Federal Court  Cour fédérale

Date: 20170316

Docket: IMM-2418-16

Citation: 2017 FC 288

Ottawa, Ontario, March 16, 2017

PRESENT: THE CHIEF JUSTICE

BETWEEN:

MORTEZA MOMENZADEH TAMEH

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] Ministers of the Crown are typically very busy people. But they are not so busy that they can take as many years as they see fit to respond to requests made pursuant to validly enacted legislation, by persons seeking determinations that are important to them. At some point, they will have an obligation to provide a response.

[2] The applicant to the present Application, Mr. Tameh, initially made a request for permanent resident status in Canada in 1994, after being found to be a Convention refugee earlier that year. However, in August 2001 he was found to be inadmissible due to his past involvement in Mujahedin-e-Kalq [MEK], an organization in his home country of Iran that, until 2012, was listed on Canada's list of terrorist entities for the purposes of Part II.1 of the *Criminal Code*, RSC 1985, c C-46. The immigration counsellor who made that recommendation also recommended that Ministerial Relief from inadmissibility be granted, pursuant to what was then paragraph 19(1)(f) of the *Immigration Act*, RSC 1985, c I-2.

[3] In November 2007, the then Minister of Public Safety, Stockwell Day, decided not to grant that Ministerial Relief. However, Justice Mactavish set aside that decision and sent it back for redetermination in July 2008, on the ground that the Minister had not been fully apprised of the relevant facts concerning Mr. Tameh's involvement with the MEK (*Momenzadeh Tameh v Canada (Public Safety and Emergency Preparedness)*, 2008 FC 884 [*Tameh*]).

[4] In October 2012, while Mr. Tameh was waiting for that redetermination to be made, he requested that the Minister's decision be postponed until after the Supreme Court of Canada [SCC] had rendered its decision in *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 [*Agraira*]. That decision was issued in June 2013, close to four years ago.

[5] However, Mr. Tameh continues to wait for a determination to be made in respect of his request for Ministerial Relief. The Minister takes the position that, because of his many duties and responsibilities, he should not be subject to any timeline whatsoever in rendering his determinations in respect of such requests.

[6] I disagree.

[7] Although the Minister must have considerable latitude in prioritizing his many duties, he must nevertheless respond to requests made for Ministerial Relief, within a reasonable period of time.

[8] What constitutes "a reasonable period of time" will, to a significant extent, be a function of the particular factual matrix at hand. Based on the evidence adduced in this hearing in respect of the time typically required to process applications for Ministerial Relief, I consider the initial delay of approximately four years that occurred in the processing of Mr. Tameh's application, between July 2008 and October 2012, to be at the outer limit of what is reasonable in that regard. This outside limit is subject to adjustments for significant delays (beyond the periods given to respond) on the part of persons who have made such requests to the Minister, inordinate delays by third parties who are not subject to the Minister's control, and exceptional circumstances.

[9] Having regard to all of the time that was spent on Mr. Tameh's file prior to the issuance of *Agraira*, above, I consider the additional 45-month delay since the issuance of that decision to be unreasonable. I also find that the balance of convenience favours the issuance of the order of *mandamus* that Mr. Tameh has requested.

[10] Accordingly, and for the additional reasons set forth below, I will issue that order, albeit on the revised terms that he reached with counsel to the Minister, after I gave counsel guidance at the hearing of this matter on February 27, 2017.

II. **Background**

[11] Mr. Tameh was a member of the MEK from 1979 to September 1982.

[12] According to an affidavit affirmed by Tracy Vansickle, a Manager in the Ministerial Relief Unit [MRU] of Canada Border Services Agency [CBSA], the MEK is an Iranian resistance organization that has sought to overthrow both secular and theocratic regimes in Iran. It has had alliances with the regime of Saddam Hussein in Iraq, the Palestinian Liberation Organization and other Palestinian factions. To achieve its objectives, its past activities have included assassinations, armed attacks, hostage taking, mortar attacks and hit-and-run raids against civilians, government and military personnel and infrastructure, both Iranian and foreign.

[13] Mr. Tameh's evidence, which does not appear to be contested, is that his activities with the MEK included distributing flyers, writing political graffiti on walls, making financial donations, hiding people who were escaping from Iranian authorities, obtaining testimony from political prisoners and participating in spot demonstrations. After becoming a neighbourhood cell leader in May 1982, he went into hiding in September 1982 and was later caught and imprisoned for five years beginning in December 1982.

[14] After being repeatedly harassed and detained by Iranian authorities following his release from prison, Mr. Tameh fled Iran and came to Canada at the end of 1993.

[15] In August 2008, after Justice Mactavish set aside Minister Stockwell Day's decision to refuse Relief from inadmissibility to Mr. Tameh, the CBSA provided Mr. Tameh with an opportunity to present further submissions in support of his application.

[16] Those further submissions were provided approximately three weeks later. Mr. Tameh then made further submissions in July 2009, after the European Union removed the MEK from its list of terrorist organizations. He was then advised by the new Minister, Peter Van Loan, that the CBSA would be providing him with a recommendation for decision within the ensuing 18 months.

[17] However, according to Ms.Vansickle, between 2009 and 2011, Mr. Tameh's application was reassigned on multiple occasions to different officers for processing. It was not until September 2012 that the CBSA finally disclosed a draft Ministerial Relief recommendation to Mr. Tameh. At the time he provided initial comments on the draft in October 2012, he requested that no decision be made on his application until after the SCC rendered its decision in *Agraira*, above.

