



Information on making a refugee claim in Canada for people entering from the USA

This information resource is designed for front-line workers who support refugee claimants and other vulnerable migrants

*Warning: The following is general information only.
For details, check the [law](#) or consult a lawyer.*

Cautions for persons in the USA considering making a refugee claim in Canada

- If you apply to make a refugee claim in Canada at the US-Canada border and you do not meet one of the exceptions to the Safe Third Country Agreement, you will not be allowed to make a refugee claim in Canada. You will be immediately returned to the USA where you might be detained and put into removal proceedings.
- The Safe Third Country Agreement now applies to anyone who crosses by land or water from the USA into Canada, whether or not they present themselves at an official Port of Entry. Since 25 March 2023, there is no longer an exception for people who cross irregularly (for example, at Roxham Road).
- If you are found ineligible to make a refugee claim in Canada for other reasons (for example, you made a previous claim in Canada or the USA, or you are inadmissible for serious criminality or security), Canada will attempt to deport you to your country of origin (not to the USA). You might be held in immigration detention in Canada while waiting for deportation. There will be little opportunity to show that you are in danger.
- If you are eligible to make a refugee claim in Canada, but your claim is not successful, you will be deported to your country of origin, not to the USA.

A. Making a refugee claim at the border: Safe Third Country Agreement

The Safe Third Country Agreement is an agreement between the Governments of Canada and the USA. Its purpose is to stop people from crossing the border in order to make a refugee claim in the other country. The Safe Third Country Agreement applies to claims made:

- At an official border crossing point, known as a Port of Entry, such as Lacolle, Fort Erie (Peace Bridge) or Windsor (Ambassador Bridge).
- On or after crossing the border in between official border crossing points (such as at Roxham Road). If a person is detected as they cross the border, or shortly after they cross the border, they will be taken to the nearest Port of Entry. Canadian officials will decide if they are eligible to make a refugee claim under the Safe Third Country Agreement rules. This is because of the expansion of the Safe Third Country Agreement which came into effect on 25 March 2023.

Unless a person qualifies for an exception to the Safe Third Country Agreement (see below), they cannot make a refugee claim in Canada. They are “ineligible.” This is what will happen when someone is ineligible based on the Safe Third Country Agreement:

- The person will be returned to the USA the same day. They are given a removal order that says that they cannot enter Canada for 12 months unless they have authorization.
- Canadian authorities will notify US authorities at the US Port of Entry;
- The person can never make another refugee claim in Canada.

Exceptions to the Safe Third Country Agreement

A person might be able to make a refugee claim in Canada if the person:

- Has a qualifying family member physically present in Canada (see below);
- Is an unaccompanied minor and neither parent or legal guardian is in either the USA or Canada;
- Has a valid Canadian visa;
- Is a national of a country where visas are not required to enter Canada but are required to enter the USA (previously this exemption applied to Mexican nationals, but as of **29 February 2024, Canada re-imposed the visa requirement** for Mexicans); or
- Is subject to the death penalty.

See also [Government of Canada information](#) about the exceptions.

Criteria for the family member exception

1. Qualifying family members must be related in one of the following ways:

- a spouse or common-law partner (including same-sex)
- a child
- a father or mother
- a legal guardian
- a brother or sister
- a grandfather or grandmother
- a grandchild
- an uncle or aunt
- a nephew or niece

2. Qualifying family members must have one of the following statuses in Canada:

- Canadian citizen
- permanent resident
- a person accepted by Canada as a refugee (Protected Person or Convention refugee)
- a person subject to a stay of removal on humanitarian and compassionate grounds
- a holder of a work permit or study permit (subject to some exceptions)
- Only if the family member in Canada is 18 years or older: a refugee claimant (the refugee claim must have been referred to the Immigration and Refugee Board and not have been rejected, withdrawn or abandoned)

3. Qualifying family members must be physically present in Canada when the person makes their refugee claim

To decide if a person meets one of the exceptions, Canadian officials will interview the person, will probably interview their family member in Canada, will examine any documents the person provides and will consult Canadian government databases.

If the family member in Canada is a refugee claimant, read this webpage to understand whether they have the necessary status: <https://www.fcjrefugeecentre.org/stca-refugee-claimant-documents/>

B. Entering Canada and then making a refugee claim

The Safe Third Country Agreement applies to people who make a refugee claim within 14 days of entering Canada from the USA by land or water.

- A person who has been in Canada for more than 14 days since entering from the US can make a refugee claim within Canada and they will not be subject to the Safe Third Country Agreement. They will need to **make an inland claim**.
- If the Canadian authorities believe that a person who makes a refugee claim within Canada has entered from the USA within the last 14 days, the person will be sent back to the US, unless they qualify for an exception to the Safe Third Country Agreement.

Note: A person can make ONE refugee claim in Canada in their life. If a person makes a refugee claim at the border and is sent back to the USA because of the Safe Third Country Agreement, and then crosses into Canada and makes a claim after 14 days, that claim will be found ineligible because the person already made a claim. See below for information about ineligible claims.

How will the Government of Canada decide if the person entered from the US within 14 days?

Canadian officials might use information such as:

- A report that Canadian police or immigration officials intercepted the person within view of the border
- Information shared by the US government showing that the person entered the US, or had an interaction with US immigration authorities, within the previous 14 days
- The person's own account of when they entered Canada
- Available evidence of where the person was during the last 14 days (even things like a receipt for a coffee bought either in the US or Canada)

C. Other reasons a person might be ineligible to make a refugee claim

Apart from Safe Third Country, a person who makes a refugee claim at the border or after entering Canada may still be ineligible if the person:

- Made a previous refugee claim in Canada (whether the claim was refused, accepted, withdrawn, abandoned or determined to be ineligible);
- Has made a refugee or asylum claim in the USA, Australia, New Zealand or the UK and the Canadian government verifies this fact through biometric data sharing
- Has been recognized as a refugee by another country and can be returned there;
- Is inadmissible to Canada because of security, serious criminality, organized crime or violation of human rights.

D. Eligible claims: determination of refugee status

Eligible claimants are referred to the [Immigration and Refugee Board](#) for a hearing. The claimant will need to complete a Basis of Claim form in advance of the hearing. This form is very important and should be completed with the assistance of experienced legal counsel.

For more information about Canada's refugee process, see myrefugeeclaim.ca.

E. Ineligible claims

If a claim is ineligible based on Safe Third Country, the person is usually immediately sent back to the USA.

If a claim is ineligible for another reason, the person is not sent back to the USA – instead the Canadian government will usually begin the process to deport the person to their country of origin. The person may be detained. In most cases, the person can apply for a Pre-Removal Risk Assessment.

F. Resources

CCR, Safe Third Country page: ccrweb.ca/en/safe-third-country

Bridges not Borders: <http://www.bridgesnotborders.ca/info-for-refugees.html>

Vive Shelter – Jericho Road Community Health Center (Buffalo) - information for claimants
www.jrchc.org/vive/information-for-asylum-seekers/

FCJ Refugee Centre – page clarifying exceptions to the Safe Third Country Agreement:
<https://www.fcjrefugeecentre.org/stca-refugee-claimant-documents/>

Immigration, Refugees and Citizenship Canada (IRCC): <https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/claim-protection-inside-canada/eligibility.html>

Immigration and Refugee Protection Regulations, s. 159: <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2002-227/page-21.html#h-688089>

Immigration and Refugee Board: <https://irb.gc.ca/en/applying-refugee-protection/Pages/index.aspx>

A guide for people making refugee claims in Canada: <https://myrefugeeclaim.ca/en/>

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