

Border Issues for refugees

Kristin Marshall, Staff Lawyer

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**St. Clair College Centre for the Arts
Windsor**



Canada-US

Border Rights Clinic



Clinique juridique

Canada-États-Unis
pour réfugiés

Agenda

1 Introduction

2 Clinic services + referrals

3 Key border issues: General Eligibility, STCA Exceptions

4 Tips and scenarios

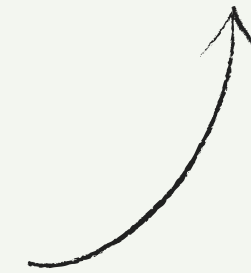
5 Q + A

Who We Are

Virtual pro bono legal clinic for people seeking safety at the Canada-US border



Our host



Our funder

Who We Are | Team

**Clinic
Coordinator**

Jenn McIntyre

Staff Lawyer

Kristin Marshall

**Legal Support
Workers**

Law Students
Volunteers



What We Do | Our services

For migrants

Legal information

Summary legal advice

For service providers

Workshops

Client referrals



Referrals | What We Do

Eligibility for
Canada claims at
the border

Canada + US
systems
interaction

Direct backs to
USA from
Canada

Referrals | What we don't do

Representation
– will start limited
in Spring 2025

Settlement
Services

Making referrals | How-to

1

Clients can self-refer by email, phone, text or website contact form



www.canadaborderclinic.org
(289) 273-6466 or
+1 855-621-2060 (toll-free)
info@canadaborderclinic.org

2

Service providers or counsel can refer clients by email and using our referral form



