

Federal Court



Cour fédérale

Date: 20241008

Docket: T-2364-23

Citation: 2024 FC 1583

Ottawa, Ontario, October 8, 2024

PRESENT: Mr. Justice O'Reilly

BETWEEN:

**DUY THANH HANG NGUYEN
and
SUYU CHANG**

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms Duy Thanh Hang Nguyen and her daughter applied for Canadian citizenship in 2021. The usual processing time is about 17 months, but the applicants are still waiting for a decision. They ask me for an order of *mandamus* requiring the Minister to accelerate the processing of their applications.

[2] An order of *mandamus* is not appropriate here because the Minister suspended the applicants' citizenship applications as a result of an investigation conducted by the Canada Border Services Agency (CBSA), a body over which the Minister has no control. The Minister has the authority to suspend an application "for as long as is necessary" to receive the results of an investigation into the admissibility of an applicant (*Citizenship Act*, RSC 1985, c C-29 [*Citizenship Act*], s 13.1).

[3] Accordingly, for the reasons below, I must dismiss this application for *mandamus*.

II. Background

[4] After the applicants submitted their applications in early 2021, Immigration, Refugees and Citizenship Canada (IRCC) began to process them and complete necessary background checks. A year later, Ms Nguyen took an online citizenship test. She failed the test but retook it successfully in May 2022. In October 2022, Ms Nguyen was invited to attend an in-person interview, but she failed to appear. The interview was rescheduled and completed in February 2023.

[5] In March 2023, IRCC suspended its processing of the applications after the CBSA began an investigation. The CBSA requested that IRCC review the file in three months and, if there were no developments, to check again in six months. IRCC followed up but was informed by the CBSA in September 2023 that the investigation was ongoing. At that point, the applicants filed their application for a *mandamus* order.

III. Is a *Mandamus* Order Warranted?

[6] An order of *mandamus* is not appropriate in these circumstances.

[7] The first requirement for an order of *mandamus* is the existence of a public duty to act (*Apotex Inc v Canada*, 1993 CanLII 3004 (FCA)). Here, the Minister does not have a public duty to continue processing the applications as a result of the ongoing CBSA investigation and the corresponding suspension under s 13.1 of the *Citizenship Act (Canada (Citizenship and Immigration) v Nilam*, 2017 FCA 44 at paras 26-27; *Tayeb Ali v Canada (Citizenship and Immigration)*, 2016 FC 1051 at para 23; *Niu v Canada (Minister of Citizenship and Immigration)*, 2018 FC 520 [*Niu*] at para 13).

[8] Therefore, a *mandamus* order is unavailable to the applicants.

IV. Conclusion and Disposition

[9] The applicants are understandably disappointed and frustrated by the delay in processing their citizenship applications, more so because they have not been given any information about the basis for the CBSA's investigation. However, an order of *mandamus* may be available against the Minister at a later point if the delay exceeds the time that is necessary for an investigation and becomes unreasonable (*Niu* at para 14). Further, the applicants' better remedy may lie in proceedings against the Minister of Public Safety and Emergency Preparedness, who is responsible for the CBSA.

[10] The application for *mandamus* is dismissed. No question of general importance arises.

JUDGMENT IN T-2364-23

THIS COURT'S JUDGMENT is that:

1. The application for *mandamus* is dismissed.
2. No question of general importance arises.

"James W. O'Reilly"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2364-23
STYLE OF CAUSE: DUY THANH HANG NGUYEN et al v. THE
MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING: SEPTEMBER 4, 2024
JUDGMENT AND REASONS: O'REILLY J.
DATED: OCTOBER 8, 2024

APPEARANCES:

Richard Kurland

FOR THE APPLICANTS

Brett J. Nash

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Kurland, Tobe
Vancouver, British Columbia
Attorney General of Canada
Vancouver, British Columbia

FOR THE APPLICANTS

FOR THE RESPONDENT