[18] In December 2012, the Government of Canada made the decision to remove the MEK from its list of terrorist entities. As a result, in February 2013, Mr. Tameh provided further submissions in respect of his application. The CBSA then prepared a final recommendation for the Minister, which it forwarded to the President of the CBSA in May of that year. A few weeks later, the SCC issued its decision in *Agraira*. According to Ms. Vansickle, that decision had the effect of requiring the CBSA to make significant changes to its approach to processing request for Ministerial Relief from inadmissibility.

[19] In response to an inquiry made by Mr. Tameh in November 2013 regarding the status of his file, the CBSA informed him that his file remained active but that it could not provide a precise timeframe within which a decision would be made on his request for Ministerial Relief. The CBSA provided similar advice to Mr. Tameh in February 2014.

[20] On January 20, 2016, Mr. Tameh wrote to the CBSA requesting that a decision be made on his outstanding request for Ministerial Relief. To date, no such decision has been made in response to his request.

III. **Relevant Legislation**

[21] The initial finding that Mr. Tameh was inadmissible to Canada was made pursuant to clause 19(1)(f)(iii)(B) of the former *Immigration Act*, RSC 1985, c I-2. The contemporaneous recommendation that he be granted Ministerial Relief from inadmissibility was made pursuant to an exception that was set forth in the post-amble language in paragraph 19(1)(f).

[22] In 2002, paragraph 19(1)(f) of the *Immigration Act* was replaced by paragraph 34(1)(f) and subsection 34(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. Among other things, paragraph 34(1)(f) states that a permanent resident or a foreign national is inadmissible on security grounds for being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts that include terrorism.

[23] Minister Stockwell Day's decision to refuse Relief from Mr. Tameh's inadmissibility was made pursuant to subsection 34(2) of the IRPA, as it was worded at that time. It appears to be common ground between the parties that Mr. Tameh's application for Ministerial Relief is to be assessed pursuant to that version of subsection 34(2), which stated:

Exception	**Exception**
(2) The matters referred to in subsection (1) do not constitute inadmissibility in respect of a permanent resident or a foreign national who satisfies the Minister that their presence in Canada would not be	(2) Ces faits n'emportent pas interdiction de territoire pour le résident permanent ou l'étranger qui convainc le ministre que sa présence au Canada ne serait nullement préjudiciable à l'intérêt

detrimental to the national interest.	national.

[24] Under the current legislation, pursuant to section 42.1(1) of the IRPA, the Minister may, on application by a foreign national, declare that the matters referred to in section 34 (and certain other sections) do not constitute inadmissibility in respect of the foreign national if they satisfy the Minister that the matter in question is not contrary to the national interest.

[25] Pursuant to subsection 42.1(3) of the IRPA, in determining whether to make a declaration under subsection 42.1(1), the Minister may only take into account national security and public safety considerations, but, in his or her analysis, is not limited to considering the danger that the foreign national presents to the public or the security of Canada.

[26] The full text of the above-mentioned legislative provisions is set forth in Appendix 1 to these reasons.

IV. **Assessment**

A. *Legal Test*

[27] The decision to grant Ministerial Relief under subsection 34(2) is highly discretionary (*Tameh*, above, at para 38).

[28] Before the Court will consider exercising its discretion to issue an order of *mandamus* to compel a public authority to make a decision, an applicant must demonstrate the following:

I. There is a public legal duty to act;

II. The duty is owed to the applicant;

III. There is a clear right to performance of that duty. In particular:

A. The applicant has satisfied all the conditions precedent giving rise to the duty, and

B. There was (1) a prior demand for performance of the duty, (2) a reasonable time to comply with the demand (unless refused outright), and (3) a subsequent refusal, which can be either expressed or implied, e.g., unreasonable delay;

IV. No adequate remedy is available to the applicant;

V. The order sought will be of some practical value or effect;

VI. There is no equitable bar to the relief sought; and

VII. On the balance of convenience, an order of mandamus should issue.

(*Apotex Inc v Canada (Attorney General)*, [1994] 1 FC 742, at para 45 (CA); *Douze v Canada (Public Safety and Emergency Preparedness)*, 2010 FC 1337, at para 26 [*Douze*]; *Dragan v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 211, at para 39 [*Dragan*]; *Kalachnikov v Canada (Minister of Citizenship and Immigration*), [2003] FCJ No 1016 (QL), at para 11 (TD) [*Kalachnikov*].)

[29] To demonstrate that a delay is unreasonable, an applicant must establish the following three things: (i) that the delay is *prima facie* longer than required by the nature of the process in question, (ii) that the applicant and his counsel are not responsible for the delay, and (iii) that the responsible authority has not provided a satisfactory justification for the delay (*Douze*, above, at para 28; *Dragan*, above, at para 54; *Esmaeili Tarki v Canada (Public Safety and Emergency Preparedness)*, 2010 FC 697, at para 10 [*Esmaeili*]).

[30] What constitutes “a reasonable period of time” will, to a significant extent, be a function of the particular factual matrix at hand. However, the existing jurisprudence can provide some helpful broad guiding parameters (*Esmaeili*, above, at para 11; *Hanano v Canada (Minister of Citizenship and Immigration)*, 2004 FC 998, at paras 13–15 [*Hanano*]; *Dragan*, above, at para 55).

B. *Application of the Test to the Present Circumstances*

[31] In applying the test for *mandamus* set forth above to the facts of the present case, Mr. Tameh places significant reliance on *Esmaeili* and *Douze*, above. Both of those cases concerned applications for *mandamus* in respect of requests for Ministerial Relief. As with the present case, *Esmaeili* concerned a request for Ministerial Relief under subsection 34(2) in respect of a determination of inadmissibility based on the applicant’s membership in the MEK. *Douze* concerned a request for Ministerial Relief under subsection 35(2), in relation to a finding of inadmissibility pursuant to paragraph 35(1)(b) of the IRPA.

