

Immigration and Travel to Canada for People Living with HIV



QUESTIONS AND ANSWERS

In general, people living with HIV are allowed to travel and migrate to Canada. However, in certain circumstances, HIV status is a factor considered by the Government of Canada to decide if a person can enter or remain in Canada. This Q&A provides information on how Canadian immigration law and policy affect people living with HIV who wish to visit or live in Canada.

This Q&A describes Canadian immigration law and policy as of July 2023. From time to time, changes are made to the laws and regulations, and Immigration, Refugees and Citizenship Canada (IRCC) issues new directives to immigration officers. Immigration officers are allowed some discretion, which they may or may not use to the advantage of an applicant. Officers may also make mistakes in applying laws, regulations, and policies. In other words, the law may be applied unevenly, which could have a positive or negative effect on an application. Therefore, an application to enter or stay in Canada may not proceed precisely according to the procedures described in this Q&A. Please seek legal advice as appropriate (see the “Getting legal advice” section on page 12).



Land Acknowledgment: While what is now called Canada can be a refuge to countless people fleeing discrimination and persecution around the globe, the country exists on treaty lands, stolen lands, and unceded territories of many different Indigenous groups and communities who have respected and cared for this land since time immemorial. The HIV Legal Network works to address the ongoing injustices and resulting health inequities faced by Indigenous Peoples. We are committed to learning to work in solidarity and to dismantling and decolonizing practices and institutions to respect Indigenous Peoples and Indigenous ways of knowing and being.

Key Definitions

Applicant: A person who submits an application to Immigration, Refugees and Citizenship Canada (IRCC) to enter or stay in Canada.

IRCC (Immigration, Refugees and Citizenship Canada): The department of the Government of Canada that is responsible for immigration, refugee protection, and citizenship matters.

Canadian citizen: A person who is Canadian by birth or who has applied for and received Canadian citizenship.¹

Dependent child: A person who is dependent on their biological or adoptive parent. The person must be less than 22 years old and not be the spouse or partner of another person. An older individual with physical or mental conditions may also, in certain circumstances, be considered a dependent child.²

Foreign national: A person who is not a Canadian citizen or permanent resident, including a person without any status in Canada.

Immigration and Refugee Protection Act: Canada's legislation governing entry and immigration to Canada, as well as the granting of refugee protection in Canada.

Immigration and Refugee Protection Regulations: Regulations enacted under, and to elaborate on, the *Immigration and Refugee Protection Act*.

Immigration medical examination: A medical examination that is required for the purpose of immigration or travel to Canada in certain circumstances. It is completed by an IRCC-approved physician, either in Canada or abroad. See Q.4 for more information.

Immigration officer: An employee of IRCC, working in Canada, whose responsibilities include deciding who can enter and remain in Canada, for instance, on temporary or permanent residency applications.

Live-in caregiver: A person who provides care to children, elderly people, or people with disabilities in private homes without supervision. A live-in caregiver must live in the private home of their employer while working in Canada.

Medical inadmissibility / Medically inadmissible: The basis for finding that a foreign national is not permitted to enter or remain in Canada for health-related reasons.

Parent and Grandparent Super Visa: A visa available to parents and grandparents of Canadian citizens and permanent residents. The visa is valid for up to 10 years and allows qualifying parents and grandparents to visit Canada for up to two years at a time, without renewing their visa.

Partner: In this publication, the term partner includes a common-law partner and a conjugal partner. In each case, the term includes same-sex and opposite-sex relationships.

- A **common-law partner** is a person who has been living with another person in an intimate relationship for at least one year.³
- A **conjugal partner** is a person outside Canada who has been in an intimate relationship for at least one year with a Canadian citizen or permanent resident who is sponsoring them to immigrate to Canada (no need to have been living together).⁴

Permanent resident: A person who has obtained permanent resident status but is not yet a Canadian citizen. Permanent residents have the right to enter and remain indefinitely in Canada, subject to certain limitations. Like Canadian citizens, permanent residents have the right to sponsor certain close relatives to immigrate to Canada. Unlike Canadian citizens, permanent residents can lose their status in certain circumstances.

Protected Person: A person who has been recognized as a *Convention Refugee* or as a *Person in Need of Protection* by the Government of Canada.

- A **Convention Refugee** is a person recognized as having a well-founded fear of persecution in their country of nationality based on their race, religion, nationality, membership in a particular social group, or political opinion.⁵
- A **Person in Need of Protection** is a person who, if removed to their country of nationality, would face a risk to their life, a risk of torture, or a risk of cruel and unusual treatment or punishment.⁶

Spouse: The person to whom someone is married. In the Canadian immigration context, a same-sex spouse will be recognized as a spouse if the marriage is valid under the law of the country where the marriage took place.⁷

Visa: An official document issued by a visa office (outside Canada) that is placed in a person's passport to show that they have met the requirements for admission to Canada as a temporary resident (i.e. as a visitor, student, or worker).

Visa officer: A person working in a visa office (outside Canada) who makes decisions on temporary or permanent residency applications presented by foreign nationals.

Q.1

Are people living with HIV allowed to enter Canada?

Yes, people living with HIV are allowed to enter Canada. Canadian law or policy does not contain a blanket exclusion on people living with HIV, nor does it specifically mention HIV or AIDS.

