

Federal Court



Cour fédérale

**Date: 20240614**

**Docket: IMM-13267-22**

**Citation: 2024 FC 913**

**Ottawa, Ontario, June 14, 2024**

**PRESENT: The Honourable Madam Justice Turley**

**BETWEEN:**

**AERI LEE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS FOR JUDGMENT**

[1] The Applicant seeks judicial review of a decision by an officer [Officer] of Immigration, Refugees and Citizenship Canada [IRCC], dated December 19, 2022, refusing her study permit application because she did not comply with IRCC's request for additional information, pursuant to subsection 16(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] I am allowing the application because, in refusing the Applicant's study permit application, the Officer breached procedural fairness. In particular, the Officer failed to consider

and respond to the Applicant's request for an extension of time of thirty days to provide the additional information requested by the Officer. Based on this determination, there is no need for the Court to consider the additional issues raised by the Applicant.

**I. Background**

[3] The Applicant is a citizen of South Korea who entered Canada on a study permit in 2006 and successfully applied for two study permit extensions. Her last study permit was valid until July 31, 2020. On August 31, 2021, the Applicant applied for a study permit extension to attend St. Michael's College at the University of Toronto for the period of September 2021 to April 2023.

[4] On December 2, 2022, IRCC requested that the Applicant provide, by December 12, 2022, the following documents required to process her application: (i) her current enrolment letter from her educational institution; and (ii) educational transcripts for all post-secondary studies in Canada.

[5] The Applicant requested a thirty-day extension of time, until January 12, 2023, to obtain the transcripts from the University of Toronto, Humber College, and Athabasca University. At that time, the Applicant submitted an official transcript from the University of Toronto and supporting documentation addressing the gap in her studies due to her mental health struggles.

[6] By letter dated December 19, 2022, the Officer refused the Applicant's study permit application. The Officer determined that the Applicant had failed to comply with IRCC's request

for additional information. The Officer, however, did not mention the Applicant's request for an extension of time to provide the additional information. The Applicant sought judicial review of the Officer's decision, asserting that the Officer breached procedural fairness by ignoring the Applicant's request for an extension of time.

[7] By letter dated February 7, 2023, the Applicant's counsel also requested that the Officer reconsider their December 19, 2022 decision as they had failed to address the Applicant's request for an extension of time. More particularly, the Applicant's counsel stated: "As this is procedurally unfair, we ask that you reconsider your decision and re-open this application and provide Ms. Lee and [sic] opportunity to reply to IRCC's request of December 19<sup>th</sup>, 2022."

[8] According to the Global Case Management System [GCMS] notes on the record, dated February 23, 2023, the Officer acknowledged that the Applicant had requested a thirty-day extension of time to submit all the required documentation. However, the Officer did not address that request for more time but rather stated that, "it is now February 23, 2023 and the remaining documentation ... have still not been provided." The Officer concluded that the refusal decision stood. The Applicant did not seek judicial review of that reconsideration decision.

## **II. Analysis**

[9] The determinative issue is whether the Officer's December 19, 2022 decision was procedurally unfair. Where breaches of procedural fairness are alleged, no standard of review is applied but the Court's reviewing exercise is "best reflected on a correctness standard": *Canadian Hardwood Plywood and Veneer Association v Canada (Attorney General)*, 2023

FCA 74 at para 57, citing *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*CPR*]. When assessing whether procedural fairness was met, a reviewing court must ask whether the “procedure was fair having regard to all of the circumstances”: *CPR* at para 54.

[10] The Applicant asserts that the Officer’s December 19, 2022 decision was procedurally unfair because the Officer ignored the Applicant’s request for an extension of time to file the requested additional documents. The Respondent’s position, however, is that any procedural unfairness in failing to address the Applicant’s request for an extension of time was “subsequently cured” by the Officer’s February 23, 2023 reconsideration decision.

[11] I agree that procedural fairness breaches or defects in an initial decision may be cured or remedied in a subsequent decision: *Canada (Health) v The Winning Combination Inc*, 2017 FCA 101 at paras 86-87; *Weldesebet v Canada (Citizenship and Immigration)*, 2022 FC 1174 at paras 21-25 [*Weldesebet*]. This is a determination to be made based on the facts of each case, considering the nature of the initial procedural fairness breach and the subsequent reconsideration decision.

[12] Thus, while the substantive merits of the Officer’s reconsideration decision are not before this Court, the decision is relevant insofar as the Respondent argues that it cured any procedural unfairness in the initial decision. The Court must therefore consider and assess the reconsideration decision to the extent necessary to determine whether it cured the initial procedural fairness defect.

[13] The Respondent relies on this Court's decision in *Weldesebet*. In that case, the Court was satisfied that, because the reconsideration decision accepted and engaged with the applicant's additional submissions, there was no longer a live controversy between the parties as it concerned a breach of procedural fairness: *Weldesebet* at paras 23-25. As such, the Court found that the procedural fairness breach did not have a material effect on the ultimate disposition of the application. Moreover, the Court noted that it was not the officer who caused the breach of the applicant's procedural fairness rights, but the applicant's former representative.

[14] In contrast, in this case, the Officer's initial procedural fairness breach was not cured by their subsequent decision. The Officer, after breaching the Applicant's procedural fairness rights at first instance, still failed (on reconsideration) to address the Applicant's request for an extension of time to provide the requested documents.

[15] In my view, in order to cure or remedy the particular procedural fairness breach in this case, it was incumbent on the Officer on reconsideration to assess the Applicant's extension request as it stood when it was made, not at the time of the reconsideration request. The Officer, however, failed to engage with the Applicant's initial request for more time to collect the additional documents. Rather, the Officer simply referred to the request for more time and faulted the Applicant for failing, in the interim, to submit the additional documents. Given that the Applicant's study permit application was rejected on December 19, 2022, it was not reasonable to expect the Applicant to spend the time and money in the intervening time to obtain official school transcripts. Indeed, if the Officer had refused to re-open and reconsider the application, this would have been a waste of the Applicant's resources.

[16] In the circumstances of this case, I find that the Officer's reconsideration decision did not cure their procedural fairness breach of failing to consider the Applicant's request for an extension of time in their initial decision. The Officer's December 19, 2022 decision is therefore set aside and the matter is remitted for redetermination by a different officer.

[17] The parties did not raise a question for certification and none arises in this case.

**JUDGMENT in IMM-13267-22**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is allowed.
2. The Officer's decision dated December 19, 2022, is set aside and the matter is remitted for redetermination by another officer.
3. There is no question for certification.

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"Anne M. Turley"

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-13267-22

**STYLE OF CAUSE:** AERI LEE v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JUNE 6, 2024

**JUDGMENT AND REASONS FOR JUDGMENT:** TURLEY J.

**DATED:** JUNE 14, 2024

**APPEARANCES:**

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