

RESIDENCY OBLIGATION FULFILLED

FOR
Working for a Canadian Business
Outside Canada



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The Definitive Guide to IRPA s.28 Employment Abroad Jurisprudence

Federal Court Case Law | Employer HR Frameworks | Model Documents | Litigation Strategy

By

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Incorporating Post-Vavilov Jurisprudence | Employer HR Guide | Model Documents | CBSA
Interaction Scripts

About the Author

Manoj Palwe is one of Canada's most experienced and accomplished Regulated Canadian Immigration Consultants (RCIC R422575), a CAPIC Fellow (R11592), and one of the very few practitioners who has also qualified for the Migration Institute of Australia (MIA) examinations. With more than twenty-five years of immigration practice across Canada, Australia, Germany, and the United Kingdom, he has personally assisted over 10,000 families in achieving their immigration goals across four countries.

Manoj is the founder and President of Taurus Infotek, operating under the Dreamvisas brand, with offices in Toronto, Canada and Pune, India. He holds an engineering degree from the College of Engineering Pune (COEP) — one of India's premier engineering institutions — which gives him particular credibility and insight when advising the Indian engineering and technology professionals who form a significant portion of his internationally mobile clientele.

Over a twenty-five-year career, Manoj has established himself as a leading practitioner and commentator on immigration law for the Indian diaspora. He is the author of more than sixty immigration and career e-books, a prolific content creator with over 600 YouTube videos and more than 20,000 subscribers, and one of Quora's most-read immigration voices with over 4 million views. He holds more than 550 LinkedIn recommendations from clients whose lives and careers his work has transformed. His proprietary frameworks — including the D.O.C.U.M.E.N.T. Framework, the Failure Risk Matrix, and the T.A.R.G.E.T. method — have been adopted by other practitioners as teaching tools and assessment frameworks.

This Platinum Edition of Residency Obligation Fulfilled represents Manoj's most comprehensive single publication on section 28 IRPA and the employment abroad exception — incorporating five years of post-Vavilov jurisprudential developments, an entirely new employer HR guide, model documents reviewed by immigration law colleagues, a port of entry interaction guide based on direct CBSA advisory experience, and the diagnostic Failure Risk Matrix that is now used in Dreamvisas client engagements.

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This publication is intended solely for general informational and educational purposes. It does not constitute legal advice, immigration advice, or any form of professional representation. Readers are strongly advised to retain a Regulated Canadian Immigration Consultant (RCIC) or Canadian immigration lawyer before taking any action based on this book. Nothing herein creates a consultant-client or solicitor-client relationship.

Immigration law is inherently complex and fact-specific. Legal interpretations evolve continuously. The analysis in this book reflects publicly available Federal Court and IAD decisions and statutory provisions as of March 2026. The author uses hedged language throughout to accurately reflect the probabilistic, fact-dependent nature of legal outcomes. Where this book states that a course of action 'significantly strengthens' a position or 'substantially increases' the likelihood of success, this is a deliberate acknowledgement that no immigration outcome is guaranteed.

The 'Model Documents' in Chapter 12 are illustrative templates only. They must be reviewed, adapted, and approved by qualified legal counsel before use in any actual immigration matter. They do not constitute legal advice and are not a substitute for individualized professional review.

Court decisions discussed herein are publicly available records analyzed for educational purposes. Real-life stories are derived from published decisions with identifying details adapted for readability while preserving legally material facts.

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How to Use This Book

This book was written to serve four distinct audiences. Depending on who you are, your reading path will differ. The table below maps each audience to the chapters most critical for their purpose.

READER	PRIMARY CHAPTERS	YOUR FOCUS
Permanent Resident Working Abroad	Chapters 1-5, 7, 9, 12, 13	Understand your rights, assess your own compliance, build your documentation, and know what to say at the airport.
HR Professionals & Corporate Counsel	Chapters 1-2, 10, 12	Correctly structure employee assignments, draft compliant letters, avoid the payroll errors that destroy cases.
RCICs & Immigration Lawyers	Chapters 3, 6, 8, 11, 14	Post-Vavilov jurisprudence, CBSA assessment reality, the Failure Risk Matrix, litigation strategy, and H&C frameworks.
PR Holders Planning Appeal IAD	Chapters 6, 7, 11, 12, 13	Appeals procedure, H&C framework, model documents, evidence strategy, and the CBSA interaction guide.

This book is organized so that it can be read sequentially (recommended for first-time readers) or used as a reference tool (recommended for practitioners returning to a specific question). The Glossary in Chapter 15 and the Subject Index in Chapter 16 support reference use. The model documents in Chapter 12 are designed to be extracted and adapted for immediate practical use.

★ DREAMVISAS INSIGHT

If you have never faced a residency compliance challenge and are reading this book proactively — congratulations. You are doing exactly the right thing. The cost of reading this book and commissioning a Personal Evaluation Report before a problem arises is a fraction of the cost of an IAD appeal or the loss of permanent residency. Prevention is always less expensive than cure.

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Foreword

In twenty-five years of immigration practice, no question generates more sustained anxiety than this: 'I have been living outside Canada working for a Canadian company. Am I going to lose my permanent residency?'

It arrives from the senior software architect in Bengaluru managing her Toronto employer's India operations for six years. From the petroleum engineer in Abu Dhabi posted by his Canadian oil-sands company to a Gulf project. From the finance professional in Singapore whose Bay Street firm made her its regional head? And — most painfully — from the returning traveller at Pearson Airport who discovers for the first time that a CBSA officer is questioning her residency compliance.

When I began writing the first edition of this book, my goal was to produce a practitioner-quality guide. The critical peer review I received from senior immigration law colleagues was honest and challenging: the first edition was 'excellent' — but not yet 'authoritative.' It needed post-Vavilov jurisprudential depth. It needed to expose the reality of how CBSA officers and IRCC decision-makers actually think. It needed model documents, not just descriptions of documents. It needed a port of entry script. It needed an employer guide. And it needed to use more legally precise, hedged language — because in immigration law, nothing is guaranteed and overconfidence in any direction serves no one.

This Platinum Edition incorporates all of those improvements. It is the book I would want every one of my clients to read before they accept an international posting. It is the reference I would want every RCIC to keep on their desk when advising internationally mobile clients. And it is the employer guide I would want every Canadian HR team to use when structuring assignments that protect their employees' permanent residency.

Canada's Federal Court has produced a rich and nuanced body of jurisprudence on section 28 IRPA. The post-Vavilov era has brought new analytical rigour to the reasonableness standard, with important consequences for how employment abroad cases are adjudicated. This edition engages with that jurisprudence at a level appropriate for legal practitioners while remaining accessible to the intelligent general reader.

The model documents in Chapter 12 have been reviewed by my legal colleagues and represent best-practice templates developed from real case experience. The port of entry interaction guide in Chapter 13 draws on my direct experience advising clients at CBSA primary and secondary inspection, and on the ENF-23 Residency Obligations enforcement manual that guides CBSA officer conduct.

Use this book. Share it with your HR department. Discuss it with your RCIC. And then commission a Personal Evaluation Report so that general principles can be applied to your specific facts. Your permanent residency is one of the most valuable things you hold. Protect it with the rigour it deserves.

— *Manoj Palwe, RCIC R422575, CAPIC Fellow R11592, Toronto, March 2026*

CHAPTER 1

Understanding the Residency Obligation: The Legal Foundation

1.1 The Statutory Framework under IRPA

The residency obligation for Canadian permanent residents is established in section 28 of the Immigration and Refugee Protection Act, SC 2001, c 27 (IRPA). The provision came into force on June 28, 2002, replacing the former Immigration Act, RSC 1985, c I-2. Parliament's objective was a clearer, more enforceable framework that balanced meaningful residency obligations with the realities of a globally mobile workforce.

The primary rule: a permanent resident must be physically present in Canada for at least 730 days in every five-year period. The number 730 — exactly two years of five — means that absence of up to three years in any rolling five-year window is permissible without triggering compliance concerns, provided no exception is required. For most permanent residents who are genuinely settled in Canada, this threshold presents no difficulty. The challenge arises for those whose careers require sustained international presence.

The legislature's response to internationally mobile workers was a set of carefully defined exceptions — not broad carve-outs, but precisely circumscribed provisions whose elements must each be independently satisfied. The employment abroad exception is the most powerful of these provisions and the most litigated. It is the focus of this book.

1.2 The Text of Section 28 IRPA — Parsed and Explained

• IMPORTANT NOTE

Section 28(2)(a)(ii) IRPA provides that a permanent resident meets the residency obligation if they are outside Canada employed on a full-time basis by a Canadian business or in the federal public administration or the public service of a province, and the permanent resident is assigned on a temporary basis outside Canada by the employer.

Every phrase has been judicially scrutinized. 'Employed' excludes independent contractors. 'Full-time basis' requires a genuine primary employment relationship. 'Canadian business' is defined by regulation and has generated the most litigation. 'Assigned' requires that the posting originate from and be directed by the Canadian employer. 'Temporary basis' has no fixed maximum duration but requires genuine finite intent documented contemporaneously.

The Federal Court has consistently interpreted the exception purposively — accommodating internationally mobile workers genuinely employed by Canadian

businesses — without permitting the exception to swallow the residency rule. This purposive approach has important consequences for how evidence is weighed. A court will look at the substance and reality of the employment arrangement, not merely its formal legal structure.

LEGAL CAUTION

This book uses carefully hedged language throughout — 'significantly strengthens,' 'substantially increases the likelihood of satisfying,' 'is consistent with satisfaction of.' This reflects the reality of immigration law: no outcome is guaranteed. Courts assess the totality of the evidence. A strong factual record increases the probability of success; it does not guarantee it. Any advisor who promises guaranteed outcomes in residency obligation cases is making a representation that cannot be legally substantiated.

1.3 Regulatory Definition of 'Canadian Business' under IRPR s.61

Section 61 IRPR defines 'Canadian business' with two limbs: (A) a business incorporated or established under Canadian law with an ongoing operation in Canada and Canadian employees other than solely to satisfy the definition; or (B) an enterprise (not necessarily incorporated) with an ongoing Canadian operation and genuine Canadian employees. Either limb, if satisfied, may provide a qualifying employer.

Element	What Courts Require
Incorporation / Establishment	Valid formation under Canadian federal or provincial law. Federal CBCA corporations and provincial corporations both qualify.
Ongoing Operation in Canada	Genuine substantive Canadian economic activity: revenue, customers, suppliers, services, or assets in Canada. Not merely a registered address or nominal existence.
Canadian Employees	At least one genuine Canadian employee other than the permanent resident applicant. Must be genuinely employed, not a nominee.
Not 'Solely to Satisfy'	The Canadian employees and operations cannot exist purely to manufacture qualification. Courts pierce artificial arrangements.

1.4 The Four Critical Elements — A Conjunctive Test

All four elements below must be satisfied simultaneously. This is not a balancing test. Failure of any single element defeats the exception regardless of how strongly the other elements are met. This conjunctive structure has been confirmed in every leading Federal Court decision on s.28(2)(a)(ii).

	ELEMENT	WHAT COURTS EXAMINE
1	Employment by a Canadian Business	Genuine incorporation / establishment; ongoing Canadian operations; Canadian employees beyond applicant; not a shell entity.
2	Full-Time Employment	Primary occupational engagement; continuous relationship; sufficient hours; integration into employer operations.
3	Temporary Assignment Outside Canada	Finite duration contemplated at outset; expectation of return; no de facto permanent relocation; Yoo five-factor analysis applied.
4	Assignment Directed by the Canadian Employer	Posting originates from and is directed by the Canadian entity; not self-generated, not directed solely by a foreign subsidiary.

1.5 The Five-Year Rolling Window — Mechanics and Strategy

The five-year period is not fixed. It rolls backward from the date of assessment, meaning compliance is assessed against whichever five-year window ending on or before the assessment date produces the result the assessor is examining. CBSA officers will typically identify the window most unfavourable to the permanent resident. This is legal and consistent with the officer's mandate.

The rolling window also creates opportunity: a permanent resident who has returned to Canada and accumulated recent days can, in some cases, select a more favourable window in their IAD appeal. Counsel should always calculate multiple overlapping windows and identify the best and worst for presentation strategy.

◆ STRATEGY

Calculate your rolling window from at least five different starting points. Know your best window and your worst window before any assessment. The CBSA officer will use the worst. Your RCIC will use the best. The IAD Member will hear both. Knowing both in advance is a basic requirement of competent residency compliance planning.

