Federal Court Cour fédérale

Date: 20250206

Docket: IMM-2332-24

Citation: 2025 FC 236

Ottawa, Ontario, February 6, 2025

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

A.R.

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, A.R., seeks an order of *mandamus* to compel the Minister of Citizenship and Immigration to make a decision on A.R.'s application for permanent residence in Canada.

[2] The Court acknowledges that this application for permanent residence is not typical, there is no stated processing time for the particular application, and further information from the Applicant, who is a child, and their parents, who were granted permanent residence status in

Canada in 2014, has very recently been requested. However, the record before the Court demonstrates that the delay in processing this application has been long and not satisfactorily explained. It appears that the application has languished for periods of time and that steps are taken only in response to either the filing of this Application for Leave and for Judicial Review [Application] or on the eve of the hearing of this Application. The Court therefore finds, for the reasons explained below, that the test for *mandamus* has been met and the writ of *mandamus* will issue.

I. Background

[3] In 2014, Mr. R and Ms. P, citizens of Iran, initiated an adoption process in Iran. At around the same time, their application for permanent resident status in Canada was approved. Mr. R and Ms. P arrived in Canada on May 5, 2014.

[4] In June 2017, A.R. was born and placed with Mr. R and Ms. P (in Iran) as the eligible adoptive parents.

[5] In April 2018, an Iranian court issued an order granting Mr. R and Ms. P guardianship over A.R.

[6] On October 17, 2018, an application for a temporary resident visa (TRV) to permit A.R. to travel to Canada with their adoptive parents was refused.

[7] On April 11, 2019, a second application was made for a TRV to permit A.R.'s travel to Canada with their adoptive parents. On June 28, 2019, that TRV was also refused.

[8] On January 4, 2021, Mr. R submitted a permanent residence application for A.R. on the basis of family sponsorship.

[9] On May 18, 2021, Mr. R received confirmation that he met the eligibility requirements to be a sponsor and the sponsorship application was forwarded to the visa office in Ankara, Turkey. The following day, this information was retracted; Mr. R received a letter acknowledging receipt of the application but revoking the prior eligibility decision, stating it was sent in error.

[10] On December 1, 2021, a third application for a TRV for A.R. was submitted.

[11] On March 8, 2022, the visa office requested additional documents regarding Mr. R and Ms. P including their residency, employment, and travel history. On April 1, 2022, Mr. R submitted the requested documents.

[12] On June 9, 2022, eighteen months after submitting the family sponsorship application, Mr. R was informed by the visa office that he was not eligible to sponsor A.R. However, the application for permanent residence for A.R. remained to be considered further.

[13] On June 10, 2022, A.R. was instructed to complete a medical examination. On June 12, 2022 the report on A.R.'s medical examination was submitted to the visa office.

[14] Between August 10, 2022, and November 22, 2022, Mr. R requested updates.

[15] On November 28, 2022, A.R. and their parents received a procedural fairness letter requesting additional information.

[16] On December 28, 2022, Mr. R made submissions requesting Humanitarian and Compassionate [H&C]) considerations given the extraordinary circumstances and challenges they were facing as a family, including that Ms. P needed to remain in Iran to be with their child, who could not come to Canada, and that Mr. R suffered stress and anxiety from family separation and related impacts.

[17] Between January 1, 2023, and November 3, 2023, Mr. R requested updates on ten different dates.

[18] On January 4, 2024, Counsel for A.R. sent a demand letter to the visa office in Ankara, Turkey.

[19] On February 7, 2024, this Application for Leave and for Judicial Review was filed seeking *mandamus* to compel the Minister via Immigration, Refugees and Citizenship Canada [IRCC] to make a decision.

[20] On February 21, 2024, A.R.'s third TRV application was rejected, however the application for permanent resident status, including H&C considerations remained to be processed.

[21] On April 18, 2024, IRCC sent Mr. R a letter, noting that Mr. R's sponsorship had failed pursuant to paragraph 130(1)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, which requires that a permanent resident reside in Canada for the duration of the application in order to sponsor a family member. The letter also requested responses to several questions including: where Mr. R is currently living; where Ms. P is living; where the family proposes to live in Canada; where they have travelled in the last three years; what documents could be provided to show their residence in British Columbia [BC]; and, whether they have contacted the BC Ministry of Family and Services regarding the adoption of A.R..

