

Q & A: UPDATE ON TEMPORARY AND PERMANENT RESIDENCE OPTIONS FOR UKRAINIANS CONNECTING OTTAWA WEBINAR, NOVEMBER 16, 2023

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Link to the webinar and slides at:

<https://cleoconnect.ca/resource/yourlegalrights/ukrainians-in-canada-special-immigration-measures-and-supports-for-temporary-residents-2/>

This handout is solely for informational purposes and does not constitute legal advice.. We urge you to consult with a lawyer if you have any specific legal questions about a client's situation.

Permanent residence for Ukrainian nationals with family members in Canada

Q: Regarding the rule of being inside Canada on the moment of submitting an application and receiving an invitation from IRCC. What about leaving Canada after applying? Is that possible? If yes, then how not to break the rule of be present in Canada on the moment of receiving an invitation, as you don't know how long it will take to get that invitation? And after receiving an invitation, can the person leave Canada for a while?

- All we know so far from the instructions provided at the launch of the new family-based Ukraine permanent residence program is that the Ukrainian applying for permanent residence must be physically inside Canada when they submit their application and at the time that they are granted permanent residence. Your question is a good one but I am not able to answer it with the limited information we have.
- In the case of economic programs, there is no requirement to remain in Canada once an Express Entry invitation to apply is received. For PNP programs, keep in mind that you need to show ongoing intention to settle in the province of destination.

Q: Could you please specify if the statutory declaration has an expiration date?

- I would never advise submitting a form or statutory declaration to IRCC that has a date more than a month before the date it is submitted. There is always the risk IRCC will say the document is not up to date.

Q: If I don't have the proper documents to prove the relationship e.g. no birth certificate or marriage certificate, how can I apply to bring my siblings or my spouse? Is there a way to overcome such an issue?

- Whether any alternate documentation will be accepted will depend on the specific situation. It may be necessary to do DNA testing to prove the sibling relationship.

Q: Can the applicant and their family travel outside of Canada after they apply for new pathway to reunite family and support Ukrainians?

- Given that the applicant must be in Canada both when they apply and when permanent residence is granted, leaving Canada may be risky since we do not have any detailed program delivery instructions indicating if travel outside the country is permitted.

Q: Do we need to include with PR application a declaration of non-accompanying parents for minor even though his parents are currently in Canada with him (they do not apply for PR pathway for Ukrainians) only minor?

- Since the parents are not non-accompanying, I would not include that document. You could include a letter signed by both parents indicating that they consent to their child receiving permanent residence in Canada and explaining that they are currently in Canada as well, also including a copy of their immigration documents.

Q: If a man from Iran has a residence permit in Ukraine and has a Ukrainian passport, can he apply as the main applicant under the family reunification program?

- He can if he is a Ukrainian citizen. If he only has a residence permit and is not a citizen of Ukraine, then no.

Q: What way to stay in Canada would you recommend for schoolchildren who came with family and will be turning 18 when they graduate from high school in a case where their parents have not applied for any of the programs yet? Will they have to apply for some program on their own?

- Children can still be included in a parent's application if they are under age 22. In addition, if a child needs to submit an application for permanent residence on humanitarian grounds on their own, for example if they are here alone, there is nothing that prevents them from doing so.

Q: If the person submits PR application before their work permit ends but will not receive an invitation from IRCC by the time of expiry date of their work permit, will the person be eligible to continue staying and working in Canada until they get any answer from IRCC about their PR application?

- It depends on what PR application they submitted. Submitting a humanitarian application does not give someone status or the right to a work permit. If someone submits a Canadian Experience Class application, they may qualify for what is called a bridging open work permit if they are far enough into the process when their CUAET work permit expires.

Q: I have clients where the woman is Ukrainian, and her husband is from Jordan. They both have CUAET status. The husband has relatives from Jordan who are Canadian citizens or PR and live in Canada. Can they still apply? Or must the husband have a Ukrainian passport?

