

## **Seeking Asylum in Canada at an Official Port of Entry on the US-Canada Border:** **What is the Safe Third Country Agreement (STCA)?**

The Safe Third Country Agreement (STCA) is an agreement between Canada and the United States, about who is allowed to cross the US-Canada border to seek asylum (called a 'refugee claim' in Canada). Under the STCA, persons seeking asylum must make a claim in the first country they arrive in (United States or Canada), unless they qualify for an exception to the Agreement.

**If you go to an official land Port of Entry to claim asylum in Canada, you will be allowed to enter Canada, only if you meet one of the exceptions to the Agreement. The information below (pages 1-2) tells you where the STCA applies and about the STCA exceptions. If you qualify for an STCA exception, a decision will then be made as to whether you can make a refugee claim. See page 3 for information on who is NOT eligible to apply for asylum.**

### **Where DOES the STCA Apply?**

The STCA applies only to people who are seeking entry to Canada from the United States to make an asylum claim (or vice versa from the US to Canada):

- at Canadian official land Ports of Entry;
- entering Canada by train;
- at Canadian airports: if someone has already been refused asylum in the US and the US is removing her or him to their country of origin and they are in transit through Canada, the STCA applies to them.

### **Where the STCA does NOT Apply:**

- At irregular land entry points into Canada (any place that is **not** an official land Port of Entry)
- At Canadian airports (except for the situation described above)
- At Canadian marine ports and ferry landings

**If cross the border to seek asylum in a place where the STCA applies, the officers will ask for proof that you meet ONE of the four exception to the STCA. You need to show that ONE exception is true for you.**

### **What are the exceptions to the STCA?**

1. Family member exceptions
2. Unaccompanied children under 18 (minors) exception
3. Visa holder exceptions
4. Public Interest exception (death penalty)

#### **1. Family member exceptions**

**You can qualify under this exception if you have a family member (called an anchor family member) in Canada who is one of the following **AND** has the right immigration status in Canada **AND** is physically present in Canada:**

- spouse or same-sex spouse
- common-law partner (a person of the same or opposite sex with whom you have cohabited for at least one year)
- mother, father or legal guardian
- grandmother or grandfather (continues)

- child or grandchild
- sister or brother (this includes a half-sister or half-brother)
- aunt or uncle (this includes an aunt or uncle who is half-sister or half-brother to one of your parents)
- nephew or niece **Note:** Cousins are NOT eligible to be anchor relatives.

**If you have a qualifying family member in Canada, make sure they have the right status in Canada.**

**A qualifying family member MUST be one of the following:**

- a Canadian citizen;
- a permanent resident of Canada;
- a person accepted by Canada as a refugee (a Convention refugee or a Protected Person)
- **a person over 18 years old** who has made a claim for asylum (refugee protection) that has been referred to the IRB for a decision (and has **not** been rejected, abandoned or withdrawn)
- a person whose removal order was stayed on humanitarian and compassionate grounds;
- a person with a valid Canadian work permit or study permit.

**2. Unaccompanied children under 18 (minors) exception**

**You can qualify under this exception if you are under 18 years of age and:**

- are not accompanied by your mother, father or legal guardian;
- you do not have a spouse or common-law partner; and
- you do not have a mother, father or a legal guardian in Canada or the United States.

**3. Document (visa) holder exceptions**

**You can qualify under this exception if you:**

- hold a valid Canadian visa (other than a transit visa);
- hold a valid work permit or a valid study permit;
- hold a travel document (for permanent residents or refugees) or other valid admission document issued by Canada; or
- are a national of a country who does not need a visa to enter Canada, but does need a visa to enter the United States (for example, Mexicans).

**4. Public interest exception (death penalty)**

**You may qualify under this exception if:**

- You have been charged with or convicted of an offence that could subject you to the death penalty in the United States or in another country.

**NOTE:** In order to decide if you qualify for one of these exceptions, Canadian officials will interview you (and your anchor family member if needed), examine any documents you provide and consult Canadian databases.

**\*\*\*MAKE SURE you qualify for an exception before you go to a Canadian land Port of Entry. Contact Vive Shelter in Buffalo 716.892.4354 or viveinfo@jrhc.org for help preparing for an STCA interview or use the services of a Canadian refugee lawyer.**

## What Happens if I have gone to an official land Port of Entry and I do not qualify for an exception under the STCA?

You will be issued with an exclusion order from Canada and will be removed back to the United States the same day. Canadian authorities will notify US authorities at the US Port of Entry. You will not be able to re-enter Canada for one year and you can NEVER make another asylum claim in Canada. You will have 15 days to appeal this decision.

## The Next Stage: Eligibility

If you qualify for one of the exceptions above, it must still be decided if you are **eligible** to make an asylum claim (called a 'refugee claim' in Canada).

### 1. Here are the reasons you will not be eligible:

- you already claimed asylum in Canada (this includes the following situations: your claim was accepted, refused, withdrawn, abandoned or found to be ineligible)
- you have been recognized as a refugee in another country (and can be returned there);
- it is decided that you can't be admitted to Canada: 1. because of security reasons; 2. because you have violated human or international rights; 3. because you committed a serious crime or were involved in organized criminality.
- **If your claim is found to be ineligible**, Canadian authorities will usually begin a process to deport you back to your country of origin. You may be detained. In most cases you can apply for a Pre-Removal Risk Assessment (PRRA). If your PRRA is successful, you will be recognized as a convention refugee or protected person in Canada.

### 2. If you have already made an asylum claim in the United States (or the United Kingdom, Australia or New Zealand)

If you have already made an asylum claim in one of these four countries, **you are not eligible** to make an asylum claim in Canada, **BUT, you will be able to go through the Pre-Removal Risk Assessment process (PRRA)**. You should be able to have a lawyer to represent you. If successful you will be recognized as a convention refugee or a protected person in Canada.

Canadian Government information on the Safe Third Country Agreement:

<https://www.cbsa-asfc.gc.ca/agency-agence/stca-etps-eng.html>

<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/agreements/safe-third-country-agreement.html>

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