<https://forms.office.com/r/FNOTYVS6v6>

Acronyms

STCA

Safe Third Country Agreement

IRCC

Immigration, Refugee and Citizenship Canada

CBSA

Canada Border Services Agency

POE

Port of Entry

PRRA

Pre Removal Risk Assessment

IRB

Immigration and Refugee Board

Terminology difference



Asylum seeker



Refugee Claimant

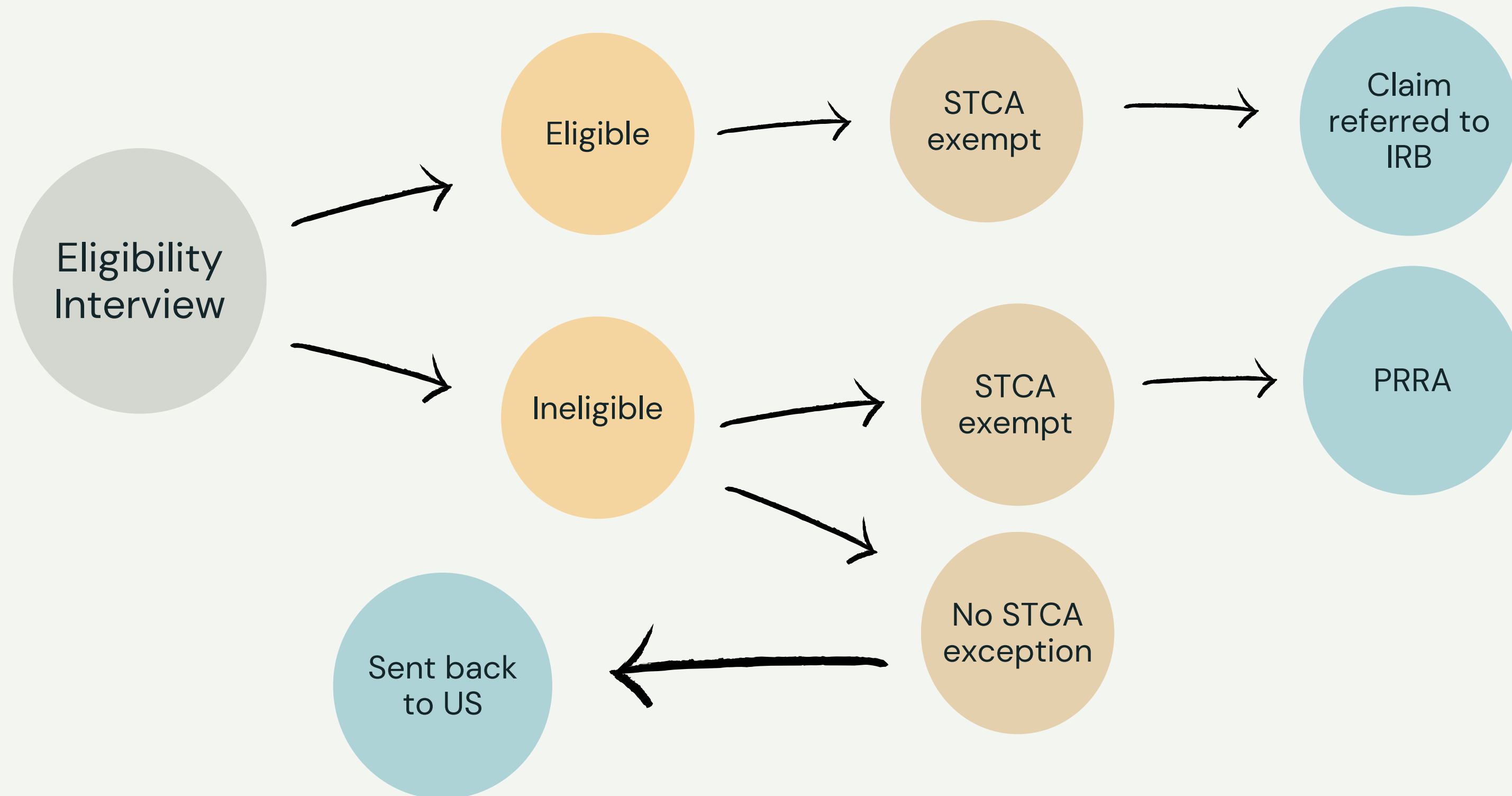


Asylee

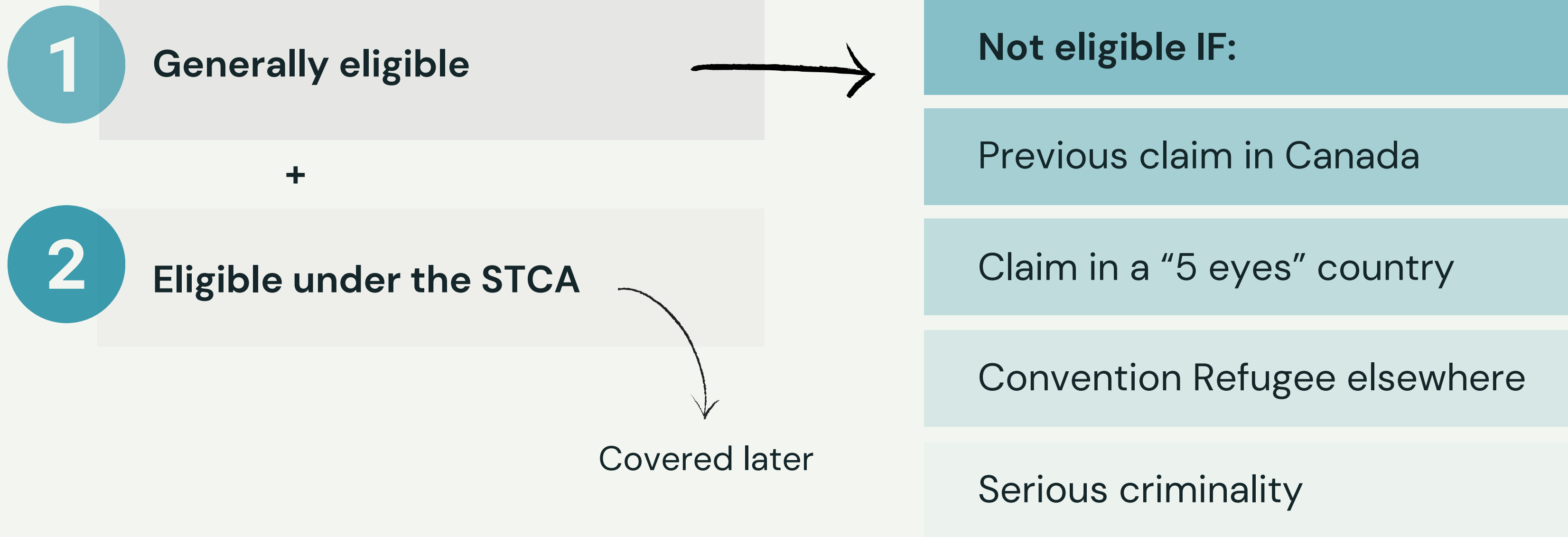


Protected Person or
Convention Refugee

Eligibility for border crossers | Steps



Eligibility for border crossers | Criteria



Ineligible if | Previous claim in Canada

