immigration consultant.



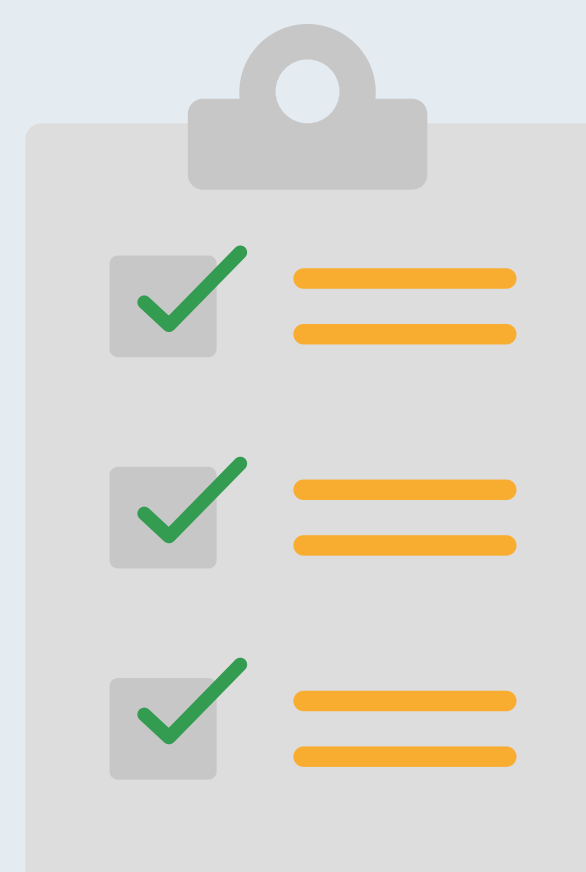


Examples of documents:

- **Letters:** From family, friends, employers, schools, counsellors, community members, religious leaders, community organizations
- **Reports and records:** Medical reports, psychological assessment, hospital records, police reports, court records, bank records, immigration records
- **Other evidence:** Photographs (of ties in Canada, volunteering and work, family, etc.), job offer, employment record, tax records, pay stubs, expert evidence, of danger in your home country

Note: You may provide evidence of employment even you do a cash job and/or are self-employed.

When filling out your application, follow the guide very closely and complete all the required forms. Make sure you answer all questions.





Frequently Asked Questions (FAQ):



Q: Can I get free help on my H&C application?

A: If you are low-income, you may be eligible for some government-funded help on your H&C application. Some specialty clinics, like the Chinese and Southeast Asian Legal Clinic and Barbra Schlifer Clinic, may take H&C cases. Legal Aid Ontario may also provide legal aid certificates that can help you fund a private lawyer for your H&C in cases involving domestic abuse, children, mental health issues, or if you did not pursue refugee claims.

Q: What can I do if I was told by legal professionals that I don't have a H&C case now?

A: Even though you might not be eligible for a successful H&C application at the moment, you might be in the future depending on the changes in your circumstances. You should connect with organizations and groups assisting migrants, building up your ties and case over time. You could also get a second opinion from another legal professional.

Q: Do I need to be in Canada in order to apply for H&C?

A: No, but applications made in Canada have had a far higher chance of success compared to applications made abroad. Furthermore, leaving the country while your H&C application is under processing may be considered a factor against your application.



Q: Can I be deported while my H&C application is being considered?

A: Yes, up until you have your Stage 1 approval. Having an H&C application in process does not mean that CBSA will not move to deport you if you do not have valid status to stay in Canada. In many cases however, some of the same arguments you use in your H&C application can also be used to argue why your deportation should be stayed. Please seek legal help if you are being deported by immigration authorities.

Q: What can I do if my H&C application is rejected?

A: You (or your lawyer) may ask the immigration authorities to reconsider your application and/or file a judicial review to Federal Court within 15 days of receiving the negative decision. You may also consider waiting for a period of time and strengthening your establishment and ties to Canada before reapplying in the future.

Q: What happens if my H&C application is approved?

A: An H&C application is assessed in two stages. If you are approved in Stage 1, **it is called an approval in principle** and you cannot be deported until your application is completed. You and your dependent family members will then need to go through medical, security, and criminal checks as part of Stage 2. Once you get Stage 2 approval, you will be given your Canadian permanent residency.



Stories



Size Size came to Canada 10 years ago. After her refugee claim and appeal was rejected, she has been living without status. She started working in different cash jobs in restaurants and massage parlours. At home, she was abused by her partner for two years and suffered psychologically.