[32] In both *Esmaieli* and *Douze*, above, the Minister appeared to focus his submissions on the absence of any unreasonable delay and on the balance of convenience. The Minister adopts a similar focus in the present case and adds that there are special circumstances that warrant additional time to make an appropriately considered decision. In this latter regard, the Minister maintains that he should not be required to make a decision within any particular time period or before any particular point in time, due to the adverse impact that this might have on the national security aspect of his determination.

(1) Duty to Act and Duty Owed to Mr. Tameh

[33] Relying on *Esmaeili*, above, at paras 9–10, Mr. Tameh asserts that the Minister has a public duty to render a decision on requests for Ministerial Relief and that such a duty is owed to him because he made such a request.

[34] I agree, although I note that in *Esmaeili*, above, the Minister did not contest that these two conditions were met. It appears that the Minister adopted a similar position in *Douze*, above, at para 27. Likewise, the Minister in the present case does not appear to contest either that there is a public duty to act in respect of requests for Ministerial Relief under subsection 34(2), or that he owes a duty to provide a response to the request that has been made by Mr. Tameh.

(2) Right to Performance of the Duty

[35] The parties' submissions with respect to this precondition to the issuance of a *mandamus* order focus on whether there has been an unreasonable delay by the Minister in responding to Mr. Tameh's request for Ministerial Relief.

[36] Mr. Tameh notes that it has been now well over eight years since Justice Mactavish set aside the Minister's initial refusal to grant him Ministerial Relief and remitted the matter to the Minister for redetermination.

[37] He acknowledges that, in October 2012, he requested that the Minister's decision be postponed until after the SCC had rendered its decision in *Agraira*, above. However, he notes that the SCC issued its decision in that case approximately eight months later, in June 2013,

which is now almost four years ago. He maintains that he is not responsible for any other delay that has occurred in the processing of his request.

[38] The Minister responds that there is no evidence that he has refused to perform a duty. He maintains that the MRU continues to process Mr. Tameh's application for Ministerial Relief.

[39] To justify the time that it has taken so far to process that application, the Minister relies on the complex nature of the assessment procedure. Among other things, the steps involved include: research and collecting data, preparing a draft recommendation to the Minister, disclosing it to the applicant for submissions, reviewing the applicant submissions and reassessing the recommendation in light of those submissions, revising the recommendation if necessary, senior-level review of the recommendation within the CBSA, further review by the President of the CBSA, and submission of the recommendation with supporting documentation to the Minister for a decision.

[40] However, in her affidavit, Ms. Vansickle notes that, from start to finish, the process described immediately above typically takes approximately nine months. This does not include the period that a file remains in the Ministerial Relief inventory, which I understand to mean the time after a recommendation has been forwarded to the Minister for consideration, following the completion of the various steps described at paragraph 39 above.

[41] Ms. Vansickle adds that the process of preparing a ministerial recommendation can take much longer where there are complicating factors, such as delays by partner agencies or an applicant in responding to requests for information, repeated submissions or novel arguments made by the applicant, new jurisprudence that has a bearing on a case, or the need to disclose an

updated recommendation to the applicant. Given that such factors will often be at play, it is reasonable to expect that the CBSA may often reasonably require significantly more than nine months to prepare a recommendation for the Minister's consideration.

[42] In other words, some delays that result in overall processing times well in excess of nine months may not be *prima facie* longer than what is required by the nature of the process. I expect that applications for *mandamus* in respect of cases involving such delays will turn on whether the CBSA has provided a satisfactory justification for the delay.

[43] In the present case, Ms. Vansickle maintains that the factors identified above, together with other factors, had a direct effect on the processing of Mr. Tameh's application. Among other things, administrative and policy changes occurred that included an internal reorganization which resulted in the creation of the MRU. In addition, there were decisions by the European Union and the Government of Canada to remove the MEK from the list of terrorist entities, decisions by the Federal Court of Appeal [FCA] and the SCC in *Agraira*, above, and amendments to the IRPA which affected the provisions relating to Ministerial Relief.

[44] Moreover, the SCC's decision in *Agraira*, above, had the effect of requiring the CBSA to make substantial changes to its approach to processing requests for Ministerial Relief. Further time was then required to consider Mr. Tameh's submissions regarding the impact of the delisting of the MEK as a terrorist entity, by both the European Union and the Government of Canada.

[45] Ms. Vansickle also notes that the CBSA's focus in the immediate aftermath of the issuance of *Agraira*, above, was on reassessing Ministerial Relief decisions that had been

pending before this Court. More recently, the CBSA has turned its attention to assessing other cases in its inventory, including Mr. Tameh's application, which currently is at an advanced stage of processing.

[46] In my view, Ms. Vansickle's explanation provides a reasonable justification for some of the delay that has been associated with the processing of Mr. Tameh's application. A number of the causes for delay identified by Ms. Vansickle were exceptional in nature, and can reasonably be expected to have had a significant impact on the CBSA's processing of applications for Ministerial Relief. These included the internal reorganization that took place in 2008, following a number of decisions of this Court, the delisting of the MEK from the lists of terrorist entities in the European Union and Canada, and the issuance of decisions by the FCA and the SCC in *Agraira*, above.

