

Questions & Answers

People living with HIV are allowed to travel to Canada. However, HIV status is one factor considered by the Government of Canada when deciding if a person can stay in Canada for an extended period of time. This Q&A provides information on how Canadian immigration law and policy affect people living with HIV who wish to come to Canada.

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Immigration and Travel to Canada for People Living with HIV

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This Q&A describes Canadian immigration law and policy as of June 2018. From time to time, changes are made to the law 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. Also, officers sometimes make mistakes in applying laws, regulations and policies. In other words, the law may be applied unevenly and this could have a positive or a negative effect on the 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).

Key definitions

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

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

IRCC (Immigration, Refugees and Citizenship Canada): The department of the Government of Canada that deals with immigration and refugee protection issues.

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

Key definitions (continued)

“Excessive demand” on health or social services: A term used by the Government of Canada to signify that a foreign national is expected to use more publicly funded health or social services than the average Canadian. See Q.2 for more information on the “excessive demand” test, and Q.5 to learn how it is applied to people living with HIV.

Foreign national: A person who is not a Canadian citizen or permanent resident, including a person without any other citizenship.

Immigration and Refugee Protection Act: Canada’s main piece of legislation governing entry and immigration to Canada, as well as the granting of refugee protection by Canada.

Immigration and Refugee Protection Regulations: Regulations enacted under the *Immigration and Refugee Protection Act*.

Immigration medical examination: A medical examination that is sometimes required for the purpose of immigration or travel to Canada. It is completed by an IRCC-approved physician, either in Canada or abroad. See Q.3 for more information.

Immigration officer: An employee of IRCC, working in Canada, whose responsibilities include deciding who can enter and remain in Canada. Immigration officers also make decisions on temporary or permanent residency applications presented by foreign nationals.

Medical inadmissibility / Medically inadmissible: When a foreign national is not permitted to enter or remain in Canada on health-related grounds. This includes cases where the foreign national is expected to place an “excessive demand” on publicly funded health or social services.

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. 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 In each case, “partner” includes same-sex and opposite-sex relationships.

Permanent resident: A person who has legally immigrated to Canada 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.

Spouse: The person to whom someone is married. For the purpose of immigrating to Canada, 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.⁵

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., 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 of people living with HIV, nor does it specifically mention HIV or AIDS.

However, Canadian law says that foreign nationals can be denied a visa or refused entry at the border if they might reasonably be expected to cause “excessive demand on Canadian health or social services.”⁶ This type of exclusion is called “medical inadmissibility.”

Q.2 What is the “excessive demand on health or social services” test?

Many health and social services are publicly funded in Canada,⁷ and it is recognized that most people in Canada (including foreign nationals) use at least some of them. In order to limit public expenses, the Canadian government restricts entry into Canada of foreign nationals who are expected to place an “excessive demand”

on these services.⁸ This is where a person's HIV-positive status becomes relevant to the immigration process.

Under Canadian law, an applicant is considered to place an “excessive demand” on health or social services if the costs of the health or social services an applicant is expected to use exceed the costs of such services for the average Canadian resident.⁹ To make this assessment, Immigration, Refugees and Citizenship Canada (IRCC) estimates the applicant's anticipated health and social services costs and compares them to the average costs for Canadians, currently estimated at CAN\$6,604 per person per year.¹⁰ In April 2018, the Minister of Immigration, Refugees and Citizenship announced that the threshold for excessive demand would be raised to three times the previous level of average anticipated health and social services costs for Canadians, or **\$19,812**.¹¹ Following this announcement, IRCC established a temporary policy allowing officers to exempt individuals whose health care costs are less than three times the average Canadian per capita health and social services costs over a

period of five consecutive years from the “excessive demand” threshold.¹² This temporary policy will apply until regulatory changes reflecting the Minister's announcement come into force. If IRCC considers that the applicant's anticipated annual costs are greater than this number, it will declare the applicant medically inadmissible — unless the applicant successfully contests IRCC's finding (see Q.6 and Q.7). For people living with HIV, a finding of medical inadmissibility may be caused by the cost of HIV medication (also known as antiretroviral medication), although the cost of many publicly funded HIV medications should fall below the revised threshold. Some medications may exceed this threshold, especially when coupled with treatment for other HIV-related illnesses. The financial or social contributions that a person may make while living in Canada are not taken into consideration in this calculation.

See Q.5 to learn when and how the “excessive demand” test is applied to people living with HIV.

Q.3 What is the immigration medical examination?

The immigration medical examination is a complete medical exam. It may include any or all of the following: a physical examination, a mental examination, a review of past medical history, laboratory tests and tests to establish medical diagnoses.¹³

The medical history questionnaire includes a question on HIV status, and the laboratory tests include an HIV test for all people 15 years of age or over.

