Federal Court Cour fédérale

Date: 20250102

Docket: IMM-1419-24

Citation: 2025 FC 2

Ottawa, Ontario, January 2, 2025

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

LANXI PENG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Lanxi Peng, seeks an order in the nature of *mandamus* ordering that Immigration, Refugees and Citizenship Canada ("IRCC") render a decision on her application for permanent residence under the Provincial Nominee Program ("PNP") class, which was received by IRCC on March 18, 2021.

[2] For the following reasons, I find that *mandamus* is warranted and grant this application for judicial review.

II. **Background**

A. *Facts*

[3] The Applicant is a citizen of China. She and her mother arrived in Canada in 2013. Her mother sought refugee protection and added the Applicant as a dependent child to her claim.

[4] While her mother's claim was being processed, the Applicant applied for study permits and a work permit. Two of her study permits were denied due to technical deficiencies. One study permit was granted in 2016.

[5] In 2019, the Applicant's mother was granted refugee status. As the Applicant was no longer a dependent child, her refugee claim was considered separately and refused. Around this time, the Applicant's work permit application was also refused. Consequently, the Applicant departed Canada in September 2019.

[6] In 2021, the Applicant applied for permanent residence under the PNP class (the "PNP Application").

[7] Throughout 2022, IRCC communicated with the Applicant to confirm receipt of the PNP Application and request additional materials. The Applicant promptly responded to IRCC's inquiries.

[8] Since then, IRCC has continued to process the PNP Application. IRCC responded to several of the Applicant's requests for a status update by affirming that her application was being processed.

[9] In September 2023, the Applicant learned through a Canadian Member of Parliament ("MP") that she had passed her medical assessment, but her eligibility and criminality assessments were pending and her security assessment had not yet been started.

[10] On October 8, 2024, the Applicant was granted leave for this application. Shortly thereafter, the Applicant received a procedural fairness letter from the Ontario Immigrant Nominee Program ("OINP"). The OINP disclosed that, in August 2024, IRCC had flagged issues with the accuracy of the business address listed in the PNP Application.

[11] By this point, the Applicant's PNP Application had been pending for over three years. According to IRCC's website, the average processing time for PNP applications is 12 months.

B. *Issue and Legal Framework*

[12] The sole issue in this application for judicial review is whether issuing an order of *mandamus* is warranted.

[13] The test for *mandamus* is set out in *Apotex Inc v Canada (Attorney General) (CA)*, 1993 CanLII 3004 (FCA) ("*Apotex*"). This test has been summarized as follows at paragraph 38 of *Vaziri v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1159 ("*Vaziri*"):

> i. There must be a public legal duty to act;
>
> ii. The duty must be owed to the Applicants;
>
> iii. There must be a clear right to performance of that duty, meaning that:
>
> a. The Applicants have satisfied all conditions precedent; and
>
> b. There must have been:
>
> I. A prior demand for performance;
>
> II. A reasonable time to comply with the demand, unless there was outright refusal; and
>
> III. An express refusal, or an implied refusal through unreasonable delay;
>
> iv. No other adequate remedy is available to the Applicants;
>
> v. The Order sought must be of some practical value or effect;
>
> vi. There is no equitable bar to the relief sought;
>
> vii. On a balance of convenience, *mandamus* should lie.

[14] With respect to the third factor of a clear right to performance, a finding of unreasonable delay may be made if the following requirements are satisfied (*Jia v Canada (Citizenship and Immigration)*, 2014 FC 596 at para 79 ("*Jia*"), citing *Conille v Canada (Minister of Citizenship and Immigration)*, [1999] 2 FC 33, 1998 CanLII 9097 at para 23 (TD) ("*Conille*")):

> 1. the delay must have been longer than the nature of the process *prima facie* requires;

2. the applicant must not be responsible for the delay; and
3. the authority responsible for the delay has not provided satisfactory justification.

III. **Analysis**

[15] The Applicant submits that *mandamus* is warranted. Highlighting IRCC's failure to justify the delay in processing her PNP Application and the hardship that the delay is causing on her and her mother, the Applicant submits that all the *Apotex* factors are satisfied.

[16] The Respondent submits that *mandamus* is not warranted, as the delay is justified in light of the Applicant's immigration history and "the Applicant has not demonstrated that she has suffered any significant prejudice resulting from the delay."

[17] The parties are in agreement that all but two of the *Apotex* factors are made out in this case. This decision therefore addresses the two factors that are contested, namely, unreasonable delay and the balance of convenience.

[18] I find that there has been unreasonable delay in this matter. Although IRCC is not bound by the average processing times posted on their website, it must nonetheless process applications within a reasonable time period (*Jia* at para 92; *Dragan v Canada (Minister of Citizenship and Immigration) (TD)*, 2003 FCT 211 at paras 51-53). As stated by this Court in *Jia*, "when evaluating whether a delay…has been unreasonable, the Court must have regard to all pertinent circumstances," including average processing times posted on IRCC's website (at para 89). This Court in *Conille* found a three-year delay to be unreasonable in the absence of any quoted

processing time. In this case, the PNP Application has remained undecided for almost four years, more than triple the average processing period posted by IRCC. IRCC was obliged to provide a "satisfactory justification" for this stark deviation from the average (*Conille* at para 23).