[47] However, even those exceptional developments, collectively and together with the other reasons for delay that were advanced by Ms. Vansickle, do not provide a satisfactory justification for all of the delay that has occurred in the processing of Mr. Tameh's application. This is so whether one starts to count from the date when Justice Mactavish sent the matter back to the Minister for reconsideration, well over eight years ago, or from the date when the SCC issued its decision in *Agraira*, above, which is now almost four years ago.

[48] In my view, a reasonable delay attributable to the internal reorganization would be in the range of 12–18 months. At most, one could reasonably attribute a further aggregate delay of 12–18 months to the delisting of the MEK from the lists of terrorist entities in the European Union and in Canada.

[49] It follows that, at best, those developments, together with time taken to review additional submissions made by Mr. Tameh in respect of those developments, simply provide a reasonable explanation for why no decision had been taken with respect to Mr. Tameh's request for Ministerial Relief by December 2012. I recognize that a further complicating factor was that, in October 2012, Mr. Tameh requested that no decision be taken on his application until after the SCC issued its decision in *Agraira*, which occurred in June 2013. That eight-month delay appears to have been the only delay in the entire history of his application for which he was responsible.

[50] Given that the SCC's decision in *Agraira*, above, at para 87, expanded the factors that may be relevant to the Minister's determination of what is in the "national interest" for the purposes of subsection 34(2), it is understandable how this might reasonably have given rise to further significant delays in the processing of Mr. Tameh's application under that provision, after June 2013.

[51] However, the modification to the law brought about by the issuance of that decision does not provide a reasonable justification for the delay of 45 months that has occurred since June 2013, particularly given all of the work that had been done on Mr. Tameh's application prior to that point in time.

[52] Although the reasonableness of a delay will, to a significant extent, be a function of the particular factual matrix that exists in a given case, the jurisprudence can provide some helpful broad guiding parameters (*Esmaeili*, above, at para 11; *Hanano*, above, at paras 13–15; *Dragan*, above, at para 55; *Platonov v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16104 (FC), at para 10 (TD)).

[53] In *Esmaeili*, above, at para 15, a delay of five years after the applicant's request for Ministerial Relief under subsection 34(2) of the IRPA had been remitted to the Minister for redetermination was found to be unreasonable. In *Douze*, above, at paras 31–33, a similar finding was made in respect of a delay of almost three years in processing a request for Ministerial Relief under subsection 35(2).

[54] In other contexts, delays in the range of two to four and a half years that were incurred in the processing of requests for citizenship or permanent residence in Canada were found to be unreasonable, notwithstanding the need to conduct background checks or assessments related to national security: (See cases reviewed in *Dragan*, above, at paras 49–58; and in *Hanano*, above, at paras 15–16). I recognize that the particular statutory provisions that provided the framework for the analysis in those cases was sufficiently different from subsections 34(2) and 35(2) of the IRPA as to render them less helpful for the present purposes.

[55] Nevertheless, the jurisprudence referred to above provides broad support for my view that the delay of 45 months in processing Mr. Tameh's application since the issuance of *Agraira*, above, has become unreasonable, particularly having regard to the delay that took place prior to that point in time. I hasten to add that, in some cases, a delay of less than this period of time can be unreasonable, depending on the "complicating factors" and whether the applicant has been responsible for any delay, beyond the period of time that he or she may have been given to respond to the CBSA.

[56] My view that the delay, post-*Agraira*, that has been incurred in processing Mr. Tameh's application has become unreasonable is supported by evidence tendered in this proceeding. As I have already noted, Ms. Vansickle stated that the process of preparing a final recommendation to

the Minister "takes approximately 9 months" from start to finish, subject to "complicating factors". Such factors appear to have been present in relation to Minister Stockwell Day's initial determination of Mr. Tameh's application, yet that determination was made approximately 26 months after the CBSA's first recommendation was sent to Mr. Tameh, in August 2005. The complicating factors then appeared to have temporarily diminished after Justice Mactavish remitted Mr. Tameh's application to the Minister in July 2008, because Mr. Tameh was informed by the new Minister in September 2009 that the CBSA would be providing a new recommendation to him for a decision "within the next 18 months". As it turned out, the new recommendation ultimately was given to Mr. Tameh for his comments in September 2012, slightly more than four years after the date of Justice Mactavish's judgment.

[57] Having regard to all of the foregoing, I consider that period of time from July 2008 to September 2012 to have been at the outer limit of what was reasonable in the circumstances described at paragraphs 40–51. Given the nature of the exceptional circumstances that intervened and impacted upon Mr. Tameh's application during that period, it is difficult to conceive of circumstances that could result in a longer processing delay being reasonable, particularly given Ms. Vansickle's evidence that the process typically takes approximately nine months "from start to finish".

[58] However, I consider that the additional delay of 45 months that has now elapsed since the issuance of the SCC's decision in *Agraira*, above, is unreasonable, notwithstanding the impact that that decision had on the CBSA's processing of requests for Ministerial Relief. Stated differently, I find that the Minister has not provided a satisfactory justification for that additional delay.

[59] I accept the Minister's general proposition that, when an application for Ministerial Relief raises issues of national security, the Court should be reluctant to issue an order of *mandamus* where that might have the effect of aborting or abbreviating an investigation (*Seyoboka v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1290, at para 9). However, this proposition can only be extended so far, and cannot be relied upon to justify the Minister's position that he should not be subject to any time limits whatsoever, when making determinations under subsection 34(2). In some circumstances, the delay associated with processing a particular application may well reach the point where an order of *mandamus* will be entirely appropriate in the circumstances.

