Federal Court Cour fédérale

**Date: 20250210**

**Docket: IMM-15411-23**

**Citation: 2025 FC 259**

**Toronto, Ontario, February 10, 2025**

**PRESENT: Madam Justice Go**

**BETWEEN:**

**Mahmoud Omar CHIRUM**

**Applicant**

**and**

**THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**

**Respondent**

# JUDGMENT AND REASONS

## I. Overview

[1] Mahmoud Omar Chirum [Applicant] is a citizen of Eritrea. He comes to the Court seeking a *mandamus* order with regard to his application for Ministerial Relief from an inadmissibility finding based on allegations made against him by the Minister of Public Safety and Emergency Preparedness [Minister].

[2] In 1974, the Ethiopian military began to occupy Eritrea. During the occupation, the Eritrean People's Liberation Front [EPLF] engaged in an armed movement to overthrow the Mengistu Haile Mariam regime. The Applicant moved to Sudan in 1976 where he began to support the EPLF by working in the refugee camps teaching literacy to Eritrean refugees.

[3] After Eritrea gained *de facto* independence in 1991, the EPLF became the governing party. The Applicant returned to Eritrea and began working for the Eritrean civil service in 1993. The Applicant quickly rose through the ranks within the Ministry of Information.

[4] As the regime became increasingly repressive, the Applicant began to express his opposition within the government. Subsequently, the Applicant was sent abroad to work as an Eritrean Ambassador. The Applicant was still working as an Ambassador when he defected in June 2009.

[5] The Applicant came to Canada and filed a refugee claim in June 2009, but his claim was never heard. In 2011, the Minister initiated a report alleging the Applicant was inadmissible pursuant to paragraphs 34(1)(b), 34(1)(c), 34(1)(f), and 35(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [*IRPA*]. The Immigration Division [ID] found the Applicant was not inadmissible on any of the grounds alleged by the Minister.

[6] In August 2015, the Immigration Appeal Division [IAD] overturned the ID decision in part, and found the Applicant inadmissible pursuant to paragraphs 34(1)(b) and 34(1)(f) for

membership in an organization that engaged in subversion by force of the Ethiopian military junta that occupied Eritrea until May 1991.

[7] In November 2019, the Applicant applied for Ministerial Relief from the inadmissibility finding. His Ministerial Relief application was accepted for processing in March 2020 and remains pending, nearly five years after it was filed.

[8] In January 2023, counsel for the Applicant sent a demand letter to the Canada Border Services Agency [CBSA] requesting processing of the Ministerial Relief application and seeking a response within 60 days. The CBSA acknowledged receipt of the demand letter in February 2023, but indicated that the Applicant's 60-day demand to render a decision could not be met and that the application remained in queue to be assigned to an analyst for processing.

[9] On December 5, 2023, the Applicant brought an application for leave and for judicial review, seeking a writ of *mandamus* and an order for the Respondent to render a final decision on his Ministerial Relief application within 60 days. The Applicant also seeks costs in the amount of $7,000.

[10] For the reasons that follow, I grant the application, in part.

## II. Analysis

[11] The Applicant raises the following issue on this application for judicial review:

*Is the Applicant entitled to an order from this Court directing the Respondent to decide his Ministerial Relief application without further delay?*

[12] The Applicant must demonstrate to the Court's satisfaction that he meets the *mandamus* test as set out in *Apotex Inc v Canada (Attorney General)*, [1994] 1 FC 742, 162 NR 177 (FCA).

[13] As reproduced from *Almuhtadi v Canada (Citizenship and Immigration)*, 2021 FC 712 at para 30, the Applicant must satisfy the following eight conditions before the Court will exercise its discretion to issue *mandamus*:

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;
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. There is no equitable bar to the relief sought; and
8. On a "balance of convenience," an order of *mandamus* should be issued.

[14] The Court outlined three requirements that must be met if a delay is to be considered unreasonable in *Conille v Canada (Citizenship and Immigration)*, [1999] 2 FC 33, 159 FTR 215 (TD):

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.

[15] In addition to establishing the delay is unreasonable, the Applicant must demonstrate there is "significant prejudice" caused by the delay: *Vaziri v Canada (Citizenship and Immigration)*, 2006 FC 1159 at para 52, citing *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 at para 101; *Chen v Canada (Citizenship and Immigration)*, 2023 FC 885 at para 16.

[16] In the matter before me, the key contentious issues between the parties are whether:

a. the Minister failed to discharge a public legal duty to act;
b. there has been an unreasonable delay in the processing of his application; and
c. the balance of convenience favours the Applicant.

