

Applying to Immigrate to Canada using the Humanitarian and Compassionate (H&C) Provision

1: What is H&C?

To immigrate to Canada, a person must meet the criteria of one of the immigration categories in Canada's *Immigration and Refugee Protection Act* (IRPA) – family, economic, or refugee.

However, a provision exists in Canada's immigration law that allows people to apply for immigration based on Humanitarian and Compassionate (H&C) grounds. This provision, under section 25 of the *Immigration and Refugee Protection Act*, is intended for people who do not meet the criteria for immigration but who may have special circumstances which should be taken into consideration in the assessment of their application. Visa officers assess applications with requests for H&C consideration on a case-by-case basis, and may use their discretion to approve cases for permanent residence in Canada. Officers can do this by exempting you from the section of the Act or Regulations which prevents you from meeting the criteria of the regular immigration category if they are of the opinion that the exemptions are justified on H&C grounds.

2: How to apply for H&C consideration

To apply for H&C from outside of Canada, you must apply in one of the existing immigration categories. You must pay all fees associated with these applications. With your immigration application you must also attach a written request for consideration to exempt you from certain criteria.

IMPORTANT: When you apply for permanent residence in Canada, you **must** disclose your family members (parents, children, spouse/partner) on your application, whether or not they will be accompanying you to Canada. Pursuant to section 117(9)(d) of the *Immigration and Refugee Protection Regulations*, if you do not disclose a family member in your application for permanent residence, that person cannot later be sponsored by you to come to Canada. This may mean a lifetime separation from this person. You must be honest and list all of these family members on your application.

2.1 The H&C Request

To apply for immigration to Canada, you must fill out the standard immigration forms for either the Family Class (<http://www.cic.gc.ca/english/applications/famcls.html>) or the Federal Skilled Worker Class (<http://www.cic.gc.ca/english/applications/skilled.html>). You must pay all fees associated with these applications.

Because you will not meet the requirements of these classes, you must attach a separate written request for H&C consideration to exempt you from the requirements of the class in which you are applying. You must ask for H&C in writing, and your H&C request must accompany an immigration application.

You must give the visa officer reasons for why you should be exempted from the existing immigration laws. It is your responsibility to give the visa officer as much information as you can about your situation. The officer will make his or her decision based on this information, so it is important that you include everything that may be relevant. Whenever possible, include as much **evidence** as you can with your application, such as documents which support the claims you make in your H&C request

2.2: What do Visa Officers consider when assessing an H&C claim?

Visa officers make decisions on a case-by-case basis, based on the evidence available to them. Every case is unique, and officers have full discretion to approve or to refuse an application based on H&C considerations. There are **no guarantees** of a positive decision.

You should provide the visa officer with as much information as possible about your situation. Identify yourself as a member of the Vietnamese population in the Philippines, and include any relevant information about your personal circumstances in the Philippines which may warrant H&C consideration.

The following are some examples of what you might include in your application. These are examples only – they might not apply to your situation, and you may have other considerations to add to your application.

- **Your status in the Philippines:** Identify that you are part of the group of Vietnamese who remain in the Philippines without status, and describe how and when you arrived in the Philippines. Are there restrictions on your ability to own property because of your status?
- **Your family situation:** Do you have family in Canada? Do you have family in the Philippines? Give as much information as possible about your family situation. (see the below section on Family Class applications)
- **Your employment situation:** Are there restrictions on your employment in the Philippines? How are you making a living in the Philippines? What skills do you have that you could use in Canada?
- **Children:** Do you have children in the Philippines? Are there any restrictions on their ability to obtain education?
- **Other migration options:** Do you have any other options – for example, can you return to Vietnam, or are you eligible for residence in the Philippines?
- **Discrimination:** Do you face discrimination in the Philippines due to being a member of the group of remaining Vietnamese?

Although all factors will be considered, the strongest cases will be those where settlement ability is demonstrated and a strong support network exists in Canada. For applicants in the Family Class, this will be demonstrated by a sponsorship undertaking by a relative in

Canada (see Section 3) or, in the case of a Federal Skilled Worker applicant, through a demonstration of community support in Canada, for example an offer of employment, or other settlement assistance (see Section 4).

IMPORTANT: There is **no** guarantee that you will be given a positive H&C decision. Your fees will **not** be returned if your case is refused. A positive H&C decision is given only to strong, compelling cases.