However, Canadian law says that foreign nationals can be denied visas or refused entry at the border if they might reasonably be expected to cause “excessive demand on [Canadian] health or social services.”⁸ This basis for refusing an application is called “medical inadmissibility.” The restriction is meant to limit public expenses, as many health and social services are publicly funded in Canada,⁹ and it is recognized that most people in Canada (including foreign nationals) use at least some of them.

Q.2

How does the Government of Canada determine who is medically inadmissible?

The government of Canada determines who is medically inadmissible by estimating what an individual’s publicly funded health and social care costs will be in Canada. Specifically, under Canadian law, an applicant places an “excessive demand on health or social services” when the costs of their health or social services are expected to be more than triple the costs of those services for the average Canadian.¹⁰

Currently, the “excessive demand” threshold is CAD \$25,689 per person per year, or CAD \$128,445 per person over five years.¹¹ Accordingly, if the IRCC finds that an applicant’s anticipated annual costs (or costs over five consecutive years) are greater than this threshold, it will declare that applicant medically inadmissible and thus refuse them entry to Canada. In some cases, an applicant may successfully contest the IRCC’s finding (see Q.7 and Q.8).

Q.3

Can a person’s HIV status lead to a finding of medical inadmissibility?

Yes, a person can be found medically inadmissible because of their HIV status. This will occur when the IRCC determines that a person’s anticipated publicly funded treatment costs, such as their HIV medication (also known as antiretroviral medication), are greater than the “excessive demand” threshold (currently set at CAD \$25,689 per person per year). The financial or social contributions that a person may make while living in Canada are not taken into consideration in the calculation.

The costs of many publicly funded HIV medications fall below the “excessive demand” threshold.¹² However, some medications exceed this threshold, especially when coupled with treatment for other HIV-related illnesses. Accordingly, it is unlikely, but possible, for a person to be found to be medically inadmissible due to their HIV status.



Q.4

On what basis does the IRCC determine a person's anticipated health and social services costs in Canada?

The IRCC determines a person's anticipated health and social services costs in Canada using the results of the person's immigration medical examination, which is required in many cases to enter and remain in Canada. A person who is not required to undergo an immigration medical examination will not have their anticipated costs in Canada evaluated and will therefore not be at risk of medical inadmissibility. See Q.6 for more information on the circumstances in which immigration medical examinations are required.

The immigration medical examination may take place in Canada or abroad. Either way, it can only be performed by a physician chosen by the IRCC to conduct immigration medical examinations. A list of approved physicians, in Canada and in other countries, is available on the IRCC website.¹³

The immigration medical examination is a complete medical examination. The examination may include any or all the following: a review of past medical history, a physical examination, a mental examination, laboratory tests, and tests to establish medical diagnoses.¹⁵ The medical history review includes a question on HIV status, and the laboratory tests include an HIV test for all people 15 years of age or over.¹⁶ The HIV test is supposed to be accompanied by appropriate pre- and post-test counselling.¹⁷ However, anecdotal evidence indicates that this does not always happen.

Notably, the physician conducting the immigration medical examination does not assess an applicant's admissibility to Canada. After the immigration medical examination, the physician shares the results with the IRCC.¹⁸ The IRCC then assesses the results and estimates the anticipated costs of the treatment the individual will need in Canada per year over the following five years and determines the applicant's admissibility to Canada on health grounds.

The immigration medical examination includes an HIV test for all people 15 years of age or over. While the HIV test is not done for most people under 15 years of age, it may be required for individuals who have:

- (i) Signs and/or symptoms compatible with an HIV diagnosis;
- (ii) A history of sexual activity;
- (iii) A history of another sexually transmitted infection;
- (iv) Suspected active tuberculosis, hepatitis B, or hepatitis C; or
- (v) A record of having a birthing parent living with HIV at the time of their birth.¹⁴