The HIV test is supposed to be accompanied by appropriate pre- and post-test counselling.¹⁴ However, anecdotal evidence indicates that this does not always happen.

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 children who have received blood or blood products, or who have an HIV-positive parent.

Depending on the circumstances, the immigration medical examination may take place in Canada or abroad. Either way, it can only be performed by a physician chosen by IRCC to conduct immigration medical examinations. A list of approved physicians, in Canada and in other countries, is available on the IRCC website.¹⁵ The physician does not assess the applicant's admissibility to Canada; the physician simply provides the results of the examination to IRCC.

See Q.5 for more information on instances when immigration medical examinations are required.

Q.4 If a person tests positive for HIV during an immigration medical examination, who else will learn about it?

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

- **IRCCC:** The physician who conducts the immigration medical examination provides the results, including the result of the HIV test, to IRCC.
- **Spouses/partners (only in case of family sponsorship):** If an applicant is sponsored by their spouse/partner, IRCC will disclose the HIV-positive test result to the sponsor, unless the applicant withdraws their application (see page 7 for more information).
- **Public health authorities in Canada:** If an application is approved, IRCC informs 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 HIV-positive person to ensure they are knowledgeable about the ways in which HIV is transmitted.

- **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.”¹⁶ Depending on the regulations of the country where the examination took place, an HIV-positive test result may be communicated to the public health authorities of that country and to other third parties (e.g., spouse or partner).

Q.5 In practice, how is the “excessive demand” test applied to persons living with HIV?

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 exam. Generally, only the following visitors must undergo a medical examination for a stay of six months or less:

- Individuals planning to work in an occupation where protection of public health is considered essential;¹⁷ and
- Individuals who need a visa to enter Canada, but only in the circumstances described in the text box on page 5.

In addition, a medical examination may also be required of 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. However, simply being HIV-positive should not be a basis for requiring a medical examination.¹⁸

It is important to note that testing positive for HIV during the immigration medical examination will not, in itself, prevent a person from visiting Canada for six months or less. 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 these services. The only exception is if a visitor to Canada (living with HIV or not) is so ill that they would likely require hospitalization during their stay in Canada. IRCC may then deny entry to that visitor.¹⁹

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:

- In the previous year, the applicant spent six or more consecutive months in a country designated by the Government of Canada as having a higher prevalence of serious communicable disease than Canada;²⁰
- The applicant is coming to Canada to work in an occupation where protection of public health is considered essential. IRCC’s website’s provides examples of such jobs;²¹
- The applicant is applying for a Parent and Grandparent Super Visa; or
- The immigration officer decides that the applicant’s specific circumstances necessitate a medical examination. In making this decision, the officer will likely consider 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.²²

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.²³

A person applying for a visa needs to fill out a visa application form.²⁴ 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.

Even if the visa officer knows that the person is HIV-positive, they should not require a medical examination on this basis. 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 a medical examination for other reasons (e.g., a person indicates having had tuberculosis within the past two years).

Beginning in 2016, nationals who are travelling to Canada by air and 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-positive status on an eTA.²⁵

Depending on the circumstances of their intended stay in Canada, an applicant may or may not become eligible for publicly funded health and social services while in Canada. If the person won't be eligible for these services, testing positive for HIV during the medical examination should not be a barrier to their stay in Canada.

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

The eligibility of foreign students and temporary foreign workers for publicly funded health and social services varies from one province or territory to another. 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 \$19,812.

It is advisable that people living with HIV look into provincial or territorial drug coverage when planning to work or study in Canada. 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.

As for the Parent and Grandparent Super Visa specifically, its eligibility criteria include undergoing an immigration medical examination and being declared medically admissible to Canada. This means that IRCC could conduct the “excessive demand” test before granting this visa.²⁶

Permanent residency

Everyone who applies to become a permanent resident of Canada must have an immigration medical examination. IRCC assesses 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. IRCC will conduct this assessment for all permanent residency applicants — except successful refugee claimants and certain applicants sponsored by a family member. For more information on refugee protection and family sponsorship, see below.

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

In some cases, IRCC may consider that an applicant for permanent residency who is living with HIV and who is currently taking HIV medication is medically inadmissible, whether or not the applicant is in good health. This is because HIV medication is expensive and publicly funded for residents.²⁷

However, **if an applicant’s annual health care costs, including the cost of their HIV medication, do not exceed \$19,812 the person will not be considered 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.”²⁸ 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. 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 also be other ways for a person living with HIV to successfully prove to IRCC that they are not likely to cause an “excessive demand” on Canadian health or social services, but any such attempt will require the services of a lawyer in Canada who specializes in immigration law and is familiar with HIV-related issues.

