Federal Court Cour fédérale

Date: 20231114

Docket: IMM-10502-22

Citation: 2023 FC 1505

Ottawa, Ontario, November 14, 2023

PRESENT: Mr. Justice Norris

BETWEEN:

DONG MING ZHANG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Dong Ming Zhang, the applicant, is a Canadian citizen. In July 2019, she applied to sponsor her husband, Guanquan Zhang, for permanent residence in Canada under the inland spousal sponsorship provisions of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*) and related Regulations. A decision has still not been made on that application. Ms. Zhang now applies under subsection 72(1) of the *IRPA* for an order in the nature of

mandamus compelling Immigration, Refugees and Citizenship Canada (IRCC) to make a decision.

[2] For the reasons that follow, I am not persuaded that this relief is warranted.

[3] Mr. Zhang, the applicant's husband, was born in China in May 1993. He first entered Canada in April 2012 as a student and has remained as a foreign worker. He and the applicant were married in March 2019. They have two Canadian-born children. As already noted, in July 2019, Mr. Zhang applied for permanent residence with the applicant as his sponsor.

[4] The delay in making a final decision on Mr. Zhang's application for permanent residence has been due to concerns that he may be inadmissible to Canada under paragraph 37(1)(a) of the *IRPA* on the basis of organized criminality for having engaged in money laundering in connection with a large-scale fraud allegedly committed by his parents. The first report to this effect under subsection 44(1) of the *IRPA* was prepared by a Canada Border Services Agency (CBSA) officer in December 2017, before Mr. Zhang and the applicant were married. In March 2018, a delegate of the Minister of Public Safety and Emergency Preparedness found the report to be well-founded and referred the matter to the Immigration Division (ID) of the Immigration and Refugee Board of Canada. However, in July 2021, this referral decision was set aside on judicial review and the matter was remitted for redetermination: see *Zhang v Canada (Public Safety and Emergency Preparedness)*, 2021 FC 746. Subsequently, the matter was referred again to the ID for an admissibility hearing. In a post-hearing update requested by the Court, the parties advised that the admissibility hearing is currently scheduled to proceed on

December 11 to 13, 2023. The applicant's sponsorship application continues to be on hold pending the outcome of the admissibility hearing.

[5] The test for *mandamus* is well-established. *Apotex v Canada (Attorney General)* (1993), [1994] 1 FC 742 (CA) (aff'd [1994] 3 SCR 1100) identified eight preconditions that must be met for an applicant to be entitled to an order of *mandamus*. In summary, these requirements are: (1) there must be a public legal duty to act; (2) the duty must be owed to the applicant; (3) there must be a clear right to performance of that duty; (4) where the duty sought to be enforced is discretionary, certain additional principles apply; (5) no other adequate remedy is available to the applicant; (6) the order sought will have some practical value or effect; (7) there is no equitable bar to the relief sought; and (8) on a balance of convenience an order of *mandamus* should be issued. See also *Lukács v Canada (Transportation Agency)*, 2016 FCA 202 at para 29.

[6] The present application turns largely on whether the applicant has established that she has a clear right to the performance of the Minister's duty to make a decision on her sponsorship application (the third *Apotex* requirement). Generally speaking, this right is engaged only if the party seeking *mandamus* has satisfied all the requirements for a decision to be made, they have requested that a decision be made, and the tribunal has either expressly refused to make a decision or it has taken unreasonably long to do so (*Apotex*, at 767). In *Conille v Canada (Minister of Citizenship and Immigration)* (1998), [1999] 2 FC 33, Justice Tremblay-Lamer held (at 43) that three requirements must be met for delay to be considered unreasonable: (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 a satisfactory justification.

[7] The applicant submits that she has satisfied all the requirements for a decision to be made on her sponsorship application and that the only live issue is whether the Minister has taken unreasonably long to make a decision. She argues that she is entitled to an order in the nature of *mandamus* because there is no issue as to the genuineness of her marriage to Mr. Zhang, there is no issue that, as the sponsor, she meets the requirements of section 133 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (*IRPR*), and it has taken IRCC unreasonably long to make a decision on her sponsorship application.

[8] On the other hand, the respondent submits that, even if the applicant has fulfilled all the requirements to be a sponsor, the right to a decision has not crystalized yet because the issue of Mr. Zhang's admissibility needs to be determined first.

[9] As I will explain, I agree with the respondent.

