

Immigration Appeals*

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The Immigration Appeal Division (IAD) hears appeals on immigration matters such as appeals from refused sponsorship applications and from removal orders.

The IAD hears four types of appeal:

- A. **Sponsorship** appeal
- B. Appeal from a **removal order** issued by an officer of the Canada Border Services Agency or the IRB Immigration Division
- C. **Residency obligation** appeal
- D. **Minister's** appeal of an ID decision

An appeal is allowed...

- if the decision being appealed was wrong in law or fact,
- if there was a breach of a principle of natural justice (for example, a breach to the right to be heard or to be heard by an impartial person), or
- in some cases, on the basis of humanitarian and compassionate considerations.

A. Sponsorship appeal

Who can appeal?

Canadian citizens and permanent residents whose applications to sponsor close family members to Canada have been refused by CIC.

Who cannot appeal?

Sponsorship appeals are not possible for persons who have been found inadmissible to Canada based on:

- serious criminality punished by a sentence of two years or more of imprisonment,
- organized criminality,
- security grounds,
- violations of human or international rights, or
- misrepresentation (unless the sponsored family member is the sponsor's spouse, common-law partner or child).

If the appeal is allowed...

CIC will resume processing the sponsorship application or it may ask the Federal Court of Canada permission to apply for judicial review of the IAD decision. It is possible for CIC to refuse the application on other grounds.

If the appeal is dismissed...

The sponsor may contest the IAD's decision by asking the Federal Court of Canada permission to apply for judicial review of the IAD decision.

B. Removal order appeal

Who can appeal?

Permanent residents, Convention refugees, protected persons and foreign nationals with a permanent resident visa who have been ordered removed from Canada.

Who cannot appeal?

None of these persons can appeal their removal order if they have been found inadmissible to Canada because of:

- serious criminality punished by a sentence of two years or more of imprisonment,
- organized criminality,
- security grounds, or
- violations of human or international rights.

The following persons also cannot appeal a removal order:

- claimants whose refugee protection claim has been rejected, and
- foreign nationals without a permanent resident visa.

If the appeal is allowed...

The person will be permitted to remain in Canada.

If the IAD stays the appeal...

The person concerned can stay in Canada under certain conditions imposed by the IAD.

If the appeal is dismissed...

The Canada Border Services Agency may remove the person from Canada.

The person may contest the IAD's decision by asking the Federal Court of Canada permission to apply for judicial review of the IAD decision.

C. Residency obligation appeal

Who can appeal?

Permanent residents determined by an immigration officer abroad not to have fulfilled their residency obligation.

If the appeal is allowed...

The person will not lose permanent resident status.

If the appeal is dismissed...

The person will lose permanent resident status. If the person is in Canada, the IAD will issue a removal order. The person may contest the IAD's decision by asking the Federal Court of Canada permission to apply for judicial review of the IAD decision.

D. Minister's Appeals

The Minister of CIC may appeal a decision made by the Immigration Division at an admissibility hearing.

What are the grounds for an appeal?

The Immigration Appeal Division may allow an appeal and set aside an original decision based on the grounds of an error in law or fact, or of a breach of a principle of natural justice. In certain cases, the Immigration Appeal Division may also give special relief on the basis of humanitarian and compassionate consideration in all the circumstances of the case, which includes taking into account the best interests of a child.

For any questions or clarifications please contact me at dsn_lawyer@yahoo.ca

** Source- Immigration Refugee Board, Canada*