Federal Court  Cour fédérale

**Date: 20250124**

**Docket: IMM-2555-24**

**Citation: 2025 FC 154**

**Ottawa, Ontario, January 24, 2025**

**PRESENT: The Honourable Mr. Justice Manson**

**BETWEEN:**

**MOHAMMED M DONZO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Introduction

[1] This is an application for judicial review seeking an order in the nature of *mandamus* directing the Minister of Citizenship and Immigration (the "Minister") to make a decision on the Applicant's permanent resident ("PR") application within a particular time period.

[2] For the reasons set out below, the application is granted.

## II. Background

[3] On July 12, 2021, the Applicant's PR application via the family class was locked in.

[4] On September 13, 2021, Immigration, Refugees and Citizenship Canada ("IRCC") notified the Applicant that his sponsor eligibility was passed.

[5] Between November 2022 and June 2023, the Applicant made several requests for status updates.

[6] On June 9, 2023, an interview was scheduled with the Applicant for June 21, 2023. During the interview, the interviewer addressed a concern in the Applicant's file stemming from an error in which someone else's biometrics were linked to the Applicant's application. The error was rectified, and the interviewing officer declared the Applicant's marriage as genuine and sponsorship eligibility was passed. The Applicant's file was then forwarded to senior management for a resolution.

[7] The Applicant's biometrics payment was received and uploaded on June 29, 2023.

[8] After a number of status inquiries, on October 17, 2023, a case analyst advised the Applicant via email that his application was "flagged as non-routine".

[9] On November 1, 2023, a case analyst at the IRCC in Accra, Ghana, sent a letter to the Applicant requesting an updated Schedule A, Additional Family Information and Police Clearance Certificate.

[10] On February 12, 2024, the Applicant filed this application for leave and judicial review.

[11] Between March 11, 2024 and March 28, 2024, the IRCC reviewed the documents provided by the Applicant and noted the following issues:

A. The Applicant appears to have had his birth certificate issued in 2018, despite his date of birth occurring on January 1, 1996; and

B. Apparent identity concern: The IRCC Officer noted that the name listed for the Applicant's father and the name listed for the father of the other client that was linked to the Applicant in error earlier in June 2023, appeared to be the same, but with different dates of birth.

[12] On March 28, 2024, the IRCC requested an explanation for the Applicant's late issued birth certificate, as well as hospital birth records, vaccination records, and school records.

[13] In response to the March 28, 2024 correspondence, the Applicant explained that he was born during the Liberian Civil War and was registered in school without identification ("ID"), he stated that he did not require ID until he needed to travel. The Applicant also provided a report card from his 2012-2013 academic year and a high school diploma. Neither document confirmed the Applicant's date of birth or his parents' names.

[14] Correspondence was forwarded to the Applicant on April 11, 2024, affording him the opportunity to provide documents that pre-date 2018 and confirm his date of birth, as well as the names of his parents.

[15] On April 19, 2024, the IRCC received documents from the Applicant regarding the outstanding identity concerns.

[16] On July 30, 2024, a procedural fairness letter ("PFL") was sent to the Applicant after records revealed that his biometrics collected on January 2, 2024 resulted in a match to fingerprints collected by the United States as part of a visa application dated March 28, 2017. The Applicant had applied for a US visa under the name Talata Kenneh with the date of birth 1989/12/01.

[17] In the Applicant's response to the PFL dated August 8, 2024, he denied that he applied for a visa to enter the US, or that his fingerprints were collected.

[18] A final decision regarding the Applicant's PR application is pending.

## III. Issues

[19] The only issue raised is whether the delay in processing the Applicant's PR application warrants the issuance of an order in the nature of *mandamus*.

## IV. Analysis

[20] *Mandamus* is a discretionary equitable remedy subject to a number of conditions precedent.

[21] The test for granting *mandamus* was established by the Federal Court of Appeal in *Apotex Inc v Canada (Attorney General)*, [1994] 1 FC 742 (CA) at para 4; aff'd [1994] 3 SCR 110:

A. There must be a public legal duty to act;

B. The duty must be owed to the applicant;

C. 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;

   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;

D. No other adequate remedy is available to the applicant;

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

F. The Court in the exercise of its discretion finds no equitable bar to the relief sought; and

G. On a "balance of convenience" an order in the nature of *mandamus* should (or should not) issue.

[22] All conditions need to be satisfied in order for the Court to issue a writ of *mandamus* (*Dragan v Canada (Minister of Citizenship and Immigration) (TD)*, 2003 FCT 211 (CanLII), [2003] 4 FC 189 at para 39). The Respondent provides argument only on the following two factors: (1) whether there is a clear right to performance of that duty; and (2) the balance of convenience.

[23] I take the Respondent's silence on the other factors as indicating that they do not dispute these are met. This is reasonable as it is well-established that the IRCC has a public legal duty to process a PR application, this duty is owed to the Applicant given he has submitted the application, paid the fees and responded to all requests in a timely manner, and the order sought will be of practical value (*Bidgoly v Canada (Citizenship and Immigration)*, 2022 FC 283 [*Bidgoly*] at paras 30-31, and 42). Neither the Respondent nor the Applicant have suggested an alternative adequate remedy, and I do not find one exists.

A. *Is There a Clear Right to Performance of the Duty to Act?*

[24] The Respondent asserts that the Applicant has not satisfied all conditions precedent to give rise to the duty because there are ongoing security concerns in the application. The Respondent refers to the issues regarding the date of issuance of the Applicant's birth certificate, and the concerns regarding the Applicant's identity given the matching biometrics to someone in the US under a different name.