You only have **one chance** to have a refugee claim found eligible

Your claim will be found ineligible if you **already** made a claim in Canada that was:

Found ineligible

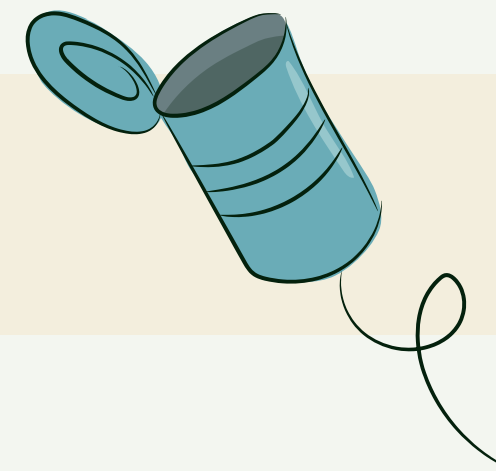
Refused by the IRB

Abandoned

Withdrawn*

*After referral to IRB

Only “one kick at the can” to make a refugee claim.



Ineligible if | Previous claim in 5 Eyes country

A refugee claim will be ineligible if:

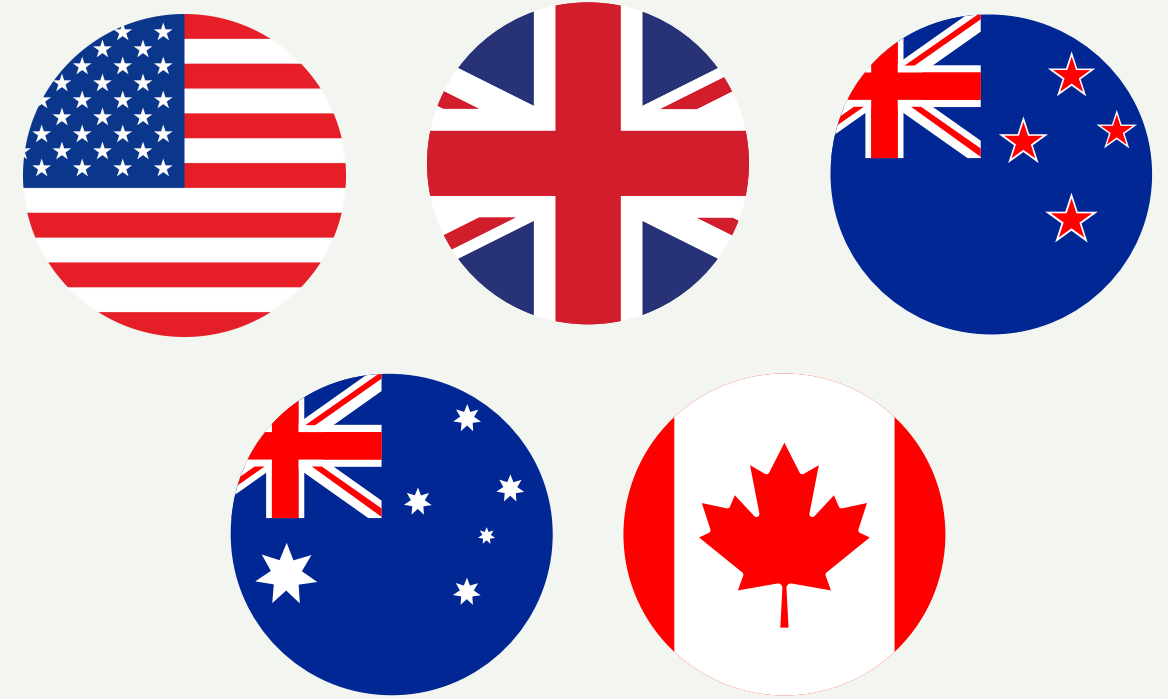
1

The person **started** a claim in a country that is part of the "Five Eyes" agreement