[22] On May 17, 2024, Counsel for A.R. and A.R.'s parents responded and made additional H&C submissions.

[23] It is also noted that on April 1, 2024, A.R. filed the Memorandum of Fact and Law for the Application for Leave and for Judicial Review [the Application] seeking *mandamus*. The Respondent filed their Memorandum of Fact and Law on May 2, 2024. A.R. filed a Reply on May 13, 2024. The Court granted Leave for Judicial Review on November 12, 2024 and scheduled the hearing for January 30, 2025.

[24] On January 30, 2025, shortly before the hearing of this Application, the Court was made aware of correspondence from the Respondent filed on January 29, 2025, providing an affidavit attaching a letter dated January 27, 2025, from IRCC (visa office in Ankara) to Counsel for A.R. and updated Global Case Management System [GCMS] notes to reflect the contents of the letter also made on January 27, 2025. The updated GCMS notes demonstrate that the previous entry in the GCMS is dated July 8, 2024, and refers to this Court's issuance of a production order for the Certified Tribunal Record for the purpose of this Application.

[25] The letter dated January 27, 2025, states that to complete the processing of the application for permanent residence in Canada, "Please provide a list of dates spent in Canada and in Iran in the past 10 years (JAN2015 to JAN2025) for both yourself and your sponsor". The letter states that this information must be provided within 30 days.

[26] The Court notes that A.R. has never set foot in Canada, which should be apparent to IRCC given the many refused TRVs. Whether Mr. R and Ms. P remain sponsors, as Mr. R was found to be ineligible, or whether H&C considerations are applied to overcome their ineligibility to be sponsors is not clear; nonetheless, Mr. R and Ms. P intend to respond as requested.

II. The Test for *Mandamus*

[27] In *Wasylynuk v Canada (Royal Mounted Police)*, 2020 FC 962 at para 76, Justice Little concisely explained the discretionary equitable remedy of *mandamus*:

> *Mandamus* is an order that compels the performance of a public legal duty. The duty is typically set out in a statute or regulation. An order of *mandamus* is the Court's response to a public

> decision-maker that fails to carry out a duty, on successful application by an applicant to whom the duty is owed and who is currently entitled to the performance of it. The test for *mandamus* thus requires careful consideration of the statutory, regulatory or other public obligation at issue, to determine whether the decision-maker has an obligation to act in a particular manner as proposed by an applicant and whether the factual circumstances have triggered performance of the obligation in favour of the applicant.

[28] The test for granting *mandamus* was established in *Apotex Inc v Canada (Attorney General)*, [1994] 1 FC 742 (CA), at para 4 (aff'd in [1994] 3 SCR 110), and has been adopted and applied in various contexts:

1. There must be a public legal duty to act;
2. The duty must be owed to the applicant;
3. There is a clear right to performance of that duty, in particular:
    (a) The applicant has satisfied all conditions precedent giving rise to the duty;
    (b) There was (i) a prior demand for performance of the duty; (ii) a reasonable time to comply with the demand unless refused outright; and (iii) a subsequent refusal which can be either expressed or implied, e.g. unreasonable delay;
4. Where the duty sought to be enforced is discretionary, consideration must be given to the nature and manner of exercise of that discretion;
5. No other adequate remedy is available to the applicant;
6. The order sought will be of some practical value or effect;
7. The Court in the exercise of its discretion finds no equitable bar to the relief sought; and
8. On a balance of convenience, an order in the nature of *mandamus* should issue.

[29] All eight conditions or criteria must be established (*Dragan v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 211, [2003] 4 FC 189 at para 39).

[30] In determining whether there is a clear right to the performance of the duty, a key issue is whether there has been a reasonable time for the decision maker to comply or, stated another way, whether there has been an unreasonable delay.

[31] In *Thomas v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 164 at para 19, Justice Fothergill reiterated the criteria to gauge whether the delay is reasonable, which were previously established in *Conille v Canada (Minister of Citizenship and Immigration)*, [1999] 2 FC 33, 159 FTR 215 (FCTD) at para 23 [*Conille*], and which have been consistently applied by the courts. The criteria are:

> (1) the delay in question has been longer than the nature of the process required, *prima facie*;
>
> (2) the applicant and his counsel are not responsible for the delay; and
>
> (3) the authority responsible for the delay has not provided satisfactory justification.

