

Federal Court



Cour fédérale

**Date: 20230623**

**Docket: IMM-9595-22**

**Citation: 2023 FC 885**

**Ottawa, Ontario, June 23, 2023**

**PRESENT: The Honourable Madam Justice Aylen**

**BETWEEN:**

**HAO CHEN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] On this application for judicial review, the Applicant, a citizen of China, seeks a writ of *mandamus* directing Immigration, Refugees and Citizenship Canada [IRCC] to make a decision with respect to the Applicant's pending study permit application.

[2] For the reasons that follow, I am not satisfied that the Applicant has demonstrated that a writ of *mandamus* is warranted. Accordingly, the application for judicial review shall be dismissed.

**I. Background**

[3] The Applicant, who has a Bachelor's degree and Master's degree in electrical and computer engineering from Zhejiang University in China, was accepted into the University of British Columbia's PhD program in electrical and computer engineering.

[4] On December 23, 2021, he submitted his study permit application.

[5] The Global Case Management System [GCMS] notes indicate that the Applicant's study permit application was provisionally approved in January of 2022 pending information from security partners. Biometrics were subsequently completed in July of 2022.

[6] A review of the GCMS entries after January of 2022 reveal numerous inquiries from the Applicant regarding the status of his application.

[7] On June 15, 2022, the Applicant submitted a second study permit application for the same PhD program. On July 8, 2022, the Applicant received a phone call from IRCC in regard to his two on-going study permit applications, asking the Applicant to withdraw the second application. The Applicant agreed and promptly submitted a request for the second application to be withdrawn. However, on July 12, 2022, the Applicant received an email from IRCC indicating that his first application had been withdrawn rather than the second. The Applicant sent an enquiry and called IRCC to inform it of its mistake and that the first application was to remain in process. The

following day, the original application was re-opened and the second application was withdrawn, as was originally intended.

[8] The GCMS notes also indicate that conversations were had with various public officials as to the status of the Applicant's study permit.

[9] The GCMS notes contain no entries after January 28, 2023.

[10] At the Court's request, on June 9, 2023, the Respondent provided a status update and advised that the Applicant's study permit application continues to undergo security screening.

[11] The Applicant states that he was able to commence his PhD program, on a limited and remote basis, in May of 2022. However, he emphasizes that the 12-hour time difference between China and Canada are difficult on his mental and physical health and he nonetheless remains unable to complete the in-person experiments required of his program. The Applicant states that he has deferred his in-person start date on two occasions.

## **II. Analysis**

[12] The sole issue for determination on this application is whether the Applicant has demonstrated that a writ of *mandamus* requiring the Respondent to determine his study permit application ought to be granted.

[13] An order of *mandamus* compels the performance of a particular statutory duty. It is an extraordinary remedy and *mandamus* applications must be assessed on the particular facts of each case [see *Tapie v Canada (Citizenship and Immigration)*, 2007 FC 1048 at para 7].

[14] In *Apotex v Canada (Attorney General)*, [1994] 1 FC 742, 69 FTR 152 (FCA) at paragraph 55, the Federal Court of Appeal affirmed the following conditions must be met to issue a writ of *mandamus*:

1. There must be a public duty to act under the circumstances;
2. The duty must be owed to the applicant;
3. There must be a clear right to performance of that duty, in particular:
  - i. The applicant has satisfied all conditions precedent giving rise to the duty;
  - ii. 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. No other adequate remedy is available to the applicant;
5. The order sought must have some practical effect;
6. In the exercise of its discretion, the Court must find no equitable bar to the relief sought; and;
7. On a balance of convenience, an order of *mandamus* should issue.

[15] The issue of reasonable delay is assessed within the third factor. A delay in performing a public legal duty may be unreasonable where the following three requirements are met: (i) the delay in question is *prima facie* longer than the nature of the process required; (ii) the applicant and his counsel are not responsible for the delay; and (iii) the authority responsible for the delay has not provided satisfactory justification [see *Conille v Canada (Citizenship and Immigration)*, [1999] 2 FC 33 at paras 23, 87]. There is no uniform standard for what constitutes a reasonable length of time. Each case turns on its facts, especially in light of the relevant immigration regime [see *Bidgoly v Canada (Minister of Citizenship and Immigration)*, 2022 FC 283 at para 33].