If an applicant is HIV-positive but not taking HIV medication, 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.²⁹

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

Canadian citizens and permanent residents can sponsor certain close relatives to immigrate to Canada.³⁰

If a person living with HIV is applying to become a permanent resident and their application is sponsored by their spouse, partner or parent³¹ who is a Canadian citizen or permanent resident, being HIV-positive 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 also true of the applicant’s dependent children.³²

If a person who is sponsored by a spouse or partner tests positive for HIV during the immigration medical examination, IRCC will send the applicant a letter requiring that they disclose their HIV status to their sponsor or withdraw their application. After a 60-day delay, unless the applicant withdraws the application, IRCC will disclose the applicant’s HIV-positive status to the sponsor.³³

If an applicant is sponsored by a spouse/partner and tests positive for HIV during the immigration medical examination, IRCC discloses the HIV-positive status to the spouse/partner 60 days after informing the applicant of its intention to do so, unless the applicant withdraws their application.

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 HIV-positive status.

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

Everyone who applies for permanent residency must list their spouse, partner and dependent children in their application.³⁴ These family members will need to undergo an immigration medical examination, irrespective of whether they are accompanying the permanent residency applicant to Canada or not. 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.”³⁵

There are some limited exceptions. 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.³⁶ The person will still be required to undergo an immigration medical examination, but their HIV-positive status will not prevent their claim from being accepted.³⁷ It will also not prevent them from successfully applying for permanent residency once their claim is accepted.

The results of the immigration medical examination are provided to IRCC, but not to the Immigration and Refugee Board of Canada (IRB), 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-positive status may help a refugee claim application.³⁸

A successful refugee claimant (also known as a “Protected Person”) can include a spouse, partner and dependent children in their application for permanent residency.³⁹ The spouse, partner or dependent children will need to undergo an immigration medical examination, but testing positive for HIV will not obstruct their permanent residency application.

Important note on HIV disclosure: If the spouse or partner of a Protected Person living in Canada tests positive for HIV, the spouse or partner will receive a letter requiring that they disclose their HIV status to the Protected Person. After a 60-day delay, IRCC will disclose the spouse/partner’s HIV-positive status to the Protected Person.⁴⁰

Refugee claimants in Canada are covered under the Interim Federal Health Program. This 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.

Q.6 What happens after a person has undergone the immigration medical examination?

The physician conducting the immigration medical examination does not assess the applicant’s admissibility to Canada; the physician simply provides the results of the immigration medical examination to IRCC.

The medical information provided by the physician will be reviewed by an IRCC medical officer. 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 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).

The IRCC visa or immigration officer then sends 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 invites 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 decides whether or not to grant it). Overturning a finding of medical inadmissibility may be possible depending on the circumstances, but the process is a complicated one and will likely require the assistance of a lawyer in Canada who specializes 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. Applicants have the right to request (and receive) a written explanation of why they were declared medically inadmissible.

Q.7 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 who specializes in immigration law. The person must act promptly. They generally

have either 15 or 30 days to respond, depending on their situation.

Q.8 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 (e.g., being refused a work or study permit does not mean the person will be refused entry to Canada for a vacation).

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

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.⁴¹ People admitted under a TRP but who are denied coverage will have to pay for any medical care whether or not 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 who specializes in immigration law.⁴² 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 who specializes 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 Canadian HIV/AIDS Legal Network at +1 416 595-1666 or info@aidslaw.ca for legal information. Please note that we cannot provide legal advice, but we will try to provide referrals to knowledgeable lawyers.

Additional information

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

This section of the website of the Canadian HIV/AIDS 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.inmylanguage.org

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.)

www.cleo.on.ca

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.

Endnotes

¹*Citizenship Act* (R.S.C., 1985, c. C-29), section 3(1).

²*Immigration and Refugee Protection Regulations*, SOR/2002-227, section 2.

³*Immigration and Refugee Protection Regulations*, SOR/2002-227, section 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, section 2.

⁵*Immigration and Refugee Protection Regulations*, SOR/2002-227, section 2, definition of "marriage."

⁶*Immigration and Refugee Protection Act* (S.C. 2001, c. 27), section 38(1).

⁷Publicly funded services include health services such as access to family physicians, medical specialists, nurses, laboratory services, and the supply of medicine and hospital care. Depending on the circumstances, they may also include social services such as home care, specialized residential care, special

education services and vocational rehabilitation services. *Immigration and Refugee Protection Regulations* (SOR/2002-227), section 1.

⁸*Immigration and Refugee Protection Act* (S.C. 2001, c. 27), section 38(1)(c).

⁹*Immigration and Refugee Protection Regulations*, SOR/2002-227, section 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.

¹⁰This number is updated annually. It is available on the IRCC website at www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/standard-requirements/medical-requirements/refusals-inadmissibility/excessive-demand-on-health-social-services.html.

¹¹See "Government of Canada brings medical inadmissibility policy in line with inclusivity for persons with disabilities," April 16, 2018. Available at: www.canada.ca/en/immigration-refugees-citizenship/news/2018/04/government-of-canada-brings-medical-inadmissibility-policy-in-line-with-inclusivity-for-persons-with-disabilities.html.

