

Permanent Resident Status – How permanent is it?

Canada's immigration law underwent a major overhaul five years ago when a new Immigration and Refugee Protection Act (IRPA) was enacted in June 2002. Consequently, the first set of permanent resident cards were issued a few months later, which means that their validity period of five years had just or will soon expire this year, 2007. This then led to a number of issues arising among permanent residents who may have left the country after landing as permanent residents in Canada and who have failed to meet the permanent residency requirement of 730 days within the last five years.

Under IRPA, the residency obligation may be satisfied in any of the following ways:

1. physical presence in Canada;
2. if outside Canada accompanying a Canadian citizen spouse or common-law partner or a child accompanying a parent
3. if outside Canada and employed full-time by a Canadian business or in the public service of Canada or a province
4. if an accompanying spouse, common-law partner or child of a permanent resident who is employed full-time by a Canadian business or is in the public service of Canada or a province.

Unfortunately, not a few permanent residents learn too late that their "permanent resident" status in Canada is not so "permanent" after all.

For instance, those whose permanent resident cards have expired and who do not satisfy any of the above while they are outside of Canada will have to apply for a travel document with the nearest Canadian embassy or visa office to be able to return to Canada. For those who have failed to comply with the residency obligation, this raises a problem as not only will the request for a travel document be denied, but that the permanent resident status will be revoked. This negative decision can be appealed with the Immigration Appeal Division (IAD) of the Immigration and Refugee Board. Aside from questions of law and possible denial of natural justice, the IAD also has jurisdiction to consider humanitarian and compassionate grounds in light of all the circumstances of the case.

Another matter that could spell doom for a permanent resident status is that of misrepresentation. If it is found out that there was any misrepresentation of a material fact made in one's application for permanent resident status, this can be used as a ground to initiate inadmissibility proceedings and may eventually lead to removal from Canada. Some common examples of misrepresentation involve falsified marital status or undisclosed criminal records for instance.

Moreover, even seemingly “minor” criminal offences may mean the end of one’s permanent resident status in Canada. That is, because IRPA’s definition of “serious criminality” which could render a permanent resident inadmissible to Canada includes conviction for any and all crimes which carry a penalty of “at least ten years or for which a term of imprisonment of at least six months was imposed”, even the most mindless acts of criminality may be covered. So if one’s crime is punishable by “imprisonment not exceeding ten years” even though the actual sentence imposed is a conditional discharge or one month of community service, this is still caught within the serious criminality ground for inadmissibility because “not exceeding ten years” includes a penalty of “at least ten years”. Hence, it is often advisable that a permanent resident who is being encouraged to plea-bargain for a lesser penalty should also be made aware of the potential effects of such plea to his or her immigration status.

The above situations are simply meant to illustrate that permanent residence is not really permanent as some might think. It can be taken away anytime that residency obligation, misrepresentation or criminal issues arise.

It is then strongly advised that permanent residents not become complacent and neglect to meet their obligations. Better yet, apply for citizenship status at the earliest opportunity. However, neither should this lead to the notion that one’s naturalized citizenship status is forever. Even this could be revoked for misrepresentation and serious criminality issues. So in the end, it does not really matter if one is a permanent resident or a citizen - if one makes it a policy to always make full disclosure of relevant facts and to lead clean and upright lives – Canadian permanent residency or citizenship will be yours to keep.

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