(3) Availability of an Adequate Remedy

[60] In the absence of any submissions from the Minister on this issue, I accept Mr. Tameh's position that there is no alternative remedy available to him to obtain relief from the determination that he is inadmissible to Canada**.**

(4) Practical Value or Effect of an Order of *Mandamus*

[61] Mr. Tameh submits that an order of *mandamus* will require the Minister to make a determination that has the potential to be of very real practical value to him. Specifically, he states that as a Convention refugee whose application for permanent residence was refused, he remains at risk of being removed from Canada. In addition, he currently has no unqualified right to exit from and then return to this country. Moreover, his pathway to permanent residence and citizenship, and the benefits that they confer, is also effectively foreclosed at the present time. If

the Minister makes a positive determination in respect of his application for Relief under subsection 34(2), the pathway to such potential status will be open to him.

[62] In response, the Minister states that Mr. Tameh enjoys the right to remain in Canada permanently because of the principle of non-refoulement, and that he may work, attend school, and access certain health and other social benefits.

[63] I am satisfied that notwithstanding these various benefits identified by the Minister, an order of *mandamus* has the potential to be of very real practical value to Mr. Tameh, including with respect to the pathway that a positive determination by the Minister will open to the possibility for him to obtain permanent residence and, perhaps eventually, citizenship in this country.

(5) Absence of any Equitable Bar to the Relief Sought

[64] The Minister has not identified any equitable bar to the order of *mandamus* that Mr. Tameh has sought.

(6) The Balance of Convenience

[65] The Minister submits that the balance of convenience does not favour a grant of *mandamus*.

[66] In this regard, the Minister relies primarily on the fact that he has a broad range of duties and responsibilities, many of which are critical to the national security of Canada. Among other things, he notes that he has sole responsibility for over 15 Acts, and, with his agencies, he administers over 130 Acts, in whole or in part. He submits that he should be left with the

flexibility to prioritize his many duties as he considers appropriate, and that requiring him to make a decision within a certain period of time may cause him to divert his attention away from an emergency situation. Alternatively, he states that this could negatively impact on other decisions for which he is personally responsible.

[67] I am sympathetic, to a point, with the Minister's submissions. However, they do not, individually or collectively, justify his position that he must have a complete *carte blanche* regarding the time available to him to make decisions under subsection 34(2) of the IRPA. There comes a time when the delay associated with responding to a request for a decision under that provision may well reach the point that it will be appropriate to require the Minister to make a decision within a particular period of time.

[68] In such circumstances, the Minister's concerns can be addressed, to a significant degree, by providing an amount of time that will confer sufficient flexibility upon the Minister to balance his other priorities, while also attending to the matter that is the subject of the order of *mandamus* (*Kalachnikov*, above, at para 24).

[69] In his written submissions, the Minister stated that the CBSA was prepared to agree to complete and share with Mr. Tameh a draft ministerial recommendation within three months of the date of an order of this court granting this Application on consent of the parties. The Minister added that Mr. Tameh would then be given a further two months to provide submissions on that draft recommendation. Within an additional three months, the CBSA would then provide the final Ministerial Relief recommendation to the Minister, unless the CBSA's amendments in response to Mr. Tameh's submissions necessitated further disclosure to him. In the latter case, the two and three-month timeframes mentioned above would again apply, effectively adding

another five months to the process. However, no position was advanced regarding the time within which the Minister would be required to make a determination, after receiving the draft recommendation from the CBSA.

[70] At the hearing of this Application, I suggested that the above-described timeframe of five to eight months was not reasonable in the circumstances, particularly having regard to the delay that has already occurred and to the fact that the Minister would not be required to make a decision within any particular period of time. In response, counsel reduced the initial three-month period set forth above to 30 days. However, counsel to the Minister steadfastly opposed the imposition of any timeframe on the Minister for making a determination, once the file had been forwarded to him by the CBSA.

[71] In response, I requested counsel to the Minister to seek instructions with respect to a more reasonable period of time within which the CBSA's recommendation would be forwarded to the Minister, and within which the Minister would then make a decision.

[72] Ultimately, after the hearing, counsel to the Minister and counsel to Mr. Tameh agreed to the following timetable:

i. Within 30 days of the date of the Court's order, the CBSA will disclose the draft Ministerial Relief recommendation to Mr. Tameh.

ii. Mr. Tameh will then have 30 days from the date of disclosure of the draft recommendation to him, within which to provide any submissions thereon to the CBSA.

iii. The President of the CBSA will then provide the draft recommendation, together with Mr. Tameh's submissions, to the Minister within 60 days of the receipt of those

submissions. Alternatively, in the event that the CBSA's amendments to the recommendation in response to Mr. Tameh's submissions necessitate further disclosure to him, the CBSA will provide an updated recommendation to Mr. Tameh within 45 days of the receipt of such additional submissions. In the latter scenario, Mr. Tameh will then have 30 days to provide any submissions to the CBSA in response to the updated recommendation; and the President of the CBSA would then have 60 days after the receipt of Mr. Tameh's final submissions to provide the recommendation and Mr. Tameh's submissions to the Minister.

iv. Within 60 days of receipt of the recommendation and submissions from the President of the CBSA, the Minister will render a decision on Mr. Tameh's application.

v. The Court will retain jurisdiction to deal with any extension or other issues that arise which affect the Court's order.

[73] Given that Mr. Tameh has consented to the foregoing timeframe, I am prepared to embrace it and to include it in the order that I will issue granting *mandamus*.

V. Conclusion

[74] For the reasons set forth above, Mr. Tameh's application for an order of *mandamus* will be granted, subject to the timelines set forth at paragraph 72 above.