2

Canada must have **evidence** of that claim through information-sharing



CAN, US, UK, NZ, AUS

Ineligible if | Convention Refugee (CR) status



CR status in another country



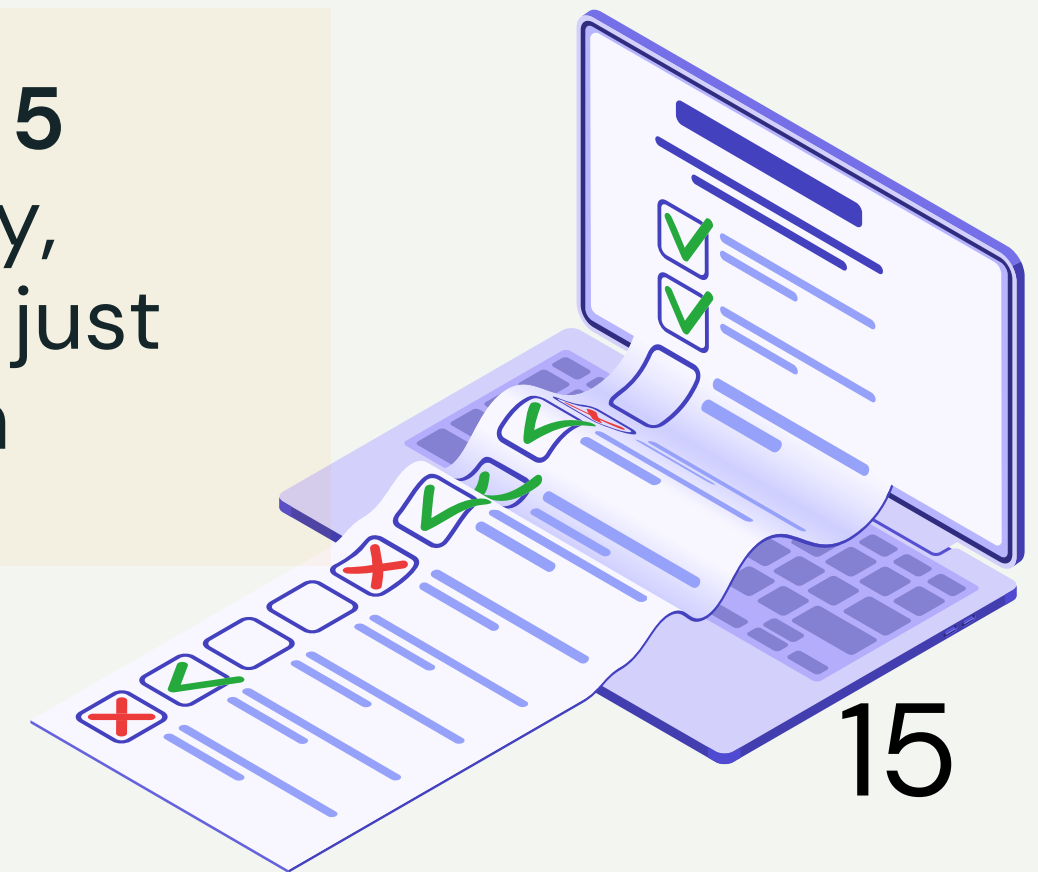
Someone can only be granted CR status **once**



Requires a **positive decision** in another country



Different from 5 Eyes ineligibility, which includes just *starting* a claim



Ineligible if | Serious criminality

Also includes serious human rights violations

May need a legal opinion from a “crimmigration” lawyer



Recall | Ineligibility and previous claims

Not eligible IF:

Previous claim in Canada

Claim in a "5 eyes" country

Convention Refugee elsewhere

Serious criminality

A person is ineligible if they **made a previous claim** in Canada that was:



Found ineligible, refused, abandoned or withdrawn (after referral to the IRB)

Recall | Ineligibility and previous claims

Not eligible IF:

Previous claim in Canada

Claim in a "5 eyes" country

Convention Refugee elsewhere

Serious criminality

A person is ineligible if they **started** an claim in the US, UK, AUS, NZ



It doesn't matter if there was a hearing, or if a decision was made

Recall | Ineligibility and previous claims

Not eligible IF:

Previous claim in Canada

Claim in a "5 eyes" country

Convention Refugee elsewhere

Serious criminality

A person is ineligible if they already **have Convention Refugee status** in another country



This means that a person has had a **positive decision**.

Scenario

Zahra made a refugee claim in Norway. She was granted Convention refugee status. She flew to the US as a visitor and crossed the border irregularly into Quebec.

How does Zahra's previous immigration history affect her eligibility to make a refugee claim in Canada?

She would be ineligible to have her refugee claim referred to the IRB, as she was recognized as a convention refugee in Norway.



Scenario



Zahra made a refugee claim in Norway. She left the country **before** she had her hearing. She flew to the US as a visitor and crossed the border irregularly into Quebec.

How does Zahra's previous immigration history affect her eligibility to make a refugee claim in Canada?

Her claim in Norway would not affect her eligibility, as she hasn't yet been found a Convention refugee there. Her US history also has no impact, as she hasn't made a US asylum claim.

Scenario



Zahra never travelled to Norway. However, she did travel to the US and made a claim for asylum there. She left **before** her hearing took place and crossed the border irregularly into Quebec.

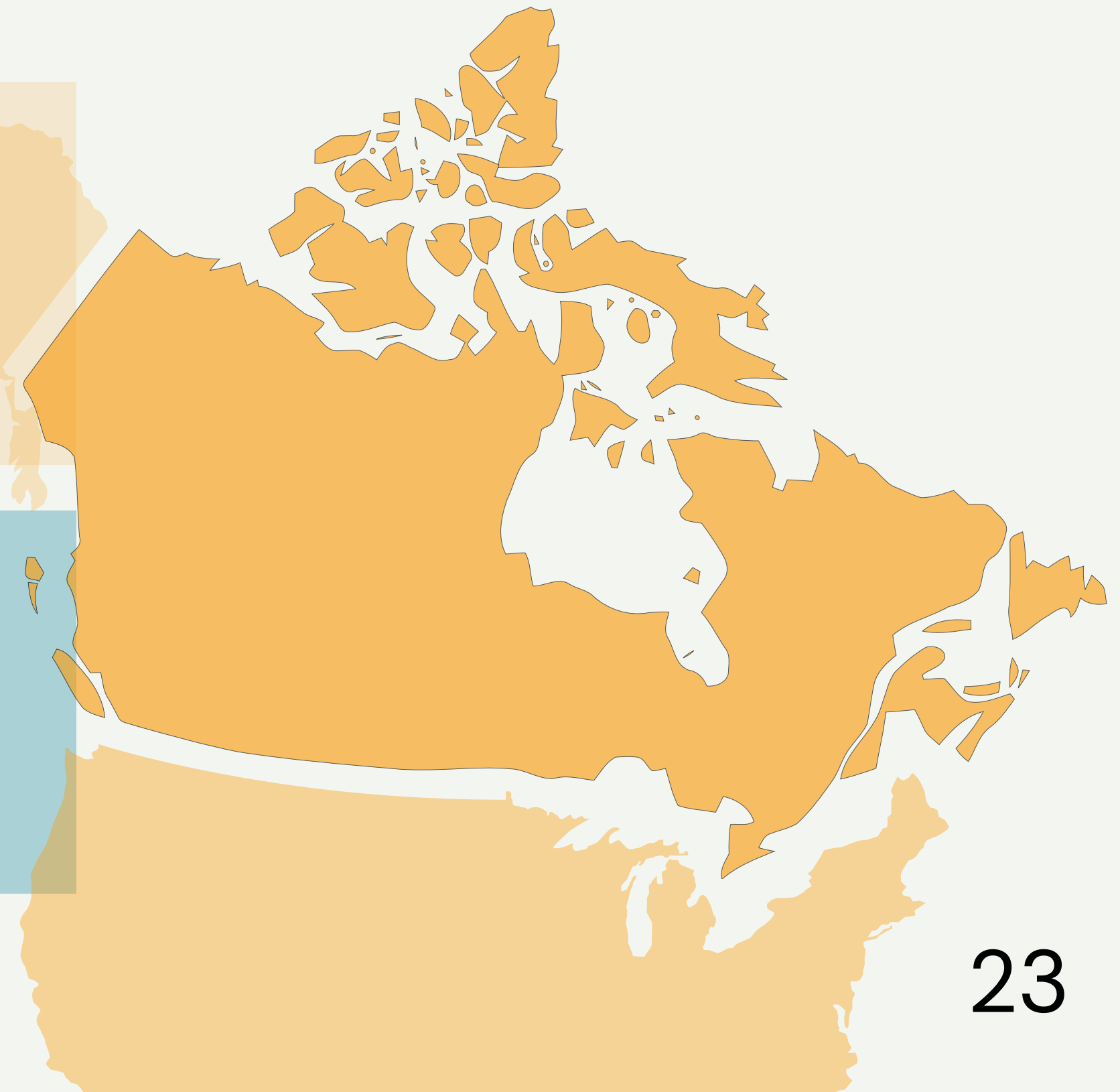
How does Zahra's previous immigration history affect her eligibility to make a refugee claim in Canada?

