



Citizenship and
Immigration Canada

Citoyenneté et
Immigration Canada

CP 8

Appeals

1. OVERVIEW

1.1 This chapter is about

appeal of judge's decision to Federal Court of Canada

1.2 Related topics

See chapters on residence, waivers.

1.3 Authorities

Citizenship Act Citizenship Regulations

Section 5(1)

Section 8

Section 9(1)

Section 11(1)

Section 14

Section 16

1.4 Applicant and Minister have right to appeal

The Minister of Citizenship and Immigration and the applicant both have the right to appeal a judge's decision to the Federal Court of Canada-Trial Division.

1.5 Appeal at Federal Court

The Federal Court justice assesses the evidence reviewed by the citizenship judge. The Federal Court justice then makes a decision. The decision of the Federal Court is final and no further appeals are allowed.

1.6 Reasons for appeal

An applicant may appeal the judge's decision where the judge did not approve the application and the applicant believes the judge made an error in the decision or did not take all evidence into account. The most common reasons for applicant appeals are for applications non-approved on the basis of language, knowledge or residence.

The Minister may appeal the judge's decision where the judge did approve the application and the Minister believes the judge made an error or did not correctly apply Federal Court jurisprudence.

1.7 Time period to file appeal

An appeal must be filed with the Federal Court of Canada-Trial Division:

- within 60 days of the date of the judge's decision to approve the application in the case of a Ministerial appeal

OR

- within 60 days of the date that the registered letter was mailed to the applicant informing him or her of the judge's decision not to approve the application, or the date the letter was given to the applicant.

New Federal Court Rules came into force on April 25, 1998. These new Rules impact on how citizenship appeal cases are managed both by the Federal Court and CIC.

2. APPLICANT APPEAL

2.1 This section is about

the process for appeals filed by the applicant

2.2 Keep applicants' files in office

Keep the file for a non-approved applicant in the local office until either:

- the citizenship judge receives a Notice of Application
- OR
- 180 days have elapsed.

2.3 If no appeal, send file to CPC-Sydney

If there is no appeal of a non-approval by the end of 180 days, send the applicant's file to CPC-Sydney for file retirement and fee refund, if applicable. Attach a covering note or tag indicating the date the applicant was provided with the letter of non-approval.

2.4 Procedure

Part I: Appeal commenced by applicant for citizenship

Procedure

Before April 25, 1998

After April 25, 1998

NOTICE OF APPEAL/OF APPLI-
CATION

The applicant files the *Notice of Appeal* in the Federal Court. The Court then sends a copy of the Notice of Appeal to:

The applicant files the *Notice of Application* in the Federal Court. The applicant then serves the notice on the Department of Justice. (The Federal Court sometimes assumes responsibility for serving the notice.)

- Litigation Management (BCL);
AND

The Department of Justice then notifies Litigation Management (BCL).

- the citizenship judge who rendered the decision.

BCL in turn informs the citizenship court.

PREPARATION AND CONTENT
OF RECORD

The citizenship judge sends a copy of the file to the Federal Court and of the original file to BCL, attaching any correspondence exchanged with the Federal Court.

The citizenship court, after being informed by BCL of the filing of the notice, prepares the record, putting it **in order**. Each page must be **numbered on the top right**, but care should be taken not to write in the top right corner, since that part of the page can be cut off when pages are photocopied. It is recommended that BCL's attention be drawn to any document of a confidential nature.

The record must contain:

The record must contain:

- a photocopy of the application, including a copy of all documents submitted by the applicant;

- a photocopy of the application, including a copy of all documents submitted by the applicant;

Part I: Appeal commenced by applicant for citizenship (Continued)

- | | |
|---|---|
| <ul style="list-style-type: none"> - a photocopy of the letter of refusal that was sent to the applicant by registered mail or that was given to him or her in person; - a photocopy of the Citizenship Application Review form indicating the judge's decision; AND - a photocopy of any other document that the judge has examined in order to render his or her decision. | <ul style="list-style-type: none"> - a photocopy of the letter of refusal that was sent to the applicant by registered mail or that was given to him or her in person; - a photocopy of the Citizenship Application Review form indicating the judge's decision; - a photocopy of any other document that the judge has examined in order to render his or her decision; |
|---|---|

- for further details on record content, please see APPENDIX I.

If the applicant so requests, the citizenship court distributes, within **20 days** of the service of the Notice of Application on the Department of Justice, certified copies of the record or the documents requested:

- to the Federal Court;
- to the applicant;
- to the Department of Justice;

AND

- to BCL.

If the applicant makes no such request, the citizenship court sends only a copy (not certified) of the record to the Department of Justice.

Note: *The citizenship court keeps the original record until the end of the appeal procedure.*

The CRS electronic file is part of the complete record. It may include any screen containing pertinent information that does not appear in the physical record. The physical record given to the Federal Court must contain the same documents that the citizenship judge used to render his or her decision.

