

Information

Cancellation and Re-Issuance of Work Permits for Individuals with Removal Orders

Q1. Under what circumstances do we issue work permits to failed asylum claimants or individuals with removal orders.

- Subsection 206(1) of the *Immigration and Refugee Protection Regulations* allows for issuance of work permits to foreign nationals who cannot support themselves without working and:
 - (a) whose claims have been referred to the Immigration and Refugee Board (IRB); or
 - (b) who are subject to an **unenforceable removal order**.
- Refugee claimants are issued a conditional removal that comes into force following a determination of ineligibility or rejection of the claim (or a determination of abandonment or withdrawal) at the IRB. If the removal order is not stayed (e.g. further to a judicial proceeding), it is enforceable. When a work permit-holder's removal order becomes enforceable, their permit is cancelled/invalidated by operation of law (for more information, see Q3, below).

Q2. If we do issue work permits under those circumstances, why? Was it a departmental decision or a Ministerial decision?

- There is no legislative or regulatory authority to issue work permits to persons with an **enforceable removal order**. However, work permits are typically issued to such persons when the CBSA is unable to remove the person for reasons beyond the person's control (e.g. inability to obtain a travel document, individual is a national of a country on the Temporary Stay of Removal or Administrative Deferral of Removal list).
- In addition, since IRPA/IRPR became law in 2002, it has been a departmental practice that the department would take a pragmatic approach when assessing work permit applications from persons under an enforceable removal order even when there are no known practical barriers to their removal. This is because many failed claimants ultimately remain in Canada for an extended period (both while availing themselves of recourse mechanisms, and afterward), and it is preferable that they be able to work, versus relying on social assistance¹ or the underground labour market.
- This practice was noted in the [2002 Regulatory Impact Analysis Statement](#) held that "*Unenforceable removal order will be interpreted generously in order to allow access to the labour market until applicants are 'removal ready'.*"

Q3. What are CBSA's concerns and how have we/ have we not addressed them.

- Regulatory amendments came into force in March 2024 at the CBSA's behest to auto-cancel work permits and study permits by operation of law once a removal order is enforceable [R209, in conjunction with R243.2]²

¹ Being a failed claimant is generally not a bar to receiving social assistance

² R209 A work permit becomes invalid when it expires or when it is cancelled under section 243.2

- The cancellation does not happen automatically in GCMS. However, as of August 14, 2024, when preparing to enforce a removal order, CBSA updates GCMS to indicate the work permit invalidity. The client is also advised of the invalidity, and asked to turn in their work permit at the time of their removal interview (should the client appear). Employers are, however, unaware of instances of work permit invalidation (and there is no set process for employers to check the validity of work permits). Failed claimants whose work permits become invalid may apply for a new work permit, however Temporary Workers Branch advises that a new one would generally not be issued.
- CBSA has argued that the issuance of work permits to people with enforceable removal orders encourages people to remain in Canada instead of cooperating voluntarily with removal proceedings. To our knowledge, this has not been raised at the operational level. More importantly, no evidence has been provided that this is, in fact, the case. In the normal course of business, public policy decisions flow from an analysis of facts.
- Historically, CBSA has faced a number of challenges with removals ranging from capacity issues, difficulties obtaining travel documents, and recalcitrant countries. IRCC has taken a facilitative approach on the issuance of work permits under R206 for 22 years, in line with the RIAS cited above, so as not leave individuals destitute.
- When this issue was raised for the first time earlier this year, discussions were undertaken including with MINO who indicated that removing the facilitation for work permits would be challenging given ongoing PT concerns with regard to the high numbers of asylum claimants and prefer to allow the approach to continue.
- It is understood that dynamics have now shifted. Should the direction be to change this approach, the policy and program owners for work permits (EFSI) can work with SD and ARR to implement the change. The CBSA would also need to provide clearer direction and instructions on which circumstances a client can be considered by IRCC to have removal impediments which could merit the issuance of a work permit.
- Implementing this shift quickly and at scale would likely raise concerns by PTs and stakeholders. There are *"50,000 enforceable cases"* cited by the OAG as having continued to accumulate in the agency's inventory, per their most recent audit of the CBSA removals function, not least as in *"two thirds of these cases, the agency did not know the whereabouts of the individuals [and] most of the accumulated cases had been enforceable for several years"*.