

Are you inadmissible in Canada due to a past criminal activity? – There is a solution.

Under Canada's Immigration and Refugee Protection Act (IRPA), persons with temporary visa to Canada or applicants who have applied for permanent residence in Canada may not be admitted in Canada if they have been involved in any criminal activity.

A person is considered criminally inadmissible if:

1. He/She was convicted of an offence in Canada;
2. He/She was convicted of an offence outside of Canada that is considered a crime in Canada;
3. He/She has committed an act outside of Canada that is considered a crime under the laws of the country where it occurred and would be punishable under Canadian law: and/or,
4. He/She has failed to act when it was their duty under the laws of the country to do so and this failure to act would be punishable under Canadian law.

In order to determine inadmissibility, the gravity of foreign convictions and offences are equated to Canadian law as if they occurred in Canada.

When a person is charged (charges withdrawn or dismissed), discharged (absolute or conditional) or pardoned for an offence that has occurred outside Canada, he/she may be rendered inadmissible under the Canadian law.

If the offences have occurred in Canada, the person must provide the visa officer with complete details of the charges, convictions, court dispositions, etc., so that the officer can determine whether he/she is admissible in Canada or not.

In case of juvenile offenders (persons over the age of 12 years but under 18 years), the laws governing juvenile convictions in Canada will determine admissibility into Canada. The person will be rendered inadmissible to Canada if he/she has been convicted and tried as an adult offender in the country where the crime occurred or if the circumstances of conviction are such that the person would have been treated as an adult in Canada.

However, the good news for such individuals is that it is possible to overcome criminal inadmissibility. This can be achieved by applying for Rehabilitation. Rehabilitation means that you lead a stable lifestyle and that you are unlikely to be involved in any further criminal activity.

Not anyone who has committed an offence in or outside Canada is eligible to apply for rehabilitation. A person is eligible only if:

1. He/She has committed an act or omission (failure to act when duty calls) outside of Canada and five years have elapsed since that act.
2. He/She has been convicted outside of Canada and five years have passed since the end of the sentence imposed.

A person may also overcome criminal inadmissibility if he/she is deemed to have been rehabilitated if ten years have passed since the person has completed the sentence imposed on him/her or if 10 years have passed since the person committed the offence, if the offence is one that would be punishable by a maximum term of imprisonment of less than ten years if the crime were committed in Canada.

If the person had been criminally convicted in Canada and now wishes to re-enter Canada, he/she has to seek a pardon from the National Parole Board of Canada before being admitted into Canada.

If the person has convictions in Canada and convictions /offences outside of Canada, both an approval of rehabilitation and a pardon are required to overcome inadmissibility.

If an individual needs to come to Canada, but is not deemed eligible for rehabilitation because five years have not passed since the end of the sentence imposed on him/her, or he /she is not eligible to apply for a pardon for convictions in Canada, he/she may ask an officer for special permission to enter or remain in Canada.

The officer has the discretion to refuse this special permission and may advise the person to refrain from traveling to or remaining in Canada or may take enforcement action (arrest, detention and/or removal from Canada).

It is never wise to hide previous offences and convictions in order to obtain a temporary visa or apply for permanent residence in Canada. Many offences are not grave and inadmissibility can be overcome by consulting a well-experienced immigration lawyer or consultant.



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