

Permanent Resident Card Renewal and Related Issues

If you are a permanent resident planning to travel outside Canada but whose permanent resident (PR) card is about to expire, please ensure that you apply for a renewal several months in advance of your intended travel date. These days, there are much longer delays in the processing of PR cards, whether for initial, renewal or replacement cards, due to CIC's much stricter scrutiny of residency compliance. It appears that the recent discovery of fraudulent citizenship and PR card residency claims have unfortunately led to the prejudice of everybody else, even for those not guilty of similarly fraudulent activity.

If a permanent resident needs to travel urgently and the PR card cannot be issued before one has to leave Canada, CIC can try to expedite processing if the application is submitted at least three weeks before departure and no issues arise during processing. If this does not work out, there is still the option of applying for a travel document from a visa office outside Canada. Again, this application could be subject to processing delays for various reasons hence does not guarantee that one could reenter Canada anytime one wants which would have been the case if the PR card is still valid.

Some permanent residents, particularly those who have foreign-based businesses or employment, or are simply frequent travelers, are unfortunately most affected by this recent trend. Worse, some of them learn too late that the validity of a PR card does not ensure the maintenance of one's permanent resident status.

When PR cards were created under the *Immigration and Refugee Protection Act (IRPA)*, many erroneously thought that as long as they possess valid PR cards, their status as permanent residents will be safe. This is not necessarily true. Conversely, the lack of a valid PR card will not necessarily negate one's permanent resident status. As a general rule, permanent residents are required to meet the residency obligation of two years (or 730 days) within the last five-year period to maintain their PR status. Some fail to realize that the two-year within every five-year period residency requirement to maintain PR status is a rolling requirement, i.e. the five-year period refers to the five years from the date of entry, hence it changes every time a PR reenters Canada.

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

1. actual physical presence in Canada;
2. if outside Canada accompanying a Canadian citizen spouse or common-law partner or is 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; and
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.

Although the residency requirement has become less stringent than the former six-months-for-every-year rule, there are other areas where longer physical presence may be important for permanent residents. One of these areas is that of maintaining provincial health insurance

coverage. In Ontario, the required physical presence in Canada to maintain provincial health insurance coverage is at least 153 days (approximately five months) every year.

It must also be noted that with the recent stricter assessment of PR card applications, the burden of proving that one has satisfied the residency requirement falls on the PR card applicant. Thus, if there is no adequate evidence provided to support one's residency claim, this could result in longer processing delays (as more documentation will be required by CIC) or worse, a refusal of the application and consequent revocation of one's PR status. The revocation of PR status can be appealed to 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. However, the chances of succeeding on appeal will depend on the evidence presented and the presiding board member's weighing of all factors involved.

Another matter that could spell doom for one's 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 a PR card or in the PR application itself, 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 residence or travel history, undisclosed marital status or criminal records.

Lastly, a controversial bill called the "Faster Removal of Foreign Criminals Act" (Bill C-43) is expected to take effect very soon and which will adversely affect permanent residents who find themselves charged and convicted of crimes after the grant of PR status. Under this new law, permanent residents who are convicted of crimes in Canada for which "a term of imprisonment of at least six months" (currently "two years" under IRPA) is imposed, will lose their right to appeal their removal order with the IAD.

Again, these issues should serve as a reminder that permanent residence in Canada is not as permanent as some might think. Clearly, the Canadian government may take steps to revoke one's permanent residency whenever certain conditions are not met or based on relevant legal or public policy considerations.

Whether you need to renew a PR card or are facing a possible criminal conviction, the advice of an experienced immigration legal professional may be invaluable in helping you understand and navigate the ever-changing and complex immigration laws, rules and regulations.

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