- The individual who is a Ukrainian citizen must be the one with the qualifying relative in Canada. In this scenario, the individual who is Ukrainian does not have a relative on the list of qualifying relatives. She does not qualify on the basis of her husband's relative because her husband would have to be a Ukrainian unable to leave Ukraine or who is dead or missing in Ukraine.

Economic immigration programs

Q: How can a new Ukrainian immigrant join an apprenticeship, if the visa is only valid for 3 years in total?

- It may be possible to have the employer support an LMIA that would allow for an extended work permit to complete an apprenticeship with that employer.

Q: How can New Ukrainian immigrants study in Canada if they have to pay international fees? It's just too expensive.

- This is a significant problem. Some provinces allow Ukrainians to study at domestic tuition rates but many do not.

Q: In FSTP can the 2 years of trades experience be self-employed?

- I believe that the answer is yes. But keep in mind that, to qualify, you must have either (1) an offer of employment with a Canadian employer (so can't rely on self-employment there), OR (2) a provincial certificate of qualification in the trade.

Q: Does a temporary contract position (e.g. 1-year or 6-month contract) qualify under any of the programs or does it have to be a permanent position?

- To meet basic program eligibility under one of the economic programs, it is the length and skill level of the work that matters, not whether it is a contract position or permanent.

Q: Should an employer have an LMIA for the job offer?

- In most cases, the answer is yes – a valid job offer requires an LMIA. There are exceptions (e.g. an International Mobility Program work permit)

Q: Does virtual work experience for a Canadian company for a person who is physically not in Canada count?

- his will not count as Canadian work experience for the purpose of PR applications

Q: What kind of language test do Ukrainians need to take exactly?

- To calculate their language level for economic programs like Canadian Experience Class, a Ukrainian must take either IELTS or CELPIP to evaluate their level of English. They must take TEF or TCF if they want to evaluate their level of French skills to get points for French ability.

Q: Can dependent children add up the points by their language tests, especially if dependent child is bilingual

- The language abilities of children are not considered.

Q: For Federal Skilled Workers Program, what kind of occupations are eligible?

- TEER 0, 1, 2 or 3 occupations

Q: Are there points given if you already have family in Canada?

- Yes, if you have a Canadian or permanent resident sibling, this gives additional EE points (but keep in mind that Ukrainians with a Canadian or PR sibling are eligible for the special family-based permanent residence program!)

Q: Does FSWP require a job offer with LMAI and permanent employment (without an end date)?

- Not required to meet the basic eligibility criteria, but a valid job offer has a positive impact on the points total.

Q: Is there a requirement for CEC to be a grad from Canadian educational institution?

- There is no requirement that the individual have graduated from a Canadian educational institution, but they certainly receive extra points for doing so.

Q: I have a client who I think would have a high NOC score (great English, lots of education, lots of work experience, not sure of age). However, he doesn't have the settlement funds. I don't think his refugee application would be super strong, and there is no basis for an H and C. (For context, there has been some discrimination in his country, but not necessarily persecution per se). Do you have advice for people who don't have the settlement funds? Or, are they just out of luck?

- Settlement funds are not required for Canadian Experience Class; only for Federal Skilled Worker and Federal Skilled Trades.

Q: How are the Quebec economic immigration programs different?

- We do not practice Quebec immigration law so cannot answer this question.

Extending temporary status

Q: If the temporary CUAET visa can be extended, when should the applicant apply to avoid last minute panic?

- We do not have any evidence that a CUAET work permit can be extended beyond three years.

Q: Can an existing CUAET temporary visa be extended for up to another three years?

- Our current understanding is that the total length of a CUAET visitor record, work permit or study permit can only be three years.

Q: Is it possible to extend an open work permit after 3 years?

- Not that we have heard through CUAET. However, if Canada does not start deporting people to Ukraine after the three-year work permits end, it will be possible to apply for an open work permit as someone who is “under an unenforceable removal order”. This work permit is for individuals from countries that Canada does not deport to

Q: If a Ukrainians applied for an open work permit (without restrictions) can they still apply for a work permit extension after 3 years?

