

APPLICATION FOR LEAVE AND FOR JUDICIAL REVIEW – IMMIGRATION AND REFUGEE PROTECTION MATTERS (section 72 of the *Immigration and Refugee Protection Act*)

Proceedings in a court of law can be complicated and as such, if you are a self-represented litigant, you may wish to [seek legal advice](#).

[Who may represent you in Federal Court?](#)

A person who would like to apply for judicial review of an immigration decision or matter that falls under the [Immigration and Refugee Protection Act](#) must first obtain permission (leave) from a judge of the Federal Court. Section 72 of this Act provides that an application for leave and for judicial review may be served on the other party and filed with the registry of the Court within 15 days (for a matter arising in Canada) OR 60 days (for a matter arising outside Canada) after the day on which an applicant is notified of or becomes aware of the matter to be reviewed.

It is only if the Court decides to grant leave that the case will proceed to an oral hearing of the application for judicial review itself. If the Court dismisses the leave application, the application for judicial review is also dismissed and the file will be closed.

The *Federal Courts Citizenship, Immigration and Refugee Protection Rules* will guide you through the various steps involved and the [forms](#) to be used in the course of an application for leave and for judicial review. You are responsible for taking these steps within the time limits provided by the Rules.

Application for leave and for judicial review (Form IR-1):

The application must include:

- names of the parties
- date and details of the decision to be reviewed
- date on which the applicant was notified or became aware of the decision
- name of the tribunal and or person(s) having made the decision
- tribunal's file number (if known)
- specific relief requested by the applicant
- grounds to be argued (include relevant sections of the laws or rules)
- place and language for the hearing of the judicial review, if leave is granted
- whether written reasons from the tribunal have been received or not
- signature and contact details in Canada of the applicant (if self-represented) or those of the lawyer
- the name and contact details of any person who, for a fee or other consideration, prepared the application for leave
- if the applicant consents to the electronic service of documents, the applicant's electronic address

If for special reasons, the time limit of 15 or 60 days mentioned in section 72 of the *Immigration and Refugee Protection Act* has expired, a request for an extension of time must be made in the application for leave.

Since an application for leave is an originating document, it must be served personally by delivering a certified copy to any respondent named in the leave application. Additional copies of the application will need to be submitted to the registry for certification (stamping) purposes.

Filing fee

Fee for filing an application for leave and for judicial review	\$50.00
Payment of the filing fee may be made	
o by credit card (VISA, MasterCard or American Express)	
o in cash or with a debit card	
o by personal cheque or money order payable to the Receiver General of Canada	

Proof of Service of the application

The proof of service of a certified copy of the application on each respondent must be filed within 10 days after the application is served.

Notice of Appearance

A notice of appearance (form IR-2) must be served upon the applicant and the tribunal and filed by the respondent within 10 days of service of the application.

A respondent who does not file a notice of appearance shall not be entitled to receive any further document in the proceeding.

Tribunal's Decision and Reasons

If the application mentions that no written reasons of the tribunal were received by the applicant, the registry will send a request to the tribunal (Form IR-3) to obtain these. The tribunal will either send copies of the reasons to the parties and to the registry or, if no reasons are available, will confirm this in a written notice.

Applicant's Record

An applicant must file a record (with proof that it has been served on every respondent having filed a notice of appearance) within:

- o 30 days from the date of filing the application if the applicant confirmed having received the tribunal's written reasons for the decision
- OR
- o 30 days (+ 10 additional days to allow for the reception of decision from the tribunal) after either receiving the tribunal's reasons or the tribunal's notice that no reasons are available (further to the registry's request)

Contents of the Applicant's Record

The pages of the record must be consecutively numbered and contain the following (in this order):

- o the application for leave
- o the tribunal's decision or order
- o the written reasons of the tribunal or the notice of no reasons available

- the request, if any, for an anonymity order under rule 8.1
- one or more supporting affidavits verifying the facts relied on by the applicant in support of the application, or a request for an anonymity order under rule 8.1, if any
- a memorandum of argument that contains written submissions of the facts and law relied upon by the applicant for the relief proposed should leave be granted, and
- a statement indicating the language of the hearing and the language of the materials for the hearing

Respondent's Affidavits and Memorandum of Argument

The respondent has 30 days from the date of service of the applicant's record to file, with proof of service on the other parties, one or more affidavits and a memorandum of argument.

Reply Memorandum

The applicant may file a memorandum of argument in reply, with proof of service on the respondent, within 10 days of service of the respondent's memorandum.

Disposition of Application for Leave

The request for leave to commence an application for judicial review is determined by the Court in writing without the personal appearance of the parties. If the applicant has also applied for an extension of time, it will be disposed of at the same time.

There is no right to appeal a decision on an application for leave.

If leave is granted

The order granting leave will include the date, time, place and language of the judicial review application and the time within which:

- the tribunal is to send copies of its record
- further material, if any, including affidavits, transcripts of cross-examinations, and memoranda of argument are to be served and filed by the parties
- cross-examinations, if any, on affidavits are to be completed

The order may also mention any other matter that the judge considers necessary for the hearing of the application.

All material filed with the application for leave will be used by the Court at the hearing of the application for judicial review.

The Tribunal's Record

Upon receipt of an order granting leave, the tribunal will send certified copies of its record to the parties and to the registry containing:

- the decision or order in respect of which the application is made and the written reasons
- all documents relevant to the matter that are in the possession or control of the tribunal

- any affidavits or other documents filed during any such hearing
- a transcript, if any, of any oral testimony given during the hearing, giving rise to the decision

Judicial review hearing

The hearing must be held no sooner than 30 days and no later than 90 days after leave was granted, unless the parties agree to an earlier date. The hearing provides the parties with an opportunity to present oral submissions with respect to the judicial review application.

If you are not represented by a lawyer, you will need to be present at the hearing to argue your case. If you are represented by a lawyer, you do not need to attend but you may choose to do so.

The judgment on the judicial review application may be delivered from the bench or at a later date.

If the Federal Court grants your judicial review application, it may refer your case back to the tribunal so that it may be reconsidered.

Certified question and right to appeal

A decision on a judicial review application concerning an immigration matter may not be appealed to the Federal Court of Appeal unless the judge of the Federal Court has certified that a serious question of general importance is involved.