

Federal Court



Cour fédérale

Date: 20240925

Docket: IMM-9752-23

Citation: 2024 FC 1513

Ottawa, Ontario, September 25, 2024

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

HAMED ZAREI

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, a citizen of Iran, has applied for a study permit to attend the Business Administration program at the University of Canada West. On August 8, 2022, Immigration, Refugees and Citizenship Canada [IRCC] refused the application. The Applicant challenged the decision in the Federal Court, but discontinued his judicial review after an agreement was reached to allow a redetermination of the application.

[2] IRCC began its redetermination on December 29, 2022 and requested updated information, which was provided by the Applicant on January 24, 2023. In February 2023, the application was accepted in principle and IRCC requested security screening from partners. IRCC requested that the Applicant provide his military records on May 13, 2024, which were recorded as being received on July 11, 2024. The application is currently pending security clearance in view of this production. The outstanding question on this application is whether the delay in processing the application warrants an order of *mandamus*.

[3] The test for issuing an order of *mandamus* was set out in *Apotex Inc v Canada (Attorney General)*, [1994] 1 FC 742 (CA) at para 45; aff'd [1994] 3 SCR 1100. In the present case, the outstanding issue is whether there has been unreasonable and unexplained delay on the part of IRCC in rendering its decision on the redetermination of the study permit.

[4] There are three requirements that must be met for delay to be considered unreasonable: 1) the delay is 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: *Conille v Canada (Minister of Citizenship and Immigration)*, [1999] 2 FC 33 at para 23 [*Conille*].

[5] The applicant asserts that the published processing time for temporary resident visa applications was 7 to 12 weeks at the time his original study permit application was filed and is now 7 weeks. While he provides copies of webforms received in response to requests for the status of his application, which include hyperlinks for accessing information relating to timing

and status, none of the hyperlinks are active nor do the materials include copies of the stated standards as of the date of the webform responses. The Respondent does not appear to take issue that there has been some delay with processing the application; however from an evidentiary stand-point, the scope of delay has not been established.

[6] The Respondent submits that the current status of the application is not exceptional in view of the necessity for security screening. Thus, the third part of the *Conille* test has not been met as to the extent there has been delay, it is not unreasonable because there is an explanation for it.

[7] I note that while the Respondent provided Global Case Management System [GCMS] notes which indicate the dates of the request and receipt of the military file, there was no information as to the nature of any security concerns or as to why it took over 15 months for the military records to be requested. Counsel for the Respondent acknowledged that she had no further information as to the details of the request or how long it would take to complete security clearance.

[8] While I find this evidence to be thin, I must also evaluate whether an order of *mandamus* would be of practical value, and whether the balance of convenience favours an order to issue on the facts of this case.

[9] There is no question that background checks and security screening are important requirements under the *Immigration and Refugee Protection Act*, SC 2001, c 27 (see

subsections 3(1)(h), (i)) and that a blanket statement that security screening is pending may be insufficient to justify a lengthy delay: *Ghalibaf v Canada (Citizenship and Immigration)*, 2023 FC 1408 at para 14; *Liu v Canada (Immigration, Refugees and Citizenship)*, 2024 FC 1341 at para 6. However, the length of time that this application has been pending security clearance since the military information was received is just over 70 days. While it is concerning that the request for military information took over 15 months to be made, I cannot conclude that the time it has taken thus far to complete security clearance since the information was received is unjustified.

[10] With respect to the balance of convenience, admittedly there is also no evidence from the Applicant in the record before me as to significant prejudice associated with the delay in processing his application. While there are certain hardships of a pending application which are evident from the record (*i.e.*, increased cost in requesting extensions for program entry, and the general disruption caused by waiting for application approval), these do not translate to an entitlement to an order of *mandamus*. Arguments of alleged significant prejudice must be supported by evidence and cannot be accepted on judicial notice as counsel for the Applicant urges.

[11] For all of these reasons, the application is dismissed without prejudice to the Applicant's right to bring a further application for *mandamus* with evidence relating to these and other facts if they arise.

[12] There was no question for certification proposed by the parties and I agree none arises in this case.

JUDGMENT IN IMM-9752-23

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed without prejudice to the Applicant.
2. No question of general importance is certified.

"Angela Furlanetto"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9752-23

STYLE OF CAUSE: HAMED ZAREI V THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 19, 2024

JUDGMENT AND REASONS: FURLANETTO J.

DATED: SEPTEMBER 25, 2024

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