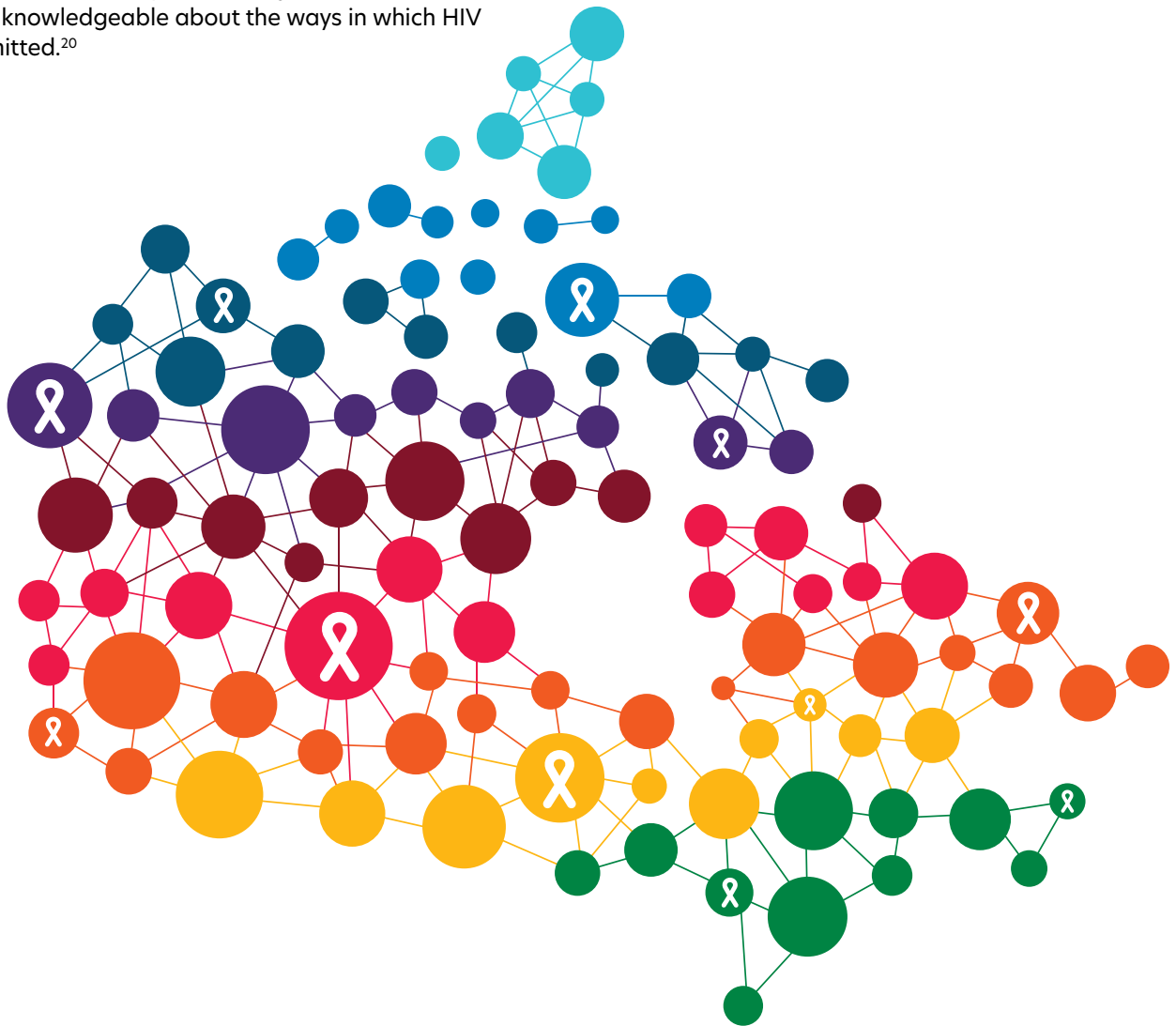


Q.5

If a person tests positive for HIV during an immigration medical examination, who else will learn about the result?

If a person tests positive for HIV during an immigration medical examination, that information will be shared with the following:

- **IRCC:** The physician who conducts the immigration medical examination provides the results, including the HIV test result, to the IRCC.¹⁹
- **Public health authorities in Canada:** If an application is approved, the IRCC will inform the public health agency of the province/territory where the successful applicant will be living (or is living, if the applicant is already in Canada) of their HIV-positive status. Depending on the province/territory, the public health agency may keep this information in their files and communicate with the person living with HIV to ensure they are knowledgeable about the ways in which HIV is transmitted.²⁰
- **Public health authorities abroad (if the medical examination took place outside Canada):** The physician conducting the examination must follow the local regulations for notification of conditions of “public health concern.”²¹ Depending on the regulations of the country where the examination took place, a test result that is positive for HIV may be communicated to the public health authorities of that country and to other third parties (e.g. spouse or partner).



Q.6

In practice, when will an applicant be assessed under the “excessive demand” test?

In general, applicants intending to stay in Canada for less than six months are unlikely to be required to undergo an immigration medical examination, and thus to be assessed for medical admissibility. Applicants planning to stay in Canada for more than six months are in most cases required to undergo immigration medical examinations and be assessed under the “excessive demand” test, raising the possibility of being found to be medically inadmissible to Canada.

Temporary stays in Canada of six months or less

Most people coming to Canada for six months or less do not require an immigration medical examination. Only the following visitors must usually undergo a medical examination for a stay of six months or less:

- Individuals planning to work in an occupation that brings them into close contact with people;²²
- Agricultural workers who visited or lived in one of the IRCC-specified countries for more than six months in the past year;²³ and
- Any person who is obviously ill at the time of applying for a visa or upon arriving at the Canadian (airport, seaport, or land) border (note that simply living with HIV will not be a basis for requiring a medical examination unless “obviously ill”).²⁴

Visitors who must apply for a visa to enter Canada

Nationals from many countries require a visa to enter Canada. These include most countries in Africa, Asia, Latin America, and the Caribbean. A country-by-country list is provided on the IRCC website.²⁵

A person applying for a visa needs to fill out a visa application form.²⁶ The form asks, “Do you have any physical or mental disorder that would require social and/or health services, other than medication, during your stay in Canada?”. This question does not require automatic disclosure of HIV status, nor does any other question on the form. There is no need to disclose the use of any medication (HIV-related or other), as medications are specifically excluded from the question. The question is focused on determining whether other sorts of services (i.e. hospitalization) will be needed during the time in Canada, which is relevant to determining possible demand on publicly funded health or social services.²⁷

Even if the visa officer knows that the person is living with HIV, they should not require a medical examination on this basis alone. However, the visa officer may require a person to have a medical examination if the officer believes that certain answers to the medical questions on the application form warrant an examination for other reasons (e.g. a person indicates having had tuberculosis within the past two years).

