

# Officer Discretion in Immigration Decision-Making. A Comparative Analysis of Canada and the United States-2026

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## ABSTRACT

Immigration law is often described as a rules-based system in which outcomes follow automatically from statutory compliance. In practice, however, immigration decisions are heavily shaped by officer discretion. Immigration officers are required not only to verify documents but also to assess credibility, evaluate risk, interpret evidence, and determine whether an applicant has genuinely met the legal standard set by law. This article examines how officer discretion operates in the Canadian and United States immigration systems. It focuses on the legal foundations of discretion, its three main operational components: credibility assessment, risk assessment, and interpretation of evidence and the constitutional and administrative law limits that constrain its exercise. Drawing on statutory frameworks, recent case law, and administrative law principles, including the Supreme Court of Canada's decision in *Vavilov* (2019), the article argues that officer discretion is not arbitrary. Rather, it is a structured, reviewable form of administrative judgment that applicants and practitioners must understand in order to navigate immigration systems effectively. The article concludes by outlining practical implications for application preparation and refusal response strategies in both jurisdictions.

**Keywords:** Immigration law; officer discretion; Canada; United States; visa refusal; credibility; risk assessment; judicial review; administrative law; comparative immigration law.

## INTRODUCTION

Immigration law is often understood as a system governed strictly by rules. Many applicants assume that if they meet the stated requirements and submit the correct documents, approval should follow automatically. This view, however, does not reflect how immigration decisions are made in practice. In reality, immigration law relies majorly on the discretionary judgment of immigration officers (Banks, 2023; Eni, 2025).

Immigration officers do more than verify documents. They are legally required to evaluate whether an applicant has genuinely met the applicable legal standard. This involves assessing credibility, weighing evidence, and judging future compliance with visa conditions. These tasks cannot be carried out mechanically. They require interpretation and judgment, which is why discretion plays a central role in immigration decision-making (Hathaway and Foster, 2014).

This gap between public expectations and legal reality is one of the main reasons applicants are often surprised by refusals. Even when formal eligibility criteria appear to be met, an application may still fail if the officer is not satisfied that the evidence is credible, coherent, and persuasive. Therefore, discretion shapes results at every stage of the process, from initial assessment to refusal and review (Rehaag, 2019).

Hence, the current review paper examines officer discretion from a comparative point of view, focusing on the immigration systems of Canada and the United States. It explores the legal foundations that authorize discretion, the practical ways in which it is exercised, and the legal limits that constrain it. Attention is given to credibility assessment, risk evaluation, and the interpretation of evidence, as well as to the role of judicial review in ensuring accountability.

Furthermore, the central argument advanced is that officer discretion is neither arbitrary nor unlimited. It is structured by statute, guided by administrative law principles, and subject to review by the courts. At the same time, discretion is real and consequential. Understanding how it operates is not just of academic interest; it is essential for applicants and practitioners seeking to span modern immigration systems effectively (Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019).

### **Legal Foundations of Officer Discretion**

Officer discretion in immigration law does not exist by accident. In both Canada and the United States, it is deliberately created by legislation. Immigration statutes and regulations set out legal requirements, but they also give immigration officers the authority to interpret evidence, assess credibility, and decide whether those requirements have been actually met. Understanding these legal foundations is essential to understanding how discretion operates in practice.

#### **Canada: Discretion under IRPA and IRPR**

In Canada, immigration decision-making is governed by the *Immigration and Refugee Protection Act* (IRPA) and the *Immigration and Refugee Protection Regulations* (IRPR). These laws establish eligibility criteria for visas and permits, but they do not prescribe outcomes automatically. Instead, they require officers to be “satisfied” that an applicant meets the legal standard (IRPA, 2001; IRPR, 2002).

A clear example is section 179(b) of the IRPR, which applies to temporary resident visa applications. This provision states that a visa may be issued only if the officer is satisfied that the applicant will leave Canada at the end of their authorized stay (IRPR, s. 179(b)). The regulation does not define what level of proof is sufficient, what documents must be provided, or how competing evidence should be weighed. Those judgments are left to the officer.

In addition, Canadian immigration law also places strong emphasis on credibility. Section 16(1) of IRPA requires applicants to answer questions truthfully and to provide all relevant evidence requested by an officer (IRPA, s. 16(1)). Where an applicant provides false information or withholds material facts, section 40(1)(a) makes them inadmissible for misrepresentation, carrying a five-year bar from Canada (IRPA, s. 40(1)(a)).

These provisions serve two important functions. First, they give officers legal authority to closely assess credibility. Second, they signal that honesty and transparency are central to the integrity of the immigration system. As a result, discretion in Canada is closely tied to an officer’s assessment of whether an applicant’s evidence can be trusted as a whole (Rehaag, 2019).