[10] The real issue is not whether the applicant is eligible to sponsor Mr. Zhang but, rather, whether Mr. Zhang is entitled to permanent residency in Canada. This cannot be determined until the issue of his admissibility is resolved. Under paragraph 72(1)(e)(i) of the *IRPR*, Mr. Zhang cannot become a permanent resident until it is determined that he is not inadmissible. The applicant submits that there is no need for IRCC to wait for a final determination from the ID as to Mr. Zhang's admissibility but she offers no authority to support this counterintuitive

proposition and I am not aware of any. As well, it is contrary to the statutory responsibility of the ID to make an admissibility determination concerning a foreign national when a matter has been referred to that tribunal, as has happened here: see *IRPA*, subsection 44(2) and section 45. It may well be that IRCC should approve the applicant's sponsorship given that there does not appear to be an issue with respect to her eligibility to sponsor her husband. However, until the issue of Mr. Zhang's admissibility is resolved by the ID, ordering IRCC to complete the processing of the sponsorship application would have no practical value or effect, contrary to the sixth *Apotex* requirement.

[11] Moreover, the applicant's complaints about the delay in processing her sponsorship application are really complaints about the delay in determining Mr. Zhang's admissibility. I have doubts about whether she has standing to raise this issue in this application. In any event, these complaints are effectively an indirect attack on the process followed by the Minister of Public Safety, who is not a party to this application, and on the process currently underway before the ID. The Minister who is named as a party is not responsible for this delay. Furthermore, any concerns about the process underway before the ID should be raised by Mr. Zhang before that tribunal, and not by the applicant before this Court.

[12] Put another way, as the applicant has framed this application, the only issue is whether IRCC has taken unreasonably long to make a decision on her sponsorship application. As the applicant knows, the delay in making a decision has been due to the delay in determining whether her husband is inadmissible; however, the issue of the reasonableness of the latter delay is not properly before the Court on this application. Consequently, even if the applicant meets all

the requirements to be eligible to sponsor her husband for permanent residency, she is unable to show that IRCC's delay in rendering a decision has been longer than the nature of the process required, *prima facie* (the first *Conille* requirement). As a result, she is unable to establish that she has a clear right to the performance of the Minister's duty to make a decision on her sponsorship application (the third *Apotex* requirement).

[13] This is not to say that IRCC can always avoid the consequences of delay on the part of another agency when discharging its own responsibilities under the *IRPA*. For example, the right to the performance of a duty owed to an applicant could crystalize when IRCC has unreasonably acquiesced to another agency's unjustified delay in discharging its responsibilities. In the present case, however, there is no basis to make such a finding.

[14] Since the applicant has not established that all the *Apotex* requirements are met, she is not entitled to an order in the nature of *mandamus*. This application must, therefore, be dismissed.

[15] The applicant has proposed the following question for certification under paragraph 74(d) of the *IRPA*: "Does IRCC have legal authority to delay the granting of immigrant status to an eligible family class applicant because of his being referred to an admissibility hearing?" The respondent opposes certification of this question.

[16] I agree with the respondent that the proposed question does not meet the test for certification. To warrant certification, the question "must be a serious question that is dispositive of the appeal, transcends the interests of the parties and raises an issue of broad significance or

general importance" (*Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at para 46; see also *Canada (Public Safety and Emergency Preparedness) v XY*, 2022 FCA 113 at para 7). In my view, the proposed question would not be dispositive of the appeal because it addresses an issue falling outside the scope of the present application. It relates to Mr. Zhang's permanent residence application and not to the applicant's sponsorship application, the subject matter of the *mandamus* application.

[17] Finally, the original style of cause names the respondent as the Minister of Immigration, Refugees and Citizenship. Although that is how the respondent is now commonly known, its name under statute remains the Minister of Citizenship and Immigration: *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, s 5(2) and *IRPA*, s 4(1). Accordingly, as part of this judgment, the style of cause is amended to name the respondent as the Minister of Citizenship and Immigration.

JUDGMENT IN IMM-10502-22

THIS COURT'S JUDGMENT is that

1. The style of cause is amended to reflect the Minister of Citizenship and Immigration as the correct respondent.
2. The application for judicial review is dismissed.
3. No question of general importance is stated.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-10502-22
STYLE OF CAUSE:	DONG MING ZHANG v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	JUNE 12, 2023
JUDGMENT AND REASONS:	NORRIS J.
DATED:	NOVEMBER 14, 2023

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