

Request to OMC - Functional Guidance Form

Formulaire de demande d'orientation fonctionnelle – Demande à la DGGOCⁱ

When complete send to/ Quand envoi complet à: OMC-GOC-Immigration@cic.gc.ca

Date : Select date/Choisir la date

A- To be completed by the requester/À remplir par l'auteur de la demande.

Office / Bureau : PRC Sydney	Email Address/Adresse de courriel : susan.macdonald@cic.gc.ca
Region/ Région Centralized Processing Region/ Région du traitement centralisé :	
Context/Contexte : Wrong Final Decision used on overseas PRD	
Category / Catégorie : Permanent Resident/ Résidents permanents	
Background /Recherche préliminaire : GCMS appears to indicate that the client was refused a travel document overseas as the final decision for the PRD-OVS is 'Refused'. However, upon reviewing notes, it was determined that the application was actually abandoned/withdrawn. A second PRD-OVS was opened months later and given a final decision of 'Approved' which further confuses the situation.	
Urgent Request/Demande urgente : <input type="checkbox"/>	Urgent Response Needed By/Réponse urgente nécessaire d'ici le : Select date/Choisir la date
Reason for Urgent Request/Raison pour laquelle la demande est urgente : Provide details (ie. Presentation; Litigation etc)/Fournir des détails (c.-à-d. présentation, litige, etc.)	
<u>Question</u>	
<p>What are the correct procedures for overseas offices to follow when making final decisions on a PRD-OVS application when the client has not complied or 'Abandoned' the application?</p> <p>See example</p>	
Supervisor / Superviseur : Manager/MaryAnn Snow	

B- To be completed by OMC advisors/à remplir par les conseillers de la DGGOC.

Tracking #/N° de suivi : IM-2014-XXXX	
Division : Choose division/Choisir la division	Advisor / Conseiller(ère) :
Answer approved by / Réponse approuvée par :	
Consulted/Personnes consultées :	
<u>Answer/Réponse</u>	
<p>Good afternoon,</p> <p>In response to your request, when assessing a permanent resident travel document (PRTD) application, the officer should refer to relevant sections of IRPA (s. <u>15(1)</u>, <u>16(1)</u> and <u>(1.1)</u>, <u>31(3)</u> and <u>41(b)</u>), as well as the Department's <u>OP 10 Manual</u>, which can provide helpful guidance with regards to processing.</p>	

There is **no effective legal provision allowing an officer to “refuse a PRTD application on non-compliance”**:

IRPA s. 41(b) is an admissibility provision, which provides that a permanent resident (PR) is inadmissible for failing to comply with the *Act* through failing to comply with subsection 27(2) or section 28. The only basis upon which s. 41 applies to a PR is if the PR fails to comply with subsection 27(2) or section 28. Neither of those provisions refer to providing further documents or appearing for an interview, for example. In terms of non-compliance with the s. 28 residency obligation, an officer cannot initiate a s. 44 report if the person is not in Canada (which is precisely the situation of a PRTD applicant).

Options:

- Therefore, an officer may generally only **approve** or **refuse** a PRTD application in order to finalize it. The decision whether to approve or refuse should be made on the basis of the application and supporting evidence provided by the applicant.
- In situations where the officer requested further documents to be able to assess whether the residency obligation was met, and where the applicant failed to provide further documents, the officer should proceed to make his/her decision on the basis of the information that was provided to him/her. Any efforts made by the visa officer to contact the applicant and the applicant’s response to these efforts should be mentioned in the notes/reasons for the decision.
- It is also possible for an applicant to **withdraw** a PRTD application, but the applicant must initiate such a withdrawal request himself/herself.
- An application can also be **cancelled**, but only for administrative reasons when the application was created in error.
- Abandoning an application is not a recommended option for finally disposing of a PRTD application, because it does not result in a recorded PR status determination and there is **no specific legal provision allowing an officer to “abandon a PRTD application”**. Furthermore, if the person were to apply again for a PRTD or were to apply for a PR card, it would be difficult to establish whether and when a prior PR status determination occurred and whether there was a final determination resulting in loss of PR status, particularly if the decision details only appear in the notes.

Note: If a PRTD application was refused on non-compliance, the decision could be subject to legal challenge due to error in the application of the law (in particular given the implications of *IRPA* s. 46(1)(b) – loss of PR status), and as such, it would be recommended that **the initial application be re-opened/re-assessed** (following principles of procedural fairness, etc.), or that a **subsequent application received does not take into consideration the initial application decision**.

Sincerely,

Status/État :	Closed/Fermé <input type="checkbox"/>	Instructions to be updated/Instructions à mettre à jour <input type="checkbox"/>
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ⁱ Please do not paste reference emails into the body of this form. You may attach emails or additional documentation to your query email. Veuillez ne pas coller de courriels de référence dans le corps du présent formulaire. Vous pouvez joindre des courriels ou documents à votre courriel de demande de renseignements.