III. The Applicant's Submissions

[32] A. R. submits that they have established all the criteria for *mandamus*, including that the delay in processing the application has been unreasonable.

[33] A.R. notes that they began to pursue how to obtain authorization to come to Canada in 2018 and after several refusals of a TRV, applied for permanent residence pursuant to family sponsorship in January 2021. At the time this Application for Leave and for Judicial Review was filed, A.R. had waited over 3 years and as of the date of this hearing, A.R. has waited over 4 years. Although there is no posted processing time for this particular type of application (given

the application was subsequently "reframed" as a sponsorship on H&C grounds), A.R. notes that processing times for other family sponsorship applications are generally 12 months. A.R. submits that the delay in processing and reaching a decision has been longer than necessary; and that A.R. has complied with all requirements, responded to all requests for additional information and is not responsible for the delay.

[34] A.R. notes the surrounding circumstances have caused significant upheaval: Ms. P has been unable to reside in Canada to maintain her PR card because she must be with A.R. in Iran; similarly, Mr. R has travelled to Canada but is pulled back to Iran to be with his family; the time outside Canada has a negative impact on Ms. P's and Mr. R's permanent residence obligations; and, the family's plans to live, work and go to school in Canada have been put on hold for many years and the uncertainty has caused significant stress to the family.

[35] A.R. notes that the Court has granted *mandamus* in cases of unreasonable delay in processing applications for permanent resident status (for example, *Ahmad v Canada (Citizenship and Immigration)*, 2012 FC 508; *Bakhsh v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1060; *Ben-Musa v Canada (Minister of Citizenship and Immigration)*, 2005 FC 764; *Kanthasamyiyar v Canada (Citizenship and Immigration)*, 2015 FC 1248; *Liang v Canada (Citizenship and Immigration)*, 2012 FC 758; *Platonov v Canada (Minister of Citizenship and Immigration)*, (2000) 192 FTR 260; and, *Shahid v Canada (Citizenship and Immigration)*, 2010 FC 405.)

[36] A.R. submits that there is no dispute that the Minister and the officers at IRCC have a public duty to process applications for permanent resident status pursuant to subsection 4(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act]. A.R. further submits that this duty is owed to them and has not been fulfilled, which can be regarded as an implied refusal (but for the very recent activity). A.R. emphasizes that there is no other adequate remedy; a determination on the permanent residence application is the only route to permit them to reside in Canada.

[37] A.R. submits that the order of *mandamus* will have practical value. A.R. again notes that there have been long periods of inaction, reframing of the application, misstatement of dates, retraction of information, yet no real progress. A.R. submits that it is obvious that pending judicial proceedings have resulted in some activity, with nothing in the intervening months.

[38] A.R. submits that contrary to the Respondent's claims that IRCC has continued to process the application and has fulfilled its public duty without unreasonable delay, the activity after a long period of silence was directly prompted by the initiation of this *mandamus* Application, which highlights the need for judicial intervention.

[39] A.R. highlights that the very recent letter received on January 27, 2025, further demonstrates that IRCC only takes steps in response to judicial proceedings, and without a *mandamus* order, there is no confidence that the application will be efficiently processed.

[40] A.R. further submits that the balance of convenience supports granting the order of *mandamus* given the uncertainty the delay has caused and the emotional toll it has taken on A.R. and on the family as a whole.

IV. The Respondent's Submissions

[41] The Respondent disputes that A.R. has met the test for *mandamus*. The Respondent submits that A.R. has failed to establish that IRCC has refused to perform a duty, pointing to the GCMS notes. The Respondent further submits that there has been no undue delay, or alternatively, that there is a reasonable explanation for the perceived delay, given the requests for additional information. The Respondent notes that there is no standard processing time for this type of application and hence no benchmark against which to gauge delay.

[42] The Respondent notes that the application has been complicated, including due to Mr. R's inability to sponsor A.R. and the need to "reframe" the application as based on H&C considerations. The Respondent acknowledged in their written submissions, filed in May 2024, that 41 months had passed since the sponsorship application was filed, but now submits that in considering whether there has been a delay, the relevant date is December 2022, when the H&C submissions were made. The Respondent submits that given the various complicating factors and the requests made for information, it is apparent that IRCC has not unreasonably delayed processing. The Respondent notes that IRCC has taken steps, and is still taking steps, as evidenced by the January 27, 2025, letter seeking more information regarding Mr. R and Ms. P's residence in Canada.

[43] The Respondent adds that any delay has not resulted in a loss of A.R.'s substantive rights.

[44] The Respondent submits that the balance of convenience does not favour issuing an order of *mandamus*. The application is ongoing, and the Minister continues to perform their duty.

[45] The Respondent also cautions that the Court's intervention to require a decision in a short period of time would not permit the necessary next steps in A.R.'s application to be fulfilled. This includes the assessment of Mr. R's and Ms. P's responses to the January 27, 2025, letter, and if A.R. is found eligible for permanent resident status, the issuance of a request for a new medical assessment to be completed within 30 days and review of the medical assessment by IRCC. The Respondent submits that if the Court is considering granting *mandamus*, at least 6 to 8 months should be provided for the next steps to unfold and for IRCC to make a decision.

V. The test for *mandamus* is established

[46] The Court is satisfied that A.R. has satisfied the criteria for *mandamus.*

[47] The Minister via IRCC has a public and legal duty to process an application for permanent residence; A.R. submitted their application in January 2021, paid the associated fees, promptly submitted documents and responded to requests for further information; the order will have practical value; there is no equitable bar; and, there is no other adequate remedy.

[48] The Respondent takes issue with the allegation of unreasonable delay, and alternatively suggests that the complexity of this application provides a reasonable explanation for the delay.

However, the record shows long periods of inaction despite countless requests for status reports by Mr. R and shows inconclusive steps only when there is push due to judicial proceedings.

[49] As A.R. notes, the service standard for processing family sponsorship applications is typically 12 months. The Respondent notes that because this application has been "reframed" as an H&C application, there is no standard processing time. However, the absence of a service standard cannot be used to suggest that processing can be delayed indeterminately. The delay has been long and the complexity alone does not account for the delay. Whether January 2021 (noted as the "lock in" date in the GCMS) or December 2022 (when H&C submissions were made) is regarded as the relevant date for assessing the delay, the record shows long periods of no activity, with no prediction of how long it will take for the completion of the process, despite A.R. and Mr. R being responsive to every request from IRCC.

[50] Although there may still be some outstanding issues to resolve in A.R.'s application (as noted in the very recent letter dated January 27, 2025, which requests information about residence, some of which was previously requested and provided), A.R. has fulfilled all the requirements to date, without any resolution. The Court cannot find that A.R. has contributed to the overall delay since 2021.

[51] The balance of convenience favours A.R., who is a child, and whose parents Mr. R and Ms. P planned to bring to Canada shortly after their guardianship was granted in 2018. The GCMS notes acknowledge that the sponsorship application dates back to January 2021 (after several refused TRVs). The GCMS notes dated December 29, 2022, acknowledge the family's

health crisis in addition to the best interests of the child, and the entry suggests that H&C grounds “may be applicable”, however, it has still taken more than two additional years to move this forward. The family has been living in a state of uncertainty for years, unable to fulfill their plan to reside together in Canada.

[52] The Court acknowledges the Respondent’s concern that ordering *mandamus* to compel the Minister to make a decision within a short time frame is unreasonable and time pressures could force an adverse outcome; however, a further six to eight months for processing, as suggested by the Respondent, is simply too long, particularly in the life of a young child. The Court again notes that this Application was filed in February 2024 and there has been no activity, apart from the acknowledgment of A.R.’s response to the letter sent by IRCC on April 18, 2024, until mere days before the hearing of this Application. This is nine months of inactivity that is unexplained by the Respondent. The Court is reluctant to grant a further eight months for completion of processing. It appears that action is taken when deadlines are looming, so a shorter deadline is required. The Court finds that the 30-day period requested by A.R. is too short, but the six to eight months suggested by the Respondent is a further unreasonable delay. The Court’s *mandamus* order will require the Minister via IRCC to complete the processing of A.R.’s application within four months (120 days). In the event that the Minister cannot do so, the Minister shall advise the Court of the reason and, if a valid reason is provided, may seek an extension of an additional 30 days.

JUDGMENT in file IMM-2332-24

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 complete the processing of the Applicant's application within 120 days of this order.
3. There is no question for certification.

"Catherine M. Kane"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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