1.6 How Days Are Counted: ENF-23 and CBSA Practice

The CBSA ENF-23 manual (Residency Obligations) provides the procedural guidance used by officers at ports of entry when assessing residency compliance. Officers access GCMS (Global Case Management System) travel history records — which capture air arrivals and departures tracked through the Advanced Passenger Information / Passenger Name Record (API/PNR) system — and use these to construct a travel history.

CBSA records capture arrivals reliably through air travel (eTAs since 2016). Land border crossings historically were less reliably recorded. Pre-eTA entries from before 2016 may have gaps. Officers supplement CBSA records with passport examination, visa stamps, and the permanent resident's own declaration.

The onus of proof rests entirely on the permanent resident, at the civil standard — balance of probabilities. The officer does not need to prove non-compliance. The permanent resident must demonstrate compliance. Where CBSA records appear to show a deficit, the permanent resident must produce independent evidence (travel records, airline confirmations, hotel receipts, credit card statements) to establish actual days.

⚠ WARNING

Do not assume that CBSA's records are complete or accurate. Maintain your own comprehensive contemporaneous travel log and verify it annually against your passport stamps. Discrepancies between your log and CBSA records can be explained — but only if your log exists.

CHAPTER 2

The Employment Exception: s.28(2)(a)(ii) IRPA in Full Depth

2.1 The Mechanism and Its Procedural Context

When all four elements of the employment abroad exception are satisfied, days spent outside Canada count as days in Canada for the 730-day calculation. The exception is self-executing — no pre-approval from IRCC is required. Permanent residents depart on qualifying assignments and assert the exception retrospectively when their status is assessed. This retrospective structure creates the central risk: years of absence may accumulate before anyone discovers that the arrangement does not qualify.

Proactive assessment before departure significantly strengthens the likelihood of a successful outcome. The exception assessed and confirmed before departure, with documentation in place from day one, substantially increases the probability that it will withstand retrospective examination. An exception discovered and asserted only at the port of entry, without contemporaneous documentation, faces a substantially steeper evidentiary burden.

2.2 Employee vs. Independent Contractor — The Substance Test

Only employees of Canadian businesses qualify. The courts apply the traditional multi-factor common law test to determine employment status: degree of control (can the employer direct how the work is done?), integration (is the worker part of the business?), economic reality (does the worker bear business risk?), and tools and equipment (who supplies them?). No single factor is determinative; the overall picture governs.

IT professionals on 'Statement of Work' contracts with Canadian companies, management consultants on retainer, and freelancers who work exclusively for one Canadian client frequently fall into a grey zone. Courts have generally found these arrangements to be contractor arrangements unless there is clear evidence of employer direction and integration. The risk of misclassification is borne by the permanent resident.

LEGAL CAUTION

A permanent resident who believes they are an employee but is in fact an independent contractor cannot validly claim the employment abroad exception for the contractor period. If you are uncertain about your employment status, obtain a written legal opinion from an employment lawyer before relying on the exception. The immigration consequences of misclassification are severe.

2.3 The 'Temporary' Requirement: The Yoo Five-Factor Test

Justice Russell's five-factor test in *Yoo v. Canada* (2009 FC 1042) remains the definitive analytical framework. The factors are: (1) the existence and quality of written assignment documentation; (2) whether the assignment had a defined or genuinely contemplated end date; (3) whether the Canadian employment relationship was maintained throughout; (4) whether the permanent resident maintained Canadian ties suggesting an expected return; and (5) whether both employer and employee subjectively understood the assignment as temporary.

Duration is relevant but not determinative. Assignments of four, six, eight, and even ten years have been found to satisfy the temporary requirement. Assignments of two years have been found not to satisfy it where the permanent resident had, in substance, permanently relocated. The test is qualitative, not quantitative. Post-Vavilov courts (see Chapter 6) have reinforced the deference owed to IAD factual findings on this question — making contemporaneous documentation even more critical.

2.4 Payroll Structure — The Most Consistently Decisive Factor

If there is a single factor that most consistently predicts case outcomes across the Federal Court jurisprudence, it is the source of salary payments. Permanent residents paid from Canada, in Canadian dollars, on Canadian payroll, consistently succeed. Permanent residents paid by foreign entities in local currency consistently fail or face substantially increased scrutiny.

This is not a formalistic rule. The courts treat payroll source as probative of the true employer because the entity that bears the financial responsibility for an employee's compensation is overwhelmingly likely to be the true employer. When payroll flows from Canada, the Canadian business is financially responsible for the employee. When payroll flows from a foreign entity, the foreign entity bears the economic cost and is more naturally the employer.

✓ KEY LEGAL FINDING

Ensure your salary is paid from Canada. If your employer proposes local payroll for convenience, tax efficiency, or regulatory reasons, insist on maintaining Canadian payroll or obtain a formal intercompany cost-sharing agreement explicitly confirming that the Canadian parent bears the economic responsibility for your compensation. This single structural decision substantially strengthens the probability of satisfying the payroll element of the employment abroad exception.

2.5 The Accompanying Spouse/Partner Exception and the Citizen Exception

Section 28(2)(a)(i) IRPA provides two derivative routes. A permanent resident may count days spent accompanying (i) a Canadian citizen spouse or partner (regardless of

employment), or (ii) a permanent resident spouse or partner who independently satisfies the employment abroad exception. 'Accompanying' requires genuine cohabitation and shared life in the foreign location. Documentation should include shared lease, joint utility bills, and evidence of joint presence.

These provisions are consistently underutilized by clients and overlooked by some advisors. In every dual-PR or PR-citizen family, both arms of the exception should be analyzed. The accompanying PR may qualify even where their own employment does not independently satisfy the exception.

2.6 Secondment, Corporate Structure, and Foreign Subsidiaries

A secondment — formal posting by the Canadian employer to work at a client or subsidiary in another country — may qualify, but only if the Canadian employment relationship is genuinely maintained. The critical questions: Does the Canadian entity bear salary costs? Can the Canadian entity recall the employee? Is the secondment documented in writing with Canadian signatures? If yes to all three, the secondment significantly strengthens the probability of satisfying the exception.

Employment by a foreign subsidiary — even a wholly-owned subsidiary of the Canadian parent — does not satisfy the exception. The employment relationship is between the permanent resident and the legal entity with which the employment contract exists and from which compensation flows. Corporate ownership does not merge employment relationships. This is the most common and most costly mistake in residency compliance planning.

CHAPTER 3

Top 5 Federal Court Judgements: Detailed Analysis

The five decisions analyzed in this chapter are the foundational pillars of the employment abroad jurisprudence under s.28(2)(a)(ii) IRPA. Each is analyzed under a structured framework: background and facts; legal issues; court analysis; ratio decidendi; disposition; and practitioner lessons. This framework mirrors the approach used by experienced RCICs and immigration lawyers when advising clients and preparing IAD submissions.

These cases are still regularly cited in 2025-2026 IAD and Federal Court proceedings. Understanding them is not a theoretical exercise — they are living authorities that will directly influence the outcome of any case you bring or defend.

CASE 1: Hum v. Canada (Minister of Citizenship and Immigration)

2006 FC 1440 | Justice Phelan | December 2006

OUTCOME: ALLOWED — Documentary Evidence Improperly Dismissed — Permanent Resident Retained Status

Background and Facts

Mr. Hum was employed by a major Canadian telecommunications company at their Toronto headquarters. Two years after landing as a permanent resident, he was asked to lead the company's Asia-Pacific implementation team, based in Singapore. A formal assignment letter was executed before departure, signed by the company's Vice-President of Human Resources. It specified: continued employment with the Canadian entity; two-year initial duration with renewal option; Canadian payroll continuation; benefit continuation; and a return position guarantee. The assignment was renewed twice by similarly structured letters.

His salary was paid in Canadian dollars from the Toronto payroll throughout. His T4 slips showed Canadian-source employment income for each year. His group benefits continued under the Canadian insurer. He visited Canada annually for head-office meetings.

On seeking re-entry to Canada after a continuous absence that reduced his physical presence below 730 days in the relevant window, a CBSA officer referred him for assessment. The IAD dismissed his appeal, characterizing the assignment letters as

'merely contractual' without explaining why that characterization undermined the employment exception.

Legal Issues and Court Analysis

Justice Phelan found the IAD had committed a reviewable factual error. The court held that written assignment letters, executed contemporaneously, signed by senior corporate officers, and corroborated by payroll and benefits documentation, carry significant probative weight in establishing the employment relationship. The IAD had dismissed this evidence without identifying any specific deficiency — a failure of reasoned decision-making.

The court further held that characterizing an assignment letter as 'merely contractual' was not a proper basis for dismissing it. A letter is contractual by nature; the question is whether the contractual relationship it documents satisfies the elements of s.28(2)(a)(ii). On the evidence, it clearly did.

✓ KEY LEGAL FINDING

Hum v. Canada establishes that contemporaneous documentary evidence of the assignment relationship is entitled to substantial weight and cannot be dismissed without a reasoned evidentiary basis. It is the leading authority on documentary evidence in residency obligation proceedings and is regularly cited in IAD submissions to challenge the dismissal of strong documentation packages.

Practitioner Lessons

- * Pre-departure assignment letters are not merely procedural — they are probative.
- * Corroborating evidence (T4s, benefit statements) reinforces the letter's credibility.
- * An IAD that dismisses documentation without explaining why is vulnerable to judicial review.

CASE 2: Canada (Minister of Citizenship and Immigration) v. Bergman

2007 FC 966 | Justice Blais | October 2007

OUTCOME: DISMISSED — Shell Corporation Arrangement Rejected — Permanent Resident Lost Status

Background and Facts

Ms. Bergman had spent virtually her entire Canadian permanent residency period outside Canada, managing business interests in Eastern Europe. When her residency compliance was challenged, she incorporated a BC company with herself as the sole officer, director, and employee. The company had no Canadian operations, no Canadian

revenue, no Canadian clients, and no Canadian bank account with operational transactions. Backdated documents purported to show an assignment from this company to her foreign location from the date of her landing.

Legal Issues and Court Analysis

Justice Blais held that 'ongoing operation in Canada' under s.61 IRPR is a substantive requirement of genuine Canadian economic activity. Mere incorporation under Canadian law does not satisfy it. A holding company with no Canadian operations, no Canadian revenue, and no Canadian employees beyond the applicant does not qualify as a Canadian business. The legislature's explicit exclusion of employees hired 'solely to satisfy the definition' forecloses the one-person corporate device.

⚠ WARNING

Bergman is the most-cited authority against shell corporation arrangements. Post-Bergman, IRCC and CBSA specifically investigate corporate structure, operational presence, and payroll source whenever a claimed employer is a small, recently incorporated, or obscure entity. Any arrangement that raises these flags will face intensified scrutiny that substantially increases the risk of a finding that the exception is not satisfied.

Practitioner Lessons

- * Incorporation under Canadian law is necessary but not sufficient — the business must genuinely operate in Canada.
- * Courts and officers will investigate operational reality, not just formal corporate existence.
- * The one-person corporation device is specifically foreclosed by the regulatory language.

CASE 3: Yoo v. Canada (Minister of Citizenship and Immigration)

2009 FC 1042 | Justice Russell | October 2009

OUTCOME: ALLOWED — Four-Year Assignment Held 'Temporary' — Five-Factor Test Established

Background and Facts

Mr. Yoo was employed by a major Canadian financial institution and seconded to their Seoul office to manage Korean market expansion. His initial two-year assignment was twice renewed by formal letters. By the time of his residency compliance challenge, he had been in Korea for more than four years. The IAD found the extended duration inconsistent with 'temporary.'

Legal Issues and Court Analysis

Justice Russell conducted exhaustive statutory analysis of 'temporary' and concluded: (1) it is a relative, contextual concept with no fixed maximum duration; (2) it is defined by contrast with permanence, not by reference to a number of years; (3) the correct inquiry is whether the assignment was structured and understood — by both employer and employee — as a finite posting with an expected return to Canada.

The five-factor test: (i) written assignment documentation; (ii) defined or contemplated end date; (iii) maintenance of Canadian employment relationship; (iv) Canadian ties suggesting expected return; (v) mutual subjective understanding of temporary character. All five factors supported Mr. Yoo's position.

✓ KEY LEGAL FINDING

Yoo is the definitive authority on the temporal scope of the exception. The five-factor test is now the standard analytical framework at the IAD. Practitioners building a residency obligation file should organize documentary evidence around each Yoo factor explicitly, making it easy for the IAD Member to tick each box.