[75] The parties did not suggest a question for certification. Given that the time required to process applications for Ministerial Relief under subsection 34(2) of the IRPA is highly fact-dependent, I find that there is no question for certification.

VI. Costs

[76] Mr. Tameh requested that he be awarded the costs that he has incurred in respect of this Application, on a solicitor-client basis.

[77] Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, provides that "[n]o costs shall be awarded to or payable by any party in respect of an application for leave, an application for judicial review or an appeal under these Rules unless the Court, for special reasons, so orders" (Emphasis added).

[78] This Court has found undue delay in the processing of an application under the IRPA to constitute such "special reasons" on a number of occasions (see *Aghdam v Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FC 131, at paras 21–22, and the cases mentioned therein). Given that it has now been well over eight years since Justice Mactavish remitted the matter back to the Minister to make a new determination on Mr. Tameh's application, I am prepared to consider that these circumstances constitute special circumstances that merit a lump sum award of $4,000, inclusive of HST and disbursements, in the exercise of my discretion.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application is granted, in part;

2. The parties shall complete the steps described below in the time periods that are stipulated:

    a. Within 30 days of the date of the Court's order, the CBSA will disclose the draft Ministerial Relief recommendation to Mr. Tameh.

    b. Mr. Tameh will then have 30 days from the date of disclosure of the draft recommendation to him, within which to provide any submissions thereon to the CBSA.

    c. The President of the CBSA will then provide the draft recommendation, together with Mr. Tameh's submissions to the Minister within 60 days of the receipt of those submissions. Alternatively, in the event that the CBSA's amendments to the recommendation in response to Mr. Tameh's submissions necessitate further disclosure to him, the CBSA will provide an updated recommendation to Mr. Tameh within 45 days of the receipt of such additional submissions. In the latter scenario, Mr. Tameh will then have 30 days to provide any submissions to the CBSA in response to the updated recommendation; and the President of the CBSA would then have 60 days after the receipt of Mr. Tameh's final submissions, to provide the recommendation and Mr. Tameh's submissions to the Minister.

d. Within 60 days of receipt of the recommendation and submissions from the President of the CBSA, the Minister will render a decision on Mr. Tameh's application.

3. The Court will retain jurisdiction to deal with any extension or other issues that arise which affect the Court's order;

4. The Minister shall pay to Mr. Tameh costs of $4,000, inclusive of HST and disbursements;

5. There is no question for certification.

"Paul S. Crampton"
Chief Justice

APPENDIX

Immigration and Refugee Protection Act, SC 2011, c 27	*Loi sur l'immigration et la protection des réfugiés, LC 2011, c 27*
Security	*Sécurité*
34 (1) A permanent resident or a foreign national is inadmissible on security grounds for	34 (1) Emportent interdiction de territoire pour raison de sécurité les faits suivants :
(a) engaging in an act of espionage that is against Canada or that is contrary to Canada's interests;	a) être l'auteur de tout acte d'espionnage dirigé contre le Canada ou contraire aux intérêts du Canada;
(b) engaging in or instigating the subversion by force of any government;	b) être l'instigateur ou l'auteur d'actes visant au renversement d'un gouvernement par la force;
(b.1) engaging in an act of subversion against a democratic government, institution or process as they are understood in Canada;	b.1) se livrer à la subversion contre toute institution démocratique, au sens où cette expression s'entend au Canada;
(c) engaging in terrorism;	c) se livrer au terrorisme;
(d) being a danger to the security of Canada;	d) constituer un danger pour la sécurité du Canada;
(e) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada; or	e) être l'auteur de tout acte de violence susceptible de mettre en danger la vie ou la sécurité d'autrui au Canada;
(f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b), (b.1) or (c).	f) être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle est, a été ou sera l'auteur d'un acte visé aux alinéas a), b), b.1) ou c).
Exception	*Exception*
(2) The matters referred to in subsection (1) do not constitute inadmissibility in respect of a permanent resident or a foreign national who satisfies the Minister that their presence in Canada would not be detrimental to the national interest. [Now repealed]	(2) Ces faits n'emportent pas interdiction de territoire pour le résident permanent ou l'étranger qui convainc le ministre que sa présence au Canada ne serait nullement préjudiciable à l'intérêt national. [Maintenant abrogé]
Exception — application to Minister	*Exception — demande au ministre*
42.1 (1) The Minister may, on application by a	42.1 (1) Le ministre peut, sur demande d'un

foreign national, declare that the matters referred to in section 34, paragraphs 35(1)(b) and (c) and subsection 37(1) do not constitute inadmissibility in respect of the foreign national if they satisfy the Minister that it is not contrary to the national interest.

étranger, déclarer que les faits visés à l'article 34, aux alinéas 35(1)b) ou c) ou au paragraphe 37(1) n'emportent pas interdiction de territoire à l'égard de l'étranger si celui-ci le convainc que cela ne serait pas contraire à l'intérêt national.

Exception — Minister's own initiative

(2) The Minister may, on the Minister's own initiative, declare that the matters referred to in section 34, paragraphs 35(1)(b) and (c) and subsection 37(1) do not constitute inadmissibility in respect of a foreign national if the Minister is satisfied that it is not contrary to the national interest.

Exception — à l'initiative du ministre

(2) Le ministre peut, de sa propre initiative, déclarer que les faits visés à l'article 34, aux alinéas 35(1)b) ou c) ou au paragraphe 37(1) n'emportent pas interdiction de territoire à l'égard de tout étranger s'il est convaincu que cela ne serait pas contraire à l'intérêt national.

