



Canadian Association of
Professional Immigration Consultants

L'Association Canadienne des
Conseillers Professionnels en Immigration

CAPIC Recommendations on the Proposed IRPR Amendment of Automatic Cancellation of Temporary Immigration Documents upon Issuance of a Removal Order

April 21, 2023



Table of Contents

Background	2
Recommendations	5
About CAPIC	6
Our Mission	6
Our Vision	6

CAPIC Recommendations on the Proposed IRPR Amendment of Automatic Cancellation of Temporary Immigration Documents upon Issuance of a Removal Order

On April 3rd, 2023, CAPIC received a request for comments from the Canada Border Services Agency (CBSA) on its regulatory amendment proposal: Canada Gazette, Part I, Volume 156, Number 15: Regulations Amending the Immigration and Refugee Protection Regulations (the Amendment). The Amendment text suggests amending the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (IRPR). It aims to implement the automatic cancellation of immigration documents for temporary residents who are being issued a removal order.

CAPIC appreciates the confidence CBSA has placed in the organization and its membership. Upon receipt, CAPIC sought 4400 strong members' input, carried out studies on the text of the Amendment, and conducted research on it. Herein lie CAPIC's recommendations.

Background

The issue identified in the Regulatory Impact Analysis Statement

The issue is that the current immigration documents cancellation process for a foreign national who has been issued a removal order is inconsistent and inefficient. The inconsistency refers to the different cancellation frameworks that apply to eTAs, TRPs, work permits, study permits, and TRVs. The inefficiency refers to the manual data input in the Global Case Management System (GCMS) by officers for current automatic cancellations and specific rationales for each discretionary cancellation.

The objective of the Amendment

The Amendment aims at streamlining internal processes, initiating cost efficiencies, and improving consistency concerning immigration document cancellation upon the issuance of a removal order against a foreign national.

CAPIC observations

In general, CAPIC agrees that bringing the different cancellation frameworks for eTAs, TRPs, work permits, study permits, and TRVs into a holistic scheme that simplifies the processes may improve administrative efficiency. However, based on the most relevant provisions of the *Immigration and Refugee Protection Act*, S.C., 2001, c.27 (IRPA) and IRPR regarding the implementation, compliance, enforcement, and service standards, CAPIC is concerned whether the Amendment may create unintended consequences.

Statutory and regulatory observations

The most relevant provisions of the IRPA are reproduced here:

Temporary resident permit

24 (1) A foreign national who, in the opinion of an officer, is inadmissible or does not meet the requirements of this Act becomes a temporary resident if an officer is of the opinion that it is justified in the circumstances and issues a temporary resident permit, which may be cancelled at any time.

Temporary resident

47. A foreign national loses temporary resident status

- (b) on a determination by an officer or the Immigration Division that they have failed to comply with any other requirement of this Act;

Enforceable removal order

48 (1) A removal order is enforceable if it has come into force and is not stayed.

In force

49(1) A removal order comes into force on the latest of the following dates:

- (a) the day the removal order is made, if there is no right to appeal;

In force – claimants

(2) Despite subsection (1), a removal order made with respect to a refugee protection claimant is conditional and comes into force on the latest of the following dates:

- (a) the day the claim is determined to be ineligible only under paragraph 101(1)(e);
- (b) in a case other than that set out in paragraph (a), seven days after the claim is determined to be ineligible;
- (c) if the claim is rejected by the Refugee Protection Division, on the expiry of the time limit referred to in subsection 110(2.1) or, if an appeal is

made, 15 days after notification by the Refugee Appeal Division that the claim is rejected;

- (d) 15 days after notification that the claim is declared withdrawn or abandoned; and
- (e) 15 days after proceedings are terminated as a result of notice under paragraph 104(1)(c) or (d).

The most relevant provisions of IRPR are produced here:

Temporary resident status

202 A foreign national who is issued a work permit under section 206 or paragraph 207(c) or (d) does not, by reason only of being issued a work permit, become a temporary resident.

No other means of support

206 (1) A work permit may be issued under section 200 to a foreign national in Canada who cannot support themselves without working, if the foreign national

- (a) has made a claim for refugee protection that has been referred to the Refugee Protection Division but has not been determined; or
- (b) is subject to an unenforceable removal order.

Invalidity

209 A work permit becomes invalid when it expires or when a removal order that is made against the permit holder becomes enforceable.

Application after entry

215 (1) A foreign national may apply for a study permit after entering Canada if they

- (d) are subject to an unenforceable removal order;

Temporary resident status

218 A foreign national referred to in paragraph 215(1)(d) and their family members do not, by reason only of being issued a study permit, become temporary residents.

Invalidity

222 (1) A study permit becomes invalid upon the first to occur of the following days:

- (b) the day on which a removal order made against the permit holder becomes enforceable, or The above provisions of IRPA distinguish between loss of status and the enforceability of removal orders.

Furthermore, the above provisions of IRPR establish that work permits, and study permits issued to refugee claimants and foreign nationals subject to unenforceable removal orders do not confer temporary resident status. That means being subject to a removal order and meanwhile holding a valid work and study permit is a situation that was considered when making the IRPA and IRPR. Then what would be the potential unintended consequences, especially concerning the refugee claimants and foreign nationals whose removal orders are unenforceable?

Implementation observation

The automatic cancellation scheme relies on the stability of the GCMS. The Implementation section mentions that in the case of administrative error that a removal order is issued incorrectly in GCMS, CBSA will have the ability to reverse the automatic cancellation of the documents. CAPIC understanding is that system glitches require manual correction. Given the significant importance of immigration documents to foreign nationals in Canada, CAPIC trusts that the system would be well-tested before the Amendments come into force. Otherwise, it may cause new inefficiencies.

Recommendations

Based on observations, CAPIC recommends:

1. Have a further statutory analysis to ensure the Amendment conforms with IRPA.
2. Have a further study of the Amendment to avoid unintended consequences.
3. Where it is confirmed that items 1 and 2 are not at issue, have adequate tests of the GCMS to prevent system glitches before the coming into force of the Amendment.

Contact Us

www.capic.ca

Stakeholders@capic.ca

About CAPIC

The Canadian Association of Professional Immigration Consultants (CAPIC) is the professional organization representing the interests of over 4400 Canadian immigration and citizenship consultants. It serves its members on the four guiding principles: Education, Information, Lobbying, and Recognition.

CAPIC is the sole association recognized by the Government of Canada as the voice of Canadian immigration and citizenship consultants. We are a major immigration stakeholder and consult with federal and provincial governments on legislation, policy, and program improvements and changes.

We are committed to promoting the ethics and competence of our members and protecting the integrity of the RCIC profession and the Canadian immigration system.

Our Mission

CAPIC leads, connects, protects, and develops the profession, serving the best interests of its members.

Our Vision

By 2024, CAPIC will:

- Represent a large majority of Citizenship and Immigration Consultants.
- Achieve optimum performance with sound governance principles centered on digital leadership.
- Lead as the point of reference in virtual and in-person professional development.
- Set the gold standard in immigration education.
- Remain the omnipresent SOLE voice of consultants in the Canadian immigration Domain.

Contact Us:

www.capic.ca

Stakeholders@capic.ca