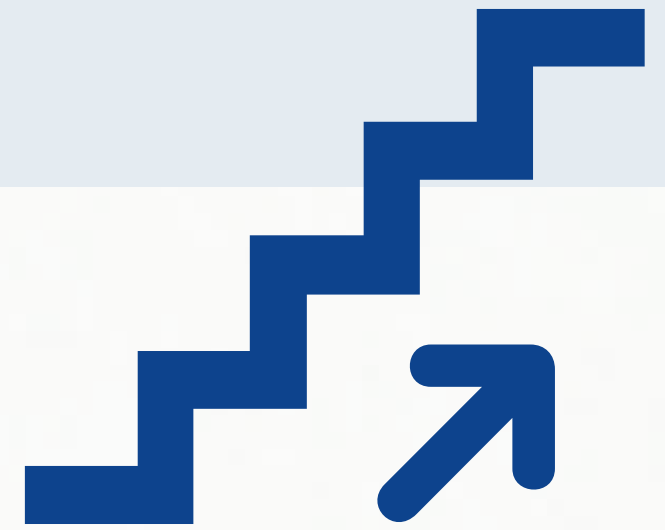
Since Size Size has been keeping her own records in detail, she was able to provide a lot of evidence when she decided to pursue her Humanitarian & Compassionate (H&C) claim with a legal clinic.

For example

- She recorded all the names and addresses of her workplaces and documented her income and dates of employment. She used this information to file her tax return.
- Despite deciding not to report the domestic violence to the police, she took pictures of her wounds, had a medical report from a doctor, and letter from a violence against women organization to help with proof. The counselor provided a strong letter to show how she was impacted by the violence that she needs continue mental health support in Canada.
- She had good relationship with friend, family and the religion groups, instead writing a very brief letter, they wrote how she had strong connection and contribution to the community. All the classmates and teacher of her ESL class had written a support letter for her.
- She kept all the document of the certification and picture of joining the community event (e.g. preparing the food for senior)
- She kept the picture of the message sent by the authority of her home country, the newspaper of political arrests against her religion that she may be in danger if she goes back.

** The documents collected by Size Size helped her to work with a lawyer in community clinic who offer her the free legal services and get the H&C approved.

Next steps/resources



Find a legal professional
(free legal services for low income people with eligible legal issues):

- Chinese and Southeast Asian Legal Clinic (service in English, Mandarin, Cantonese): 416-971-9674, www.csalc.ca
- Find a legal clinic near your home
<https://www.legalaid.on.ca/legal-clinics/>
- Legal clinic for self-identified women, non-binary, intersex and Two spirit people who experienced violence
 - Barbra Schlifer Commemorative Clinic:
www.schliferclinic.com
- Call Legal Aid Ontario (you can ask for an interpreter):
1-800-668-8258
 - If you are eligible, you may apply for the Legal Aid Ontario to pay for your legal representation (e.g. for refugee claim and H&C application etc)
<https://www.legalaid.on.ca/services/how-do-i-apply-for-legal-aid/>
 - If you are a refugee or detained by immigration, you may reach out to Refugee Law Office
<https://www.legalaid.on.ca/services/help-with-immigration-or-refugee-problems/>
 - You can also hire a local immigration lawyer or consultant to assist you



Other resources:

H&C application guide:

- <https://www.canada.ca/en/immigration-refugees-citizenship/services/application/application-forms-guides/guide-5291-humanitarian-compassionate-considerations.html>

CLEO guide to H&C applications:

- <https://www.cleo.on.ca/en/publications/handc>

Barbra Schlifer Commemorative Clinic guide on gathering evidence:

- <https://drive.google.com/file/d/1LDDRdxxk4lOHBB9lxgxqZYbVS5Yblg2x/view?usp=sharing>

Connect with community groups that assist Chinese/Asian migrants.

- Chinese Canadian National Council (Toronto Chapter)
www.ccnctoronto.ca
416-596-0833
Wechat: ccnctoronto
- Butterfly (Asian and Migrant Sex Workers Support Network)
www.butterflysw.org
416-906-3098
- Friends of Chinatown Toronto
<http://linktr.ee/FOCT>
- Lesbond: Asian Queer Women Migrant Support Project
lesbondinfo@gmail.com
<https://www.facebook.com/AsianQueerWomenMigrantsInCanada>
- Ontario Hong Kong Youth Action (OHKYA)
<http://ohkya.com>

Partner organizations:



Funded by:

The Law Foundation of Ontario Access to Justice Fund



Published: June 2022

This document provides general information. Talk to your lawyer if you want legal advice specific to your situation.