Considerations

(3) In determining whether to make a declaration, the Minister may only take into account national security and public safety considerations, but, in his or her analysis, is not limited to considering the danger that the foreign national presents to the public or the security of Canada.

Considérations

(3) Pour décider s'il fait la déclaration, le ministre ne tient compte que de considérations relatives à la sécurité nationale et à la sécurité publique sans toutefois limiter son analyse au fait que l'étranger constitue ou non un danger pour le public ou la sécurité du Canada.

Immigration Act, RSC 1985, c I-2 [Repealed]

Loi sur l'immigration, LRC 1985, c I-2 [Abrogée]

19(1) Inadmissible persons

19(1) Personnes non admissibles

No person shall be granted admission who is a member of any of the following classes:

Les personnes suivantes appartiennent à une catégorie non admissible :

(a) persons who are suffering from any disease, disorder, disability or other health impairment as a result of the nature, severity or probable duration of which, in the opinion of a medical officer concurred in by at least one other medical officer,

a) celles qui souffrent d'une maladie ou d'une invalidité dont la nature, la gravité ou la durée probable sont telles qu'un médecin agréé, dont l'avis est confirmé par au moins un autre médecin agréé, conclut :

(i) they are or are likely to be a danger to public health or to public safety, or

(i) soit que ces personnes constituent ou constitueraient vraisemblablement un danger

pour la santé ou la sécurité publiques,

(ii) their admission would cause or might reasonably be expected to cause excessive demands on health or social services;

(ii) soit que leur admission entraînerait ou risquerait d'entraîner un fardeau excessif pour les services sociaux ou de santé;

(b) persons who there are reasonable grounds to believe are or will be unable or unwilling to support themselves and those persons who are dependent on them for care and support, except persons who have satisfied an immigration officer that adequate arrangements, other than those that involve social assistance, have been made for their care and support;

b) celles dont il y a des motifs raisonnables de croire qu'elles n'ont pas la capacité ou la volonté présente ou future de subvenir tant à leurs besoins qu'à ceux des personnes à leur charge et qui ne peuvent convaincre l'agent d'immigration que les dispositions nécessaires — n'impliquant pas l'aide sociale — ont été prises en vue d'assurer leur soutien;

(c) persons who have been convicted in Canada of an offence that may be punishable under any Act of Parliament by a maximum term of imprisonment of ten years or more;

c) celles qui ont été déclarées coupables, au Canada, d'une infraction qui peut être punissable, aux termes d'une loi fédérale, d'un emprisonnement maximal égal ou supérieur à dix ans;

(c.1) persons who there are reasonable grounds to believe

c.1) celles dont il y a des motifs raisonnables de croire qu'elles ont, à l'étranger :

(i) have been convicted outside Canada of an offence that, if committed in Canada, would constitute an offence that may be punishable under any Act of Parliament by a maximum term of imprisonment of ten years or more, or

(i) soit été déclarées coupables d'une infraction qui, si elle était commise au Canada, constituerait une infraction qui pourrait être punissable, aux termes d'une loi fédérale, d'un emprisonnement maximal égal ou supérieur à dix ans, sauf si elles peuvent justifier auprès du ministre de leur réadaptation et du fait qu'au moins cinq ans se sont écoulés depuis l'expiration de toute peine leur ayant été infligée pour l'infraction,

(ii) have committed outside Canada an act or omission that constitutes an offence under the laws of the place where the act or omission occurred and that, if committed in Canada, would constitute an offence that may be punishable under any Act of Parliament by a maximum term of imprisonment of ten years or more,

(ii) soit commis un fait — acte ou omission — qui constitue une infraction dans le pays où il a été commis et qui, s'il était commis au Canada, constituerait une infraction qui pourrait être punissable, aux termes d'une loi fédérale, d'un emprisonnement maximal égal ou supérieur à dix ans, sauf si elles peuvent justifier auprès du ministre de leur réadaptation et du fait qu'au moins cinq ans se sont écoulés depuis la commission du fait;

except persons who have satisfied the Minister

that they have rehabilitated themselves and that at least five years have elapsed since the expiration of any sentence imposed for the offence or since the commission of the act or omission, as the case may be;

(c.2) persons who there are reasonable grounds to believe are or were members of an organization that there are reasonable grounds to believe is or was engaged in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of any offence under the Criminal Code or Controlled Drugs and Substances Act that may be punishable by way of indictment or in the commission outside Canada of an act or omission that, if committed in Canada, would constitute such an offence, except persons who have satisfied the Minister that their admission would not be detrimental to the national interest;

c.2) celles dont il y a des motifs raisonnables de croire qu'elles sont ou ont été membres d'une organisation dont il y a des motifs raisonnables de croire qu'elle se livre ou s'est livrée à des activités faisant partie d'un plan d'activités criminelles organisées par plusieurs personnes agissant de concert en vue de la perpétration d'une infraction au Code criminel ou à la Loi réglementant certaines drogues et autres substances qui peut être punissable par mise en accusation ou a commis à l'étranger un fait — acte ou omission — qui, s'il avait été commis au Canada, constituerait une telle infraction, sauf si elles convainquent le ministre que leur admission ne serait nullement préjudiciable à l'intérêt national;

(d) persons who there are reasonable grounds to believe will

d) celles dont on peut penser, pour des motifs raisonnables, qu'elles :

(i) commit one or more offences that may be punishable under any Act of Parliament by way of indictment, other than offences designated as contraventions under the Contraventions Act, or

(i) soit commettront une ou plusieurs infractions qui peuvent être punissables par mise en accusation aux termes d'une loi fédérale, autre qu'une infraction qualifiée de contravention en vertu de la Loi sur les contraventions,