She would be found ineligible to make a refugee claim in Canada because she started an asylum claim in the US, one of the Five Eyes countries.

What is the Safe Third Country Agreement?

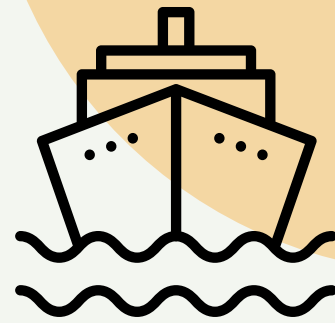
A treaty between Canada and the US that determines which country will assess a claim for protection made at the border.

Takeaway: a person must “usually” make their claim for protection where they first arrive.



STCA | When doesn't it apply?

At an airport
or seaport



14 days after an
irregular
border crossing



STCA | Exceptions



Family member
in Canada



Unaccompanied
Minor



Canadian Document
Holder

Public Interest



STCA | Family member exceptions

Relationship

- Spouse (includes same sex)
- Common-law partner
- Parent or legal guardian
- Child
- Sibling
- Grandparent
- Grandchild
- Uncle or aunt
- Niece or nephew

Status in Canada

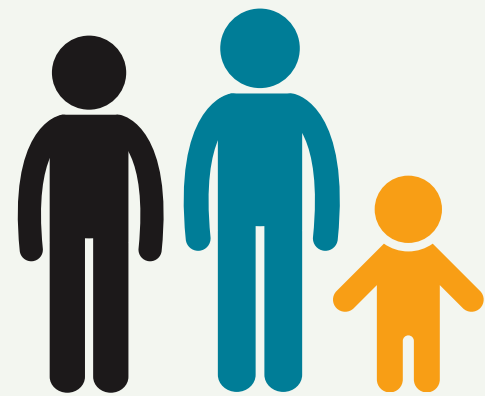
- Canadian citizen
- Permanent Resident
- Refugee claimant, **18+** (**not** refused, abandoned or withdrawn)
- Protected Person
- Valid work or study permit holder (**not** a refused claimant)



See the Government of Canada webpage for more details about each exception

STCA | Families approaching the border

Family at the border: mother, father and child

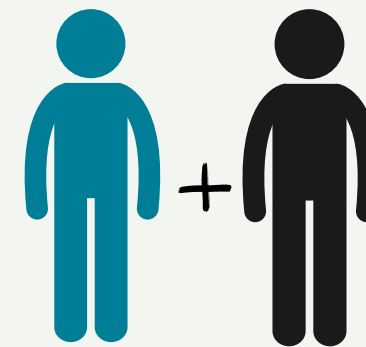


Anchor relative: Mother's aunt (Canadian citizen)