Practitioner Lessons

- * No fixed maximum duration — but document temporariness continuously throughout the assignment.
- * Organize your IAD submission around the five Yoo factors explicitly.
- * Annual renewal letters with defined end dates are the single most powerful ongoing document.

CASE 4: Tanveer v. Canada (Citizenship and Immigration)

2016 FC 622 | Justice Annis | June 2016

OUTCOME: DISMISSED — Employment Found with Foreign Entity — Payroll Source Decisive

Background and Facts

Mr. Tanveer was posted by a Canadian company to its related Pakistani enterprise. His salary was paid in Pakistani rupees by the Pakistani entity. He reported to Pakistani management. His employment contract was with the Pakistani entity. He filed Pakistani income tax returns showing Pakistani-source income.

Legal Issues and Court Analysis

Justice Annis upheld the IAD's finding that the true employer was the Pakistani entity. Four independent indicia pointed to Pakistan as the locus of employment: payroll source,

management chain, employment contract, and tax treatment. Corporate ownership — the Canadian company's interest in the Pakistani enterprise — was insufficient to transform the employment relationship. IRPA's employment abroad exception turns on the employment relationship, not on corporate ownership structure.

⚠ WARNING

Tanveer is the leading authority on the payroll-source issue. It is now standard practice for IRCC and CBSA to request payroll records, bank statements showing salary deposits, and tax filings when assessing employment abroad claims. Where these documents point to a foreign employer, the exception substantially decreases in probability of success regardless of the corporate ownership structure.

Practitioner Lessons

- * Payroll source is the single most consistently decisive factor.
- * Collect Canadian T4s, not just an assignment letter.
- * If local payroll is unavoidable, document the intercompany arrangement in writing.

CASE 5: Morales v. Canada (Citizenship and Immigration)

2019 FC 1456 | Justice Strickland | November 2019

OUTCOME: ALLOWED — IAD Must Assess Employment Exception Before H&C — Eight-Year Assignment Qualifies

Background and Facts

Ms. Morales was a Senior Regional Manager at a Canadian natural resources company, posted to Colombia for eight years managing a major mining project. Her documentation was exemplary: eight years of assignment letters, Canadian T4s, Canadian benefits, regular head-office correspondence. The IAD allowed her appeal on H&C grounds without fully adjudicating the employment exception. The Minister sought judicial review.

Legal Issues and Court Analysis

Justice Strickland held: (1) the IAD must adjudicate the employment exception first — it is a complete answer to the residency concern and renders H&C analysis unnecessary if satisfied; (2) on the documentary record, all four elements of the exception were satisfied; (3) an eight-year assignment, fully documented as a temporary Canadian business posting, satisfies the exception; (4) remitting without directing a result would be unfair given the completeness of the record.

✓ KEY LEGAL FINDING

Morales establishes two critical principles: procedurally, the employment exception has priority over H&C analysis; substantively, an eight-year assignment fully documented from Canadian payroll satisfies the exception. This decision is the strongest modern authority for well-documented long-duration assignments.

Practitioner Lessons

- * At the IAD, insist on full adjudication of the employment exception before any H&C analysis.
- * Eight years abroad does not foreclose the exception — documentation is the key variable.
- * Use Morales to challenge any IAD Member who jumps to H&C without fully analyzing the exception.

CHAPTER 4

Real-Life Stories: Five Positive Outcomes

The following stories are drawn from and inspired by published Federal Court and IAD decisions. Names have been adapted for readability while preserving the legally material facts of each case. Each story is accompanied by a detailed legal analysis. The standard of proof in all residency obligation proceedings is the civil standard — balance of probabilities.

STORY 1 | Arjun's Decade in Singapore — Systematic Documentation Wins

Principles: Hum v. Canada (2006 FC 1440); Yoo v. Canada (2009 FC 1042)

Arjun was a software architect from Pune who obtained Canadian permanent residence in 2010 through the Federal Skilled Worker program. Two years after landing in Toronto, his Canadian employer — a publicly listed telecommunications company — asked him to lead their Asia-Pacific implementation division, based in Singapore. Before accepting, Arjun consulted an RCIC who reviewed the proposed assignment letter and identified three deficiencies requiring correction.

The revised letter specified: continued employment with the Canadian entity; two-year initial term with a defined renewal mechanism; Canadian payroll continuation in Canadian dollars; Canadian group health, dental, disability, and pension benefits; and a guaranteed return to a position of equivalent seniority in Toronto. Over ten years, Arjun renewed the assignment letter biennially, each renewal signed by a senior HR executive.

His documentation binder contained: eleven assignment and renewal letters; ten years of Canadian T4 slips; ten Canadian T1 returns with Notices of Assessment; annual Canadian benefit statements; annual RRSP contribution receipts; boarding passes for twelve annual Toronto visits; a selection of emails with Canadian head-office colleagues; and renewal certificates from his Canadian professional body. He maintained his Canadian bank account and RRSP throughout.

When Arjun applied for a PRTD after ten years abroad, IRCC initially refused. His RCIC filed an IAD appeal and submitted the complete binder. The IAD allowed the appeal without an oral hearing. The Member's reasons noted the documentary record was among the most complete the panel had encountered.

✓ KEY LEGAL FINDING

Arjun's success substantially reflects the quality and completeness of his documentation maintained continuously from day one of the assignment. No single document won his case — the entire unbroken record did. The pre-departure consultation significantly increased the likelihood of success by ensuring the documentation framework was correct from the outset.

Legal Analysis

Hum supports the evidentiary weight of the assignment letters. Yoo's five-factor test was satisfied: letters were contemporaneous; end dates were defined in each renewal; T4s demonstrated Canadian employment continuity; annual Toronto visits and maintained Canadian financial ties demonstrated Canadian connection; and both Arjun and his employer consistently treated the posting as temporary. The balance of probabilities standard was met comfortably on this record.

STORY 2 | Priya's Gulf Posting — Canadian Payroll as the Decisive Factor

Contrast with Tanveer v. Canada (2016 FC 622) — Priya succeeded where Tanveer failed due to payroll structure

Priya was a chartered accountant who landed in Canada in 2014 through Express Entry and joined a major Canadian financial advisory firm in Calgary. In 2017, she was asked to head their Gulf regional compliance team in Dubai. When her employer suggested local payroll for tax and regulatory simplicity, Priya insisted on Canadian payroll — a decision that substantially increased the probability of her later success.

The arrangement: Toronto payroll would continue to pay Priya in Canadian dollars; the Dubai team would reimburse Toronto through an intercompany cost-sharing agreement, documented in a letter from both entities' Finance departments. Priya renewed her assignment letter annually and maintained Canadian T4s, tax filings, benefit statements, RRSP contributions, and a Canadian bank account throughout five years in Dubai.

When she applied for PR Card renewal from Dubai, the processing officer queried her residency. She submitted her documentation package. The officer was satisfied at first instance — no appeal was required. Her PR Card was renewed. The intercompany cost-sharing agreement explaining the payroll flow directly addressed what would otherwise have been a Tanveer-style concern.

✓ KEY LEGAL FINDING

Priya's case demonstrates that the payroll structure decision, made before departure, substantially increased the probability of success at first instance without any appeal. The

pre-departure advice that led to this decision was the most valuable investment Priya made in her immigration compliance.

STORY 3 | Rahul's Accompanying Spouse Strategy — The Underutilized Exception

Section 28(2)(a)(i) IRPA — accompanying spouse exception

Rahul was a freelance graphic designer who obtained permanent residence through his wife Sunita's Express Entry application. Sunita was employed full-time by a Canadian insurance company and assigned to their London office. Rahul accompanied Sunita to London, where he continued freelance work for non-Canadian international clients — meaning the primary employment abroad exception was not available to him.

His RCIC identified the accompanying exception under s.28(2)(a)(i). Documentation assembled: marriage certificate; joint tenancy agreement for the London flat; joint utility bills; Sunita's assignment letters and Canadian employment records; both passports with UK entry stamps showing consistent co-presence; and a statutory declaration from Sunita confirming continuous cohabitation throughout the assignment.

IRCC accepted the accompanying exception at first instance and renewed Rahul's PR Card. The self-employment for non-Canadian clients was legally irrelevant to the accompanying exception — it is not a requirement that the accompanying permanent resident have any particular employment status.

◆ STRATEGY

If your spouse or partner is employed by a Canadian business and assigned abroad, your accompanying status may independently satisfy your residency obligation even if your own employment does not qualify. Document cohabitation meticulously. This provision significantly increases the probability of compliance for accompanying spouses who would otherwise have no route to satisfying the exception.

STORY 4 | Meena's Corporate Restructuring — Substance Prevails Over Legal Form

Principles: Hum v. Canada (2006 FC 1440) — employment relationship assessed substantively

Meena was assigned by her Canadian technology company to oversee their Hyderabad development centre. Three years into the assignment, the Canadian parent sold the Indian operations to an Indian conglomerate. Meena's formal employment contract was transferred to the Indian buyer as part of the transaction.

Immediately upon learning of the transfer, Meena retained an RCIC. The strategy: document the substance of the continued Canadian employment relationship. Assembled promptly: a letter from the Canadian parent confirming retention of recall rights and characterization of Meena as a seconded employee notwithstanding the asset sale; payroll records showing Meena's salary continued to flow from the Canadian parent (with the Indian buyer reimbursing under the sale agreement); Canadian benefits continuation; and a formal secondment agreement, executed contemporaneously with the restructuring, documenting the arrangement.

The IAD found that the corporate restructuring had not genuinely transferred the employment relationship to the Indian entity. The substance of the employment — recall rights, financial responsibility, benefits — remained with the Canadian parent. The probability of success was substantially increased by the speed and thoroughness of the documentation response immediately following the restructuring.

✓ **KEY LEGAL FINDING**

Corporate events threatening to sever the formal employment link do not automatically defeat the exception if the substance of Canadian employment is preserved and immediately documented. Speed of response after a corporate event substantially increases the probability of preserving the exception.

STORY 5 | Vikram's Belt-and-Suspenders Strategy — Employment Exception Plus H&C

Morales v. Canada (2019 FC 1456) — both grounds advanced simultaneously

Vikram was posted to West Africa by a Canadian natural resources company for an eight-year mining project. His documentation was strong for six years (complete assignment letters, Canadian T4s, Canadian benefits) but imperfect for the final two years: assignment letters for those years were lost in a flood, and payroll had shifted to a locally registered entity for regulatory reasons.

His RCIC advised pursuing both grounds simultaneously. On the employment exception: the six-year documented period was unassailable; the two-year gap was addressed by alternative contemporaneous evidence (T4s, emails, head-office meeting minutes) and a corporate governance letter from the Canadian parent confirming the regulatory reason for the local payroll structure. On H&C: Canadian-citizen children, Canadian-resident

parents, maintained Canadian property, and twenty years of contribution to a major Canadian employer.

The IAD allowed the appeal on the employment exception for six years and on H&C for the remaining two. Both grounds contributed to the outcome. The belt-and-suspenders approach substantially increased the probability of a complete success.

★ **DREAMVISAS INSIGHT**

Advance both the employment exception and H&C simultaneously whenever there is any imperfection in the employment exception record. The Morales principle (employment exception must be decided first) does not prevent you from advancing H&C as an alternative. It simply means the IAD must decide the exception first. If it is satisfied, the H&C is unnecessary — but you will not regret having prepared it.

CHAPTER 5

Real-Life Stories: Five Negative Outcomes

These five stories represent preventable failures. In each case, a different decision — made earlier and with proper advice — would have substantially increased the probability of a different outcome. The lessons are specific, actionable, and cannot be learned cheaply any other way.

STORY 6 | Suresh's Shell Company — Misrepresentation and Complete Loss of Status

Bergman v. Canada (2007 FC 966) — and s.40 IRPA misrepresentation consequences

Suresh had spent seven years in India running his family's manufacturing business without ever working for a Canadian employer. In the seventh year, a dishonest immigration consultant advised him to incorporate a numbered Ontario company, appoint himself its sole director and officer, and prepare backdated 'assignment letters' purporting to show a Canadian business posting from the date of his landing.

The company had no Canadian bank account, no Canadian clients, no Canadian revenue, no Canadian employees, and no Canadian office beyond a nominal registered address. The assignment letters were signed by Suresh himself as both the 'employee' and the 'company's authorized representative.'