Beginning in 2016, foreign nationals who are travelling to Canada by air, and who do not require a visa to enter Canada, must apply for an Electronic Travel Authorization (eTA). An eTA is electronically linked to a traveller’s passport and valid for up to five years or until the passport expires, whichever comes first. Visitors do not need to disclose their HIV status to obtain an eTA.²⁸

Notably, even where an immigration medical examination is required for a short-term stay in Canada, testing positive for HIV is unlikely to lead to a finding of “excessive demand.” This is because short-term visitors are not usually eligible for publicly funded health and social services in Canada. Therefore, they are not likely to place an “excessive demand” on those services. The only exception is if a visitor to Canada, living with HIV or another health condition, is so ill that they would likely require hospitalization during their stay in Canada. The IRCC may deny entry to that visitor.²⁹

Temporary stays in Canada of more than six months

A person who wants to visit, study, or work temporarily in Canada for more than six months needs to undergo an immigration medical examination in the following circumstances:

- The applicant spent six or more consecutive months in the previous year in a country designated by the IRCC;³⁰
- The applicant is coming to Canada to work in an occupation where protection of public health is considered essential (the IRCC’s website provides examples of such jobs);³¹
- The applicant is applying for a Parent and Grandparent Super Visa;³² or
- The immigration officer decides that the applicant’s specific circumstances necessitate a medical examination, considering the length of the applicant’s intended stay in Canada, whether the applicant is eligible for publicly funded health and social services under the rules of the Canadian province/territory to which they are going, whether the applicant has private health insurance, and their overall state of health. (More information can be obtained directly from Canadian visa offices located outside Canada.)³³

Testing positive for HIV in an immigration medical examination will only be relevant to the applicant’s stay in Canada if the applicant may become eligible for publicly funded health and social services while in Canada. While short-term visitors (e.g. tourists, visiting family, etc.) are not usually eligible for publicly funded health and social services, people who come to Canada to study or work may become eligible for such services. The eligibility of foreign students and temporary foreign workers for publicly funded health and social services varies from one province or territory to another.

Even if the applicant does not plan to rely on publicly funded health and social services in Canada, if they **may** become eligible for publicly funded health and social services, the IRCC will assess whether they can reasonably be expected to place an “excessive demand” on Canadian health or social services. Therefore, in instances where a work or study visa applicant is required to undergo an immigration medical examination, the IRCC will generally conduct an assessment to decide whether the applicant meets the requirements of the “excessive demand.”

In short, a person’s HIV-positive status should **not** be a barrier to studying or working in Canada in the following circumstances:

- The person is coming to study or work in a province/territory where foreign students or temporary foreign workers **are not eligible** for publicly funded health and social services;
- The person is coming to study or work in a province/territory where foreign students or temporary foreign workers **are eligible** for publicly funded health and social services, **but** the person is eligible for private insurance coverage offered by their educational institution or employer **and** that insurance will cover the costs of their HIV medication; or
- The annual cost of their HIV medication is less than \$25,689.

It is advisable that people living with HIV look into provincial or territorial drug coverage when planning to work or study in Canada.³⁴ Many educational institutions have international student offices that can provide useful information to prospective students on this topic.

A person living with HIV who qualifies under one of the three circumstances above should not, in principle, be prevented from coming to work or study in Canada. However, **proving** to IRCC that a person does indeed qualify may require the assistance of an immigration lawyer in Canada.

To note, the Parent and Grandparent Super Visa eligibility requires undergoing an immigration medical examination and being declared admissible to Canada on health grounds. This means that IRCC will conduct the “excessive demand” test before granting this visa.³⁵

Permanent residency

Everyone who applies to become a permanent resident of Canada must undergo an immigration medical examination.³⁶ The IRCC will assess the results of the examination and decides if the applicant can reasonably be expected to place an “excessive demand” on Canada’s publicly funded health or social services. The IRCC will conduct this assessment for all permanent residency applicants, **except** for people who have been recognized as Protected Persons in Canada and **certain** applicants sponsored by family members in Canada.³⁷

For more information on Protected Persons applications and family sponsorships, see below. Also see below for information specific to live-in caregivers.

The application of the “excessive demand” test to permanent resident applicants

An individual living with HIV and applying for permanent residence in Canada may be deemed medically inadmissible, even if they are in good health. Medical inadmissibility is possible because HIV medication is expensive and publicly funded for residents.³⁸ However, **if an applicant’s annual health care costs, including the cost of their HIV medication, do not exceed \$25,689 the person will not be found to pose an “excessive demand” on Canadian health services**, and may obtain permanent resident status.

In addition, an applicant living with HIV who has private medical insurance that covers the cost of their HIV medication **may** be able to prove to IRCC that they are not likely to cause an “excessive demand.”³⁹ The process is complicated and will likely require the assistance of a lawyer in Canada who specializes in immigration law. For instance, the impact of private insurance on the “excessive demand” test will depend on many factors (e.g. the province/territory of residency, and whether the private insurance has a coverage “cap”). Also, an application can be refused if all the necessary evidence is not provided to IRCC or if it is not provided at the proper time in the process.

An applicant who does not have private insurance coverage cannot simply promise to personally pay for their HIV medication, even if they have the financial resources to do so.⁴⁰ The Canadian federal court has said on numerous occasions that a permanent residency applicant who promises to pay for medications “out of pocket” using savings or other means will generally still be found to be medically inadmissible. The court made this decision because there is no way to enforce such a promise, and because the law guarantees that all permanent residents have equal access to publicly funded health and social services.

