

Federal Court



Cour fédérale

**Date: 20180420**

**Docket: IMM-3758-17**

**Citation: 2018 FC 423**

**Ottawa, Ontario, April 20, 2018**

**PRESENT: The Honourable Madam Justice St-Louis**

**BETWEEN:**

**Mohamed Ibrahim YASSIN**

**Applicant**

**and**

**THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**Respondent**

**JUDGMENT AND REASONS**

I. Nature of the matter

[1] This is an application by Mr. Mohamed Ibrahim Yassin, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], whereby he seeks judicial review of the Respondent's [also the Minister] failure to render a decision with respect to his application for ministerial relief under subsection 42.1(1) of the IRPA.

[2] Mr. Yassin requests an order in the nature of *mandamus* compelling the Respondent to provide a final answer, “approved” or “refused” to his application within the updated timeline he presented to the Court at the hearing.

[3] For the reasons exposed hereinafter, the Court will grant Mr. Yassin’s application and will issue the order in the form of a *mandamus*.

## II. Background

[4] Mr. Yassin is a citizen of Somalia who initiated the process to obtain Canadian permanent residence in Canada on behalf of himself, his wife and four dependent children.

[5] In 2008, Mr. Yassin first applied for Quebec Selection Certificates under the Investor program. In November 2009, each member of the family received their Quebec Selection Certificate, and in April 2010, they applied for Canadian permanent resident status.

[6] On April 23, 2015, the visa officer sent Mr. Yassin a procedural fairness letter stating there were reasonable grounds to believe he was, or had been, a member of an inadmissible class of persons described in paragraph 35(1)(b) of the IRPA, due to his role as a senior official in the designated regime of President Siad Barre from June 1977 until July 1979.

[7] On June 8, 2015, Mr. Yassin’s counsel responded to the procedural fairness letter. First, he argued that Mr. Yassin did not fall within the scope of paragraph 35(1)(b) of the IRPA and secondly, he requested the granting of ministerial relief pursuant to subsection 42.1(1) of the

IRPA, and submitted that it would not be contrary to Canada's national interests to grant Mr. Yassin permanent residency. The visa officer did not then forward the ministerial relief request to the Ministerial Relief Unit [MRU], responsible for these applications.

[8] On December 10, 2015, the Canada Border Services Agency Liaison Officer and First Secretary [Liaison Officer] wrote to Mr. Yassin's counsel. The Liaison Officer then stated essentially that he did not doubt the good faith of counsel's arguments or the fact that Mr. Yassin would not have been involved in President Barre's faults, but stressed that the law was clear and that Mr. Yassin fell into its ambit. The Liaison Officer offered Mr. Yassin the possibility of raising humanitarian grounds under section 25 of the IRPA, but on December 13, 2015, he wrote again to rekindle this offer and confirm he would be soon issuing the official refusal letter.

[9] On December 15, 2015, Mr. Yassin's counsel wrote to the Liaison Officer, and reminded him of that he had presented a request for ministerial relief and relevant submissions back in June 2015.

[10] On December 20, 2015, the Liaison Officer sent Mr. Yassin's counsel an email confirming that he would be sending the request for ministerial relief to the MRU for processing. The Liaison Officer attached to his email the letter addressed to Mr. Yassin confirming that his application for admission to Canada was refused.

[11] Between March and August 2017, Mr. Yassin's counsel wrote to the Respondent and to the MRU requesting processing of the file, initially within a 90 days delay. The Respondent

essentially replied that he was unable to accede to his request for processing within the requested delay and to provide a specific timeframe. On August 30, 2017, Mr. Yassin filed his application for leave and judicial review, seeking an order in the nature of a *mandamus* from the Court.

### III. Issue

[12] The Court must decide if Mr. Yassin is entitled to a *mandamus* order with respect to the pending request for ministerial relief.