2.5 Appeal heard

The Federal Court hears the appeal in the city closest to where the applicant resides. The applicant is notified in writing of the Federal Court decision. The decision is also communicated to the citizenship judge and the Minister. The Minister's notice is forwarded to Director, Litigation Management (BCL), in Case Management Branch.

2.6 Appeal dismissed

When the Federal Court dismisses an appeal, the original non-approval decision of the citizenship judge stands. The local office is notified and the file is closed. Case Management Branch ensures the file is forwarded to CPC-S for file retirement.

2.7 Appeal allowed

When the appeal is allowed, the Federal Court rules that the applicant meets the requirements of the Act. Case Management officers ensure the file contains valid clearances and a valid citizenship certificate before forwarding the file to the local office. Citizenship may be granted by the Case Management officer or the local citizenship officer. The local office schedules the applicant for the taking of the oath of citizenship.

The approval of the application must be recorded in CRS and the file is forwarded to CPC-S for retirement once the oath is administered.

2.8 Appeal dismissed but Federal Court refers case back to Citizenship Judge for Reconsideration.

The Federal Court may dismiss an applicant or Minister's appeal but issue instructions to the citizenship judge or to the Minister to reconsider a file and recommend a grant under paragraph 5(3) or 5(4). Federal Court jurisprudence is divided on the issue of whether a federal court justice has the authority to instruct the minister to use ministerial discretion. In these cases, neither the citizenship judge nor the Minister are obligated to consider a waiver.

2.9 Procedures when Federal Court refers case back to original judge

In cases where a justice from the Federal Court dismisses the applicant's appeal but returns the file back to the original judge for further consideration the citizenship judge is free to make a new decision but not obligated to do so. Upon receipt of the Federal Court decision, the citizenship judge decides whether he/she wishes to change the original decision. Where the judge reviews the application but does not change the original decision, the client is notified in writing by the judge that the application was reconsidered under paragraph 5(3) or 5(4) and the non approval stands.

If the judge, after reviewing the file makes a recommendation for a waiver under 5(3):

- Case Management Branch is informed.
- a Case Analyst, as Ministers' Delegate, makes the decision.
- if the waiver is granted, Case Management Branch notifies the local office and ensures valid clearances are obtained.
- the applicant is scheduled for the taking of the oath, by the local office, once the clearances and grant of citizenship are completed.
- If the judge makes a recommendation for a waiver and Case Management Branch does not grant the waiver:
- BCM notifies the judge in writing and provides the judge with the reasons for not granting the waiver.
- the Minister's delegate in BCM sends a letter notifying the client of the decision.
- this letter will indicate that notwithstanding the Federal Court's dismissal of the appeal and referral to judge for waiver, the Minister has not granted the waiver.

- the letter will provide reasons for not granting the waiver.

Related topic: See chapter on waivers for guidelines.

2.10 Procedures when Federal Court refers case to Minister for use of discretionary powers.

In cases where a justice from the Federal Court dismisses the applicant's appeal but refers the file to the Minister for use of discretion under section 5(3) or section 5(4), the Minister is free to consider but not obligated to consider the use of discretion. In these cases, the file is reviewed by a Case Analyst in BCM and not by a citizenship judge.

If the Minister's delegate grants the waiver:

- the applicant is notified in writing in writing by BCM of the grant under section 5(3).
- Case Management Branch notifies the local office and ensures valid clearances are obtained.
- the applicant is scheduled for the taking of the oath, by the local office, once the clearances and grant of citizenship are completed.

If the Minister's delegate does not grant the waiver:

- the Minister's delegate in BCM sends a letter notifying the client of the decision.
- this letter will indicate that notwithstanding the Federal Court's dismissal of the appeal and referral to Minister for waiver, the Minister has not granted the waiver.
- the letter will provide reasons for not granting the waiver.

2.11 Appeal after 60-day limit

If an applicant appeals **after** the 60-day appeal period, the Federal Court asks for a copy of the receipt for the registered letter sent to the applicant. The Federal Court determines if the appeal was filed within the time period before requesting a certified copy of the file.

Send a copy of the proof of registered mail receipt to the Federal Court. Do not send a certified copy of the file until the citizenship judge receives a Notice of Application.

2.12 Applicant re-applies during appeal

An applicant can make a subsequent application for a grant of citizenship while the first application is being appealed.

The second application is processed in the usual way. It is not expedited nor is it held pending the Federal Court's decision on the appeal.

If the second application is approved, advise the applicant to withdraw the appeal of the first application.

Where the Federal Court allows the appeal on the first application before the second application is processed, the second application may be considered abandoned.

