

# ORMAN IMMIGRATION LAW

**David Orman  
Barrister & Solicitor**

**Suite 807  
920 Yonge Street  
Toronto, ON M4W 3C7**

**Tel. (416) 861-0091  
Fax (647) 277-9094  
orman@bondlaw.net**

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## **2023 Study Permit Refusal – Judicial Review Fact Sheet**

### **How does an application for leave and judicial review work**

An application for leave and for judicial review is a formal application that is filed with the Federal Court when a decision maker (most often an immigration officer in cases that we deal with) refuses an application (ie. a visitor visa, study permit, temporary resident permit, permanent resident application, refugee claim, etc.). These appeals are decided by a Federal Court judge. The steps involved in such an appeal are set out below.

**Step 1: File an application for leave and for judicial review** – this must be filed within 15 to 60 days of receiving the decision, depending on whether the client is inside of Canada (15 days) or outside of Canada (60 days). Our office can sign the first part of the appeal on the client's behalf. A payment of \$1000.00<sup>1</sup> plus \$150 in Court fees and insurance is required in order to take this first step.

**Step 2: File an application record.** The application record includes all the arguments as to why the appeal should be allowed. It is a complicated legal document requiring many hours of work to finalize. This must be filed typically within 30 days of filing the application for leave, although occasionally the time period is longer. A payment of \$3000.00<sup>2</sup> is required in order to take this next step.

**Step 3: The responding party (ie. the government of Canada) will file their reply.** We will receive this 30 days after we file the application record.

**Step 4: We file our reply.** We will file this reply 10 days after receiving the response from the Government of Canada.

**Step 5: A judge of the Federal Court will decide whether the case is strong enough to be heard.**

**Option 1: Case is heard:** If the judge decides to hear the case then the matter will be heard about 6-8 months after we file the first application for leave. In that case a further

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<sup>1</sup> Plus taxes if client is based in Canada.

<sup>2</sup> Plus taxes if client is based in Canada. Additional fee of \$1,000.00 if refusal involves misrepresentation.

\$3000.00<sup>3</sup> will be owing. If we win the appeal then the matter will go back to a new visa officer for a new decision. If we lose the appeal then there are no more options available, except filing a further application.

**Option 2: Judge refuses to hear the case** – If the judge refuses to hear the case then there are no more options available, except filing a further application. A refusal is typically communicated about 1-2 months after filing the reply.

There is also the possibility of the other side suggesting a settlement. In some cases the government of Canada receives our application record, agrees that a mistake was made and offers to settle the matter by having us withdraw our appeal and having the matter be sent back to the visa office for a redetermination. In that case we don't proceed to a hearing and no further money is owing in relation to the appeal.

In other cases, the offer to settle happens after the judge sets a hearing date. In that case, a partial refund of the \$3,000.00 hearing fee will be given, depending on how long we have worked to prepare the case for the hearing. And, of course, there is also the possibility that no offer to settle will be made.

When the application is reopened (whether by settlement or winning the hearing), there will be an opportunity to make updated submissions on the file before it is reassessed by a different officer. Our office can be hired to help prepare these updated submissions. This is a separate service that is not covered by our court fees.

#### **Late Filing of Application Record:**

If the Application Record is not filed in time, we may need to file a motion for an extension of time. This additional step will cost a further \$2000.00.<sup>4</sup>

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<sup>3</sup> Plus taxes if client is based in Canada.

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