¹²According to this policy, delegated officers may grant an exemption from section 38(1)(c) of the *Immigration and Refugee Protection Act* (medical inadmissibility due to excessive demand on health or social services) to foreign nationals (principal applicant or their dependent family members) who would otherwise have been found inadmissible under this section and who have a temporary or permanent resident application that was received on or after April 16, 2018 or was pending as of that date, was sent back by the Court for redetermination on or after April 16, 2018, or was sent back by the Immigration Appeal Division for reconsideration on or after April 16, 2018; and the costs of the health and social services that would be required to treat the applicant's health condition are less than three times the average Canadian per capita health and social services costs over a period of five consecutive years immediately following the most recent medical examination, unless there is evidence that significant costs are likely to be incurred beyond that period, in which case the period is no more than 10 consecutive years. See Government of Canada, *Temporary Public Policy Regarding Excessive Demand on Health and Social Services*, June 1, 2018. Available at <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/excessive-demand-june-2018.html>.

¹³*Immigration and Refugee Protection Regulations*, SOR/2002-227, section 29.

¹⁴Panel Members' Handbook 2013, available on the IRCC website at www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/panel-members-handbook-2013.

¹⁵The list is available at www.cic.gc.ca/pp-md/pp-list.aspx.

¹⁶Panel Members' Handbook 2013. See note 14.

¹⁷Examples 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.

[immigration-refugees-citizenship/services/application/medical-police/medical-exams/requirements-temporary-residents.html](http://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 health sciences field, clinical laboratory workers, patient-attendants in nursing and geriatric homes, teachers of 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.

¹⁸IRCC, ENF4: *Port of Entry Examinations*, December 23, 2016, section 17.3. Available online on the IRCC website at www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf04-eng.pdf.

¹⁹Ibid

²⁰This 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.

²¹See note 17.

²²The 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#vwv.cic.gc.ca/english/information/offices/apply-where.asp#v.

²³The 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.cic.gc.ca/english/visit/visas.asp.

²⁴The "Application for a Temporary Resident Visa" is available on the IRCC website at www.cic.gc.ca/english/information/applications/visa.asp.

²⁵To learn more about the Electronic Travel Authorization, visit Government

of Canada, Find out about Electronic Travel Authorization (eTA), March 22, 2018. Available at www.canada.ca/en/immigration-refugees-citizenship/services/visit-canada/eta/facts.html.

²⁶Other 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.

²⁷Canada 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. For a Treatment Access Map for people living with HIV (October 2015), see the website of the Canadian Treatment Action Council (www.ctac.ca).

²⁸*Companioni v. Canada (Minister of Citizenship and Immigration)*, [2009] F.C.J. No. 1688 (Federal Court) (QL).

²⁹This position was initially stated in a 2002–2004 CIC policy document (available on the website of the Canadian HIV/AIDS Legal Network at www.aidslaw.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.

³⁰Information on family sponsorship, including which family members can be sponsored, is available on the IRCC website (www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/family-sponsorship.html) and on the website of the Ontario Council of Agencies Serving Immigrants (www.settlement.org/ontario/immigration-citizenship/sponsorship).

Endnotes (continued)

³¹The sponsored child must be a dependent child of the sponsor.

³²*Immigration and Refugee Protection Act*, section 38(2)(a); *Immigration and Refugee Protection Regulations*, SOR/2002-227, section 24.

³³ If an applicant expresses personal concerns, such as concern about a risk to their safety should their HIV status become known, visa and immigration officers are to advise the immigration program manager of such cases, who will address as appropriate. Government of Canada, “Procedure for HIV-positive cases,” August 23, 2017. Available at <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/standard-requirements/medical-requirements/surveillance-notifications/procedure-hiv-positive-cases.html>.

³⁴*Immigration and Refugee Protection Regulations*, SOR/2002-227, section 10(2)

³⁵*Immigration and Refugee Protection Act* (S.C. 2001, c. 27), section 42(1).

³⁶*Immigration and Refugee Protection Act* (S.C. 2001, c. 27), section 38.

³⁷The 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. (IRCC, ENF4: *Port of Entry Examinations*, section 17.3. See note 18.)

³⁸Information on the application process for refugee claimants can be found on the IRCC website at www.canada.ca/en/immigration-refugees-citizenship/services/refugees.html.

³⁹*Immigration and Refugee Protection Regulations*, SOR/2002-227, section 176(1).

⁴⁰See note 33.

⁴¹See note 27.

⁴²**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 the Positive Living Society at +1 604 893-2200 or +1 800 994-2437 (toll-free within BC); email: info@positivelivingbc.org; website: www.positivelivingbc.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/ressources/vih-info-droits.html.

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