3. MINISTERIAL APPEAL

3.1 This section is about

the process for appeals filed by the Minister

3.2 Local office initiates appeal

The officer granting citizenship is responsible for ensuring that all requirements of the Act have been met. An officer may not grant citizenship where a judge approves an application and the officer believes the judge may have made an error. In these cases, the officer should bring the file and reasons for not granting citizenship to their manager's attention.

3.3 Forward file to Case Management Branch

The manager forwards the complete original file to Case Management Branch with a covering note explaining why the local office feels the Minister may wish to exercise the right of appeal. The note must clearly indicate the date of the judge's decision and the date the appeal period expires.

3.4 File reviewed by Legal Services

The advice of legal counsel is sought and the legal opinion forms part of the case file. Should legal services agree that an appeal is warranted, the appeal is filed with the Federal Court on behalf of the Minister.

3.5 Treat Ministerial appeals as urgent

An appeal must be filed with the Federal Court of Canada–Trial Division within 60 days of the date of the judge's decision to approve the application. The local office must therefore forward the file to Case Management immediately after the judge's decision is rendered so that the appeal may be filed in time.

3.6 Procedures (Ministerial Appeals)

Part II: Appeal commenced by Minister

Procedure	Before April 25, 1998	After April 25, 1998
SENDING RECORD TO BCL	<p>The citizenship officer brings to his or her manager's attention the reasons for which citizenship should not be granted. The manager then sends the complete original record to BCL, indicating:</p> <ul style="list-style-type: none"> - the reasons for which the court is of the opinion that the Minister might wish to exercise his or her right of appeal; - the date of the judge's decision; AND 	<p>The citizenship officer brings to his or her manager's attention the reasons for which citizenship should not be granted. The manager sends to BCL the key documents in the file (for example, a copy of the application for a grant of citizenship and a signed copy of the decision rendered by the citizenship judge), indicating:</p> <ul style="list-style-type: none"> - the reasons for which the court is of the opinion that the Minister might wish to exercise his or her right of appeal; - the date of the judge's decision; AND

Part II: Appeal commenced by Minister (Continued)

Procedure	Before April 25, 1998	After April 25, 1998
	- the date on which the right of appeal expires.	- the date on which the right of appeal expires.
PRIORITY PROCESSING OF APPEAL COMMENCED BY MINISTER	The Minister has 60 days from the date of a judge's decision to file an appeal of that decision.	The Minister has 60 days from the date of a judge's decision to file a Notice of Application. Local offices are asked to send these documents to BCL at least 30 days prior to the expiry of this period, in order to meet the 60 day limit.
PREPARATION AND CONTENT OF RECORD	<p>The citizenship court receives a Notice of Appeal from the Federal Court. It sends a fax containing notification of this to BCL, which then prepares the complete record to be sent to the Federal Court.</p> <p>BCL sends a copy of the complete record to the Federal Court.</p>	<p>The citizenship court receives a copy of the Notice of Application from the Department of Justice. It notifies BCL of this by fax. BCL helps the citizenship court prepare the record by means of instructions, where necessary. The record must be in order and each page must be numbered on the top right, but care should be taken not to write in the top right corner, since that part of the page can be cut off when pages are photocopied. It is recommended that BCL's attention be drawn to any document of a confidential nature.</p>
	The record must contain the following documents:	The record must contain the following documents:
	- a photocopy of the application, including a copy of all the documents submitted by the applicant;	- a photocopy of the application, including a copy of all the documents submitted by the applicant;
	- a photocopy of the Citizenship Application Review form indicating the judge's decision; AND	- a photocopy of the Citizenship Application Review form indicating the judge's decision; AND
	- a photocopy of any other document that the judge has examined in order to render his or her decision.	- a photocopy of any other document that the judge has examined in order to render his or her decision;
		- for further details on record content, please see APPENDIX I.

Part II: Appeal commenced by Minister (Continued)

Procedure

Before April 25, 1998

After April 25, 1998

Within **20 days** of the date of receipt by the citizenship court of the copy of the Notice of Application from the Department of Justice, the citizenship court distributes certified copies of the complete record:

- to the Federal Court;
- to the applicant; AND
- to the Minister of Justice.

Note: The CRS electronic file is part of the complete record. It may include any screen containing pertinent information that does not appear in the physical record. The physical record given to the Federal Court must contain the same documents that the citizenship judge used to render his or her decision.

3.7 Appeal heard

The Federal Court hears the appeal in the city closest to the citizenship judge’s area of jurisdiction. The Minister is notified in writing of the Federal Court decision. The decision is also communicated to the citizenship judge and the client. The Minister’s notice is forwarded to Director, Litigation Management (BCL), in Case Management Branch.

3.8 Appeal dismissed

When the minister’s appeal is dismissed, the Federal Court rules that the judge made a correct decision in determining the applicant meets the requirements of the Act. Case Management officers ensure the file contains valid clearances and a valid citizenship certificate before forwarding the file to the local office. Citizenship may be granted by the Case Management officer or the local citizenship officer. The local office schedules the applicant for the taking of the oath of citizenship.

