

Responding to a Negative Decision

Preamble

This document is intended to assist sponsors in dealing with negative decisions. Information provided in this document is based on policy and information from Citizenship and Immigration Canada. RSTP consulted experienced SAHs and lawyers in the preparation of this document, however, this, or any similar RSTP information sheets are not meant to offer legal advice.

Introduction

Refusal letters in overseas cases most often provide the sponsor with a few sentences about why the case has been refused. Often these sentences shed very little light on the actual reasoning of the officer. Requesting the CAIPS¹ notes, which include interview notes, will provide more information regarding the reasons for refusal.

In the following you will be provided with basic information regarding how to request CAIPS and the process of applying for judicial review. This is only intended as an outline of the process, you are encouraged to contact an immigration lawyer who has experience with challenging negative refugee resettlement decisions for further assistance with the process.

Appeal vs. Judicial Review²

In an appeal, an individual seeks to challenge a decision. Outcomes can include: dismissing the appeal and upholding the original decision or allowing the appeal and substituting a new decision as determined by the courts or sending the issue back to the decision maker for reconsideration.

A judicial review on the other hand is not an appeal on the merits of the case. The Court cannot substitute its decision for that of the decision maker. Rather, the Court examines the process that led to the decision and determines if this process was fair and the decision was reasonable. If the Court determines that it was not, the Court may only quash the decision in question and order a redetermination.

¹ Computer Assisted Immigration Processing System (CAIPS). Citizenship and Immigration Canada's tracking systems for cases processed overseas. Local CIC offices have access to CAIPS. Sponsorship Agreement Holders can place a request for CAIPS notes to CIC under the Access to Information Act

² For more information please consult Overseas Process Manual 22: Judicial Review, Section 5.1 at <http://www.cic.gc.ca/english/resources/manuals/op/op22-eng.pdf>

Judicial Review

Under Canada's immigration law, you can ask the Federal Court of Canada to review decisions related to immigration. A lawyer must apply for judicial review on your behalf.

Review by the Federal Court is a two-stage process. In the first stage, which is known as the "application for leave" stage, the Court reviews the documents and legal arguments related to your case. You must show the Court that an error was made in the decision, or the decision was not fair or reasonable. If leave is given, this means the Court has agreed to examine the decision in greater depth. At this second stage, called "judicial review," and an oral hearing is held before the Court in order to explain why the original decision was wrong.

On a judicial review of a sponsorship case, the role of the judge is simply to uphold the decision or quash it. Winning a judicial review case means having the judge say that the decision is unreasonable or not consistent with the law, which means that a new officer will review the case again and decide if she or he will accept the refugee. The judge can also order the new officer to address a specific matter that was not properly addressed in the first determination of the case, and can set a deadline for the redetermination. The judge can also order the Government to pay the applicant some or all of the costs they incurred in hiring a lawyer to argue their case. ***However, winning a judicial review case does not mean the refugee is automatically accepted to Canada.***

Requesting the file

Under the Access to Information Act, a Canadian citizen, permanent resident or a person inside Canada can request a complete copy of the complete CIC file relating to the person's resettlement application. The SAH or the co-sponsor can submit a request on behalf of the refugee. It is extremely important to make this request as soon as possible after receiving the refusal letter as the information contained in the CIC file can have a major impact on a case. The refugee and all family members over 18 years of age must complete an Authority to Release Personal Information Form (IMM5475). Some SAHs ask the refugees to fill this out initially when they sign a Use of a Representative form (IMM5476).

Once this is complete, an Access to Information Request form (IMM5563) needs to be completed. You don't need to fill in the Requester's reference no. or ATIP file no. boxes – this form is used for different purposes and those areas do not apply in this case.

Send all the forms together with an administrative fee of 5\$ (payable to the Receiver General of Canada) to:

Public Rights Administration
Citizenship and Immigration Canada
360 Laurier Avenue West, 10th floor
Ottawa, ON K1A 1L1

Stage One: Applying for Leave

Applying for leave, is asking the Federal Court permission to proceed with a judicial review. This must be done within **60 days of being notified of the negative decision**. This deadline can only be extended in exceptional circumstances. Leave applications can be filed by applicants themselves, but are normally filed by lawyers.