#### **United States: Discretion and the Presumption of Immigrant Intent**

The legal foundation of officer discretion in the United States is structured differently. Under section 214(b) of the *Immigration and Nationality Act* (INA), most applicants for nonimmigrant visas are presumed to be intending immigrants unless they can prove otherwise (INA, § 214(b)).

Fundamentally, this presumption shapes how discretion operates. Rather than starting from a neutral position, U.S. consular officers begin with the assumption that the applicant intends to remain permanently in the United States. The applicant must actively avoid this presumption by demonstrating strong connection abroad and a clear intention to comply with the temporary nature of the visa (U.S. Department of State, 2025a).

Going further, the Foreign Affairs Manual (FAM), which guides consular officers, clarifies that a refusal under section 214(b) reflects a failure to qualify for the requested nonimmigrant status, not merely weak documentation (U.S. Department of State, 2025b). The decision is personal to the officer and cannot be delegated or automated, reinforcing the central role of individual judgment.

Lastly, credibility also plays essential role in the U.S. system. Under INA section 212(a)(6)(C)(i), an applicant who engages in fraud or willful misrepresentation may be permanently inadmissible to the United States. This

severe consequence is a testament on how seriously credibility assessments are treated in discretionary decision-making (INA, § 212(a)(6)(C)(i)).

## Comparative Observations

Although the Canadian and U.S. systems are structured differently, both depend on officer discretion as a major feature. In Canada, discretion operates through an officer's determination of whether they are satisfied on the evidence. In the United States, it operates through an applicant's obligation to overcome a statutory presumption of immigrant intent.

However, in both systems, discretion is intentional, legally authorized, and central to immigration enforcement. Therefore, officers are not expected to apply rules mechanically. Instead, they are required to evaluate evidence, assess credibility, and make judgment calls within the boundaries set by law. These shared foundations explain why similar applications can lead to different results, and why understanding discretion is essential for both applicants and practitioners.

## The Three Core Components of Discretion

Although immigration laws differ between Canada and the United States, officer discretion in both systems operates through three closely connected components: credibility assessment, risk assessment, and the interpretation of evidence. These components do not function separately. Instead, they interact to shape how officers decide whether an applicant has met the legal standard required for approval.

### Credibility Assessment

Credibility is the foundation of immigration decision-making. Before officers consider legal eligibility in detail, they must first decide whether they believe the applicant's account. This assessment goes beyond detecting fraud. It focuses on whether the application presents a coherent, consistent, and believable narrative when viewed as a whole (Hathaway and Foster, 2014).

Officers assess credibility by comparing information across the entire file. They look for consistency between written statements, supporting documents, financial records, employment history, travel history, and the stated purpose of the application. Even when all documents appear genuine, credibility concerns may arise if the overall story does not logically fit together (Immigration and Refugee Board of Canada [IRB], 2025).

In Canada, credibility carries heightened legal importance because applicants are under a statutory duty to be truthful and to disclose relevant information (IRPA, s. 16(1)). Where credibility failures amount to misrepresentation, applicants may face inadmissibility and a multi-year ban (IRPA, s. 40(1)(a)). In the United States, findings of fraud or willful misrepresentation can result in permanent inadmissibility (INA § 212(a)(6)(C)(i)).

As a result, credibility problems are not merely evidentiary weaknesses. They can have long-term legal consequences, making credibility the most critical component of discretionary assessment (Rehaag, 2019).

### Risk Assessment

The second core component of discretion is risk assessment. Every immigration decision involves a forward-looking judgment about whether an applicant is likely to comply with the conditions of the visa or permit they are seeking.

In Canada, this assessment is expressed through the requirement that an officer be satisfied the applicant will leave Canada at the end of their authorized stay (IRPR, s. 179(b)). In the United States, it is reflected in the presumption of immigrant intent, which applicants must overcome to qualify for most nonimmigrant visas (INA § 214(b)).

Officers assess risk by considering multiple factors, including home-country ties, employment stability, financial circumstances, family obligations, prior travel history, and the coherence of the stated purpose of travel (U.S. Department of State, 2025a). No single factor is determinative. Instead, officers weigh these elements together to form a judgment about the likelihood of future compliance.

Moreso, risk assessment is uncertain rather than certain. Officers are not required to prove that an applicant will overstay or violate visa conditions. They must only determine whether the evidence sufficiently reduces the perceived risk to an acceptable level. This explains why applications with similar facts may receive different outcomes depending on how those facts are presented and explained.

### **Interpretation of Evidence**

The third component of discretion is the interpretation of evidence. Immigration officers do not simply verify documents; they interpret what those documents mean in context. A bank statement, employment letter, or invitation does not automatically establish eligibility. Officers must decide how much weight to assign to each piece of evidence and whether it supports the applicant's overall narrative.

This interpretive role is where discretion is most visible and often most contested. Officers may question whether financial resources are stable or temporary, whether employment is genuine or nominal, or whether the stated purpose of travel agrees with the applicant's background and timing (Banks, 2023).

