

Parental consent webinar

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Refugee Family Reunification Project

Project with two goals:

- Providing tools and training to support applicants and those assisting them
- Advocating for faster reunification and better processes

Parental consent webinar

- Discuss strategies to deal with challenges in meeting IRCC's requirement for parental consent for the admission of minors immigrating to Canada.
- Primarily for NGOs, lawyers also welcome!

Thanks to FCJ Refugee Centre for
hosting the webinar!

Introduction to parental consent

- When minor child is immigrating to Canada to reunite with one parent but not the other parent, IRCC requires consent from the other parent

Webinar plan

- Why consent is required
- How to provide consent
- Some challenging situations and strategies for dealing with them

Understanding the requirement for parental consent

- The IRPA does not specifically obligate people to provide parental consents for minors, but IRCC still asks for these documents, why?
- Immigration law requires people to provide documentation to officers where they are relevant and reasonably required.

Understanding the requirement for parental consent

- The need for documentation is assessed on a case by case basis.
 - Some people may not require a passport to become a PR.
 - Some people may not require a marriage certificate to show they are in a relationship.
 - Some children may not require consent – but in many cases, IRCC is likely reasonable to ask for these consents.

Reasonable and relevant?

Why would it normally be reasonable and relevant for IRCC to ask for a consent from non-accompanying parents or proof of sole custody from the parent in Canada?

- Canada needs to respect the family laws in other countries.
- Canada is a signatory to the Convention against Child Abduction (for children under 16).
- There are criminal laws in Canada for taking children under 16 without parental consent (assessing inadmissibility).

Reasonable and relevant? (continued)

- Federal Court decisions found the requirement to show consent or sole custody to be reasonable and relevant, in specific cases.

Importantly, in some cases, it may not be reasonable for IRCC to insist on these documents.

In other cases, where the documents are needed but there are very good and compelling reasons why a person cannot obtain these documents, IRCC may be convinced to waive the request for these documents on humanitarian and compassionate grounds (H&C)

How to provide parental consent

- Consent from a non-accompanying parent is provided on a specific form that IRCC designed (IMM 5604)
- The form uses clear and direct (and potentially scary) language, so that the non-accompanying parent will clearly indicate they understand that allowing the child to come to Canada does not give a right to the parent to come here.

How to provide parental consent

- IRCC wants to make sure that the non-accompanying parent actually gave consent, so they ask the non-accompanying parent to notarize the form (meaning, go to a notary public whose job is to verify the identity and signature of the person making the declaration).
- IRCC also asks the non-accompanying parent to provide them with a photo ID (possibly an overkill to ensure the non-accompanying parent signed the document)

How to provide parental consent

If there are bureaucratic issues (for example, finding a notary in the home country), try and be creative.

- There is more willingness to accept notarization of documents by zoom, for example (maybe a notary in Canada could do this?)
- Ask for extensions of time to obtain documents.
- Try and obtain documents that are similar in nature
- Gather evidence that the documents cannot be obtained and seek a waiver.

How to provide parental consent

Remember, it is better to comply with IRCC's requirements to save time and avoid a potential refusal, but if the person cannot meet the requirements, it could be that the requirements are unreasonable in their case or that a waiver should be issued.

Have client consult a lawyer if there are difficulties to obtain consent from the non-accompanying parent or a sole custody court order.

Other parent is dead or suspected to have died, but there is no death certificate

Scenario: The other parent left home and never came back. There is no death certificate.

What to do? Need to show you made best efforts to:

1. Seek a death certificate (even if you can't get one).
2. Locate the other parent.
3. Document the reasons and evidence those most in the know believe the other parent is dead.

Begin as soon as possible

Making “best efforts” does not have a clear end point: it can drag on and make processing times long. Find a happy medium:

- Cover bases early on in a single submission.
- Updates are just that other parent has not turned up.
- Starting early avoids rush and needing to request extensions.
- Depending on application processing time, there might be significant wait time during which to address these issues

Brainstorm with applicant

Identify individuals in home country who can help

- Family members, friends
- May need to pay someone

Document efforts to obtain a death certificate.

