

Date: 20080908

Docket: IMM-5040-07

Citation: 2008 FC 994

Ottawa, Ontario, September 8, 2008

PRESENT: THE HONOURABLE MADAM JUSTICE DAWSON

BETWEEN:

**ALEXANDRE VOROPAEV
TATIANA VOROPAEVA
JULIA VOROPAEVA**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicants' request for an order of *mandamus* is dismissed because they have not established that the delay in processing their application for permanent residence is unreasonable.

[2] The relevant facts are as follows:

- On September 21, 2004, the applicants were granted refugee protection by the Refugee Protection Division of the Immigration and Refugee Board (RPD).

- On October 4, 2004, the Minister sought leave to judicially review that finding. At issue was whether Alexandre Voropaev should be excluded from refugee protection because, prior to his admission to Canada, he committed a serious non-political crime outside of Canada.
- On October 15, 2004, the applicants applied for permanent residence as protected persons.
- On February 14, 2005, the applicants' criminality clearances were passed.
- On June 24, 2005, this Court set aside the decision of the RPD granting refugee protection to the applicants. The claim for protection was remitted to the RPD for redetermination.
- This had the effect of suspending processing of the applicants' application for permanent residence as protected persons.
- The Minister later concluded that he was no longer satisfied that there were serious reasons for considering that Mr. Voropaev had committed a serious non-political crime before coming to Canada. Accordingly, the Minister withdrew his notice of intent to participate in the second refugee hearing before the RPD.
- On December 21, 2006, the applicants were again found to be protected persons by the RPD.
- On February 3, 2007, the suspension of processing the application for permanent residence was lifted.
- On April 19, 2007, the applicants' medical clearances were received.
- On April 19, 2007, the Minister requested updated IMM 5202 forms from the applicants so that security clearances could be completed.

- On May 9, 2007, updated IMM 5202 forms were received by Citizenship and Immigration Canada (CIC).
- On May 18, 2007, the updated forms were sent by CIC for security clearance.
- On December 3, 2007, this application for leave and judicial review was commenced.
- As of the date of the judicial review hearing, the applicants' security clearances are pending.

[3] The parties are agreed that the principles that govern the grant of *mandamus* are those articulated by the Federal Court of Appeal in *Apotex Inc. v. Canada (Attorney General)*, [1994] 1 F.C. 742. They further agree that the specific principle relevant to this case is the requirement that the applicants establish a clear right to the performance of the requested duty, and more particularly the requirement that the applicants establish that a reasonable amount of time has elapsed for the performance of the duty.

[4] When considering whether a period of delay is unreasonable, the Court has applied the tripartite test articulated by my colleague Justice Tremblay-Lamer in *Conille v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 F.C. 33. A delay is to be considered unreasonable if:

- (1) the delay in question has been longer than the nature of the process requires, *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 a satisfactory justification.

[5] No issue arises in this case with respect to the second element of the test.

[6] With respect to the first element, the applicants argue that their application was submitted in October of 2004 and that the delay of almost 4 years is well in excess of normal processing times. Further, they submit that because the applicants' criminality clearances were received in February of 2005, and because the Minister withdrew his intervention in their refugee claim after a thorough review of the facts, the delay is *prima facie* longer than the process requires.

[7] In respect of the third requirement, the applicants assert that the Minister has not provided any satisfactory justification for the delay.

[8] In my view, it is not correct for the applicants to argue that their application has been outstanding for almost 4 years, and that no explanation has been given for the delay. As the Minister's deponent explained, processing of the applicants' application for permanent residence as protected persons was suspended after this Court vacated the finding that the applicants were protected persons. Such processing was not recommenced until February 3, 2007, following the second finding of the RPD that the applicants were protected persons.

[9] The relevant period of delay, therefore, is the period from May 18, 2007, when the security clearances were requested, to date.

[10] As to whether that delay has been longer than the nature of the process *prima facie* requires, the applicants conflate the investigation of criminality concerns with the issue of a security clearance. While there may be some factual overlap, security checks *per se* cannot be equated to simple consideration of an applicant's criminal record.

[11] To the extent the applicants rely upon advice on the CIC website about normal processing times, the website warns that the times given are "estimated processing times only." The website further warns that the processing times are for first-stage approval only, that not all cases receive first-stage of approval at the case processing center in Vegreville, Alberta, and that some files may be transferred to a local CIC office, which may add further delays to the overall processing time. The applicants have been advised that their application has been transferred to the Etobicoke CIC office.

[12] The security checks were outstanding for approximately six months when this application was commenced. They have now been outstanding for approximately 15 months. While the delay is a cause for some concern, the applicants have not met the burden upon them to establish that the delay is longer than the process *prima facie* requires or is otherwise unreasonable. It follows that the application for judicial review will be dismissed.

[13] Counsel posed no question for certification, and no question arises on this record.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES THAT:

1. The application for judicial review is dismissed.

“Eleanor R. Dawson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5040-07

STYLE OF CAUSE: ALEXANDRE VOROPAEV ET AL., Applicants and
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION, Respondent

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 2, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** DAWSON, J.

DATED: SEPTEMBER 8, 2008

APPEARANCES:

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