



Safe Third Country Agreement: Impact on refugee claimants

FREQUENTLY ASKED QUESTIONS

The Safe Third Country Agreement remains in effect, despite the recent decision of the Federal Court

You may have heard about a [recent decision of the Federal Court of Canada](#) regarding the US-Canada Safe Third Country agreement. The court decided that the Agreement violates the rights of refugees. However, the court decision has not yet taken effect and the situation at the border remains the same, despite the decision. On 17 January 2008, the Court issued a final order, ruling that the designation of the US as a safe third country would be quashed as of 1 February 2008. The government is applying to the Federal Court of Appeal to stay the order while they appeal the case. If they are successful, the safe third country rules would continue to apply. It is therefore important that people considering making a refugee claim at the border wait to find out whether or not safe third country is in effect after 1 February. For the time being, refugee claimants who make a claim at the US-Canada border continue to be subject to the rules of the Safe Third Country agreement (see below).

On 29 December 2004, the US-Canada safe third country agreement came into effect. This means that the rules changed for people making a refugee claim at the US-Canadian land border. For many refugee claimants, the safe third country rule means that if they apply at a land border they will be rejected by Canada without ever being able to present their refugee claim. However, there are exceptions to this rule.

This document is intended to give basic information to people considering making a refugee claim in Canada or to their advisors.

Is the US-Canada border now closed to refugee claimants?

No, the border is not closed to all refugee claimants. If you meet one of the exceptions to the safe third country rule, you will be able to present your refugee claim in Canada.

What are the exceptions to the safe third country rule?

You can still make a refugee claim in Canada at a land border point:

- If you have in Canada:

- o A spouse or common-law partner*
- o A legal guardian

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- o A child
- o A father or mother
- o A brother or sister
- o A grandfather or grandmother
- o A grandchild
- o An uncle or aunt
- o A nephew or niece

and that family member is:

- o A Canadian citizen
- o A permanent resident
- o A protected person (i.e. determined to be a refugee or a person in need of protection)
- o Accepted in principle on humanitarian and compassionate grounds (removal order stayed under Immigration and Refugee Protection Regulations 233)
- o 18 years of age or over and is a refugee claimant (and the claim has not been rejected, withdrawn, found abandoned or ineligible)
- o 18 years of age or over and is in Canada on a work permit or study permit (but check the exceptions)

* a common law partner is a person (of the same or opposite sex) with whom you are cohabiting in a conjugal relationship and have cohabited for at least a year.

- If you are under 18 years, you are not accompanied by your father, mother or legal guardian, you are unmarried and neither your mother, father nor legal guardian is in Canada or the US.
- If you are a national of a country to which Canada has temporarily suspended removals (currently, **Afghanistan, Burundi, Democratic Republic of Congo, Haiti, Iraq, Liberia, Rwanda, Zimbabwe**). This exception does not apply if you are inadmissible to Canada on criminality grounds. (NB the exception for **Sri Lanka** was lifted on 2 September 2005)
- If you have been charged with or convicted of an offence punishable with the death penalty in the country where the charge or conviction was made. (However, you may be ineligible to make a claim on grounds of criminality).
- If you have a valid visa to enter Canada, other than a transit visa.
- If you come from a country for whose nationals Canada does not require a visa but the US does (currently **Antigua and Barbuda, Barbados, Botswana, Cyprus, Greece, Malta, Mexico, Namibia, Papua New Guinea, Republic of (South) Korea, St. Kitts and Nevis, St. Lucia, St. Vincent, Solomon Islands, Swaziland, Western Samoa**.)

How can I prove that I meet one of the exceptions?

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If you arrive at a border point and make a refugee claim, an immigration officer will interview you to see if you meet any of the exceptions. The officer will take into account what you say and will look at any documents you provide. The officer may also do some research (for example, if you say you have a family member in Canada, the officer will look for that person in the immigration databases and may try to speak to them on the telephone). You should try to bring with you documents that show you meet an exception. If you have a family member in Canada, you should know how to contact that person on the day you make your claim in Canada.

What will happen if an immigration officer decides I meet an exception but later it turns out not to be true?

Deliberately giving false information to an immigration officer can have very serious consequences. If you falsely claim to meet one of the exceptions and the Canadian government later finds out that you did not answer the questions truthfully, the Canadian government can take away your right to make a refugee claim (Immigration and Refugee Protection Act (104(1)(c)).

Does the safe third country rule apply to all refugee claimants arriving from the US?

No, the rule applies only if you make a refugee claim at a land port of entry. The rule does not apply if you arrive by air or by water: claims made at an airport, port or ferry landing are not affected by the safe third country rule, even though you arrived from the US. The rule does not apply to claims made inside Canada: if you enter Canada from the US and later make a refugee claim at an immigration office within Canada, you are not affected by the safe third country rule.

If I have made an asylum application in the US, does this affect my right to make a claim in Canada?

No. If you meet one of the exceptions to the safe third country rule, you can make a claim in Canada whether or not you have applied for asylum in the US.

How can I get advice on my own case?

Vermont Refugee Assistance: Tel. 802-223-6840, email vtrefuge@together.net or jenness@accessvt.com, www.vermontrefugeeassistance.org.

Freedom House, Detroit, Tel. 313-964-4320 ext*833, email fhdkoelsch@sbcglobal.net, www.freedomhousedetroit.org

VIVE, Buffalo, Tel. 716-892-4354, www.vivelacasa.org

Committee to Aid Refugees, Montreal, Tel. 514-272-6060, ext 5, email carmtl@cam.org (for people destined to Montreal or elsewhere in Québec)

FCJ Hamilton House, Toronto, Tel. 416-469-9754, email fcjhamilton@on.aibn.com (for people destined to Toronto), www.fcjsisters.ca/HamiltonHouse

Where can I find more information?

- For the Canada Border Services Agency explanation of safe third country, go to <http://www.cbsa-asfc.gc.ca/agency-agence/stca-etps-eng.html>
- The information above is a summary of the main rules on safe third country. For full details, consult 6839 Drolet, #302, Montréal, QC, Canada H2S 2T1 TÉL.: 514 277-7223 FAX : (514) 277-1447

the Immigration and Refugee Protection Regulations, as amended 12 October 2004. The amendments are published in the Canada Gazette, Part II, 3 November 2004, SOR/2004-217, available at <http://canadagazette.gc.ca/partII/2004/20041103/html/sor217-e.html>. Note that even if you meet an exception to the safe third country rule, you may still be ineligible to make a claim in Canada, for example if you have previously made a refugee claim in Canada, if you have been granted refugee protection by another country or if you are inadmissible on certain criminality or security grounds. See Immigration and Refugee Protection Act, section 101. The Act is available at <http://laws.justice.gc.ca/en/I-2.5/index.html>.

- For the text of the agreement, go to <http://www.cic.gc.ca/english/about/laws-policy/safe-third.asp>
- For instructions to officers in Citizenship and Immigration Canada's manual, go to <http://www.cic.gc.ca/english/resources/manuals/pp/index.asp> and select PP1: Processing Claims for Protection in Canada. Section 17 of the manual deals with safe third country rules.
- For documents of the Canadian Council for Refugees opposing the Safe Third Country Agreement and analyzing its likely impacts, go to <http://www.ccrweb.ca/S3C.htm>

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