When applying for leave you will need, at a minimum, the refusal letter to begin with, so that you can enter the necessary information in the “originating notice”. If you have not yet received the CAIPS notes through Access to Information, you can indicate in the originating notice that you have not received written reasons for refusal (despite having received the refusal letter). This triggers an obligation on the visa post to send you the CAIPS notes directly. These CAIPS notes form part of the officer’s reasons for refusal, and will assist in outlining most of the legal arguments that can be made in the leave and judicial review application. Common errors that one may discover upon review of the CAIPS notes are: inadequate reasons for refusal; issues important to the case have been ignored by the officer; the officer drew unreasonable, perverse conclusions; the officer was overtly biased; the officer misunderstood the legal definition of a refugee; etc.

When filing the legal arguments it is imperative to be thorough. A good case for Judicial Review must have a complete paper record which will allow you to convince the judge that this is a genuine refugee claim and that the reasons for refusal do not match the actual case. If the case only has the minimal necessary information (the forms) you may have difficulties in proving your arguments. Supporting documents such as ID documents, long narratives from the refugee, documents that prove their story, etc., are critical for a judicial review. (If you do not have copies of these documents yourself, you should receive them through the Access to Information request.)

Things to look for in a case:

- A well-documented case is crucial; good narrative provided to the visa officer, supporting documents, etc...
- If credibility is stated as part of the visa officers decision, this will be more hard to review it because you will only have a paper document when proving your case
- Relevant factual evidence that is ignored or not believed is a good example of a case to go forward with; so are comments that disclose a clear bias, or CAIPS notes that show the officer was not aware of a basic element of the case.

Stage Two: Applying for Judicial Review (contingent on successfully being granted leave)

If your application for leave is accepted, the judge can set the conditions of a full judicial review hearing. This date must be set within 90 days but after at least 30 days, of a decision on the application for leave being granted. Only a lawyer (or the refugee herself were she is in Canada) can appear before the judge in the hearing. If your application for leave is denied, there is nothing more you can do (apart from submitting a new and very well documented application with new evidence to the visa post).

It is possible that CIC may concede the case even before going to court, and a letter will be received by your lawyer saying that a redetermination should be done as there were problems in the first determination. Once you get to this step you may be able to negotiate terms to the redetermination; for instance ensuring that the redetermination only examines the issues that the visa officer had a problem with, not any of the issues that the visa officer had already agreed with. It is also important to include that a new decision be made in 30-60 days so that the refugee is not left waiting for years for a new determination. You can also request costs, if the case is very strong.

Tips to Avoid Negative Decisions

Although applying for judicial review is possible, sponsors must focus on proactive work such as thorough case assessments in order to avoid negative decisions.

It is important that sponsors **ensure that a case is well-documented when it is submitted**. That includes identity and corroborating documents such as police or medical reports, employment letters, etc, as well as “objective” reports on country conditions from human rights organizations such as Amnesty International, Human Rights Watch, the US Department of State, UNHCR, and major media outlets. Remember: documents can be filed up until the point a decision is made. Even after the interview if a sponsor learns that issues came up during the interview that lead them to believe that something needs to be clarified, supporting documents can still be submitted to the visa office, so long as a final decision has not yet been made. Any information received up until that point needs to be taken into consideration. This is part of procedural law that allows people to submit the best case possible. If this type of situation arises, it is important to immediately notify the visa post in writing that you will be sending further evidence, and request that no decision be rendered until that new evidence has been received.

Interview preparation is very important if possible. Talk to the refugee before they go into the interview. It is important for the refugee to understand what is going to happen and the purpose of the interview. To go over the key facts that the refugee needs to convey to the visa officer. Emphasize the importance of focusing on what they know and admitting what they do not know. Also emphasize that if

they have ANY concerns about the interpreter or the quality of the interpretation they should raise it with the officer immediately during the interview.

Post interview debriefing is also very useful in the event that the case is refused and you need to take the case to Court. Having the refugees recount what happened at the interview, what was asked, what they answered, whether there were problems with the interpreter, whether the officer appeared to be listening or distracted, etc, provides a record that can be used to rebut the officer's sometimes different report of the interview.

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