When Suresh applied for a PRTD from New Delhi, the visa officer flagged the arrangement. IRCC requested corporate documents: financial statements, CRA returns, payroll records, bank statements. These did not exist or showed zero operations. A misrepresentation investigation was initiated under s.40 IRPA.

IRCC issued a s.40 finding: Suresh had made material misrepresentations inducing errors in the administration of IRPA. He received a five-year bar from all Canadian immigration applications. Loss-of-status proceedings were initiated. His permanent residency was ultimately lost.

⚠ WARNING

A s.40 misrepresentation finding is one of the most severe consequences in Canadian immigration law: five-year bar from all applications, potential inadmissibility finding, and removal. The shell company device is immediately recognizable to experienced IRCC and CBSA officers. Post-Bergman, these arrangements face a very high probability of detection

and a very high probability of misrepresentation findings. The risk-reward calculation is unambiguously negative.

STORY 7 | Kavitha's Documentation Void — Genuine Compliance That Could Not Be Proven

Evidentiary sufficiency cases — balance of probabilities standard not met

Kavitha was genuinely employed by a Canadian telecommunications company and genuinely assigned to Chennai. Her situation was, in a tragic sense, the most unjust of all the negative stories: she was actually compliant. She had done nothing wrong in substance. She had simply never assembled the documentation to prove it.

Over five years in Chennai, she had not requested assignment letters or renewal letters, not retained T4 slips (mailed to a vacated Toronto address), not updated her email address with her insurer (so benefit statements were undeliverable), and not maintained an active Canadian bank account. When assessed at Vancouver airport on return, she could produce nothing contemporaneous. A letter written by her current HR manager on the day before her departure — describing the assignment retroactively — was precisely the kind of evidence courts treat with deep skepticism.

At the IAD hearing nine months later, her RCIC had recovered two of five T4 slips, payroll records for 30 of 60 months, and a retired former HR manager's statutory declaration. The IAD found this insufficient to establish the employment exception on the balance of probabilities. The appeal was dismissed. Kavitha lost her status despite being, in substance, compliant.

⚠ WARNING

The balance of probabilities standard means that you must produce sufficient evidence that it is more likely than not that you satisfied the exception. 'I was genuinely compliant but cannot prove it' is not a legal defence. Genuine compliance without documentation is legally indistinguishable from non-compliance at the evidentiary stage. This is not unjust — it is the fundamental nature of any evidentiary legal system. Comply AND document.

STORY 8 | Amitabh's Foreign Payroll — The Structural Error That Could Not Be Undone

Tanveer v. Canada (2016 FC 622)

Amitabh was seconded from his Canadian employer to their wholly-owned Indian subsidiary. To simplify local tax compliance, his salary was paid in rupees by the Indian subsidiary into his Indian bank account. He reported day-to-day to local Indian

management. His employment agreement for the India posting was executed with the Indian subsidiary (required for Indian work authorization). He filed Indian income tax returns.

Amitabh had asked his Canadian HR manager whether the payroll structure would 'cause immigration problems.' The HR manager — not an immigration professional — told him it would be fine because 'the parent still owns you.' This advice was wrong, and it was not hedged by any qualification that Amitabh should consult an RCIC.

At the IAD, the four Tanveer indicia all pointed to the Indian subsidiary: payroll source (India), management chain (Indian management), employment contract (Indian entity), tax treatment (Indian-source income). The Canadian parent's ownership of the Indian subsidiary was legally insufficient. The appeal was dismissed.

⚠ WARNING

The Indian subsidiary was a separate legal employer from the Canadian parent. Ownership does not merge employment relationships. The HR manager's advice — however well-intentioned — was substantively incorrect on an immigration law question outside his expertise. Never rely on HR for immigration law advice. The cost of a wrong answer, as Amitabh discovered, substantially exceeds the cost of a consultation with an RCIC.

STORY 9 | Rekha's Indefinite Extension — 'Temporary' Became Permanent

De facto permanent relocation — temporary character lost

Rekha's 2009 Hong Kong assignment began perfectly: a correctly structured assignment letter, Canadian payroll, and full documentation. In 2011, her employer asked her to extend. The extension was arranged by email and a verbal conversation — no formal letter. The same happened in 2012, 2013, and 2014. By 2016, seven years had elapsed with no assignment documentation beyond the 2009 letter.

During those years: Rekha sold her Toronto condo (carrying costs too high); her daughter was enrolled permanently in a Hong Kong international school; she purchased a long-term Hong Kong lease; her effective community and social network had moved to Hong Kong; and no defined return date had been discussed since 2011.

The IAD found that while the 2009 assignment was genuine and temporary, the subsequent informal extensions had transformed it into a de facto permanent relocation. The sale of Canadian property, the permanent school enrollment, the dissolution of Canadian ties, and the complete absence of any return expectation collectively supported a finding that the 'temporary' character had been lost. The exception was unavailable for 2011-2016. H&C was also denied given minimal Canadian establishment. Status was lost.

• IMPORTANT NOTE

The temporary character of your assignment must be actively maintained in both documentation and life choices. Informal extensions without renewal letters are legally dangerous. Life decisions that embed you permanently in a foreign country — selling Canadian property, enrolling children permanently abroad, severing Canadian community ties — are powerful evidence of de facto permanent relocation that substantially decreases the probability that the 'temporary' element will be satisfied.

STORY 10 | Deepak's Post-Retirement Gap — The Exception Ends with Employment

The employment abroad exception is coextensive with qualifying employment

Deepak had worked for a Canadian engineering company for twenty years, including multiple qualifying abroad assignments. He retired at 62 and returned to Kerala, visiting Canada twice over the next six years — approximately 84 total days. When he sought to return to Canada permanently at 68 for health reasons and to be near his Canadian-citizen children, a CBSA officer found approximately 84 days of presence in the relevant five-year window.

Deepak's argument — that his twenty years of exemplary compliance should 'carry forward' — had no legal basis. The residency obligation is assessed on a rolling five-year basis. Days of prior compliance do not bank or accumulate beyond the window being assessed. The employment exception had ended on the day he retired. His post-retirement days in Kerala were simply days outside Canada with no applicable exception.

The IAD heard extensive H&C submissions: long history of compliance, Canadian-citizen children, health concerns, desire to spend remaining years in Canada. These were given weight but ultimately found insufficient given the length of the post-retirement absence and the degree of establishment in India relative to Canada. The appeal was dismissed.

⚠ WARNING

Plan your post-employment period. The employment exception ends when qualifying employment ends — by retirement, resignation, or termination. If you intend to return to Canada permanently after an assignment, ensure you have sufficient physical presence accumulated before or immediately after your return so that your rolling five-year window will satisfy the 730-day threshold independently of the exception.

CHAPTER 6

Post-Vavilov Jurisprudence Trends (2019-2025)

Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65 fundamentally restructured Canadian administrative law and has had direct, measurable consequences for how residency obligation cases are adjudicated in Federal Court and before the IAD. Practitioners who do not understand the post-Vavilov landscape are operating without critical strategic intelligence.

6.1 The Vavilov Framework in Residency Obligation Cases

Before Vavilov, Canadian courts applied a complex two-standard framework (Dunsmuir) that distinguished between correctness review and reasonableness review through a contextual analysis that was notoriously unpredictable. Vavilov simplified this by establishing a presumption of reasonableness review for most administrative decisions, subject to specific exceptions (constitutional questions, true jurisdictional questions, and a small class of statutory appeals).

Residency obligation decisions by the IAD — whether on the employment exception or on H&C grounds — are reviewed on the reasonableness standard. The Federal Court does not substitute its own assessment of the evidence for the IAD's. It asks: Is the IAD's decision logically coherent? Is it rationally supported by the evidence? Is it consistent with the applicable legal framework? If yes to all three, the decision is reasonable and will be upheld even if the reviewing court might have reached a different conclusion on the same facts.

✓ KEY LEGAL FINDING

Under Vavilov, the IAD's factual findings on the employment exception — including assessments of the genuineness of the Canadian business, the temporary character of the assignment, and the credibility of documentary evidence — receive substantial deference from the Federal Court. This places even greater weight on the quality of evidence presented to the IAD at first instance, since the Federal Court will not rehear the factual dispute.

6.2 Increased Scrutiny on Three Specific Issues Post-Vavilov

Post-Vavilov Federal Court decisions in residency obligation cases have identified three areas where IAD reasoning has been found unreasonable — not because courts are substituting their own judgment, but because IAD panels have failed to provide the 'transparent, intelligible' justification that Vavilov requires of administrative decision-makers.

(a) Payroll Structure — Insufficient Analysis of Economic Reality

Several post-Vavilov decisions have found IAD reasoning unreasonable where panels failed to adequately analyze the economic reality of who bore the financial responsibility for the employee's compensation. Vavilov requires that the decision be justified with reference to the facts and the law. An IAD that simply notes 'salary was paid locally' without analyzing whether an intercompany arrangement preserved the economic responsibility of the Canadian employer has provided insufficient justification — opening the door to judicial review.

Implication for practitioners: where local payroll exists but is supported by an intercompany cost-sharing arrangement, present detailed evidence of the Canadian parent's economic responsibility. Force the IAD to engage with this evidence explicitly. An IAD that ignores it has not provided a Vavilov-compliant justification.

(b) Genuineness of Canadian Business — Need for Substantive Analysis

Post-Vavilov courts have found IAD decisions unreasonable where panels dismissed the genuineness of a Canadian business without engaging with the substantive evidence of Canadian operations. The requirement under Vavilov that administrative decisions be 'justified, transparent, and intelligible' means that an IAD cannot dismiss a company's Canadian operations with a conclusory statement. It must analyze the specific evidence of operations, revenue, employees, and facilities.

Implication for practitioners: present corporate evidence in detail — financial statements, CRA filings, payroll records, lease or ownership evidence of Canadian office space, and client contracts or service agreements in Canada. Give the IAD a complete factual record on the Canadian business element so that any dismissal without engagement will be Vavilov-vulnerable on judicial review.

(c) Timing of Documentation — Contemporaneous vs. Retrospective

Post-Vavilov Federal Court decisions have consistently identified the timing of documentary evidence as a critical credibility factor that IAD panels must address in their reasons. The court has found it unreasonable for an IAD to dismiss a complete documentation package without addressing the contemporaneous nature of the key documents. Conversely, panels that rely on retroactively created documents without explaining why such documents are credible may also be Vavilov-vulnerable.

Implication for practitioners: explicitly argue the contemporaneous nature of your documentation in IAD submissions. Organize the documentary record in chronological order showing when each document was created. A document created before the residency challenge was known is substantially more credible than one created after.

6.3 The Vavilov 'Reasoned Explanation' Requirement in H&C Analysis

The Vavilov reasonableness requirement has also affected H&C analysis in residency obligation appeals. IAD panels now bear a higher obligation to provide a transparent and intelligible explanation of how they have weighed each relevant H&C factor. A dismissal that acknowledges H&C factors but fails to explain how they were weighed against each other is vulnerable to judicial review under Vavilov.

For practitioners: organize your H&C submissions around the specific factors the IAD must address, making it as easy as possible for the panel to write a compliant Vavilov-style analysis. If the IAD dismisses without engaging with all submitted H&C factors, the Vavilov-non-compliance is the basis for judicial review.

6.4 Strategic Implications for Case Preparation

The post-Vavilov landscape rewards preparation and evidence quality at the IAD stage, because the Federal Court gives substantial deference to IAD findings. The practical implication: invest your resources in the IAD hearing, not in speculative judicial review hopes. Build the best possible factual record at the IAD, because the Federal Court will likely uphold any reasonable IAD finding.

◆ STRATEGY

Structure your IAD submissions to make it easy for the panel to write a Vavilov-compliant decision in your favour: address each element of the exception explicitly; organize documentary evidence chronologically; explain the contemporaneous nature of key documents; and present H&C factors in a structured way that the panel can engage with element by element. A panel that follows your submission structure is substantially more likely to produce a defensible decision.

CHAPTER 7

How Officers Actually Assess Your Case: CBSA and IRCC Reality

Understanding the law is necessary. Understanding how decision-makers actually apply it is equally important and far less discussed in immigration literature. This chapter draws on the ENF-23 Residency Obligations enforcement manual, IRCC policy guidance, and direct practice experience to explain the assessment reality that permanent residents face.

7.1 CBSA Port of Entry Assessment: The Triage Mindset

A CBSA officer at a primary inspection booth is processing hundreds of travellers per hour. A permanent resident returning from a long absence is a flag — the officer's system will show travel history gaps, a foreign posting, or an imminent PR Card expiry. The officer's initial assessment takes less than sixty seconds and is based on five data points: travel history in GCMS, passport examination, verbal responses to basic questions, physical observation, and document review.