(ii) engage in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of any offence that may be punishable under any Act of Parliament by way of indictment;

(ii) soit se livreront à des activités faisant partie d'un plan d'activités criminelles organisées par plusieurs personnes agissant de concert en vue de la perpétration d'une infraction qui peut être punissable par mise en accusation aux termes d'une loi fédérale;

(e) persons who there are reasonable grounds to believe

e) celles dont il y a des motifs raisonnables de croire qu'elles :

(i) will engage in acts of espionage or subversion against democratic government, institutions or processes, as they are

(i) soit commettront des actes d'espionnage ou de subversion contre des institutions démocratiques, au sens où cette expression

understood in Canada,

s'entend au Canada,

(ii) will, while in Canada, engage in or instigate the subversion by force of any government,

(ii) soit, pendant leur séjour au Canada, travailleront ou inciteront au renversement d'un gouvernement par la force,

(iii) will engage in terrorism, or

(iii) soit commettront des actes de terrorisme,

(iv) are members of an organization that there are reasonable grounds to believe will

(iv) soit sont membres d'une organisation dont il y a des motifs raisonnables de croire qu'elle :

(A) engage in acts of espionage or subversion against democratic government, institutions or processes, as they are understood in Canada,

(A) soit commettra des actes d'espionnage ou de subversion contre des institutions démocratiques, au sens où cette expression s'entend au Canada,

(B) engage in or instigate the subversion by force of any government, or

(B) soit travaillera ou incitera au renversement d'un gouvernement par la force,

(C) engage in terrorism;

(C) soit commettra des actes de terrorisme;

(f) persons who there are reasonable grounds to believe

f) celles dont il y a des motifs raisonnables de croire qu'elles :

(i) have engaged in acts of espionage or subversion against democratic government, institutions or processes, as they are understood in Canada,

(i) soit se sont livrées à des actes d'espionnage ou de subversion contre des institutions démocratiques, au sens où cette expression s'entend au Canada,

(ii) have engaged in terrorism, or

(ii) soit se sont livrées à des actes de terrorisme,

(iii) are or were members of an organization that there are reasonable grounds to believe is or was engaged in

(iii) soit sont ou ont été membres d'une organisation dont il y a des motifs raisonnables de croire qu'elle se livre ou s'est livrée :

(A) acts of espionage or subversion against democratic government, institutions or processes, as they are understood in Canada, or

(A) soit à des actes d'espionnage ou de subversion contre des institutions démocratiques, au sens où cette expression s'entend au Canada,

(B) terrorism,

(B) soit à des actes de terrorisme,

except persons who have satisfied the Minister that their admission would not be detrimental to the national interest;

le présent alinéa ne visant toutefois pas les personnes qui convainquent le ministre que leur admission ne serait nullement préjudiciable à l'intérêt national;

(g) persons who there are reasonable grounds to believe will engage in acts of violence that would or might endanger the lives or safety of persons in Canada or are members of or are likely to participate in the unlawful activities of an organization that is likely to engage in such acts of violence;

g) celles dont on peut penser, pour des motifs raisonnables, qu'elles commettront des actes de violence de nature à porter atteinte à la vie ou à la sécurité humaines au Canada, ou qu'elles appartiennent à une organisation susceptible de commettre de tels actes ou qu'elles sont susceptibles de prendre part aux activités illégales d'une telle organisation;

(h) persons who are not, in the opinion of an adjudicator, genuine immigrants or visitors;

h) celles qui, de l'avis d'un arbitre, ne sont pas de véritables immigrants ou visiteurs;

(i) persons who, pursuant to section 55, are required to obtain the consent of the Minister to come into Canada but are seeking to come into Canada without having obtained such consent;

i) celles qui cherchent à entrer au Canada sans avoir obtenu l'autorisation ministérielle requise par l'article 55;

(j) persons who there are reasonable grounds to believe have committed an offence referred to in any of sections 4 to 7 of the Crimes Against Humanity and War Crimes Act;

j) celles dont on peut penser, pour des motifs raisonnables, qu'elles ont commis une infraction visée à l'un des articles 4 à 7 de la Loi sur les crimes contre l'humanité et les crimes de guerre;

(k) persons who constitute a danger to the security of Canada and are not members of a class described in paragraph (e), (f) or (g); or

k) celles qui constituent un danger envers la sécurité du Canada, sans toutefois appartenir à l'une des catégories visées aux alinéas e), f) ou g);

(l) persons who are or were senior members of or senior officials in the service of a government that is or was, in the opinion of the Minister, engaged in terrorism, systematic or gross human rights violations, or any act or omission that would be an offence under any of sections 4 to 7 of the Crimes Against Humanity and War Crimes Act, except persons who have satisfied the Minister that their admission would not be detrimental to the national interest.

l) celles qui, à un rang élevé, font ou ont fait partie ou sont ou ont été au service d'un gouvernement qui, de l'avis du ministre, se livre ou s'est livré au terrorisme, à des violations graves ou répétées des droits de la personne ou à un fait - acte ou omission - qui aurait constitué une infraction au sens des articles 4 à 7 de la Loi sur les crimes contre l'humanité et les crimes de guerre, sauf si elles convainquent le ministre que leur admission ne serait nullement préjudiciable à l'intérêt national.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2418-16
STYLE OF CAUSE:	MORTEZA MOMENZADEH TAMEH v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
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DATED:	MARCH 16, 2017

APPEARANCES:

Shane Molyneaux	FOR THE APPLICANT
Helen Park	FOR THE RESPONDENT

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