

Federal Court



Cour fédérale

Date: 20240904

Docket: IMM-10548-23

Citation: 2024 FC 1377

Ottawa, Ontario, September 4, 2024

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

PEJMAN ILBAGIZADEH MOHABADI

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, a citizen of Iran, applied for permanent residency under the Saskatchewan Immigration Nominee Program, Farm Category in February 2022. In July 2023, 17 months after having submitted the Application, the Applicant wrote the Respondent requesting a decision be rendered. The Respondent acknowledged receipt of the July correspondence but no decision was rendered.

[2] The Applicant applies under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] for an order in the form of *mandamus* requiring the Tribunal to render a decision.

[3] The Respondent submits that the Applicant has not established that the delay in rendering a decision in this case is unreasonable or that the balance of convenience favours the granting of the order, and therefore the Applicant is not entitled to a *mandamus* order.

II. Preliminary matters

A. *Style of Cause*

[4] The Application has identified the Respondent as the Minister of Immigration, Refugees and Citizenship Canada, the name that is commonly used to refer to the Respondent. However, the Respondent is identified in statute as Minister of Citizenship and Immigration and should be so identified in the style of cause (*Federal Courts Citizenship, Immigration and Refugee Protection Rules*, r 5(2) and *IRPA*, s 4(1)). The style of cause is amended accordingly (*Federal Courts Rules*, r 76).

B. *Supplementary Affidavits*

[5] The Respondent seeks leave to file the supplementary affidavit of Ho-Li Chen [Chen Affidavit] affirmed on April 19, 2024 which attaches as an exhibit an updated and current copy of the Global Case Management System [GCMS] notes.

[6] The Applicant is concerned with the timing of the Chen Affidavit and the accuracy of the GCMS notes as they relate to the reported circumstances regarding the Applicant's son's studies in Canada. The Applicant seeks to file the affidavit of Ali Ilbagizadeh Mohabadi [Mohabadi Affidavit] sworn April 22, 2024 in response to the Chen Affidavit.

[7] Leave to file the Chen and the Mohabadi Affidavits has been granted in the course of the hearing of this matter. I am satisfied that the updated GCMS notes attached to the Chen Affidavit – which include an April 3, 2024 entry – are of direct relevance to the issue before the Court. The current version of the GCMS notes were not available at the time the Respondent's motion record was filed and admitting the Chen Affidavit will not prejudice the Applicant who had notice and was in a position to address the contents of the updated GCMS notes in the course of the hearing.

[8] I acknowledge the Applicant takes issue with the accuracy of the April 3, 2024 GCMS note entry as it relates to the Applicant's son's study status. While this information is of little, if any, relevance to the issue before me, I also admitted the Mohabadi Affidavit, which sets forth the Applicant's position on the issue of the son's study status.

III. The Law

[9] An order of *mandamus* is a discretionary remedy and may issue to compel the performance of a statutory duty owed to an applicant (*Bedard v Canada (Attorney General)*, 2024 FC 570 at para 25 [*Bedard*]). The test, set out in *Apotex Inc v Canada (Attorney General)*,

1993 CanLII 3004 (FCA) [*Apotex*] and reiterated more recently at paragraph 29 of *Lukacs v Canada (Transportation Agency)*, 2016 FCA 202 at para 29 [*Lukacs*], follows:

- A. There must be a legal duty to act;
- B. The duty must be owed to the applicant;
- C. There must be a clear right to performance of that duty;
- D. Where the duty sought to be enforced is discretionary, certain additional principles apply;
- E. No adequate remedy is available to the applicant;
- F. The order sought will have some practical value or effect;
- G. The Court finds no equitable bar to the relief sought; and
- H. On a balance of convenience, an order of *mandamus* should issue.

