

Introduction

This paper deals with the provisions of the *Immigration and Refugee Protection Act* (IRPA) and the *Immigration and Refugee Protection Regulations* (IRPR) as they pertain to removal order appeals before the Immigration Appeal Division (IAD) of the Immigration and Refugee Board of Canada (IRB). In addition, this paper covers residency obligation appeals. This paper represents the most current treatment of the law as expressed in the jurisprudence respecting removal order appeals before the IAD. Both Federal Court and IAD jurisprudence has been used for this paper. The cut-off date for cases is December 31, 2008 (except for the *Khosa* decision of the Supreme Court).

This paper does not constitute legal opinion and should not be taken to represent the views of the IRB and its members.

Generally

Under IRPA there are three specific classes of persons defined in IRPA who may have, in some circumstances, a right of appeal to the IAD from a removal order. These classes include a permanent resident, a protected person and a foreign national. A permanent resident is someone who has obtained permanent resident status and has not lost it. A protected person is a person on whom refugee protection has been conferred and who has not lost that status. A foreign national is someone who is not a Canadian citizen or a permanent resident and may include a stateless person.

The IAD hears appeals from removal orders (exclusion orders, departure orders and deportation orders) issued to permanent residents and protected persons by the Immigration Division (ID) at an admissibility hearing or by an officer at an examination. It also hears appeals by the Minister from ID decisions to not issue removal orders at an admissibility hearing. A foreign national who holds a permanent resident visa has an appeal against a removal order.

Residency obligation appeals under section 63(4) of the Act are also covered in this paper, although these are an appeal type in itself, and not a type of removal order appeal. The IAD can hear an appeal from a decision made by a visa officer overseas denying recognition of a person's permanent residence status due to non-residence in and absence from Canada. The same issues that arise in these section 63(4) appeals can also arise in a removal order appeal under section 63(3) – typically, this occurs at a port of entry when a permanent resident is trying to return to Canada, and an immigration officer in Canada issues a removal order on the grounds of a violation of the permanent residency obligation.

The grounds for an appeal continue to include the following:

1. the decision appealed is wrong in law or fact or mixed law and fact,
2. a principle of natural justice has not been observed, and
3. discretionary relief for humanitarian and compassionate considerations in all the circumstances of the case including the best interests of a child.

The right of appeal has been in some cases curtailed or restricted by the provisions in IRPA to give effect to one or more of the objectives of IRPA. In s. 3(1)(h), for example, one objective of IRPA is “to protect the health and safety of Canadians and to maintain the security of Canadian society”. Persons who are found to be inadmissible on grounds of security (s. 34), violating human or international rights (s. 35) serious criminality punished in Canada by a term of imprisonment of at least two years (s. 36 and s. 64(2)) or organized criminality (s. 37) have no access to an appeal, pursuant to s. 64 of IRPA. In section 63(1) appeals by a foreign national who holds a permanent resident visa based on a family class sponsorship, section 65 permits discretionary relief only if the foreign national is a member of the family class and their sponsor is a sponsor within the meaning of the regulations.

Every effort has been made to provide relevant cases in each chapter. If anyone believes that a relevant case is missed, it would assist the authors and the editor if the omitted case is brought to their attention, along with an explanation as to its relevance. This will ensure that the IRB can continue to provide helpful material to both members and counsel in this form.