[19] IRCC has failed to do so. At various points between August and December 2023, IRCC "confirm[ed] that [the Applicant's] permanent residence application is still in process," stated that "all required documents and information have been received," and recommended that the Applicant "[c]heck the processing times available on [IRCC's] website" for further information. At no point did IRCC explain why a decision on the PNP Application remained outstanding. In fact, the only substantive updates the Applicant received about the PNP Application were from the MP and OINP. In this case, not only has "the authority responsible…not provided satisfactory justification"—it has provided hardly any justification at all (*Conille* at para 23).

[20] The Respondent submits that the delay in this matter is warranted given the Applicant's "lengthy immigration history." In my view, this is not a satisfactory justification for the delay. The Applicant was denied two study permits on technical grounds in 2014. In 2019, the Applicant's refugee claim was refused and she was denied a work permit. Given the relatively uncomplicated nature of work and study permits, I agree with the Applicant that her immigration history is not, on its face, particularly complex. Although it was open to IRCC to find otherwise, "nothing in the evidence nor in the Minister's submissions points to any complex or particular features of the [PNP Application] that could shed light on the unusual delay" (*Ghaddar v Canada (Citizenship and Immigration),* 2023 FC 946 ("*Ghaddar*") at para 29).

[21] Instead, the Applicant was provided with blanket statements that her eligibility and criminality assessments were pending and her security assessment had not yet been started. These are not a satisfactory explanation for the delay in this case. I follow my colleague Justice Gascon's determination that such statements announcing "that delays are incurred because of pending security assessments are inadequate" (*Ghaddar* at para 33 [citations omitted]).

[22] Consequently, the third step of the test in *Apotex* is satisfied.

[23] With respect to balance of convenience, I find that this factor favours the granting of *mandamus*.

[24] The Respondent submits that the balance of convenience lies with IRCC, as IRCC "has an explicit statutory duty to ensure the integrity of the immigration system" and must therefore "carefully and diligently investigate potential inadmissibility."

[25] However, "the integrity of the immigration system" does not rest solely on inadmissibility determinations. Other objectives of the statutory scheme are listed in subsection 3(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*"IRPA"*). The Applicant rightly notes that the delay in this proceeding is inconsistent with several of these objectives, including family reunification, consistent standards and prompt processing, and fair and efficient procedures (*IRPA*, ss 3(1)(d), 3(1)(f), 3(1)(f.1)).

[26] Furthermore, the evidence does not demonstrate that the Applicant's potential inadmissibility has been "carefully and diligently" investigated. The delay in this matter is

unreasonable per the test in *Conille*. This distinguishes the present proceeding from *Vaziri* and *Jia*, which the Respondent cites for the proposition that hardship does not entitle the Applicant to the remedy of *mandamus* (*Vaziri* at para 59; *Jia* at para 99).

[27] In this case, the Applicant and her mother have experienced "significant mental and physical hardship" due to an unreasonable delay. The delay "has…caused [the Applicant's] career to stagnate." The Applicant reports "insomnia," "losing hair in clumps," "heart palpitations," and "breaking out into cold sweats." She states her mother "feels very anxious" and has been unable to sleep "due to [their] lengthy separation." The Applicant stresses that "[her] mother is [her] only living immediate family" and that, "[s]ince [she] submitted [her] application…in March 2021, [she] ha[s] been longing every day to reunite with [her] mother."

[28] During the hearing, the Respondent stated that the Applicant's evidence of hardship was insufficient, as the Applicant may mitigate the impact of family separation by visiting her mother on vacation or through other measures.

[29] With respect, the record does not support this submission and it is irrelevant to the present proceeding. The Applicant's evidence is that she and her mother face multiple health issues due to the delay with the PNP Application and that, as a result, the Applicant has been unable to work since April 2024. Given this context, the ailing Applicant failing to go on vacation to visit her ailing mother is not compelling evidence of a refusal to mitigate harm. More importantly, I agree with the Applicant that "vacation is not the same as family reunification." Hypothetical and temporary reunions during "vacations" do nothing to address the Respondent's failure to properly uphold the objective of family reunification, pursuant to

paragraph 3(1)(d) of the *IRPA*. This is especially so as this purpose is one of reunification in Canada, not through sojourns abroad.

[30] In my view, the unreasonableness of the delay, the hardship upon the Applicant and her mother, and resultant tensions with the objectives of the *IRPA* demonstrate that the balance of convenience lies with the Applicant in this matter. As in *Almuhtadi v Canada (Citizenship and Immigration)*, 2021 FC 712, IRCC's mandate to investigate admissibility "does not justify the delay in question," particularly in light of the Applicant's explanation "in her supporting affidavit[s]" about "how the delay has negatively impacted" her and her mother (at para 49).

[31] Thus, I find the balance of convenience favours the Applicant and an order of *mandamus* is warranted.

[32] The Applicant requests an order that a decision be rendered on the PNP Application within 90 days of this decision. Given the current status of her application and the length of time that has passed since the PNP Application was received, I find this deadline to be reasonable.

IV. **Conclusion**

[33] For these reasons, I find that the Applicant has met the requirements for an order of *mandamus* and grant this application for judicial review.

JUDGMENT in IMM-1419-24

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted. An order of *mandamus* is hereby issued, requiring IRCC to render a decision on the Applicant's PNP Application within 90 days from the date of this decision.

2. There is no question to certify.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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