### IV. Analysis

#### A. *Legal test for a mandamus*

[13] As stated in *Douze v Canada (Citizenship and Immigration)*, 2010 FC 1337 (*Douze*), the following criteria must be satisfied for a *mandamus* order to be issued (*Apotex Inc v Canada [Attorney General]*, [1994] 1 FCR 742, 162 NR 177 [FCA] conf by *Apotex Inc v Canada*, [1994] 3 SCR 1100, 176 NR 1 [*Apotex*], *Tameh v Canada [Minister of Public Safety and Emergency Preparedness]*, 2017 FC 288 [*Tameh*]):

1. There must be a public legal duty to act...
2. The duty must be owed to the applicant...
3. There is a clear right to performance of that duty, in particular:
  - (a) the applicant has satisfied all conditions precedent giving rise to the duty...
  - (b) there was (i) a prior demand for performance of the duty; (ii) a reasonable time to comply with the demand unless refused outright; and (iii) a subsequent refusal which can be either expressed or implied, e.g. unreasonable delay...

4. Where the duty sought to be enforced is discretionary, the following rules apply: [omitted]
5. No other adequate remedy is available to the applicant...
6. The order sought will be of some practical value or effect...
7. The Court in the exercise of its discretion finds no equitable bar to the relief sought...
8. On a "balance of convenience" an order in the nature of mandamus should (or should not) issue.

B. *Criteria at issue in these proceedings*

[14] In this case, the Respondent does not challenge criteria 1, 2, 3 (a), 3(b)(i) and 5 and do not address the criterion 4.

[15] Mr. Yassin filed affidavit evidence from himself and from his former counsel, Me Jean-François Harvey.

[16] He essentially asserts that all the *mandamus* criteria are met and, most notably, that the delay is unreasonable and not properly justified by the Minister.

[17] Relevant to this application, the Minister adduced affidavits from Ms. Julie Bossé to outline the processing of ministerial relief, the recent progress achieved related to the processing of these applications, the Applicant's immigration history and his ministerial relief application.

[18] The Minister essentially responds that (1) Mr. Yassin has no clear right to the performance of the duty; (2) the order sought will not have some practical value or effect; (3)

there is an equitable bar to the relief sought; and (4) the balance of convenience does not favour the order of *mandamus*.

C. *Mr. Yassin has a clear right to the performance of the duty*

[19] On this point, Mr. Yassin submits that this criterion is met as the delay is unreasonable and unjustified and the timelines cannot be open-ended, as confirmed by the Chief Justice in the *Tameh* decision.

[20] The Minister responds that (1) there is no evidence that the Minister refused to perform his duty; (2) the short timeframes outlined by Mr. Yassin in his demands were unreasonable and unrealistic given the specific nature of an application for ministerial relief and the in-depth analysis it requires; and (3) Mr. Yassin has not met his burden to prove that the delay in processing his application for relief is unreasonable.

[21] As in most of the case law cited by the parties, the main issue revolves around the determination of whether or not the delay experienced, thus far, has been unreasonable.

[22] The Court determined that three requirements must be met in order for a delay to be considered unreasonable: (1) the delay in question must have been longer than the nature of the process required, *prima facie*; (2) the applicant and his counsel must not be responsible for the delay; and (3) the authority responsible for the delay must not have provided a satisfactory justification (*Conille v Canada (Attorney General)*, 2003 FCT 613 [*Conille*] at para 33).

[23] The parties now agree that the computation of the delay starts on June 8, 2015, when Mr. Yassin first requested ministerial relief, and about two years and 10 months have thus elapsed since that date.

[24] It is not disputed that the Applicant and his counsel are not responsible for the delay.

[25] Mr. Yassin submitted case law in support of his assertion that the current delay is unreasonable (*Esmaeili-Tarki v Canada (Public Safety and Emergency Preparedness)*, 2010 FC 697 [*Esmaeili-Tarki*]; *Tameh*; *Douze*).

[26] The Respondent argues that Mr. Yassin has no right to a decision on his application for a ministerial relief because the delay is not *prima facie* unreasonable. As a general rule, the Respondent submits that delays of less than three years have not been found by the Court to be unreasonable, and also refers to the decisions in *Tameh*, *Esmaeili* and *Douze*.

[27] Furthermore, the Respondent submits he has provided a satisfactory justification for the delay when responding to Mr. Yassin, as “Ministerial relief applications require an in-depth review of a voluminous amount of information and submissions, entailing a complex assessment of many factors. While these applications are generally prioritized for processing in accordance with their year of receipt, other factors such as changes in jurisprudence or legislation, court-mandated timelines, and re-determination orders may also impact file prioritization” (Minister’s Letter dated April 24, 2017, Application Record of the Applicant at p 75).