[16] In addition to the list of three requirements, a person seeking *mandamus* based on delay must also demonstrate significant prejudice which results from an unacceptable delay [see *Vaziri v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1159, at para 52; *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 at para 101].

[17] This case turns on the issue of whether the Applicant has demonstrated that the delay in the processing of the Applicant's study permit has been unreasonable and if so, that the delay has resulted in significant prejudice to the Applicant.

[18] I am satisfied that the Respondent's explanation for the delay is lacking. Simply pointing to the impact of the pandemic, with no evidence of the pandemic's actual impact on the Applicant's application, is not sufficient. Moreover, a blanket assertion that security checks are pending without more (such as particulars as to what renders the Applicant's case relatively more complex, what specific security considerations related to the Applicant have contributed to the delay or evidence of inquiries or follow-ups with security partners on the status of their security checks) is also not enough to reasonably explain the delay [see *Almuhtadi v Canada (Minister of Citizenship and Immigration)*, 2021 FC 712; *Bidgoly, supra*; *Samideh v Canada (Minister of Citizenship and Immigration)*, 2023 FC 854].

[19] However, notwithstanding these deficiencies in the Respondent's evidence, I am not satisfied that the Applicant has demonstrated that he has suffered significant prejudice as a result of the delay. It must be kept in mind that what the Applicant seeks is a study permit. The delay has not removed any substantive right of the Applicant, but rather prevents a right to study in Canada (assuming he satisfies the required security clearance) from being vested for a period of time [see *Vaziri, supra* at para 50].

[20] Notwithstanding the delay, the Applicant has been able to commence his PhD program remotely and has performed extremely well, having received numerous awards for his academic

achievements. The Applicant asserts that pursuing his program remotely is difficult on his mental and physical health and is difficult due to the time difference between Vancouver and China and restrictions on internet use. He also asserts that the delay has caused him anxiety. However, I am not satisfied that this rises to the level of serious prejudice, particularly given the absence of any medical evidence in support of the assertion. Moreover, while the Applicant asserts that the delay is preventing him from progressing with his studies and potentially impacting his career path, it always remains open to him to pursue studies elsewhere and there is nothing in the evidence before me to suggest that only the program at the University of British Columbia can meet his educational objectives. Moreover, there is also no evidence that the Applicant will be unable to further defer the commencement of the in-person portion of his program. As for any potential impact that the delay may have on his career, I find that this assertion is purely speculative.

[21] While the Applicant is understandably frustrated with the amount of time that it has taken thus far to process his study permit application, the Court must carefully review a request for a writ of *mandamus* to ensure that an applicant satisfies all of the necessary requirements (including significant prejudice). Otherwise, the effect of granting a writ of *mandamus* is to permit an applicant to “jump the queue” and have their application determined before that of others who have been patiently waiting their turn.

### **III. Costs**

[22] The Applicant seeks his costs of this application, either on a solicitor-client basis or based on “special reasons” as prescribed by section 22 of the *Federal Courts Citizenship, Immigration*

*and Refugee Protection Rules*, SOR/93-22. However, having not been successful on the application, I see no basis for an award of costs to the Applicant.

**IV. Conclusion**

[23] I am not satisfied that the Applicant has demonstrated that a writ of *mandamus* is warranted and accordingly, the application for judicial review shall be dismissed.

[24] The parties proposed no question for certification and I agree that none arises.



**JUDGMENT in IMM-9595-22**

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

1. The application for judicial review is dismissed.
2. The parties proposed no question for certification and none arises.
3. There shall be no award of costs.

“Mandy Ayles”

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Judge

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

**DOCKET:** IMM-9595-22

**STYLE OF CAUSE:** HAO CHEN v MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** JUNE 21, 2023

**JUDGMENT AND REASONS:** AYLEN J.

**DATED:** JUNE 23, 2023

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