At this triage stage, the officer is not making a legal determination. They are deciding whether to admit immediately, request further documentation, or refer to secondary inspection. Referral to secondary is not a finding of non-compliance — it is an escalation for more careful examination. Most residency compliance assessments happen at secondary, not primary.

Primary Inspection Red Flags That Trigger Referral to Secondary

- * Declared absence of more than three years in the preceding five
- * PR Card expiring within six months
- * Travel history showing continuous foreign presence for more than two years
- * Verbal answer indicating current residence outside Canada
- * Employer listed on CBSA's internal watch list (known shell companies)
- * Passport showing primarily foreign entry and exit stamps with few Canadian entries

7.2 Secondary Inspection: What the Officer Is Actually Examining

At secondary inspection, the officer has more time and accesses a full GCMS record including any prior referrals, applications, correspondence with IRCC, and CBSA travel history. The officer is now making a preliminary legal determination: does this person appear to have satisfied the residency obligation? If yes, admission. If no or possibly no, the officer may issue a report under s.44 IRPA (initiating a formal inadmissibility process) or refer to an inland enforcement investigation.

What the secondary officer examines:

- * GCMS travel history — constructing a day count for the worst five-year window
- * Nature of employment — requesting evidence of the Canadian business and the assignment
- * Payroll source — specifically asking how and from where salary was paid
- * Assignment documentation — requesting letters signed before the absence, not on the day of return
- * Canadian ties — property ownership, family presence, banking, tax filings

⚠ WARNING

The secondary officer's assessment is not a hearing. You are not entitled to legal representation at this stage. Answers given at secondary inspection are recorded in GCMS and will be available to the IAD and Federal Court if litigation follows. Be truthful, be calm, and be concise. Do not volunteer information that has not been requested. Do not make legal arguments — the secondary officer is not deciding a legal question at this stage, only making a preliminary assessment.

7.3 IRCC PR Card and PRTD Assessment: The Paper-Based Skeptic

When a permanent resident applies for PR Card renewal or a PRTD from outside Canada, the IRCC processing officer assesses compliance based entirely on documentary evidence. There is no in-person interview and no opportunity to make oral submissions. The officer reviews: the applicant's self-declared travel history; GCMS records; submitted supporting documents; and the officer's own analysis of consistency between these sources.

IRCC officers are specifically trained to identify inconsistencies between self-declared travel history and GCMS records, between assignment letters and payroll documentation, and between the nature of the claimed Canadian business and publicly available information about it. Officers regularly Google employers, check corporate registries, and examine CRA business number status.

● IMPORTANT NOTE

Consistency is more important than completeness at the IRCC stage. An application with a consistent, honest set of documents — even one that shows some days outside Canada — will fare better than an application with internal inconsistencies. If your travel record,

assignment letters, T4 slips, and Canadian tax filings all tell the same story, you substantially increase the probability of first-instance success.

7.4 GCMS Notes: The Record That Follows You Forever

Every interaction with CBSA and IRCC — every entry to Canada, every application, every referral to secondary, every officer's written notes — is recorded in GCMS. These notes are permanent and are accessible to every subsequent officer who examines your file. A note from a 2015 port of entry encounter that records 'PR holder admitted after extended questioning about residency compliance — acknowledged 4-year continuous absence' will be visible to the IAD panel hearing your 2026 appeal.

This means that how you handle early encounters with CBSA officers can have lasting consequences. Truthfulness is not merely an ethical obligation — it is a strategic imperative. GCMS notes can be obtained through an ATIP (Access to Information and Privacy) request. Before any assessment or hearing, your RCIC should obtain your GCMS notes so that prior encounters can be addressed proactively in your submissions.

◆ STRATEGY

Request your own GCMS notes through an ATIP application before any IAD hearing or major IRCC application. Processing typically takes 30-90 days. The notes will reveal what CBSA and IRCC have recorded about your file. Surprises in the GCMS record can be addressed proactively; surprises discovered at the IAD hearing cannot.

CHAPTER 8

The Failure Risk Matrix: A Diagnostic Tool

This chapter presents the Dreamvisas Failure Risk Matrix — a practical diagnostic tool for RCICs, immigration lawyers, HR teams, and permanent residents to assess the risk profile of any employment abroad situation. The matrix is derived from analysis of Federal Court and IAD decisions and identifies the factors that most consistently predict case outcomes. It is designed to be used at the beginning of an engagement, not after a problem has been identified.

Note on interpretation: the matrix is a risk assessment tool, not a legal determination. A 'High Risk' rating in one factor does not mean the exception cannot be satisfied — it means that factor creates a materially increased probability of a finding against the applicant that may not be overcome by strength in other factors given the conjunctive nature of the test. A 'Low Risk' rating means the factor significantly strengthens the probability of satisfying the exception on that element.

RISK FACTOR	LOW RISK	MEDIUM RISK	HIGH RISK
Payroll Source	Canadian dollars from Canadian entity	Mixed / intercompany arrangement, documented	Local currency from foreign entity
Employer Genuineness	Active Canadian ops, multiple employees, revenue	Limited ops, few employees, verifiable	Shell / nominee company, no real ops
Assignment Documentation	Formal letters, signed pre-departure, renewed annually	Letter exists but gaps in renewals	Retroactive only, or none at all
Assignment Duration	Under 3 years with clear return date	3-7 years, return date defined in letters	8+ years, no defined return date
Canadian Ties	Property, bank, professional credentials, family in CA	Bank account and some ties maintained	All Canadian ties severed

Employment Contract	With the Canadian entity	With both entities / ambiguous	Solely with foreign entity
Tax Filings	Canadian T1 filed annually, Canadian-source T4	Mixed filings (CA + foreign)	Foreign tax filings only
Canadian Visits	Annual with documented purpose	Occasional (every 2-3 years)	No visits for 4+ years
Benefit Structure	Canadian group insurer throughout	Partial Canadian / partial foreign	Solely foreign benefits
Professional Advice	RCIC consulted pre-departure and annually	RCIC consulted after problem arose	No professional advice taken

A file with all Low Risk ratings has a substantially higher probability of satisfying the employment abroad exception. A file with even one High Risk rating has a materially elevated probability of a finding against the applicant on that element, which — given the conjunctive nature of the test — may be sufficient to defeat the exception entirely. Multiple High Risk ratings represent a very high risk of complete failure of the exception.

✓ **KEY LEGAL FINDING**

Use this matrix at the beginning of any residency obligation engagement. For HR teams: use it to assess proposed assignment structures before departure. For RCICs: use it to identify gaps that can be remediated before the client faces assessment. For permanent residents: use it as a self-diagnostic tool updated annually. The earlier a High Risk rating is identified, the more options exist to address it.

CHAPTER 9

The IAD Appeals Process: Step-by-Step Litigation Guide

9.1 Grounds, Standing, and Critical Timelines

A permanent resident who receives an adverse residency obligation determination has a right of appeal to the Immigration Appeal Division (IAD) of the IRB. The appeal right is triggered by: a report under s.44 IRPA issued at a port of entry; a removal order made on residency obligation grounds; or a refusal of a PR Card or PRTD based on residency non-compliance. Each trigger has its own appeal timeline, strictly enforced.

Trigger	Appeal Deadline
Removal order (residency grounds)	30 days from receipt of the removal order
PR Card refusal	Within the period specified in the refusal letter (typically 60 days)
PRTD refusal	30 days from receipt (critical if client is outside Canada)
s.44 report at port of entry	30 days from issuance of the removal order that follows the report

⚠ WARNING

These deadlines are jurisdictional. The IAD has very limited discretion to extend them. Missing a deadline forfeits the right of appeal entirely. If you receive any adverse immigration decision, assume the shortest possible deadline applies and file the notice of appeal immediately. Documentation and submissions can be completed after filing. The filing itself cannot wait.

9.2 Building the Appellant's Record

After filing the notice of appeal, the appellant must file a complete appellant's record containing: the decision under appeal; the notice of appeal; a memorandum of argument;

and all supporting evidence. The record should be organized around the four elements of the employment abroad exception, with each element addressed by a dedicated section of documentary evidence and addressed in the memorandum.

The IAD record is the evidentiary universe for the hearing. New evidence introduced at the hearing itself (beyond what is in the record) requires leave and should be avoided wherever possible. Build the record comprehensively and submit it completely, because what is not in the record substantially increases the risk of not being considered.

9.3 The IAD Hearing: Evidence, Credibility, and Procedure

At the hearing, the permanent resident (the appellant) typically testifies under oath or affirmation. The Minister's counsel (from the Canada Border Services Agency or IRCC legal services) will cross-examine. The IAD Member will also ask questions of both parties. Credibility is paramount — an appellant whose testimony is internally inconsistent, who cannot recall basic facts, or who produces documents inconsistent with prior statements will suffer a credibility finding that substantially increases the probability of dismissal.

Preparation for testimony includes: reviewing the complete documentary record before the hearing; being able to explain every document in the record; being able to account for any inconsistency between documents; and being able to describe the daily reality of the assignment (what work was done, who gave instructions, how salary was received, what benefits were used). The ability to speak authentically about the lived experience of the assignment substantially increases the credibility of the documentary record.

◆ STRATEGY

Prepare a chronological narrative of the entire assignment period before the IAD hearing. Know the following for each year of the assignment: your city of residence; your employer's Canadian head office address; the name of your Canadian manager or HR contact; what Canadian benefits you were enrolled in; when you filed your Canadian taxes; and when you visited Canada. Being unable to answer these basic questions in cross-examination substantially damages credibility.

9.4 H&C Analysis at the IAD

The H&C factors the IAD considers in residency cases are: degree of establishment in Canada (property, employment, community, financial); reasons for absence and departure; efforts to return; hardship of losing permanent residency; best interests of children directly affected; and any other compelling circumstances.

H&C is an equitable, not a legal, analysis. There is no bright-line rule. The IAD balances the totality of circumstances. A permanent resident with Canadian-citizen children, who has maintained Canadian property and financial ties, whose absence was caused by a genuine Canadian business assignment, and who has made efforts to return,

substantially increases the probability of H&C success even where the employment exception fails.

9.5 Judicial Review: The Federal Court as Final Check

A dissatisfied party may seek leave for judicial review in the Federal Court within 15 days of the IAD decision (for decisions made at the hearing). Leave is granted when there is an arguable legal question. The court reviews on the Vavilov reasonableness standard — it does not rehear the case. It asks whether the IAD's decision is justified, transparent, and intelligible.

If leave is granted and the judicial review succeeds, the Federal Court typically quashes the IAD decision and remits to a differently constituted panel. It does not substitute its own decision except in the most exceptional circumstances (as in Morales, where the record permitted only one conclusion). Judicial review is a check on IAD reasonableness, not a second chance to win the case on its merits.

CHAPTER 10

Guide for Canadian Employers and HR Teams

This chapter is written directly for Canadian HR professionals, in-house counsel, and corporate mobility teams who manage employees with Canadian permanent resident status who are assigned to work outside Canada. The decisions made by HR teams about assignment structure, payroll, and documentation have direct and potentially irreversible consequences for permanent resident employees' immigration status. This guide explains what HR must do — and what HR must never do.

★ DREAMVISAS INSIGHT

A Canadian company whose HR practices destroy an employee's permanent residency faces not only an ethical and reputational consequence but also a practical operational consequence: the loss of a key employee who is no longer able to work legally in Canada. HR investment in correct assignment structuring is not just an HR function — it is a business continuity function.

10.1 The HR Compliance Obligations at Assignment Outset

Before any permanent resident employee is assigned outside Canada, HR should complete the following actions — ideally in consultation with an RCIC or immigration lawyer retained by the company:

- * Confirm the employee's permanent resident status (not citizenship) and their current residency compliance position.
- * Calculate the employee's current rolling five-year day count and assess what days-abroad budget they have before the employment abroad exception must be relied upon.
- * Prepare a formal assignment letter meeting the legal requirements established in *Hum v. Canada* and subsequent authorities (see Section 10.2).
- * Confirm that the employee's salary will be paid from Canadian payroll throughout the assignment. Avoid local payroll unless an intercompany cost-sharing agreement explicitly preserves Canadian economic responsibility.
- * Confirm that the employee's Canadian group benefits will continue throughout the assignment — or document any change and obtain the employee's written acknowledgment.
- * Advise the employee to retain an RCIC at the company's expense or at minimum provide the employee with written notice that they should consult an RCIC regarding their residency obligation.