[28] The Respondent also submits that the evidence adduced show (1) the MRU has taken important measures to improve the efficiency in processing ministerial relief applications by creating the MRU section, adopting new regulations, creating a guide, creating a streamlined application form; (2) significant progress was made in the processing of ministerial relief as per Ms. Julie Bossé's affidavits so that as of January 9, 2018, the pending inventory stood at 277, from 321 in March 2017, and there were approximately 238 applications made prior to Mr. Yassin's.

[29] However, the Court notes that (1) in the *Douze* case, a delay of less than 3 years was deemed unreasonable in the circumstances, even if the recommendation had already been completed; (2) in the *Tameh* case, the first 4 years' delay, between 2008 and 2012, was considered to be at the outer limit of what is reasonable (paragraph 8); while (3) in the *Esmaeili-Tarki* case, a 5-year delay was found unreasonable.

[30] This case law is not entirely conclusive. However, the delays considered occurred before the adoption of the aforementioned new measures described by the Respondent as justification for the delay and, paradoxically, as destined to increase the efficiency of the MRU processing. Furthermore, in *Douze* a delay of less than three years was considered unreasonable even though the recommendation to the Minister had already been issued, while in this case, said recommendation has not yet been issued.

[31] In fact, it appears nothing at all has been yet done on Mr. Yassin's case since June 8, 2015, and the justification advanced by the Respondent does not assist in understanding why that



is so. Furthermore, in *Douze* and in *Esmaeili-Tarki*, the Court did not accept as justification for the delay the “many levels of assessment and review” involved nor the institutional reorganization.

[32] Hence, the Court finds the delay unreasonable.

D. *The order sought will have some practical value or effect*

[33] The Court is satisfied that the order will have some practical value or effect to Mr. Yassin and his family.

E. *There is no equitable bar to the relief sought*

[34] The Respondent confirmed, in his further memorandum, that the requirement to respect the application queue is not an equitable bar to a *mandamus*.

F. *The balance of convenience favours granting the order of mandamus.*

Finally, as to the balance of convenience criteria, the Court finds it favours the Applicant, particularly given the fact that nothing has been submitted to establish that the previous *mandamus* orders from the Court have in fact created administrative chaos.

G. *Processing timeframe submitted by the Applicant*

[35] As previously mentioned, at the hearing, Mr. Yassin submitted an updated timeframe for the processing of his application for ministerial relief, almost identical to the one ordered by the Chief Justice in *Tameh*, and the Court is satisfied that the suggested timeframe is appropriate.

**JUDGMENT in IMM-3758-17**

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

1. The application is granted.
2. The parties shall complete the steps described below within the following timeframes:
  - a) Mr. Yassin will have 30 days from the date of this Order to file additional materials and submissions to the MRU to update his file.
  - b) Within 120 days thereafter, the CBSA will disclose its proposed draft Ministerial Relief recommendation to Mr. Yassin.
  - c) Mr. Yassin will then have 30 days from the date of disclosure of the draft recommendation to provide any further submissions or materials to the MRU.
  - d) The President of the CBSA will then provide the draft recommendation, together with Mr. Yassin's submissions, to the Minister within 60 days of the receipt of those submissions. Alternatively, in the event that the CBSA's amendments to the recommendation in response to Mr. Yassin's submissions necessitate further disclosure to him, the CBSA will provide an updated recommendation to Mr. Yassin within 45 days of the receipt of such additional submissions. In the latter scenario, Mr. Yassin will then have 30 days to provide any submissions to the CBSA in response to the updated recommendation; and the President of the CBSA would then have 60 days after the receipt of Mr. Yassin's final submissions to provide the recommendation and Mr. Yassin's submissions to the Minister.
  - e) Within 60 days of receipt of the recommendation and submissions from the President of the CBSA, the Minister will render a decision on Mr. Yassin's application.

- f) The Court will retain jurisdiction to deal with any extension or other issues that arise which affect the Court's order.

"Martine St-Louis"

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Judge

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

**DOCKET:** IMM-3758-17

**STYLE OF CAUSE:** MOHAMED IBRAHIM YASSIN AND THE MINISTER  
OF PUBLIC SAFETY AND EMERGENCY  
PREPAREDNESS

**PLACE OF HEARING:** MONTRÉAL

**DATE OF HEARING:** APRIL 9, 2018

**JUDGMENT AND REASONS:** ST-LOUIS J.

**DATED:** APRIL 20, 2018

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