NOTE: Only those individuals previously identified on the list provided to CIC by the representatives of the Vietnamese community in the Philippines will receive expedited processing on their H&C application.

3: Applying as a member of the Family Class

If you have any relatives in Canada (including extended relatives such as aunts/uncles, nieces/nephews, or cousins), you could complete an application for permanent residence in the **Family Class**. Although the Family Class is limited to spouses/partners, children, or parents of Canadian citizens and permanent residents, as part of the request for H&C consideration you can ask to be **exempted** from the requirement to be one of these family members. In your request for H&C consideration you should indicate that you have relatives in Canada and what their relationship is to you.

Another requirement of the Family Class is that members must be sponsored by a relative in Canada. A sponsorship is a legal agreement that indicates that the sponsor will ensure that all basic needs of the sponsored relative are met. The period of sponsorship in the case of extended relatives who may sponsor members of this community will be 10 years. Your sponsor must meet certain criteria to sponsor you, including financial criteria. Potential sponsors with insufficient income to meet the minimum necessary income (MNI) may submit evidence of other financial support available to them such as community support, which would enable them to fulfill their sponsorship undertaking. This will be taken into account by the visa office when assessing the application for permanent residence, but is not a guarantee of approval.

If your relative is unable to sponsor you, or does not meet the criteria for sponsorship (for example, sponsors must be at least 18 years old), you may ask for an **exemption** from the requirement to have a sponsor. Without a sponsorship, however, there must be other compelling considerations or evidence of support networks in Canada to merit approval based on H&C.

IMPORTANT: There is an additional application for sponsorship (<http://www.cic.gc.ca/english/applications/family.html>) to be filled out by the sponsor in Canada. To ensure expedited processing, the sponsorship application must be sent together with the application for permanent residence and request for H&C consideration to the Case Processing Centre in Mississauga, Ontario. In addition, in the appropriate box on the sponsorship application itself, it must be indicated that you want to proceed with the application for permanent residence despite the sponsor being found ineligible to

sponsor. This will ensure that the application will be forwarded to the visa office in Manila. Please write “Vietnamese in the Philippines” on the envelope that contains the application.

As noted above, as a member of the Vietnamese population in the Philippines, the applicant should identify themselves as such on the request for H&C consideration and include any relevant information about their personal circumstances in the Philippines, (see above section 2.2 for possible examples), as well as information about settlement ability and support networks in Canada.

IMPORTANT: If the sponsor resides in Quebec, the undertaking will be with the Province of Quebec, and applications will be subject to the Quebec selection process.

4. Applying as a member of the Federal Skilled Worker class

If you do not have any relatives in Canada, you may apply for membership in the **Federal Skilled Worker class**. Federal Skilled Workers are assessed on selection factors such as education, language, and work experience. Applicants are given a certain number of points for each selection factor and must receive enough points to meet a pass mark in order to be selected for immigration to Canada.

If you do not obtain sufficient points from the selection factors, you may ask for an **exemption** from these requirements by requesting H&C consideration. You must complete the selection grid on the application form, even if you do not meet the pass mark.

You should identify yourself as a member of the Vietnamese population in the Philippines, and include any relevant information about your personal circumstances in the Philippines which may warrant H&C consideration (see above section 2.2 for possible examples), as well as information on settlement ability and support networks in Canada. Settlement ability and support networks may be demonstrated, for example, by an offer of employment in Canada. Other forms of settlement assistance or support may be arranged by community member(s) in Canada such as assistance in finding housing, or a commitment to providing ongoing integration assistance on a volunteer basis. Any evidence to this effect will be considered in your request for H&C consideration.

IMPORTANT: Any applicant intending to reside in the Province of Quebec is subject to the Quebec selection process.

5. Inadmissibility

All applicants will be subject to inadmissibility provisions concerning health, safety and security.

In addition to requests to be exempted from immigration class requirements, applicants may also request exemptions to overcome inadmissibilities based on H&C grounds. Such inadmissibilities might include: minor criminality; financial reasons; misrepresentation; non-compliance with the *Immigration and Refugee Protection Act* or *Regulations*; and, having an inadmissible family member. If you or a family member is inadmissible to Canada, you must specifically request an exemption to overcome the inadmissibilities in your application and explain the H&C grounds which would justify such an exemption. Please note that criminality is usually exempted only in very exceptional cases.