- What are the local requirements to get death certificate?
- Why can't they be met?
- Why is it overly burdensome to meet the requirements?
- Why is it against the child's best interests to take these steps?

Document efforts to locate the other parent

- Ask close family & friends about their whereabouts; follow all leads.
- Report missing person to police, and make follow-up inquiries.
- Check prisons, hospitals, mental health facilities, shelters.
- Take steps similar to notifying a party in a family court case: send mail to last known address, published a notice.

Reasons other parent is believed dead

- Affidavits are best, or letters with government ID and witnessed
- Choose family, friends, community members most likely to know other parent's whereabouts, and have a genuine interest in finding the other parent
- These affidavits and letters address
 - When other parent was last seen
 - Circumstances of disappearance
 - Their unsuccessful efforts to locate the person
- Articles or reports about country conditions, if disappearances are commonplace.

Show you took the other parent's parental rights seriously

- Depending on the country of origin, once the child immigrates to Canada, the other parent may lose their right to visit the child.
- If they are still alive, they may never see their child again.
- Goal is to show that there are compelling reasons to believe the other parent is dead and will not turn up asking for their child.

Other parent has not been involved in child's care and their whereabouts are unknown

Scenario: parent left when child very young and blocked all contact. Other parent didn't think they could be found.

Tips:



- start looking ASAP
- document all steps taken
- gather evidence (affidavits, letters from relatives, missing person report ...)

Possible outcomes

1. The parent is found and signs the form
2. The parent is found and refuses to sign
 - custody order that includes right for parent in Canada to bring child to Canada
3. The parent is not found
 - submissions to embassy
 - custody order
 - legal advice

The other parent is abusive

Scenario 1: child in home country is not living with the other parent

- Allegations of violence **toward the first parent** were made in the context of the refugee claim  check narrative and refugee decision
- Allegations of violence **toward the child** were made in the context of the refugee claim  check narrative and refugee decision

The other parent is abusive

WHAT TO DO

Include documents from past applications, as well as declaration from person living with the child if possible

OUTCOME / IMM5604 exemption likely granted

The other parent is abusive

Scenario 2: child in home country is living with the other parent

- Get more information and check possible context of post separation abuse (can Convention Refugee talk to the child when they want, etc)

The other parent is abusive

WHAT TO DO

- File relevant case documents including refugee decision
- Prepare a (very short) declaration signed by Convention Refugee
 - include objective documents on post separation abuse if necessary

OUTCOME

- IMM5604 exemption likely granted
- **BUT** the problem will inevitably resurface in other areas than the IMM5604

Other parent will not consent for reasons other than domestic violence

Scenario: Ex-spouse refused to sign
Refugee parent in Canada suspected child abuse and mental illness

Resolution: Custody order with right of parent to bring child to Canada

Tips: Document attempts to get signature
Involve family members if possible
Hire lawyer in child's country if necessary

What to do when a case cannot be resolved

Scenario: Estranged partner refused to sign form because they wanted to come to Canada with the child. No apparent basis for a custody order.

Tip:

- Explain difficulty to client*
- Refer to lawyer for opinion on options

Reminder: sometimes cases cannot be resolved

* Problems can arise when children who are not coming to Canada still need to be medically examined.

Minors aged 16-17

Scenario:

Mary applied for PR as a caregiver and met the requirements for the program. She wants to bring her 17 year old daughter, Anna, to Canada. IRCC is demanding that Anna's father sign a consent, but the father of the child cannot be found.

Anna wants to come to Canada and has made declarations to that effect.

Minors aged 16-17

Things to consider in Anna's case (and other cases involving children over 16):

- Are Anna's declarations relevant?
- Does it matter that Anna is over 16?
- What will happen when Anna is 18 years old?

Exit from country of origin

- Minors may also need parental consent to exit their country of origin (or get a passport).

Follow up

- Version française du webinaire incluant un volet sur les exigences du MIFI | French-language version of webinar, including a component addressing Quebec
- Suggestions for future webinars (e.g. on basics of family reunification for NGOs)?
- Join us in advocacy on refugee family reunification!