Canadian courts have recognized that this interpretive space allows for a range of reasonable results. However, officers must still base their interpretations on the evidence before them and must not rely on incorrect facts or speculation. Where officers fail to meaningfully engage with major evidence or rely on erroneous assumptions, their decisions may be found unreasonable on judicial review (Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019; *Gibson v. Canada*, 2024).

The practical implication is that evidence left unexplained invites adverse interpretation. When officers are forced to infer meaning without context, they may draw conclusions that are unfavorable to the applicant. Therefore, clear explanation and contextualization play essential role in shaping discretionary outcomes.

### **Legal Limits on Discretion**

While immigration and border officers have discretion, that choice is not unlimited. The law places clear boundaries on how officers can make decisions to ensure fairness, consistency, and respect for individual rights. In simple terms, officers must follow the law, respect procedures, and avoid personal bias when exercising their authority.

First, statutory limits apply. Officers must act within the powers granted by legislation. For example, immigration laws clearly define who is admissible or inadmissible, and officers cannot ignore these rules based on personal opinions (Immigration and Refugees Protection Act [IRPA], 2001; Immigration and Nationality Act [INA], 1952). Discretion can only be used where the law allows it.

Second, constitutional and human rights protections restrict discretion. Decisions must respect fundamental rights such as equality, due process, and protection from discrimination. Courts have repeatedly held that cautionary decisions cannot be arbitrary, abusive, or based on race, nationality, or religion (Canadian Charter of Rights and Freedoms, 1982; U.S. Constitution, amend. V).

Third, administrative law principles impose limits. Officers are required to act reasonably, consider necessary evidence, and provide justifiable reasons for their decisions. If an officer ignores important facts or applies the law unfairly, their decision may be overturned through judicial review (*Dunsmuir v. New Brunswick*, 2008; U.S. Citizenship and Immigration Services [USCIS], 2024).

Finally, policy guidelines and oversight mechanisms further constrain discretion. Agencies such as Immigration, Refugees and Citizenship Canada and U.S. Citizenship and Immigration Services issue manuals and operational

guidelines to promote consistency. Internal audits, appeals, and court reviews help ensure officers remain accountable (IRCC, 2024; USCIS, 2024).

In short, discretion exists to allow flexibility, but it must always operate within the law, guided by rights, fairness, and accountability.

### **Practical Implications**

In reality, officer discretion has real, everyday effects on migrants, governments, and the immigration system as a whole. How discretion is used can determine whether an application is approved, delayed, or refused, even when applicants appear to meet the basic legal requirements.

For applicants, discretion means that how a case is presented matters. Clear documentation, truthful explanations, and consistency can positively influence an officer's assessment, especially in borderline cases (Immigration, Refugees and Citizenship Canada [IRCC], 2024). Small issues such as gaps in travel history or weak explanations may be interpreted differently depending on the officer's judgment.

For officers, discretion allows flexibility to respond to complex human situations that the law cannot fully predict. However, it also places responsibility on officers to apply the law carefully and fairly. Poorly exercised discretion can lead to inconsistent results, complaints, and court challenges (USCIS, 2024).

For the immigration system, discretion helps manage high application volumes and prioritize enforcement resources. Agencies like Immigration, Refugees and Citizenship Canada and U.S. Citizenship and Immigration Services rely on internal guidelines to promote consistency, but variation in decisions can still occur (IRCC, 2025).

Furthermore, discretion is a double-edged sword: it provides flexibility and efficiency, but it also creates uncertainty. Understanding how discretion works helps applicants prepare stronger cases and helps policymakers design clearer rules that reduce unfair outcomes.

### **CONCLUSION**

In everyday terms, officer discretion is what allows immigration and border laws to work in the real world. Laws are written to cover millions of people and situations, but no law can fully capture the personal, social, and humanitarian details that come with individual cases. Discretion gives officers the flexibility to look at the whole picture rather than treating every case as exactly the same.

That flexibility, however, comes with serious responsibility. Discretion is not meant to be random, emotional, or based on personal beliefs. Officers are required to follow the law, respect human rights, and make decisions that are reasonable and fair. When discretion is used properly, it can prevent harsh or unjust results. When it is used poorly or inconsistently, it can result in unfair refusals, unequal treatment, long delays, and loss of trust in the immigration system.

For applicants, this reality explains why similar cases can sometimes have different outcomes. It also shows why honesty, consistency, and strong documentation are so important. A well-prepared application helps the officer understand the facts clearly and reduces the risk of negative assumptions or misunderstandings.

For governments and institutions, discretion highlights the need for clear legislation, detailed policy guidance, proper training, and strong oversight mechanisms. These safeguards help ensure that discretion supports fairness rather than undermines it.

In the end, discretion is neither a weakness nor a loophole in immigration law. It is a necessary tool. When guided by clear rules, accountability, and respect for human dignity, discretion helps balance border control with justice, compassion, and the rule of law.

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