Federal Court  Cour fédérale

Date: 20231116

Docket: IMM-8004-22

Citation: 2023 FC 1523

Ottawa, Ontario, November 16, 2023

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

JUDGE YAW ASIEDU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Approximately four years ago, the Applicant, Jude Yaw Asiedu, applied for permanent residence as a member of the Family Class along with his spouse and four dependent children. Immigration, Refugees and Citizenship Canada [IRCC] acknowledges that no steps have been taken to process his application for more than three years.

[2] The Applicant asks this Court to issue a writ of *mandamus* directing the Respondent to make a final decision in their family sponsorship application within a specified timeframe.

[3] For the reasons that follow, I find an order of *mandamus* is warranted. The Respondent has not provided an adequate justification for the unreasonable delay in determining the Applicant's permanent residence application. The application for judicial review is allowed.

II. Background on Processing Permanent Residence Application

[4] The Applicant lives in Ghana with his spouse and their four children. He is the sole living relative of his brother, who lives in Canada and is a Canadian citizen. The Applicant's brother applied to sponsor the Applicant and his family under the Other Relative Stream of the Family Class provided for under 117(1)(h) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227.

[5] The Applicant submitted his permanent residence application on October 23, 2019. By letter dated December 10, 2019, IRCC informed the Applicant's brother that he met the requirements for eligibility as a sponsor. Also on December 10, 2019, IRCC asked the Applicant's brother to complete a Family Information Sheet, and sent the Applicant and his family biometrics and medical examination requests. The Applicant's brother submitted the Family Information Sheet on January 14, 2020. The Applicant and his family completed the medical exams, which have since expired.

[6] According to the GCMS notes, the Applicant requested a status update on his application five times between July 2021 and July 2022. In response to an October 27, 2021 request for update, IRCC verified that the Applicant and his family had passed all their medical examinations.

[7] The last activity recorded on the file as per the GCMS notes and the affidavit filed by the Respondent on this judicial review is the positive sponsor eligibility decision, issued December 10, 2019, and the receipt of the Family Information Sheet on February 14, 2020. The application has sat idle for more than three years.

III. Analysis

A. *Test for Mandamus*

[8] Mandamus is an equitable remedy that is used to compel the performance of a public duty. This Court's ability to grant a writ of *mandamus* is provided for under subsections 18.1(3)(a) and 18.1(4) of the *Federal Courts Act*, RSC, 1985, c F-7. As set out in *Apotex v Canada (Attorney General)*, 1993 CanLII 3004 (FCA), [1994] 1 FC 742 (CA), in order to be entitled to an order of *mandamus* the following criteria must be met:

> (1) there must be a public legal duty to act;
>
> (2) the duty must be owed to the applicant;
>
> (3) there must be a clear right to performance of that duty;
>
> (4) where the duty sought to be enforced is discretionary, certain additional principles apply;
>
> (5) no other adequate remedy is available to the applicant;

> (6) the order sought will have some practical value or effect;
>
> (7) there is no equitable bar to the relief sought; and
>
> (8) on a balance of convenience an order of *mandamus* should be issued.

[9] In this case, the only point of dispute between the parties is whether there has been an unreasonable delay in processing the Applicant's application for permanent residence.

B. *Unreasonable Delay*

[10] This Court set out three requirements in determining whether there has been an unreasonable delay in *Conille v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 9097 (FC), [1999] 2 FC 33:

> (1) The delay in question has been longer than the nature of the process required, *prima facie*;
>
> (2) The applicant and his counsel are not responsible for the delay; and
>
> (3) The authority responsible for the delay has not provided satisfactory justification.

[11] The parties agree on the second point that the Applicant and his counsel are not responsible for the delay. The first and third points are in contention.

[12] The Respondent takes issue with the Applicant's reliance on the 12-month service standard and processing goals set by IRCC for deciding Overseas Family Class applications for spouses and dependent children. The Respondent argues these standards are not relevant to the

Applicant's application because he applied under the Other Relative stream. I agree that the 12-month service standard does not strictly apply to the Applicant's application. I do not find it wholly irrelevant though because the nature of the process to decide these types of applications is the same, with similar requirements for both.

[13] The problem is there is no published service standard, processing goals, or average processing times for the Family Class stream under which the Applicant applied. The Respondent has not provided any information about the nature of processing required for this category. Nor has the Respondent provided any explanation of why the nature of processing of Family Class applications under the Other Relative stream requires a processing time of approximately four years.

[14] Ultimately, the determination on delay is straightforward because of the facts of this case, where there has been such a lengthy period of inactivity on the file and limited information provided about the nature of processing required for the Other Relative stream. In these circumstances, I find that the delay in question has been longer than the nature of the process required.

[15] On justification, the Respondent argues that the COVID-19 pandemic and the shutdowns it caused in overseas offices from March 2020 onwards affected the processing of overseas files. While I accept that the pandemic affected processing and caused delays, I do not find this general assertion is a sufficient justification for the length of delay in this case. Further, as noted by this Court in *Bidgoly v Canada (Citizenship and Immigration)*, 2022 FC 283 [*Bidgoly*] at

paragraph 41 and *Almuhtadi v Canada (Citizenship and Immigration)*, 2021 FC 712 [*Almuhtadi*] at paragraph 47, processes have slowly resumed and institutions have adapted. Without more detail about how the pandemic affected processing of the Applicant's application, the pandemic is not a sufficient justification for the delay.

C. *Remedy*

[16] In written submissions, the Applicant asked that the Court order his application be determined within 30 days. In oral submissions, Applicant's counsel explained 30 days was a suggestion and that any relatively short fixed timeline would be helpful so that the file does not remain languishing without any activity.

[17] In these circumstances, I direct the Respondent to determine the Applicant's application for permanent residence within 90 days of the Court's Order. Neither party raised a question for certification and I agree none arises.

JUDGMENT in IMM-8004-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted;

2. An order of *mandamus* is hereby issued, requiring the Respondent to render a final decision on the Applicant's permanent residence application within 90 days of the Court's order; and

3. No serious question of general importance is certified.

"Lobat Sadrehashemi"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8004-22
STYLE OF CAUSE:	JUDE YAW ASIEDU v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	JUNE 12, 2023
REASONS FOR JUDGMENT AND JUDGMENT:	SADREHASHEMI J.
DATED:	NOVEMBER 16, 2023

APPEARANCES:

Lev Abramovich	FOR THE APPLICANT
Michael Butterfield	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Abramovich & Tchern Professional Corporation Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANT
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT