



## Eligibility issues for people in the US wanting to coming to Canada

Coalition meeting – October 25, 2022

### Potential situation

Your organization receives a call or email from someone in the US wanting to come to Canada or their family members already in Canada wanting to know how they can enter the country to make a refugee claim.

### Considerations:

- As a non-legal professional, you must be careful to only give legal information, not legal advice or a legal opinion. This means avoiding language like “should” or telling them what will happen in their case.
- Ensure that you understand the Safe Third Country Agreement and its exceptions.
- Ensure that you understand ineligibility for people who have made a claim in a Five Eyes country (US, UK, New Zealand, Australia).

### Safe Third Country Agreement:

- Individuals seeking to make a refugee claim in Canada at an official land border with the US will not be eligible to do so unless they meet an exception to the Safe Third Country Agreement. Exceptions include people who have:
  - an anchor relative in Canada (spouse (incl. common-law), sibling, parent, legal guardian, child, aunt/uncle, niece/nephew, grandparent, grandchild) who has status in Canada (citizen, PR, protected person, refugee claimant, H&C approved, work permit or study permit holder)
  - an unaccompanied minor without a legal guardian in either Canada or the US
  - a valid Canadian visa holder or exempt from requiring a visa (ex. EU citizen)
  - been classified as a public interest exemption (are subject to the death penalty in the US or another country)

### Five Eyes Ineligibility:

- A person is ineligible to make a refugee claim if they have initiated a refugee claim (asylum proceedings) in a Five Eyes country. However, they may still be eligible to do an enhanced PRRA once they are in Canada.
- CBSA determines this through *biometric information* shared between Five Eyes countries.
- Note: biometrics are not taken from children under 14. Therefore, even if children under 14 have started an asylum claim in the US, they will be eligible to make a refugee claim in Canada.
- A person who is ineligible for this reason can still enter Canada and file a PRRA if they meet an exception to the STCA.
- **However**, accompanying family members who do not meet exceptions (ex. a spouse who themselves does not have an anchor relative in Canada) may not be granted the PRRA at the POE but may be turned back.

### What constitutes initiating an asylum claim in the US?

To initiate an asylum claim, the person will have filed an i-589 form: “*Application for Asylum and for Withholding of Removal.*” Up until this point, this is the way that CBSA has been defining an asylum claim.



### How do you know if they have made an asylum claim?

- Check their forms: You can ask the person to see any documents they received from the US government if they are unsure what they have done. The i-589 form (12 pages) can be seen on the US government website: <https://www.uscis.gov/sites/default/files/document/forms/i-589.pdf>
- Call the EIOR hotline: **If the person was apprehended entering the US**, they will likely be in removal proceedings and will be in the immigration court system. They (or you) can call the automated EIOR hotline (1-800-898-7180) with their A number (similar to the UCI in the US) to find out if they have any upcoming court proceedings.
  - If the automated phone system mentions asylum, this is a confirmation that they are in asylum proceedings in the US.
  - Caution: If the system makes no mention of asylum or indicates that they are not in the database, this does not mean that they are not asylum proceedings. This hotline is specifically for people in the removals stream. Someone who entered the US legally and made an affirmative asylum application (i-589) or entered illegally, was not apprehended and made an affirmative asylum application (i-589) will not be in the database. But they are still in asylum proceedings and are ineligible in Canada.

### What if they underwent a credible fear interview in the US?

- A credible fear interview is an initial threshold screening to see if a case has the possibility of having merit for asylum in the US, allowing the person to be released from detention and then choose to file an i-589. This interview itself does not constitute an asylum claim, but is an indication they are in the removal process.
- **Up until this point**, CBSA has not considered a credible fear interview to be equivalent to an asylum claim and has determined those people who have had them (and not filed an i-589) to be eligible to make refugee claims in Canada. However, some American immigration lawyers have alerted us to upcoming changes in asylum procedures in the US that might impact how credible fear interviews are classified in the future.
- In at least one case that we know of, a claimant who underwent a credible fear interview in the US was determined eligible to make a claim in Canada at the POE. They later received notification from the IRB that they were being switched to a PRRA because they made an asylum claim in the US. This was challenged in a Judicial Review by counsel at the Federal Court of Canada, with a legal opinion from a US lawyer submitted as evidence. It was overturned and the case went back to the IRB.

### Resources to share with prospective claimants:

- Border Process Map - <https://sanctuarycanada.ca/infographic/>
- Bridges not Borders Website - <http://www.bridgesnotborders.ca/>
- Vive Shelter (Buffalo) - <https://www.jrchc.org/vive/>