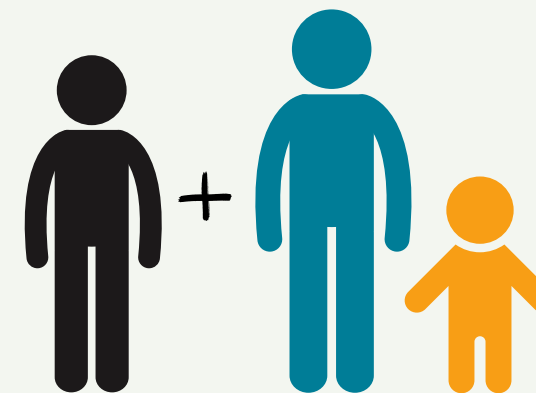
Order of eligibility processing:

1



Mother is found eligible under STCA with **aunt as anchor relative**

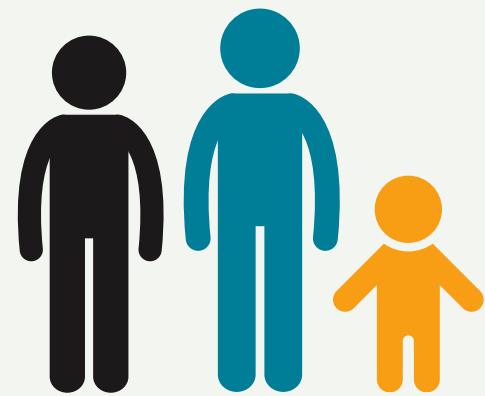
2



Mother, now a refugee claimant, **becomes the anchor relative** for her partner and child

STCA | Families who made US asylum claims

Family at the border: mother, father and child

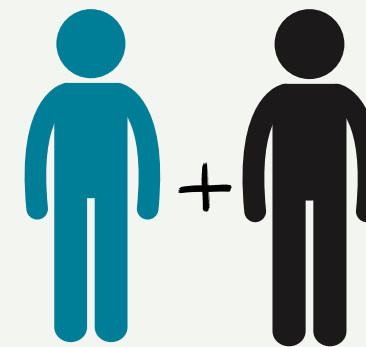


Anchor relative:
Mother's aunt (Canadian citizen)



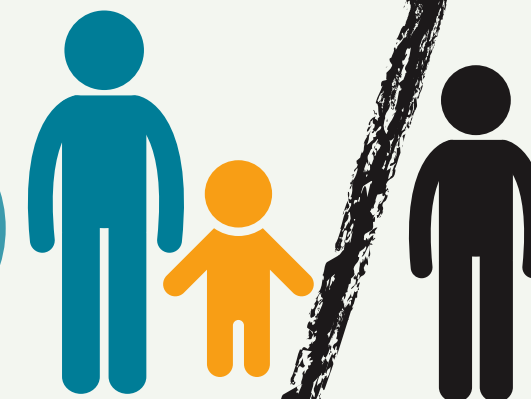
Order of eligibility processing:

1



Mother eligible under STCA **aunt is anchor relative**, but her US claim means she is ineligible to have claim here, she can **only** enter Canada and make a **PRRA**.

2



Mom's partner and child **cannot** enter Canada, they are not eligible. A PRRA applicant **can't** be anchor relative.

Scenario



Maria has been living in the US without status for 6 months. She wants to make a refugee claim at the Canadian border because she has an uncle in Thunder Bay whom she can live with.

What information do you need from Maria to determine if she is eligible to make a refugee claim at the border?

What is the uncle's status in Canada? Can she prove her relationship with him? Has she started a US asylum claim?

Common Challenges at Border

Incomplete
documentation

Miscommunication

Timing and
Logistics



Ineligibility | Potential consequences



Exclusion Order

Detention in the United States



Family separation



Removal to country of persecution



Scenario



Abed fled Afghanistan to Brazil and travelled to the US on foot. He entered the US irregularly. He does not feel safe in the US and wants to come to Canada where he has a half-sister in North Bay who is a permanent resident.

Neither Abed nor his sister have their birth certificates and the Afghan government is not producing new ones. How can they prove their relationship to CBSA?