There may be other ways for a person living with HIV to successfully prove to the IRCC that they are not likely to cause an “excessive demand” on Canadian health or social services. Any such attempt will require the services of a lawyer in Canada specialized in immigration law and familiar with HIV-related issues.⁴¹

If an applicant is living with HIV but not taking HIV medication, the IRCC will still conduct the “excessive demand” test. They will calculate the anticipated cost of health and social services based on when medical evidence suggests the applicant will need to start taking HIV medication.⁴²

Permanent resident applicants who are sponsored by a family member in Canada

Canadian citizens and permanent residents can sponsor certain relatives to immigrate to Canada.⁴³

If a person living with HIV is applying to become a permanent resident and their application is sponsored by their spouse, partner, or parent⁴⁴ who is a Canadian citizen or permanent resident, their HIV status will **not** be a barrier to the person’s application. The applicant will be required to take an immigration medical examination but will be exempt from the “excessive demand” test. The same is true of the applicant’s dependent children.⁴⁵

If an applicant for permanent residency has another kind of family relationship with their sponsor (e.g. they are the sponsor’s parent or grandparent), the applicant will **not** be exempt from the “excessive demand” test. The person will be treated like any other applicant for permanent residency, which means their application could be denied based on their HIV status.

Live-in caregivers

Foreign nationals who live and work in Canada as live-in caregivers can apply for permanent residency after two years.⁴⁶ They are not required to undergo an immigration medical examination when applying for permanent residency, as they will have been required to undergo that examination to obtain their initial work permit to enter Canada and work as a live-in caregiver.⁴⁷ Their family members, however, will need to undergo an immigration medical examination, whether or not they intend to join the applicant in Canada (see below).


Permanent resident applicants with a spouse, partner, and/or children outside Canada

Everyone who applies for permanent residency in Canada must list their spouse, partner, and dependent children in their application.⁴⁸ These family members are required to undergo immigration medical examinations, irrespective of whether they are accompanying the permanent residency applicant to Canada. If one member of the family tests positive for HIV, that family member may be inadmissible to Canada under the “excessive demand” test. The person applying for permanent residency may also have their application refused because one of their family members tested positive for HIV and the annual cost of their HIV medication exceeds the threshold for “excessive demand.”⁴⁹

However, there are some limited exceptions to an applicant’s inadmissibility resulting from a family member’s HIV status (and estimated costs exceeding the “excessive demand” threshold). For instance, family members of accepted refugees, or dependent children of applicants who are being sponsored by their spouses/partners, are not subject to the “excessive demand” test.

Refugee protection

A person who is making a refugee claim is exempt from the “excessive demand” test, regardless of whether they are ultimately recognized as a *Convention Refugee*, a *Protected Person*, or denied protection altogether.⁵⁰ The person will still be required to undergo an immigration medical examination, but their HIV status will not prevent their claim from being accepted.⁵¹ It will also not prevent them from successfully applying for permanent residency if their claim is accepted (either through recognition as a *Convention Refugee* or *Protected Person*).



For refugee claimants, the results of the immigration medical examination are provided to the IRCC, but not to the Immigration and Refugee Board of Canada – the tribunal making the decision on the refugee claim. A person living with HIV who is making a refugee claim may want to consider disclosing their HIV status as part of their refugee claim and discuss it with the person representing them. Depending on the circumstances, disclosing one’s HIV status can help a refugee claim. For instance, it may establish the risks of harm the claimant faces upon return to their country of nationality, if there is evidence of severe discrimination against, or mistreatment of, people with HIV in that country.

A successful refugee claimant (or Person in Need of Protection) can include a spouse, partner, and dependent children in their application for permanent residency.⁵² The spouse, partner, and dependent children will need to undergo immigration medical examinations. However, testing positive for HIV will not obstruct their permanent residency application.⁵³

It is important to note that, once a person claims refugee protection in Canada, and they have passed their eligibility interview,⁵⁴ they are covered under the Interim Federal Health Program (IFHP), which provides them with temporary healthcare benefits. Until the eligibility interview, a claimant will not be covered and will have to pay for health services out of pocket (unless they have some other insurance in Canada). The IFHP program covers the cost of a limited amount of medical treatment, including HIV medication. Once a refugee claim is accepted, the Protected Person becomes eligible for coverage under the public health insurance plan of the province or territory in which they live.⁵⁵

Q.7

What happens after a person has undergone the immigration medical examination?

Following an applicant's immigration medical examination, the IRCC-approved physician will provide the applicant's results to the IRCC.⁵⁶ An IRCC medical officer will review the results. If the IRCC medical officer determines that the applicant is expected to place an "excessive demand" on health or social services, the IRCC medical officer will send their opinion to the relevant IRCC visa or immigration officer (accompanied by a narrative report, a list of health and social services the applicant will likely require, and the overall expected costs).⁵⁷

The IRCC visa or immigration officer will then send a "procedural fairness letter" to the applicant, informing the applicant of the health and social services that IRCC believes the applicant will likely require. The letter will invite the applicant to provide additional information or documentation to overturn the finding of medical inadmissibility, and to do so within 60 days (an applicant can ask for an extension, but the visa or immigration officer has full discretion regarding whether to grant it). Overturning a finding of medical inadmissibility may be possible depending on the circumstances, but the process is complicated and will likely require the assistance of a lawyer in Canada specialized in immigration law.

