Federal Court  Cour fédérale

Date: 20120502

Docket: IMM-7038-11

Citation: 2012 FC 508

Ottawa, Ontario, May 2, 2012

PRESENT: The Honourable Mr. Justice Boivin

BETWEEN:

AHMAD, RAUF
YASMIN, TAHIRA
MUMTAZ, AMBER
MUMTAZ, JAVARIA
MUMTAZ, BUSHRA
HAIDER, ALI
and
MUMTAZ, WARDA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application by Rauf Ahmad (the principal applicant), Tahira Yasmin, Amber Mumtaz, Javaria Mumtaz, Bushra Mumtaz, Ali Haider and Warda Mumtaz (together, the applicants), pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act], for judicial review of the respondent's failure to render a decision with

respect to the principal applicant's application for Canadian permanent residence for himself and his family. The applicants request an order in the nature of *mandamus* requiring the respondent to render a final decision on the applicants' application.

I. Factual Background

[2] The principal applicant fled Pakistan in June of 2005 and claimed asylum in Canada. He successfully obtained refugee protection in Canada on April 11, 2006. He subsequently applied for permanent residence in July of 2006 for himself and for his family, who are still living in Pakistan. The principal applicant also included his "adopted son" on the application for permanent residence.

[3] On November 13, 2007, an Immigration officer advised the principal applicant's wife that her "adopted son" could not be considered a dependant child as per section 2 of the Act. The applicants' counsel requested an extension of this delay until February 1, 2008, in order to consult a Pakistani lawyer on the issue and provide the officer with additional information.

[4] In August of 2008, the applicants filed further representations with regard to the status of their "adopted son".

[5] On September 4, 2008, Citizenship and Immigration Canada (CIC) notified the principal applicant that his "adopted son" could not be considered a dependent child. However, CIC did not withdraw the "adopted son's" name from the application as it explains that it fell upon the shoulders of the applicants to do so.

[6] On June 3, 2009, the applicants sought further clarification of CIC's position.

[7] On May 14, 2010, as the applicants had not received a response concerning the status of their application for permanent residence, counsel for the applicants filed for *mandamus* in the Federal Court. The applicants' application for *mandamus* failed to get leave on July 21, 2010.

[8] On August 18, 2010, the principal applicant's wife wrote to the Canadian High Commission in Islamabad, Pakistan (the High Commission), informing them that she wished to withdraw her "adopted son" from the application for permanent residence.

[9] One year later, on August 23, 2011, the applicants sent a letter to the High Commission and asked for a decision to be made.

[10] On August 24, 2011, the High Commission responded and advised the applicants that their application was being processed and that it was in queue for review by an Immigration officer. The High Commission explained that the extended processing time was due to the "dynamics of the application and the concerns associated with the application".

[11] On September 7, 2011, the applicants received a letter from the High Commission that informed them that their "adopted son" had been officially deleted from the application as he did not meet the definition of a "dependant child" under the Act.

[12] On September 23, 2011, the applicants wrote to the High Commission again to inquire as to the status of their application. On October 1, 2011, the applicants then received a similar response as the letter of August 24, 2011.

[13] On November 1, 2011, the applicants received another letter from the Deputy IPM of the Immigration Section of the High Commission, which stated that "no decision has yet been made on the Applicant's application."

II. Issue

[14] The sole issue to be decided is whether the applicants are entitled to an order of *mandamus* with respect to their application for permanent residence.

III. Pertinent Legislation

[15] The following provision of the *Immigration and Refugee Protection Act* applies in the case at hand:

OBJECTIVES AND APPLICATION	OBJET DE LA LOI
Objectives – immigration	Objet en matière d'immigration
3. (1) The objectives of this Act with respect to immigration are	3. (1) En matière d'immigration, la présente loi a pour objet :
[…]	…
(*f*) to support, by means of consistent standards and prompt processing, the	*f*) d'atteindre, par la prise de normes uniformes et l'application d'un traitement

attainment of immigration goals established by the Government of Canada in consultation with the provinces; […]	efficace, les objectifs fixés pour l'immigration par le gouvernement fédéral après consultation des provinces; …

IV. Analysis

[16] The applicants underline the fact that paragraph 3(1)(*f*) of the Act outlines the principle of "prompt processing". The applicants submit that an order of *mandamus* should issue as they have not received an answer to their application for permanent residence for almost six (6) years. The applicants allege that they do not understand the reasons why their application has taken so long to process and they state that CIC should be able to make a decision at this point. Alternatively, the applicants advance that they should be informed of the reasons for the delay in the processing so that they may address any concerns that CIC may have.