[25] Outstanding issues in the processing of the application does not mean that the Applicant has not satisfied all the conditions precedent. The Applicant has actioned all duties asked of him from the IRCC in a timely manner, paid all fees, and made numerous inquiries as to the status of

his application. There is nothing in the record showing, nor does the Respondent assert anything that the Applicant has failed to do. The Applicant has satisfied all conditions precedent.

[26] The more relevant question in this case is whether the delay of the IRCC in processing the Applicant's application is reasonable. A delay may be unreasonable if the following three criteria are met (*Almuhtadi v Canada (Citizenship and Immigration)*, 2021 FC 712 [*Almuhtadi*] at para 32, citing Conille v Canada (Minister of Citizenship and Immigration) (TD), 1998 CanLII 9097 (FC), [1999] 2 FC 33 [Conille] at para 23):

A. the delay in question is prima facie longer than the nature of the process required;

B. the applicants are not responsible for the delay; and

C. the authority responsible for the delay has not provided satisfactory justification.

[27] The first two prongs of the *Conille* test are met. The IRCC's service standard for processing time for PR applications through family sponsorship is 12 months. At the time of this hearing, the Applicant's application has been pending for over 40 months, more than three times longer than the standard service time. The first prong is met. The second prong is also met as the Applicant has satisfied the procedural requirements of the Immigration and Refugee Protection Act, SC 2001, c 27 [*IRPA*] and the *Immigration and Refugee Protection Regulations*, SOR/2002-227, by providing the necessary supporting documentation and paying the required processing fees (*Almuhtadi* at paras 34-35).

[28] The determinative issue is whether the Respondent has provided a satisfactory justification for the delay. The Applicant and Respondent both refer to a number of cases in support of their positions. I have considered these cases in my analysis, however, *mandamus* applications must be assessed in accordance with the particular facts of each case.

[29] The Respondent asserts that screening regarding security and inadmissibility is a necessary and important requirement under the *IRPA.* They argue that there has been no unreasonable delay as there has been activity on this file, referring to the interview in June 2023, and communications on November 11, 2023, March 28, 2024, April 11, 2024, and July 20, 2024.

[30] I note that much of the progress and communication the Respondent refers to has occurred after the Applicant initiated this application for leave and judicial review in February 2024. Prior to that, the other activities referred to by the Respondent made little progress on the Applicant's application.

[31] As mentioned above, the Applicant's application was locked in on July 12, 2021. Other than the sponsor eligibility approval on September 10, 2021, no progress was made on the application until June 2023, despite multiple status inquiries from the Applicant and his spouse. That is already a delay of more than 21 months unexplained by the Respondent or the IRCC. After the June 2023 interview, which left the Applicant under the impression that the identity concerns were rectified, the IRCC requested updated documents from the Applicant, which he promptly provided. The Applicant inquired two more times before filing this application for judicial review. Again, this is further delay without any explanation.

[32] Prior to filing this application for judicial review, the Applicant was not given an explanation for the delay other than notice that his file was flagged as “non-routine”. This Court has held on multiple occasions that statements that security checks are pending does not in itself constitute an adequate explanation (*Ghaddar v Canada (Citizenship and Immigration)*, 2023 FC 946 at para 33; *Bidgoly* at para 46). The notice and information given to the Applicant is akin to “blanket statements that security checks are pending.”

[33] While I appreciate that the file is now progressing, albeit slowly, and the Applicant has been given some explanation for the delay, this does not supersede the previous delay incurred without any justification. The delay is unreasonable.

B. *Does the Balance of Convenience Favour Mandamus?*

[34] The Applicant emphasizes that the delay in processing his application has prevented him and his wife from seeing each other, which has impacted their financial, educational and living situations, as well as key family planning decisions. They say that the lack of certainty in terms of a timeline has put their lives on hold, causing stress and anxiety.

[35] The Respondent asserts that the balance of convenience does not favour the issuance of an order, as there is no indication that the Minister has unduly delayed the processing of the application or declined to perform any legal duty in this case; the Applicant’s application has been progressing. The Minister has an explicit statutory duty to ensure the integrity of the immigration system and must carefully and diligently investigate potential inadmissibility before granting a permanent resident visa.

[36] I find that in addition to the hardships faced by the Applicant and his wife, the lack of reasonable explanation for the delay further tips the balance in favour of the Applicant. Additionally, the objectives of the *IRPA* with respect to maintaining the integrity of the immigration system, in addition to the security inadmissibility review underway, can still be pursued despite a *mandamus* order (*Vadiati v Canada (Citizenship and Immigration)*, 2024 FC 1056 at para 22).

[37] The Applicant is entitled to a decision on his application, whether positive or negative, within a definite period of time.

## V. Conclusion

[38] This application for judicial review is granted. A writ of *mandamus* is ordered compelling the Minister or IRCC to process the Applicant's application within 90 days of this order.

[39] There is no question for certification.

**JUDGMENT in IMM-2555-24**

**THIS COURT'S JUDGMENT is that**:

1. This application for judicial review is allowed.
2. A writ of *mandamus* is ordered compelling the Minister or IRCC to process the Applicant's application within 90 days of this order.
3. There is no question for certification.

"Michael D. Manson"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-2555-24 |
| **STYLE OF CAUSE:** | MOHAMMED M DONZO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | JANUARY 22, 2025 |
| **JUDGMENT AND REASONS:** | MANSON J. |
| **DATED:** | JANUARY 24, 2025 |

**APPEARANCES:**

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| Mohammed M Donzo | FOR THE APPLICANT ON HIS OWN BEHALF |
| Nicole John | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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| Attorney General of Canada<br>Toronto, Ontario | FOR THE RESPONDENT |