If the applicant does not supply additional documentation or information within 60 days, the visa or immigration officer will refuse the application on the basis of medical inadmissibility. The applicant will then have the right to request (and receive) a written explanation of why they were declared inadmissible.

Q.8

Can a finding of medical inadmissibility be challenged in court?

Some inadmissibility decisions can be challenged before a court or a tribunal. The process is complicated. A person wanting to challenge a finding of medical inadmissibility should contact a lawyer in Canada specialized in immigration law. The person must act promptly. They will generally have 15 or 30 days to initiate a challenge to their inadmissibility decision, depending on their situation.⁵⁸

Q.9

If an applicant is found medically inadmissible, is there any way for them to enter Canada?

An applicant who is found medically inadmissible to Canada will be denied the entry or the visa for which they applied. However, the person is not banned from entering Canada under different circumstances for which they would not be considered medically inadmissible. For instance, being refused a work or study permit does not mean a person will be refused entry to Canada for a vacation (e.g. under a short-term tourist visa).

In addition, a person who has been deemed inadmissible for medical (or other) reasons may be able to obtain a Temporary Residence Permit (TRP). These permits are valid for limited periods of time and are only granted in exceptional circumstances. TRPs are issued for several purposes, including:

- to facilitate family reunification;
- to bring in highly skilled workers; or
- to allow individuals into Canada for medical treatment not available in their home countries (the individuals must pay for their own treatment).⁵⁹

Someone admitted under a TRP may or may not be eligible for publicly funded health and social services. The rules governing eligibility vary from one province or territory to another.⁶⁰ People admitted under a TRP but who are denied coverage will have to pay for any medical care regardless of whether the condition is related to HIV.

Getting legal advice

This Q&A document contains general information. It is not a substitute for getting legal advice about your particular situation. Depending on your situation, you may need to talk to a lawyer familiar with Canadian immigration law.

If you are in Canada, contact an organization serving immigrants and refugees, or an AIDS service organization in your area, and ask them if they can provide you with information on immigration issues or refer you to a lawyer specialized in immigration law.⁶¹ You may have to pay for the services of a lawyer unless you are eligible for legal aid, or the lawyer is willing to provide services free of charge.

Getting legal advice: know who you are dealing with

Both lawyers and consultants (also known as agents) provide information and services about immigration and refugee matters. All lawyers in Canada are regulated and insured and have professional responsibilities to their clients. Immigration consultants, on the other hand, may or may not be insured or regulated under any binding professional codes of practice. **Protect yourself: if what you need is legal advice, make sure to speak with a lawyer.**

If you are outside Canada and can afford to pay a lawyer, you may want to consider contacting a lawyer in Canada specialized in immigration law and who regularly represents people outside Canada. It is best to find a lawyer who is familiar with HIV-related issues.

You can also contact the HIV Legal Network at +1 416 595-1666 or info@hivlegalnetwork.ca for legal information. Please note that we cannot provide legal advice, but we will try to provide referrals to knowledgeable lawyers.

Additional information

IRCC

The IRCC's website provides guidance for people who want to visit Canada, to study or work temporarily in Canada, or to apply for permanent residency. It provides access to all application forms for visas and permits, as well as most of the IRCC's manuals and guidelines, as well as the full text of the *Immigration and Refugee Protection Act* and the *Immigration and Refugee Protection Regulations*.

www.canada.ca/en/services/immigration-citizenship.html

HIV Legal Network

This section of the website of the HIV Legal Network provides access to this Q&A document in multiple languages, as well as other material (in English and French) relating to HIV and immigration.

www.hivlegalnetwork.ca/site/our-work/immigration-and-travel/?lang=en

Ontario Council of Agencies Serving Immigrants (OCASI)

The website of the Ontario Council of Agencies Serving Immigrants (OCASI) contains legal information in numerous languages on various topics relating to immigration and citizenship (permanent resident application process, refugee application process, family sponsorship, etc.).

<https://settlement.org/translated-information/>

Community Legal Education Ontario (CLEO)

The website of Community Legal Education Ontario (CLEO), available in French and English, contains legal education pamphlets and fact sheets about Canada's immigration and refugee law generally.