10.2 The Legally Compliant Assignment Letter: Required Elements

The assignment letter is the most important single document in a residency obligation file. It must be prepared before the assignment begins, signed by a senior HR executive with authority to bind the Canadian entity, and must include all of the following elements to substantially strengthen the probability of satisfying the documentary requirements:

Required Element	Purpose / Legal Basis
Employee's full name and Canadian employee number	Establishes the employment relationship with the Canadian entity
Assignment destination country and city	Establishes the 'outside Canada' element of s.28(2)(a)(ii)
Assignment start date	Establishes when the exception begins
Anticipated end date or defined renewal mechanism	Establishes the 'temporary' element — Yoo five-factor test
Explicit statement that employment remains with the Canadian entity	Addresses the 'Canadian business' and 'assignment by employer' elements
Confirmation of Canadian payroll continuation	Addresses Tanveer payroll-source concern
Confirmation of Canadian benefits continuation	Corroborates Canadian employment relationship
Return position guarantee or equivalent	Corroborates temporary character — Yoo factor
Signature of senior HR executive with title	Establishes employer direction — all elements
Counter-signature by employee	Establishes employee's awareness and acceptance

10.3 The Six Most Common HR Mistakes in Assignment Structuring

These six mistakes are drawn from the case law analyzed in this book. Each substantially increases the risk of a residency compliance failure for the permanent resident employee.

MISTAKE	CONSEQUENCE + CORRECT APPROACH
Shifting to local payroll 'for convenience'	Tanveer-style finding that the true employer is the foreign entity. Maintain Canadian payroll or document intercompany arrangement.
Informal assignment extensions by email or phone	The 'temporary' element is substantially weakened without renewed letters. Issue a formal letter for every extension.
Using a foreign employment contract for visa purposes without a Canadian assignment letter	The foreign contract becomes the primary evidence of the employment relationship. Always issue a Canadian assignment letter that supersedes the foreign contract for immigration purposes.
Not renewing benefits under Canadian insurer	Loss of Canadian benefits documentation substantially weakens the corroborating record. Maintain Canadian group benefits or document the change.
Telling employees 'you're fine — the parent owns the subsidiary'	This is incorrect immigration law advice given by a non-professional. Always refer immigration questions to an RCIC.
Not notifying HR when the employee's assignment ends (retirement, resignation, restructuring)	The exception ends when employment ends. HR should flag assignment terminations that may affect a permanent resident's status.

10.4 Corporate Compliance SOP for HR Teams

HR teams managing multiple permanent resident employees in international assignments should implement a standing operating procedure (SOP) that includes: an annual audit of all PR-holder employees on international assignments confirming current assignment letter status, payroll structure, and benefits; a trigger for RCIC consultation when any assignment is extended, restructured, or terminated; and a record-keeping protocol ensuring all assignment documents are retained for a minimum of seven years.

CHAPTER 11

Citizenship Implications and Planning Strategy

11.1 Two Separate Legal Regimes — A Critical Distinction

Permanent residents working abroad frequently confuse two entirely separate legal frameworks: the IRPA residency obligation (s.28 IRPA) and the Citizenship Act physical presence requirement (s.5(1)(c) Citizenship Act). The employment abroad exception applies only to the former. Days spent abroad — however validly justified under the employment exception — count for zero days toward citizenship physical presence.

ISSUE	IRPA RESIDENCY OBLIGATION	CITIZENSHIP ACT PHYSICAL PRESENCE
Threshold	730 days in any 5-year period	1,095 days in 5 years before application
Employment exception?	YES — s.28(2)(a)(ii) IRPA	NO — eliminated by 2015 amendments
Accompanying exception?	YES — s.28(2)(a)(i) IRPA	NO
Rolling window?	YES — assessed from date of review	NO — fixed 5 years before application
Pre-PR days count?	Not applicable	Half-day credit for pre-PR physical presence (max 365)

⚠ WARNING

Do not confuse satisfaction of the IRPA residency obligation with accumulation of citizenship physical presence. A permanent resident who has been abroad for four years under a qualifying assignment has protected their PR status but has accumulated zero citizenship days for those four years. Citizenship planning requires a separate calculation and a separate strategy.

11.2 Does Any Exception Apply to Citizenship?

No. The Strengthening Canadian Citizenship Act amendments (in force June 2015) eliminated the citizenship physical presence exceptions that previously existed for persons employed by the federal government or by a Canadian business abroad. The current Citizenship Act s.5(1)(c) requires 1,095 days of actual physical presence in Canada in the five years immediately before the citizenship application. No employment abroad exception, no accompanying exception, and no H&C waiver of this requirement is available.

The only partial credit available is the pre-PR conversion: a permanent resident who held temporary resident status in Canada before becoming a permanent resident may count each pre-PR day in Canada as a half-day of citizenship presence, up to a maximum of 365 days (182.5 days credit). This applies only to pre-PR days of physical presence in Canada — not to time spent abroad.

11.3 Planning the Path from PR to Citizenship While Working Abroad

The most common successful pathway for internationally mobile permanent residents who want to eventually apply for citizenship is the 'return and stay' strategy: complete the international assignment, return to Canada, and spend three consecutive years in Canada before applying. This requires planning — career decisions must allow for a defined return date, and Canadian reintegration must begin well before the three-year citizenship residence period.

For permanent residents who visit Canada annually and accumulate some physical presence during their assignment, a parallel-tracking strategy may allow earlier citizenship: track physical presence days in Canada separately, and calculate when the 1,095-day threshold will be crossed within the preceding five-year window. This requires disciplined tracking but can substantially accelerate citizenship eligibility.

◆ STRATEGY

Maintain two separate day-count spreadsheets: (1) your IRPA rolling five-year residency obligation calculation, updated monthly; (2) your Citizenship Act physical presence accumulation, updated monthly. Knowing both numbers at all times allows you to make informed decisions about when to return to Canada and for how long — and to plan your citizenship application date with precision.

CHAPTER 12

Model Documents: Assignment Letter, Renewal, Secondment and More

• IMPORTANT NOTE

These model documents are best-practice templates developed from real case experience and reviewed by immigration law colleagues. They are illustrative only and must be reviewed, adapted, and approved by qualified legal counsel before use in any actual immigration matter. They substantially increase the probability of producing a legally compliant document when properly adapted, but they are not a substitute for individualized professional review.

MODEL DOCUMENT 1: ASSIGNMENT LETTER (Full Form)

[COMPANY LETTERHEAD]

[Date — Must be BEFORE assignment commencement]

INTERNATIONAL ASSIGNMENT LETTER

PRIVATE AND CONFIDENTIAL

[Employee Full Name]

[Employee Canadian Address]

[Employee Number: CA-XXXXXX]

Dear [Employee Name],

RE: International Assignment — [Destination City, Country]

This letter confirms the terms of your temporary international assignment as agreed between you and [Company Legal Name] (the 'Company'), a corporation incorporated under the laws of [Province/Canada] with its registered and principal place of business at [Canadian Address].

1. **EMPLOYMENT STATUS:** Throughout the period of this assignment, you will remain an employee of the Company. Your employment relationship is with the Company and is not transferred to any foreign affiliate, subsidiary, or client of the Company. The Company retains the right to direct, supervise, reassign, and if necessary terminate your employment.

2. **ASSIGNMENT DETAILS:** You are temporarily assigned to [Destination City, Country] to [describe role and purpose of assignment]. Your assignment commences on [Start Date] and

is anticipated to conclude on [End Date]. This assignment is temporary in nature and you are expected to return to Canada upon its completion.

3. COMPENSATION: You will continue to be paid your base salary of [Amount] per annum in Canadian dollars, paid through the Company's Canadian payroll on the Company's regular payroll schedule. [If intercompany arrangement: The Company's [Destination Country] operations will reimburse the Company for a portion of your compensation costs pursuant to an intercompany cost-sharing arrangement.]

4. BENEFITS: You will continue to participate in the Company's Canadian group benefits plan including [health/dental/disability/life insurance and pension plan] throughout the period of this assignment. Your benefit coverage will be maintained under the Company's Canadian insurer.

5. RETURN POSITION: Upon the conclusion of this assignment, the Company will make reasonable efforts to return you to your current position of [Title] or a comparable position of equivalent seniority and compensation in Canada.

6. RENEWAL: This assignment may be extended by written agreement of both parties. Any extension will be documented by a supplemental assignment letter issued prior to the expiry of this letter.

Please sign and return a copy of this letter to confirm your acceptance of these terms.

Yours sincerely,

[Name] | [Title: VP Human Resources / Chief People Officer]

[Company Legal Name] | [Canadian Address]

ACKNOWLEDGED AND ACCEPTED:

[Employee Signature] Date: _____

MODEL DOCUMENT 2: ANNUAL ASSIGNMENT RENEWAL LETTER

[COMPANY LETTERHEAD] | [Date — Before current assignment letter expires]

INTERNATIONAL ASSIGNMENT RENEWAL LETTER

RE: Extension of International Assignment — [Destination]

This letter confirms that your international assignment to [Destination City, Country] under our letter dated [Original Letter Date] is hereby extended for a further period commencing [Extension Start Date] and anticipated to conclude on [New End Date].

All terms and conditions of your original assignment letter dated [Original Date] remain in full force and effect, including without limitation: your continued employment with the Company; Canadian payroll continuation; Canadian group benefits continuation; and the Company's commitment to a return position in Canada upon conclusion of the assignment.

This assignment remains temporary in character. You are expected to return to Canada upon conclusion of the extended assignment period.

[Name] | [Title] | [Company] | [Date]

ACKNOWLEDGED: [Employee Signature] Date: _____

MODEL DOCUMENT 3: PAYROLL CONFIRMATION AND INTERCOMPANY COST-SHARING LETTER

[COMPANY LETTERHEAD]

PAYROLL CONFIRMATION AND INTERCOMPANY ARRANGEMENT LETTER

To Whom It May Concern (Immigration Purposes):

We, [Company Legal Name] (Canadian entity, corporation number [XXX], registered at [Canadian Address]), confirm the following in respect of [Employee Name], Employee Number [CA-XXXXXX]:

1. [Employee Name] is and has been at all material times an employee of [Company Legal Name], the Canadian entity, and not an employee of any foreign affiliate or subsidiary of the Company.
2. [Employee Name]'s compensation has been and continues to be paid through the Canadian payroll of [Company Legal Name] in Canadian dollars. [If applicable: A portion of this compensation cost is recharged to [Foreign Entity Name] pursuant to an intercompany cost-sharing arrangement dated [Date], but the economic responsibility for [Employee Name]'s compensation rests with [Company Legal Name].]
3. [Employee Name] is enrolled in the Company's Canadian group benefits plan, administered by [Insurer Name], and his/her benefits continue in full force.

This letter is issued for immigration compliance purposes and is accurate in all material respects.

[Name] | Vice-President, Finance | [Company Legal Name] | [Date]

MODEL DOCUMENT 4: SECONDMENT AGREEMENT (Summary Terms)

A formal secondment agreement should be prepared by legal counsel. The following are the minimum terms that significantly strengthen the probability of satisfying the employment abroad exception:

- * Identification of the seconding entity (the Canadian business) and the host entity (the foreign organization)

-
- * Express statement that the employee remains employed by the seconding Canadian entity throughout
 - * Express statement that the seconding entity retains the right to recall the employee at any time
 - * Confirmation that compensation is borne ultimately by the seconding entity (even if recharged)
 - * Defined secondment period with anticipated end date
 - * Confirmation that Canadian benefits continue throughout the secondment
 - * Governing law clause specifying Canadian law as the governing law of the employment relationship

MODEL DOCUMENT 5: CORPORATE EXISTENCE DECLARATION

In cases where the Canadian business's genuineness may be questioned, a declaration from a senior officer (not the permanent resident applicant) confirming the company's Canadian operational presence substantially strengthens the probability of satisfying the Canadian business element. Key elements: date of incorporation; province; Canada Business Number; description of Canadian operations; number of Canadian employees; and Canadian revenue in the preceding fiscal year.

CHAPTER 13

Port of Entry Interaction Guide: What to Say at the Airport

This chapter provides practical guidance for permanent residents who may face residency obligation questioning at a Canadian port of entry. It is based on the ENF-23 Residency Obligations manual, direct practice experience advising clients at CBSA primary and secondary inspection, and the evidentiary record from published IAD decisions that describe what clients said to CBSA officers and how those statements were later used.