Affidavits or letters of support from other family, interview questions, half-sister's IRCC forms, DNA test from IRCC accredited testing company

Exclusion Order | What is it?

A type of **removal order**

It allows CBSA to remove a person at the border **directly back to the US**

Irregular crossers **previously turned back** at the border will likely have one



Preparation Tips | Documentation

Translation

Certified if possible

Consistency + Accuracy

Names, dates, relationships details

Alternative Evidence

Affidavits, notarized statements, other proof

Exclusion Order | Implications

The person “usually” can’t return to Canada for **one year**. There are some exceptions:

New situation = now eligible under STCA

Parent leaves = unaccompanied child

Marriage to anchor

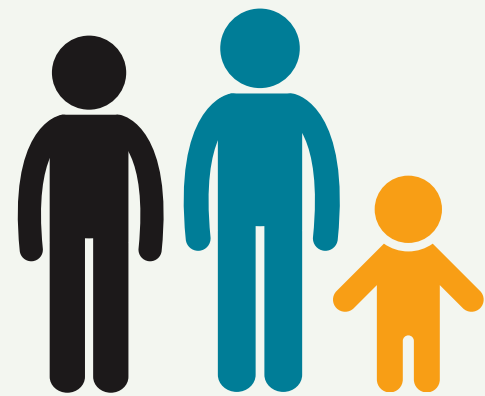
Anchor’s PRRA accepted

Irregular entry + wait **14 days** = STCA does not apply



STCA | Families who made US asylum claims

Family at the border: mother, father and child

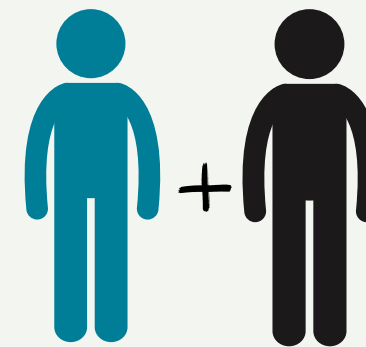


Anchor relative:
Mother's aunt (Canadian citizen)



Order of eligibility processing:

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PRRA | Canada is not removing to...

Administrative
Deferral of
Removals

OR

Temporary
Suspension of
Removals



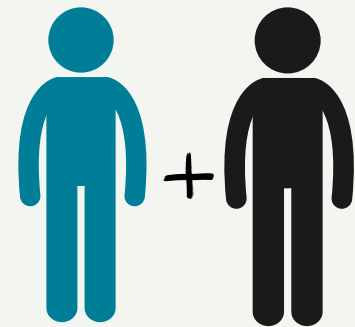
ADR / TSR
countries



PRRA | Countries Canada does not remove to

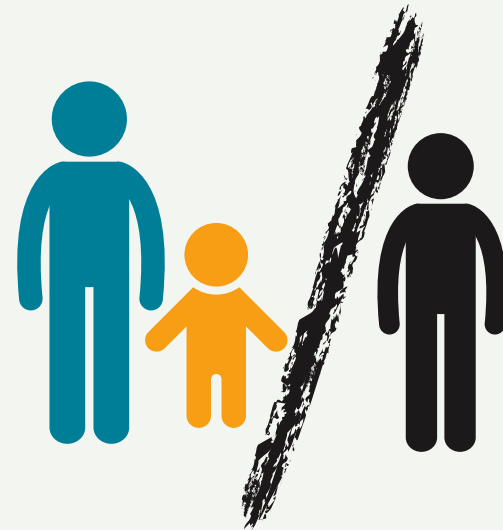
Order of eligibility processing:

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Mother eligible under STCA
aunt is anchor relative, but her US claim means she is ineligible to have claim here, she can **only** enter Canada and make a **PRRA**.

2



Mom's partner and child **cannot** enter Canada, they are not eligible. A PRRA applicant **can't** be anchor relative.

ADR or TSR = will not be served with a PRRA, because not **pre-removal**

Protection from removal, but perpetual **legal limbo**

Result: long term **family separation**

Contact Us | Questions?

www.canadaborderclinic.org

(289) 273-6466 or +1 855-621-2060 (toll-free)

info@canadaborderclinic.org



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