[17] The criteria which an applicant must satisfy for the Court to grant a *mandamus* relief are well known. They were outlined in the case of *Apotex Inc. v Canada (Attorney General)* CA), [1994] 1 FC 742, [1993] FCJ No 1098 [*Apotex*], affirmed by [1994] 3 SCR 1100, at para 45:

> 1. There must be a public legal duty to act;
> 2. The duty must be owed to the applicant;
> 3. There is a clear right to performance of that duty, in particular:
> (a) the applicant has satisfied all conditions precedent giving rise to the duty; and
> (b) there was
> (i) a prior demand for performance of the duty;
> (ii) a reasonable time to comply with the demand unless refused outright; and
> (iii) a subsequent refusal which can be either expressed or implied, e.g. unreasonable delay.
> […]
> 4. No other adequate remedy is available to the applicant;

5. The order sought will be of some practical value or effect;
6. The Court in the exercise of its discretion finds no equitable bar to the relief sought; and
7. On a "balance of convenience" an order in the nature of *mandamus* should (or should not) issue.

[18] Further, in the case of *Conille v Canada (Minister of Citizenship and Immigration)*, [1999] 2 FC 33, 159 FTR 215 [*Conille*], Justice Tremblay-Lamer observed that a delay in the performance of a statutory obligation may be considered unreasonable if the following requirements are met at para 23:

> [23] …
> (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.

[19] The respondent notes that an order of *mandamus* is not warranted in the case at bar as it appears that the applicants' application for permanent residence is now complete and they are presently in queue for review by an Immigration officer. While the respondent concedes that the processing of their application has taken a long time, the respondent affirms that this delay was caused by CIC's concerns about the legality of the adoption of Mr. Ahmad's "adopted son".

[20] However, the evidence demonstrates that the applicant's application for permanent residence, which included his family members residing outside of Canada, was sent on July 24, 2006 (Tribunal Record pp. 362 and following). It is, therefore, difficult for the Court to agree with the respondent that the relevant date to consider in determining whether the *mandamus* should issue is 2007 or 2010 or 2011. The Court also notes that there were a number of inquiries from the applicants. Based on the evidence on record, the Court finds that the relevant date is

July 24, 2006. The application for permanent residence has therefore been outstanding for nearly six (6) years and the evidence demonstrates that the applicants have responded to the requests made by the CIC. While the applicants "officially" withdrew their "adopted son" from their application in 2010, the fact of the matter is that the respondent was aware of the applicants' intention – in a letter dated December 14, 2007 – that the "adopted son" be removed from the file (Tribunal's Record, pp. 218, 259).

[21] In light of the parties' submissions and the evidence, the Court is satisfied that the test has been met and that an order of *mandamus* should issue.

[22] The Court recalls that an order of *mandamus* is a discretionary equitable remedy and that each request for *mandamus* turns on its own particular set of facts. Further, in light of the cases of *Ogbewe v Canada (Minister of Citizenship and Immigration)* 2006 FC 77; [2006] FCJ No 98; *Bageerathan v Canada (Minister of Citizenship and Immigration)*, 2008 FC 599, [2008] FCJ No 750, *Douze v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1337, [2010] FCJ No 1680, the Court is of the view that the delay in question has become unreasonable and has not been adequately justified by the respondent.

[23] With respect to the time line, the Court is satisfied that, in light of the submissions by both parties at hearing, a delay of 60 days is in order.

[24] The Court agrees with the parties that there is no serious question of general importance for certification in this case.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application is granted;
2. The respondent is ordered to make a decision and provide it to the applicants within 60 days of the Court's decision;
3. No serious question of general importance is certified;
4. No costs.

"Richard Boivin"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7038-11
STYLE OF CAUSE:	**AHMAD, RAUF et al v MCI**
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	April 25, 2012
REASONS FOR ORDER:	BOIVIN J.
DATED:	May 2, 2012

APPEARANCES:

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Ian Demers	FOR THE RESPONDENT

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