The approval of the application must be recorded in CRS and the file is forwarded to CPC-S for retirement once the oath is administered.

3.9 Appeal allowed

When the Federal Court allows a ministerial appeal, the original approval decision of the citizenship judge is reversed. The local office and the applicant are notified that citizenship will not be granted. The applicant is free to apply for citizenship at any time but may not appeal the decision of the Federal Court. Case Management Branch ensures the file is forwarded to CPC-S for file retirement.

3.10 Additional information

The following is additional information concerning certain aspects of the appeal process, both for cases in which the appeal is commenced by the applicant and for those in which it is commenced by the Minister.

- Appeal de novo

Since April 25, the Department of Justice argues before the Federal Court that the appeal is not de novo - that is, that only the evidence examined by the citizenship judge is admissible in court. Previously, the Federal Court heard any new evidence presented by the Minister or the applicant.

- Application of rules in force prior to April 25, 1998

The rules in force prior to April 25, 1998, may still apply to appeals commenced before and heard after that date. However, in such cases, the Federal Court generally applies the rules that are in the favour of the applicant for citizenship.

- Time frames

The time frame starts on the day following the performance of a given act (for example, receipt of a Notice of Application). When the last day of a time frame falls on a Saturday or statutory holiday (Sundays and religious and civic holidays), the deadline is moved to the following working day. For example, a Notice of Application is received on March 2. The time frame is 20 days. It therefore starts on March 3 and ends on March 22. If March 22 falls on a Saturday, the deadline is moved to Monday, March 24.

APPENDIX A : Preparation of the Certified Tribunal Record

The Certified Tribunal Record (CTR) contains photocopies of only those documents related to the decision. Documents received after the decision was taken are not relevant to the decision being challenged in the Federal Court and should not be included in the CTR.

Examples of sensitive documents which should be protected from disclosure, include:

- solicitor-client privileged communications;
- information obtained in confidence from governments/institutions of foreign states or from international organizations of states (or their institutions) which “would be injurious to national security or to the safety of persons” (see: s. 82.1(10) of the Immigration Act);
- materials which the government can object to disclosing pursuant to the Canada Evidence Act on the grounds of:
 - a) “a specified public interest” (s.37);
 - b) injury “to international relations or national defence or security” (s.38);
 - c) being “a confidence of the Queen’s Privy Council for Canada” (s.39).

If any material in the file appears to fall into any of the above categories, do not create or distribute the CTR until you have discussed these documents with both BCL and the litigator, so an informed decision can be made on how best to proceed. Depending on which of the 3 categories the documents fall into, a different procedure must be followed to maintain their confidentiality from disclosure:

- **solicitor-client privileged communications** (e-mails, letters, copies of draft affidavits, legal opinion etc.) can be protected from disclosure by the litigator writing to the Court, pursuant to the Rule 1613(2), informing the Court that objection is being made to the production of documents by solicitor-client privilege;
- **s.82.1 (10)** materials are protected by litigation counsel making an application to the Court seeking an order permitting the non-disclosure of such information; the Court will determine if it must be disclosed or not;
- **section 37 and 38 Canada Evidence Act** materials again must be protected by an application by litigation counsel to the Court, supported by “A Minister of the Crown” or other interested person certifying orally or in writing to the Court that the information should not be disclosed and objecting to its disclosure; the Court will determine if it must be disclosed or not (s.39 information is protected without the necessity of an application to the Court but still requires a Minister of the Crown or the Clerk of the Privy Council to object to the disclosure by certifying such objection in writing).

On occasion “snitch” letters are received by offices advising of some unfavourable information concerning the applicant. These letters may contain personal information about the person providing the information and should not be divulged or edited before disclosure. It is advisable to discuss with BCL and the litigator these types of materials prior to releasing such material through distribution of CTR.

Litigation counsel should take action to secure protection from disclosure of this kind of information. It is crucial to carefully review all the documents and information in your file before preparing the CTR, immediately bringing to the attention of BCL and the litigator documents or information which we may wish to make known in the CTR.

The Citizenship officer must send a letter to the Federal Court certifying that the CTR is a true copy of the originals on file, along with the record. A copy of this letter is provided to Counsel for the Applicant when the Minister is the appellant, and to Counsel for the Respondent if a copy of the CTR has been requested. The certifying officer will ensure that the original file, and the certified copies are legible and complete.

The CTR must be numbered and bound. Numbering (in black pen on the upper, right-hand corner of each page) begins with the covering letter certifying that the CTR is a true copy of the original file; this letter is page ONE. You can bind the CTR in any way that makes it SECURE. The preparation of the CTR is NOT a trifling clerical task. Errors may have grave consequences.