- Normally individuals do not just qualify for an open work permit. CUAET is a special program to give Ukrainians an open work permit for three years. If someone wants to extend their work permit after that, they will likely need to find a job supported by a Labour Market Impact Assessment and obtain an employer-specific work permit or obtain an open work permit on the basis of being a citizen of a country to which Canada does not carry out deportations. However, we do not know if Canada will resume deportations to Ukraine soon or not.

Q: Heather said 3 year work permit extension is possible for Ukrainians before March. For PGWP- is it better they didn't qualify for PR as they were not CUAET

- Our current understanding is that the three-year CUAET work permit cannot be renewed. If someone has a work permit for less than three years because their passport expired, they can apply to extend their work permit to get the full three years.

Express Entry programs

Q: To clarify, does the express entry require family members in Canada?

- No family member in Canada is required. In some programs, an individual may receive extra points for having particular Canadian family members, but it is not a requirement.

Q: I am Ukrainian, CUAET, have applied for Express Entry, have worked full time for a year as Settlement Worker at YMCA Immigrant settlement services, still on the job, NOC 41300. CSR 431. Now what?

- What to do next will depend on the person's particular circumstances. We advise a full consultation with an immigration lawyer to examine whether any economic program will be feasible or whether an application for permanent residence on humanitarian grounds is the best option.

Permanent residency based on humanitarian & compassionate grounds

Q: Regarding H&C program: what are the consequences for those who apply for H&C and get refusal? Will they be eligible to apply for other PR Programs in the future?

- There is no bar on applying for other PR programs in the future if someone is denied permanent residence on humanitarian and compassionate grounds. The only issue is that if their H&C factors became stronger later, it would potentially be better to wait before applying. It all depends on the person's individual circumstances.

Q: Can you do many H&C applications in a lifetime?

- It is extremely difficult to succeed on a second H&C application. It would be necessary to have stronger and different evidence than what was submitted in the first application.

Q: What are legal consequences of the H&C application being rejected?

- If the individual still has temporary resident status under CUAET when their H&C is rejected, they will continue to have that status despite the rejection. If they were denied refugee status in the past and now have no legal status, they will continue to have no legal status and can be deported from Canada if Canada begins deportations to Ukraine.

Q: Will rejection of H&C affect my temporary status?

- Rejection of an application for permanent residence on humanitarian grounds does not impact temporary resident status. However, it is risky to leave Canada while an H&C application is in process.

Q: If my H & C case is rejected do I need to leave Canada or can I stay until the end of my temporary status? On other hand, if my TR status is expiring and I apply for H&C application can I stay until the decision is made?

- If an H&C application is rejected, the individual may remain in Canada until the end of their temporary resident status. However, if someone's temporary resident status expires while their H&C application is in process, they now have no status and could be deported while the H&C is in process if Canada begins deporting to Ukraine. In short, submitting an H&C does not automatically stop deportation.

Q: What to do if the family got rejected from H&C program and they are not able to apply for other PR programs, because they do not meet eligibility criteria? Do they have any options?

- They may not have any options; it all depends on their personal circumstances so they should consult a lawyer.

Q: Would having a disabled child be a pro or con in H and C?

- You would want to show that it is in the child's best interests to remain in Canada. It would be important to show that the child has better access to services and supports here compared to Ukraine and has better future opportunities here.

General

Q: Is that possible to apply for two programs at the same time?

- Yes, individuals can apply for two permanent residence programs at the same time as long as they have temporary resident status while the two applications are in process.

Q: Is there any tiny possibility for Ukrainians to wait a bit more and maybe there will be similar program as family reunion, but without relative in Canada who is Canadian Citizen or PR?

- There is no way to know.

Q: What could be the options for those Ukrainians, whose work permit ends in one year and they cannot extend it and cannot apply for any of PR programs by that time?

- This is too general as it depends on the person's circumstances. Some individuals may not have any route to remain in Canada permanently.

Q: I want to confirm that all the programs you have been talking about require that the individual wishing to make a claim must already be in Canada when they make their claim.

- For Federal Skilled Worker under Express Entry, the individual does not have to already be in Canada.