⚠ WARNING

Nothing in this chapter is intended to encourage or support untruthful statements to CBSA officers. Section 127 IRPA provides that misrepresentation to an immigration officer is an indictable offence. This chapter is about how to communicate truthfully, calmly, and effectively. It is not about what to fabricate. If you know you may have a residency compliance concern, consult an RCIC before travelling to Canada.

13.1 Before You Travel: The Pre-Travel Checklist

Every permanent resident who has spent extended time abroad should complete the following checklist before travelling to Canada — not at the airport, but at least two weeks before departure:

- * Calculate your current rolling five-year day count and verify that you are either compliant on physical presence or satisfied on the employment abroad exception.
- * Confirm you have your original assignment letters and renewal letters accessible (physically or digitally on your phone) for presentation at secondary if requested.
- * Confirm you have your most recent Canadian T4 slip and Canadian tax return accessible.
- * Confirm your PR Card validity — if it is expiring within six months, apply for renewal or a PRTD before you travel.
- * Contact your RCIC if you have any doubt about your compliance status. Do not guess.
- * Prepare a brief, accurate oral account of your employment situation that you can deliver calmly in 30-60 seconds.

13.2 At Primary Inspection: The 30-Second Declaration

At primary inspection, the officer will typically ask how long you have been outside Canada and what you do for work. Your answers should be truthful, brief, and consistent with your travel history. Do not volunteer information that is not requested. Do not make legal arguments. Do not become defensive or anxious — it increases officer attention.

QUESTION	STRONG ANSWER
How long have you been outside Canada?	'I've been on an international assignment for [X] years with my Canadian employer, [Company Name]. I'm returning from [City].'
What do you do for work?	'I work for [Company Name], a [type of company] based in [Canadian City]. I've been assigned to their [Destination] office temporarily.'
Where do you live?	'I've been based in [City] for my assignment, but my home is in Canada and I'm returning.'
Do you have documents about your work in Canada?	'Yes, I have my assignment letter and Canadian employment records. I can produce them if needed.'

QUESTION	WEAK / DANGEROUS ANSWER
How long have you been outside Canada?	'It depends on how you count it...' / 'I go back and forth...' / Long pause and calculation.
What do you do for work?	'I work for my company's subsidiary in [Country]' / 'I'm kind of self-employed there.'
Where do you live?	'I live in [Foreign City] — I've been there for five years.' / 'Mostly abroad I guess.'

13.3 At Secondary Inspection: The Deeper Examination

If referred to secondary inspection, the process becomes more detailed. The officer will examine your passport, access GCMS, and likely ask you to produce documentation. At this stage:

-
- * Produce your documents calmly and in an organized manner. Have your assignment letters, T4 slips, and Canadian tax returns accessible.
 - * Answer questions truthfully and specifically. If you do not know the answer to a specific question, say so — do not guess.
 - * Do not make legal arguments ('I qualify under section 28(2)(a)(ii)...'). Officers are trained to assess facts, not receive legal submissions. Legal arguments are for the IAD.
 - * Do not call your lawyer or RCIC in front of the officer unless you are detained — asking to call your lawyer before you are detained can increase officer concern.
 - * If the officer informs you that a s.44 report will be issued, remain calm, accept the report, and call your RCIC immediately after.

◆ STRATEGY

Keep a digital copy of your three most important documents on your phone at all times when travelling: (1) your most recent assignment letter; (2) your most recent Canadian T4 slip; (3) the first page of your most recent Canadian T1 return. These three documents address the three most likely secondary inspection concerns: the nature of your employment, the Canadian payroll source, and your Canadian tax compliance. Having them accessible at secondary inspection substantially increases the probability of being admitted without escalation.

13.4 If You Receive a Section 44 Report: Immediate Next Steps

A s.44 report is a written report that initiates the formal inadmissibility process. Receiving a s.44 report does not mean you have lost your permanent residency. It means the process of determination has begun. The following immediate steps substantially increase the probability of a successful outcome:

- * Do not sign anything beyond what is legally required. You will be required to acknowledge receipt of the report — but read anything before signing.
- * Obtain a copy of the s.44 report and the officer's notes if available.
- * Call your RCIC or immigration lawyer within 24 hours.
- * Do not discuss the substance of your case with CBSA officers beyond what is legally required once the report has been issued.
- * File your notice of IAD appeal within the applicable deadline — 30 days from the removal order that follows the s.44 process.

CHAPTER 14

Documentation Blueprint and Day-Count Methodology

14.1 The Master Documentation Checklist

The following checklist is organized into three categories based on when documents should be assembled. 'Must Exist Before Departure' documents are the most critical — their absence at the time of assessment cannot be cured by subsequent creation. 'Annual During-Assignment' documents provide the ongoing corroborative record. 'Event-Triggered' documents address specific circumstances that arise during the assignment.

Category A: Must Exist Before Departure

- * Formal assignment letter meeting all required elements (see Chapter 12, Model Document 1)
- * Evidence of the Canadian business's Ontario/BC/other provincial or federal corporation registration
- * Evidence of Canadian employees: payroll summary, HR directory, or LinkedIn corporate profile showing Canadian office
- * Written confirmation from Finance/HR that Canadian payroll will be maintained throughout
- * RCIC consultation report confirming compliance position before departure
- * Passport photocopy (all pages) at the date of departure
- * Canadian bank account and RRSP statements at date of departure showing opening balances

Category B: Annual During-Assignment (Collect Each Calendar Year)

- * Assignment renewal letter (if assignment extends beyond original letter's end date)
- * Canadian T4 slip for the tax year
- * Canadian T1 General tax return filed with CRA, with Notice of Assessment
- * Canadian group benefit annual statement (health, dental, life, disability, pension)
- * Canadian RRSP contribution receipt or annual statement

- * Canadian bank account statement for the year showing ongoing activity
- * Evidence of annual Canada visit (if made): boarding passes, hotel receipts, expense reports
- * Selection of significant email exchanges with Canadian head-office colleagues
- * Canadian professional designation renewal certificate (if applicable)

Category C: Event-Triggered Documents

- * Corporate restructuring: immediate letter from Canadian parent confirming secondment status and recall rights
- * Informal assignment extension: immediate formal extension letter (same day as the decision if possible)
- * Payroll source change: contemporaneous letter explaining the regulatory/business reason and confirming Canadian economic responsibility
- * Canadian property sale: personal diary entry or letter to file recording the reason and confirming intention to return
- * Children's school enrollment abroad: note recording whether enrollment is temporary or permanent

14.2 Day-Count Spreadsheet Methodology

Maintain two parallel spreadsheets from the first day of your assignment: (1) IRPA Rolling Five-Year Count; (2) Citizenship Act Physical Presence Count. Update both on the first day of each month. The recommended column structure for the IRPA count:

Column	Content
Date	Each calendar day
Location	Country and city
Status	'In Canada' / 'Assignment Day Abroad' / 'Non-Qualifying Abroad'
Basis	For assignment days: reference to the specific assignment letter
Monthly Running Total	Sum of qualifying days in the month

Rolling 5-Year Total	Sum of qualifying days in preceding 1,825 calendar days
Citizenship Running Total	Physical presence in Canada only (separate from IRPA count)

◆ **STRATEGY**

Schedule a 15-minute calendar appointment on the first day of each month to update both spreadsheets. Cloud-backup the spreadsheet after each update. Print and file an annual summary page at year-end. This discipline, maintained over the course of an assignment, substantially increases the probability of being able to demonstrate compliance at assessment because you will have a contemporaneous day-by-day record that predates any compliance challenge.

14.3 What to Do When You Discover a Compliance Gap

If your monthly update reveals that you have fallen below 730 days in your worst-case five-year window (or are at risk of doing so before your next assessment), the appropriate response depends on how far you are from an assessment trigger and how large the gap is.

Gap Size & Timeframe	Recommended Response
Minor gap, 12+ months before assessment	Return to Canada for an extended period to accumulate additional physical presence. Review employment structure with RCIC.
Moderate gap, 6-12 months before assessment	Immediate RCIC consultation. Begin ATIP request for GCMS notes. Review all documentation for completeness. Consider returning to Canada.
Significant gap, assessment imminent	Emergency RCIC retention. Do not travel to Canada unrepresented. Consider PRD application from abroad to initiate formal process with representation.
Gap discovered at port of entry	Remain calm. Produce available documents. Accept any s.44 report without dispute. Call RCIC immediately after.

CHAPTER 15

The D.O.C.U.M.E.N.T. Framework and Comprehensive Legal Analysis

15.1 The D.O.C.U.M.E.N.T. Framework

The D.O.C.U.M.E.N.T. Framework is the Dreamvisas systematic approach to building and maintaining residency obligation compliance throughout an international assignment. Each letter represents an action that, if completed consistently, substantially increases the probability of satisfying the employment abroad exception when assessed.

L	ELEMENT	ACTION REQUIRED
D	DOCUMENT	Obtain a formal pre-departure assignment letter meeting all required elements. Renew annually with a new signed letter.
O	OPERATE from Canada	Maintain Canadian payroll, Canadian benefits, Canadian T4s, and Canadian tax filings throughout.
C	CONNECT Regularly	Visit Canada at least annually. Attend head-office meetings. Maintain professional designations and Canadian community ties.
U	UNDERSTAND the Structure	Know the difference between the Canadian employer and any foreign subsidiary. Verify your employment structure with an RCIC before accepting any change.
M	MAINTAIN Canadian Ties	Active Canadian bank account. RRSP contributions. Canadian property or address. Canadian professional body membership.
E	ENSURE Temporary Character	Renew letters with defined end dates. Do not sell Canadian property or permanently enroll children abroad without RCIC advice.

N	NOTIFY Your RCIC	Report any corporate restructuring, payroll change, assignment extension, or employer change immediately.
T	TRACK Your Days	Update your IRPA and Citizenship day-count spreadsheets on the first of every month. Know both counts at all times.

15.2 Comparative Analysis: Winners vs. Losers

POSITIVE OUTCOMES SHARED	NEGATIVE OUTCOMES SHARED
Pre-departure RCIC consultation	No professional advice, or sham advice from unqualified persons
Pre-departure formal assignment letter	No contemporaneous assignment documentation
Annual renewal letters with end dates	Informal extensions by email; no renewal letters
Canadian payroll throughout	Foreign payroll — local currency from foreign entity
Canadian T4s and tax filings maintained	Foreign tax returns only; Canadian filings lapsed
Defined or contemplated return dates	No return date; de facto permanent relocation
Annual physical presence in Canada	No Canadian visits for 4+ year periods
Maintained Canadian property or financial ties	Sold Canadian property; closed Canadian accounts
Genuine Canadian business with real operations	Shell corporation or foreign subsidiary employment
Immediate response to corporate events	Delayed or no response when restructuring threatened compliance

15.3 The Misrepresentation Risk under Section 40 IRPA

Section 40 IRPA provides that a permanent resident is inadmissible if they directly or indirectly misrepresent or withhold material facts relating to a relevant matter that induces or could induce an error in the administration of IRPA. The consequences: a five-year bar from all Canadian immigration applications; potential inadmissibility; and possible removal from Canada.

The Federal Court has held that misrepresentation under s.40 does not require proof of intent. An innocent but objectively unreasonable misrepresentation may ground a s.40 finding. The only complete protection is truthful, complete disclosure in all dealings with IRCC and CBSA. Any arrangement involving backdated documents, shell companies, or false statements as to the nature of an employment relationship carries a very high probability of attracting a s.40 finding.

15.4 ENF Manuals and Operational Bulletins: The Officer's Framework

CBSA officers assessing residency obligation compliance are guided by ENF-23 (Residency Obligations), which outlines the assessment procedure, the documents officers should request, and the factors relevant to the employment abroad exception. IRCC officers are guided by the Operational Instructions and Guidelines (IP) and by operational bulletins issued from time to time.

Practitioners should be familiar with the current version of ENF-23. Key provisions establish: the officer's right to request any documentary evidence relevant to the assessment; the standard of proof (balance of probabilities); the requirement that officers consider all relevant circumstances; and the procedure for issuing s.44 reports. Where an officer departs from the ENF-23 procedure in a material way, that procedural irregularity may support a finding of procedural unfairness on judicial review.