[10] A court may issue a *mandamus* order in response to unreasonable delay, that delay implying a refusal to perform a duty to act (*Ben-Musa v Canada (Minister of Citizenship and Immigration)*, 2005 FC 764 at para 21; see also *Mersad v Canada (Citizenship and Immigration)*, 2014 FC 543 at para 15 [*Mersad*]; and *Dragan v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 211 at para 45 [*Dragan*]). As stated at paragraph 46 of *Abu v Canada (Citizenship and Immigration)*, 2021 FC 1031, “[a] key consideration in determining whether an applicant is entitled to the performance of a duty to make a decision is whether the tribunal has taken unreasonably long to do so.”

[11] *Conille v Canada (Minister of Citizenship and Immigration)* (1998), [1999] 2 FC 33, 1998 CanLII 9097 (FC) [*Conille*] sets out three criteria at paragraph 23 that must be met for a delay to be considered unreasonable:

- A. The delay in question has been longer than the nature of the process required, *prima facie*;
- B. The applicant and his counsel are not responsible for the delay; and
- C. The authority responsible for the delay has not provided satisfactory justification.

[12] The initial time estimate given by the respondent in a matter can be used as a gauge as to what might be a reasonable amount of time for a decision to issue. However, the reasonableness of a delay will depend on the facts of each case (*Mersad*, at para 17; *Bedard*, at para 31; *Almuhtadi v Canada (Citizenship and Immigration)*, 2021 FC 712 at para 37; *Dragan*, at para 55).

IV. Analysis

[13] Relying on the 17-month average processing time and pointing to a similar application where a decision was rendered within the average time, the Applicant argues the delay in processing and rendering a decision with respect to his PR application is unreasonable, and that a *mandamus* should issue.

[14] The Respondent argues the *Apotex* test has not been met because there is no unreasonable delay and the Applicant has therefore failed to demonstrate a clear right to the performance of the duty owed. The Respondent also argues that the Applicant has failed to establish that the balance of convenience favours the issuance of a *mandamus* order.

[15] Delay in this instance exceeds the estimated 17 months of processing time – at the time of hearing, 26 months have elapsed since the initial PR application. While processing times exceeding the average are relevant to the issue of unreasonable delay, it is not determinative.

[16] The Applicant’s reliance on knowledge of a similar case is also of little assistance. As I note at paragraph 9, the reasonableness of a delay will depend on the facts of each case.

[17] A review of the GCMS notes discloses that the application in issue was referred for review in September 2022 and that a documents review was undertaken in October 2022. It is troubling that the GCMS notes do not reflect any further processing activity until after the Application for a *mandamus* order was filed with this Court, and the Respondent has not filed any evidence to explain that gap in processing.

[18] That said, the GCMS notes demonstrate ongoing and active processing since September 2023, and the most recent GCMS note entry indicates the application has been “directed to officer for security review and action.” The Applicant’s reliance on average processing times is simply not sufficient to demonstrate the delay at this stage has been longer than the nature of the process requires. The first prong of the *Conille* test has not been met and unreasonable delay has not been established.

[19] My conclusion that the Applicant has failed to establish an unreasonable delay is determinative of the Application.

V. Conclusion

[20] The Application for Judicial Review is dismissed. The Parties have not identified a question of general importance for certification, and none arises.

JUDGMENT IN IMM-10548-23

THIS COURT’S JUDGMENT is that:

1. The style of cause is amended, with immediate effect, to identify the Minister of Citizenship and Immigration as the Respondent.
2. The Affidavit of Ho-Li Chen affirmed on April 19, 2024 is accepted for filing.
3. The Affidavit of Ali Ilbagizadeh Mohabadi sworn April 22, 2024 is accepted for filing.
4. The Application for Judicial Review is dismissed.
5. No question is certified.

“Patrick Gleeson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-10548-23

STYLE OF CAUSE: PEJMAN ILBAGIZADEH MOHABADI v MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: APRIL 24, 2024

JUDGMENT AND REASONS: GLEESON J.

DATED: SEPTEMBER 4, 2024

APPEARANCES:

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