www.cleo.on.ca

References

- ¹ *Citizenship Act*, RSC, 1985, c C-29, s 3(1).
- ² *Immigration and Refugee Protection Regulations*, SOR/2002-227, s 2.
- ³ *Immigration and Refugee Protection Regulations*, SOR/2002-227, s 1(1). The one-year cohabitation requirement may be waived in certain circumstances, such as in situations of persecution.
- ⁴ *Immigration and Refugee Protection Regulations*, SOR/2002-227, s 2.
- ⁵ *Immigration and Refugee Protection Regulations*, SOR/2002-227, s 96.
- ⁶ *Immigration and Refugee Protection Regulations*, SOR/2002-227, s 97.
- ⁷ *Immigration and Refugee Protection Regulations*, SOR/2002-227, s 2, definition of "marriage."
- ⁸ *Immigration and Refugee Protection Act*, SC 2001, c 27, s 38(1)(c).
- ⁹ Publicly funded services include health services such as the provision of devices related to the services, laboratory services, and the supply of pharmaceuticals. Depending on the circumstances, they may also include social services such as residential or institutional care. *Immigration and Refugee Protection Regulations*, SOR/2002-227, s 1.
- ¹⁰ *Immigration and Refugee Protection Regulations*, SOR/2002-227, s 1(1), definition of "excessive demand," paragraph (a). The definition of "excessive demand" is divided into two paragraphs; it is typically paragraph (a) that is problematic for people living with HIV.
- ¹¹ This number is updated annually. It is available on the IRCC website at www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/inadmissibility/reasons/medical-inadmissibility.html.
- ¹² Information on the HIV drugs that can be accessed in Canada is available on the CATIE website at www.catie.ca/your-guide-to-hiv-treatment/common-hiv-drugs-available-in-canada-for-adults.
- ¹³ The list of IRCC Panel Physicians is available on the IRCC website at <https://secure.cic.gc.ca/pp-md/pp-list.aspx>.
- ¹⁴ The Panel Members' Handbook 2020, available on the IRCC website at www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/panel-members-guide.html.
- ¹⁵ *Immigration and Refugee Protection Regulations*, SOR/2002-227, s 29.
- ¹⁶ Panel Members' Handbook 2020. See note 14.
- ¹⁷ Panel Members' Handbook 2020. See note 14.
- ¹⁸ Panel Members' Handbook 2020. See note 14. As of July 7, 2023, the IRCC no longer requires any applicants to notify their sponsors or family members of their HIV status to continue their application. See the notice of the termination of the requirement on the IRCC website at www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/updates/2023-hiv-partner-notification.html.
- ¹⁹ Panel Members' Handbook 2020. See note 14.
- ²⁰ Health follow-up handout: HIV infection, available on the IRCC website at www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/standard-requirements/medical-requirements/surveillance-notifications/health-follow-handout-hiv-infection-applicant.html.
- ²¹ Panel Members' Handbook 2020. See note 14.

- ²² Examples of such jobs are provided on the IRCC website at www.canada.ca/en/immigration-refugees-citizenship/services/application/medical-police/medical-exams/requirements-temporary-residents.html. The majority of examples listed are jobs (e.g. workers in the healthcare settings, clinical laboratory workers, patient-attendants in nursing and geriatric homes, workers in primary or secondary schools or other teachers of small children, some agricultural workers, etc.), but the list also includes medical students admitted to attend a Canadian university and take medical electives.
- ²³ The list of countries whose nationals need to undergo an immigration medical examination can be found on the IRCC website at www.canada.ca/en/immigration-refugees-citizenship/services/application/medical-police/medical-exams/requirements-temporary-residents/country-requirements.html.
- ²⁴ IRCC, *ENF4: Port of Entry Examinations*, December 23, 2016, section 17.3. Available on the IRCC website at www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf04-eng.pdf.
- ²⁵ The full list of countries whose nationals need to apply for a temporary resident visa for short term visits in Canada can be found on the IRCC website at www.canada.ca/en/immigration-refugees-citizenship/services/visit-canada/entry-requirements-country.html.
- ²⁶ The “Application for a Temporary Resident Visa” is available on the IRCC website at www.cic.gc.ca/english/information/applications/visa.asp. Visa applicants are also encouraged to apply via an online portal, which does not include any questions about applicants’ medical conditions.
- ²⁷ The current language in the application forms is the result of successful advocacy in the early 2000s to eliminate a requirement that individuals disclose their HIV status in the forms. More information about that advocacy can be found on the HIV Legal Network website at www.hivlegalnetwork.ca/site/network-news-20-june-2005/?lang=en.
- ²⁸ More about the Electronic Travel Authorization is available on the Government of Canada website at www.canada.ca/en/immigration-refugees-citizenship/services/visit-canada/eta.html. The application asks whether the applicant has a serious medical condition, but the responses available do not include HIV. The response only includes “untreated syphilis, untreated drug or alcohol addiction, untreated mental health condition with psychosis, or ‘none of the above’”.
- ²⁹ *ENF4: Port of Entry Examinations*, section 17.2. See note 24.
- ³⁰ The list includes about 150 countries and can be found on the IRCC website at www.canada.ca/en/immigration-refugees-citizenship/services/application/medical-police/medical-exams/requirements-temporary-residents/country-requirements.html.
- ³¹ See note 22.
- ³² See note 22.
- ³³ The list of Canadian visa offices located outside Canada can be found on the IRCC website at www.canada.ca/en/immigration-refugees-citizenship/corporate/contact-ircc/offices/international-visa-offices.html#www.cic.gc.ca/english/information/offices/apply-where.asp#v.
- ³⁴ More information about HIV antiretroviral medication coverage in Canada is available on the IRCC website at www.canada.ca/content/dam/ircc/migration/ircc/english/pdf/eta/english.pdf.
- ³⁵ Other eligibility criteria for the Parent and Grandparent Super Visa are available on the IRCC website at www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/visitors/super-visa.html.

- ³⁶ Note that in October 2022, a temporary policy came into effect exempting certain foreign nationals in Canada from immigration medical examinations until October 2024. Under the policy, foreign nationals are exempt from the immigration medical exam if (i) they have a new or pending application for permanent residence made from within Canada, and (ii) they completed an immigration medical examination within the past five years and posed no risk to public health or safety, or reported to public health authorities for monitoring (if required), at the time. In most circumstances, an HIV positive status will not lead to a finding of risk to public health or safety. Thus, an applicant living with HIV who meets the other requirements for the policy, will likely be exempt from an otherwise mandatory immigration medical examination. Further information about the policy is available on the IRCC website at www.canada.ca/en/immigration-refugees-citizenship/news/notices/2022-foreign-exempt-ime.html.
- ³⁷ *Immigration and Refugee Protection Act*, SC 2001, c 27, s 38(2).
- ³⁸ Canada is home to 19 independent provincial, territorial, and federal public drug benefit plans, with varying eligibility criteria, enrolment processes, and out-of-pocket expenses for users. Public coverage of drug costs therefore significantly varies throughout Canada, depending on one's province or territory of residence. See note 34 .
- ³⁹ *Companiononi v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1315.
- ⁴⁰ *Companiononi v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1315; *Rashid v Canada (Minister of Citizenship and Immigration)*, 2010 FC 157; *Chauhdry v Canada (Minister of Citizenship and Immigration)*, 2011 FC 22.
- ⁴¹ For instance, by requesting an exemption to the medical admissibility requirement on humanitarian grounds. See, e.g., *ZW v Canada (Citizenship and Immigration)*, 2017 FC 963, *AB v Canada (Citizenship and Immigration)*, 2017 FC 1170, *Bains v Canada (Citizenship and Immigration)*, 2008 CanLII 87335 (CA IRB).
- ⁴² This position was initially stated in a 2002–2004 CIC policy document, available on the HIV Legal Network's website at www.hivlegalnetwork.ca/site/wp-content/uploads/2015/06/CIC_OP2002-004-EN.pdf. While the policy has not been renewed, recent IRCC practices appear to continue to be in line with it.
- ⁴³ Information on family sponsorship, including which family members can be sponsored, is available on the IRCC website at www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/family-sponsorship.html.
- ⁴⁴ The sponsored child must be a dependent child of the sponsor.
- ⁴⁵ *Immigration and Refugee Protection Act*, SC 2001, c 27, s 38(2)(a); *Immigration and Refugee Protection Regulations*, SOR/2002-227, s 24(3).
- ⁴⁶ More information about the live-in caregiver program can be found on the IRCC website at www.canada.ca/en/immigration-refugees-citizenship/services/work-canada/permit/caregiver-program/become-permanent-resident.html.
- ⁴⁷ *Immigration and Refugee Protection Regulations*, SOR/2002-227, s 30(1)(g).
- ⁴⁸ *Immigration and Refugee Protection Regulations*, SOR/2002-227, s 10.2
- ⁴⁹ *Immigration and Refugee Protection Act*, SC 2001, c 27, s 42(1).
- ⁵⁰ *Immigration and Refugee Protection Act*, SC 2001, c 27, s 38(2).
- ⁵¹ The purpose of the medical examination in this situation is to assess whether the person has a medical condition, other than HIV, that is likely to be a danger to public health or public safety. If so, the person may be considered medically inadmissible to Canada. However, it is the Canadian Government's policy that people living with HIV do not represent a danger to public health or safety on the basis of their HIV status. See note 36.

- ⁵² *Immigration and Refugee Protection Regulations*, SOR/2002-227, s 176(1).
- ⁵³ *Immigration and Refugee Protection Act*, SC 2001, c 27, s 38(2).
- ⁵⁴ An individual claiming refugee protection in Canada will be required to attend an eligibility interview, during which IRCC will determine whether the person is eligible to claim protection in Canada. Questions focus on why the individual left their country of nationality, how they came to Canada, whether they made a refugee claim in another country, why they came to Canada when they did, and whether they committed any crime in any other country. Following the eligibility interview, the IRCC transfer the person's refugee claim to the Immigration and Refugee Board of Canada, which will determine whether the person qualifies as a *Convention* Refugee or a Person in Need of Protection. More information about the process can be found on the Steps to Justice website at <https://stepstojustice.ca/steps/refugee-law/2-go-your-eligibility-interview/>.
- ⁵⁵ Services covered under the Interim Federal Health Program are summarized on the IRCC website at www.canada.ca/en/immigration-refugees-citizenship/services/refugees/help-within-canada/health-care/interim-federal-health-program/coverage-summary.html.
- ⁵⁶ See note 14.
- ⁵⁷ More information about the procedure is available on the IRCC website at www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/standard-requirements/medical-requirements/surveillance-notifications/procedure-hiv-positive-cases.html.
- ⁵⁸ For instance, an applicant wanting to pursue a Judicial Review from within Canada must file and serve an application for judicial review 15 days from the date of the decision they wish to challenge. More information about the judicial review process can be found on the federal court website at www.fct-cf.gc.ca/en/pages/representing-yourself/procedural-charts/application-for-leave-and-for-judicial-review-immigration. We encourage any person seeking to an inadmissibility decision to first obtain legal counsel.
- ⁵⁹ More information about Temporary Residence Permits can be found on the IRCC website at www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/permits/eligibility-assessment.html.
- ⁶⁰ See note 34.
- ⁶¹ **In Ontario**, contact HALCO at +1 416 340-7790 or +1 888 705-8889 (toll-free within Ontario); email: talklaw@halco.org; website: www.halco.org. **In British Columbia**, contact AIDS Vancouver at +1 604 893-2201; email: contact@aidsvancouver.org; website: www.aidsvancouver.org. **In Quebec**, contact COCQ-SIDA's legal information service (VIH info droits) at +1 514 844-2477 (ext. 34) or +1 866 535-0481 (ext. 34) (toll-free within Quebec); email: vih-infodroits@cocq-sida.com; website: www.cocqsida.com/vih-infos-droits/.



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