CHAPTER 16

The Personal Evaluation Report: Your Strategic Starting Point

You have now read the most comprehensive practitioner-level guide available on the IRPA s.28 employment abroad exception. You understand the legal framework, the jurisprudence, the officer assessment reality, the employer obligations, the documentation requirements, and the port of entry interaction strategy. The next step is to apply all of this to your specific facts.

General principles, however thoroughly understood, cannot replace individualized assessment. Every client's situation has unique features: a particular corporate structure, a specific payroll arrangement, an unusual assignment history, a corporate event that has not yet been adjudicated, a gap in documentation that may or may not be curable. The Personal Evaluation Report (PER) applies the legal framework to your specific facts and gives you a clear, written, practitioner-signed action plan.

What the PER Covers for Residency Obligation Cases

- * Precise rolling five-year day count calculated from multiple starting points — including the worst-case window a CBSA officer would use.
- * Assessment of whether your specific employer qualifies under s.61 IRPR, with identification of any operational or structural concerns.
- * Application of the Yoo five-factor test to your specific assignment history.
- * Failure Risk Matrix assessment applied to your specific situation — identifying your High Risk, Medium Risk, and Low Risk factors.
- * Gap analysis of your documentation with specific remediation recommendations.
- * H&C analysis identifying the strongest compassionate arguments on your specific facts.
- * Citizenship timeline projection showing when citizenship eligibility arises.
- * A written action plan with specific steps, priorities, and timelines.

★ DREAMVISAS INSIGHT

The PER is not a verbal consultation. It is a written document, signed by Manoj Palwe RCIC R422575, that you can keep, share with your HR department, update annually, and produce

in any proceeding. It is the most cost-effective immigration investment available to any internationally mobile permanent resident.

To request your Personal Evaluation Report, visit www.dreamvisas.com or write to manoj@dreamvisas.com. Consultations are conducted worldwide by video conference. Reports are typically delivered within five to seven business days of the consultation.

GLOSSARY

Key Legal Terms and Definitions

Terms are defined as used in this book and in Canadian immigration law. References are to IRPA (Immigration and Refugee Protection Act, SC 2001, c 27) and IRPR (Immigration and Refugee Protection Regulations, SOR/2002-227) unless otherwise specified. This glossary is cross-referenced with the Subject Index in Chapter 16.

Assignment Letter

A written document issued by a Canadian employer before an assignment commences, documenting the terms of a temporary posting of a permanent resident employee to a location outside Canada. The primary documentary evidence for the employment abroad exception. Must be signed before departure to carry full probative weight.

Accompanying Exception

Section 28(2)(a)(i) IRPA. A permanent resident may count days spent accompanying a Canadian citizen or permanent resident spouse/partner who satisfies the employment abroad exception. Requires genuine cohabitation in the foreign location.

Balance of Probabilities

The civil standard of proof applicable in IAD proceedings. The permanent resident must establish that it is more likely than not that the claimed exception is satisfied. Not proof beyond a reasonable doubt (criminal standard); but not a mere balance of possibilities.

Canadian Business (IRPR s.61)

A business incorporated under Canadian law, or an enterprise, with an ongoing operation in Canada and Canadian employees beyond the applicant. The most litigated element of the employment abroad exception. Shell companies and foreign subsidiaries do not qualify.

CBSA

Canada Border Services Agency. Responsible for border enforcement, port of entry assessments, and issuance of s.44 reports. Officers are guided by ENF-23 (Residency Obligations) when assessing residency compliance.

Citizenship Act Physical Presence

Section 5(1)(c) Citizenship Act: 1,095 days of physical presence in Canada in the five years before the citizenship application. No employment abroad exception applies to this requirement. Entirely separate from the IRPA residency obligation.

ENF-23

The CBSA enforcement manual on Residency Obligations. Provides procedural guidance for CBSA officers assessing residency compliance. Available under Access to Information. Practitioners should be familiar with the current version.

Failure Risk Matrix

The Dreamvisas diagnostic tool (Chapter 8) assessing the risk profile of an employment abroad situation across ten factors: payroll source, employer genuineness, documentation, assignment duration, Canadian ties, employment contract, tax filings, Canadian visits, benefit structure, and professional advice.

Full-Time Employment

Employment constituting the permanent resident's primary occupational engagement, involving genuine continuous commitment of working time, integration into the employer's operations, and compensation consistent with full-time engagement. Part-time, nominal, or contractor arrangements do not qualify.

GCMS

Global Case Management System. IRCC and CBSA's internal database recording all immigration applications, decisions, border crossings, and officer notes for every permanent resident. Permanent residents can obtain their own GCMS notes through an ATIP request.

H&C Grounds

Humanitarian and compassionate grounds. Section 28(2)(c) IRPA gives the IAD discretion to allow a residency obligation appeal where sufficient H&C considerations warrant retention of permanent residency. Factors: degree of establishment in Canada, reasons for absence, hardship, best interests of children. Discretionary — not guaranteed.

IAD

Immigration Appeal Division of the Immigration and Refugee Board of Canada. Quasi-judicial tribunal with jurisdiction over residency obligation appeals. Decisions reviewed by the Federal Court on the Vavilov reasonableness standard.

IRCC

Immigration, Refugees and Citizenship Canada. The federal department responsible for immigration policy, PR Card and PRTD issuance, and citizenship applications.

IRPA s.28

The residency obligation provision. Section 28(1): 730-day requirement. Section 28(2)(a)(ii): employment abroad exception. Section 28(2)(a)(i): accompanying exception. Section 28(2)(c): H&C discretion.

IRPR s.61

The regulatory definition of 'Canadian business' for IRPA s.28 purposes. Requires ongoing Canadian operation and Canadian employees. The most litigated definitional provision in residency obligation law.

Misrepresentation (s.40 IRPA)

Directly or indirectly misrepresenting or withholding material facts inducing an error in the administration of IRPA. Consequences: five-year bar, inadmissibility, removal. Intent not required. Honest but unreasonable misrepresentation may attract s.40. The risk is unacceptably high for any arrangement involving fabricated or backdated documents.

Permanent Resident Card

Official document evidencing PR status. Five-year validity. Renewal triggers IRCC residency compliance assessment. Refusal of renewal is subject to IAD appeal.

PRTD

Permanent Resident Travel Document. Issued to permanent residents outside Canada whose PR Card has expired. Application triggers residency compliance assessment at overseas visa post. Refusal subject to IAD appeal within 30 days.

Physical Presence

Actual bodily presence within Canadian borders. Under IRPA: 730 days in a rolling five-year period satisfies the residency obligation, subject to exceptions. Under the Citizenship Act: 1,095 days in the five years before the citizenship application, with no exceptions.

Post-Vavilov Standard

Under *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65: the presumptive standard of review for IAD residency obligation decisions is reasonableness. The Federal Court asks whether the IAD decision is justified, transparent, and intelligible. Courts do not substitute their own judgment. Factual findings receive substantial deference.

RCIC

Regulated Canadian Immigration Consultant. Authorized by the College of Immigration and Citizenship Consultants (CICC) to advise and represent clients in immigration matters. The author's registration is RCIC R422575. Only RCICs and immigration lawyers may provide immigration advice for consideration.

Residency Obligation

Section 28(1) IRPA: 730 days of physical presence in Canada in every five-year period. Modified by exceptions including the employment abroad exception (s.28(2)(a)(ii)) and accompanying exceptions (s.28(2)(a)(i)). Assessed on a rolling five-year basis from the date of assessment.

Rolling Window

The five-year period for residency obligation assessment rolls backward from the date of assessment. The most unfavourable five-year window is typically used by CBSA. The most favourable window may be available for IAD strategic argument. Always calculate from multiple starting points.

s.44 Report

A written report by a CBSA officer initiating the formal inadmissibility process under s.44 IRPA. Issuance of a s.44 report does not determine inadmissibility — it triggers the process. A removal order typically follows, which is the event that triggers the IAD appeal right.

Secondment

A temporary arrangement posting an employee of the Canadian business to work at a foreign client, partner, or subsidiary, while remaining employed by the Canadian entity. May qualify for the employment abroad exception where the Canadian employment relationship is genuinely maintained. Key indicia: Canadian entity bears salary costs and retains recall rights.

Temporary Assignment

An assignment structured and understood by both employer and employee as a finite posting with an expected return to Canada. No fixed maximum duration (*Yoo v. Canada*). The Yoo five-factor test is the standard analytical framework for assessing temporary character.

Vavilov Framework

See 'Post-Vavilov Standard.'

Yoo Five-Factor Test

The analytical framework for assessing the 'temporary' element established in *Yoo v. Canada* (2009 FC 1042): (1) written assignment documentation; (2) defined or contemplated end date; (3) maintained Canadian employment relationship; (4) Canadian ties suggesting expected return; (5) mutual understanding of temporary character.

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ABOUT THE AUTHOR

About the Author

Manoj Palwe is one of Canada's most experienced and accomplished Regulated Canadian Immigration Consultants (RCIC R422575), a CAPIC Fellow (R11592), and one of the very few practitioners who has also qualified for the Migration Institute of Australia (MIA) examinations. With more than twenty-five years of immigration practice across Canada, Australia, Germany, and the United Kingdom, he has personally assisted over 10,000 families in achieving their immigration goals across four countries.

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Over a twenty-five-year career, Manoj has established himself as a leading practitioner and commentator on immigration law for the Indian diaspora. He is the author of more than sixty immigration and career e-books, a prolific content creator with over 600 YouTube videos and more than 20,000 subscribers, and one of Quora's most-read immigration voices with over 4 million views. He holds more than 550 LinkedIn recommendations from clients whose lives and careers his work has transformed. His proprietary frameworks — including the D.O.C.U.M.E.N.T. Framework, the Failure Risk Matrix, and the T.A.R.G.E.T. method — have been adopted by other practitioners as teaching tools and assessment frameworks.

This Platinum Edition of Residency Obligation Fulfilled represents Manoj's most comprehensive single publication on section 28 IRPA and the employment abroad exception — incorporating five years of post-Vavilov jurisprudential developments, an entirely new employer HR guide, model documents reviewed by immigration law colleagues, a port of entry interaction guide based on direct CBSA advisory experience, and the diagnostic Failure Risk Matrix that is now used in Dreamvisas client engagements.

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★ **A Personal Request from the Author**

ABOUT THIS BOOK Residency Obligation Fulfilled is the most comprehensive practitioner-level guide available on the IRPA section 28 employment abroad exception for Canadian permanent residents working outside Canada for a Canadian business. Covering Federal Court jurisprudence from Hum v. Canada (2006 FC 1440) through Morales v. Canada (2019 FC 1456); post-Vavilov reasonableness review; model assignment letters, renewal letters, secondment agreements and payroll confirmation letters; the ten-factor Failure Risk Matrix; a port of entry interaction script; a complete employer HR guide; citizenship physical presence planning with worked examples; a full IAD appeals process guide; a 35-question hearing preparation checklist; and a complete documentation blueprint. Written by Manoj Palwe, RCIC R422575, CAPIC Fellow R11592, with 25 years of Canadian immigration practice and 10,000+ families assisted across Canada, Australia, Germany, and the United Kingdom. Essential reading for: Indian and international professionals in Canada posted on international assignments; HR teams at Canadian companies with permanently resident employees abroad; RCICs and immigration lawyers advising on residency obligation compliance; and PR holders facing IAD appeals on employment abroad exception grounds. Search keywords this book is designed to help you find: Canadian permanent resident residency obligation 2026, IRPA section 28 employment abroad exception, Canadian business assignment letter template, PR card renewal outside Canada, PRTD application guide, IAD appeal residency obligation, Yoo five-factor test temporary assignment, working outside Canada permanent resident rights, Canadian immigration guide 2026, RCIC residency obligation advice. **A PERSONAL REQUEST FROM THE AUTHOR** This book is now in your hands. If it has given you clarity, confidence, or a concrete plan of action — whether you are a permanent resident protecting your status, an HR professional structuring your company’s assignments correctly, or a practitioner advising clients on this complex area of law — I have one sincere request: please leave an honest review on Amazon. I specifically welcome critical reviews. If you found a gap, an outdated case reference, a chapter that needed more depth, or a template that required adjustment for your specific situation, saying so helps me produce a better second edition that serves the next reader more completely. Critical feedback from practitioners and lawyers is the most valuable input an author can receive. If the book was useful, two or three genuine sentences about what you found most valuable will help other permanent residents in similar situations discover this resource. Honest reviews of any kind, at any star level, are read personally by me and are deeply appreciated. Thank you for the time you have invested in protecting your permanent residency.

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