[17] Before turning to my analysis of the key issues, I pause here to make a few preliminary comments. First, the Applicant submitted an expert's affidavit from an actuary who analyzed data obtained through an Access to Information request to calculate the average processing time for Ministerial Relief applications between 2009 and 2022. The Respondent challenged the reliability of the report, questioning its data limitations, assumptions, and uncertainties. I find it unnecessary to assess the expert affidavit, and rely instead on the jurisprudence and the Applicant's personal evidence for my analysis. Similarly, I need not address the Applicant's arguments alleging violations of his rights under the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, as I find the issues herein are well-canvassed in the case law.

A. *There has been an unreasonably delay and the Minister has failed to discharge his public legal duty to act*

[18] The Applicant submits that delays in determining Ministerial Relief between three years and five years have repeatedly been found unreasonable and led to an order of *mandamus* and costs for "undue delay" by the Court: *Yassin v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 423 [*Yassin*]; *Esmaeili-Tarki v Canada (Public Safety and Emergency Preparedness)*, 2010 FC 697 [*Esmaeili-Tarki*]; *Tameh v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 288 [*Tameh*]; *Douze v Canada (Citizenship and Immigration and Public Safety and Emergency Preparedness)*, 2010 FC 1337 [*Douze*]; *Thomas v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 164 [*Thomas*].

[19] In his case, the Applicant submits there has been an almost five-year delay, starting from March 2020 when his application was put in a queue for assignment to an analyst.

[20] By contrast, the Respondent submits the Applicant has not met the requirements for an order of *mandamus*. The Respondent provides the following submissions to argue that the delay is not unreasonable, and that there are justifications for the delay:

a. Since the Respondent received the Applicant's Ministerial Relief application in 2020, the Applicant continued to submit additional submissions and evidence, in two packages in January 2023 and December 2023. In February 2023 and December 2023, Applicant's counsel was informed that the Applicant's additional submissions would be added to his Ministerial Relief application, and that it was in queue for processing;

b. The Applicant was informed about the very complex nature of the Ministerial Relief process, which requires an in-depth review of a voluminous amount of information and

submissions. The Applicant was also informed that Ministerial Relief applications are generally processed in accordance with their year of receipt and that the CBSA was currently processing applications received prior to the Applicant's;

c. While each demand for *mandamus* turns on its own particular facts, the timeline in processing the Applicant's application in this case is not unreasonable, especially given the circumstances of the COVID-19 pandemic and the resulting effects on the CBSA's operations. While the COVID-19 pandemic is not sufficient on its own to justify the entirety of the delay, it is a relevant consideration when determining the reasonableness of the delay;

d. Applications for *mandamus* must be assessed in accordance with the particular facts of each case: *Bedard v Canada (Attorney General)*, 2024 FC 570 [*Bedard*] at para 31. In the present case, unlike the cases cited by the Applicant such as *Douze*, *Yassin*, *Thomas*, and *Tameh*, the Applicant's Ministerial Relief application was made during the height of the COVID-19 pandemic; and

e. The Minister, not a delegate, is the final decision-maker on a Ministerial Relief application. The Minister is responsible for exercising leadership within the federal government for public safety national security issues, while overseeing the work of various government departments. The Minister's varied responsibilities require that a flexible and deferential approach be taken when determining what is a reasonable time to make a final decision on a Ministerial Relief application. Besides, there have been four different Ministers of Public Safety and Emergency Preparedness since 2020, and it takes time for a Minister to become familiarized with their portfolio.

[21] I note that the Respondent has made similar arguments in other *mandamus* cases with regard to the complexity of the application process and the Minister's wide-ranging duties. The Court has rejected these arguments as insufficient justification for the delay: see for instance *Yassin* at paras 27-28; *Esmaeili-Tarki* at paras 13-14.

[22] As the Chief Justice commented in *Tameh* at para 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.”

[23] While the context was different, the Court in *Dragan v Canada (Citizenship and Immigration)*, 2003 FCT 211 at para 58 held that “there is ample precedent to grant *mandamus* for the assessment of visa applications where the excuse for the delay is the enormous workload faced by the Immigration Department, and where the delay may result in a substantive detriment to the applicant.”

[24] Similarly, I find that the Minister cannot rely on their heavy workload as a justification for inaction to the detriment of those whose lives are impacted by their decisions, or lack thereof.

[25] I also find it unpersuasive to point to the numerous changes in the Minister to justify the delay. It is a privilege to be appointed as the Minister. Anyone who accepts this appointment does so with the full knowledge of the tremendous power and responsibility that comes with it. It is incumbent on the individual appointed to such a powerful position to keep themselves up to speed on all their portfolios without delay.

[26] I agree with the Respondent that every application of *mandamus* must be assessed on its own set of particular facts, which is why I find their reliance on my decision in *Bedard* curious to say the least. In *Bedard*, the government institution in question faced a sudden and significant increase in backlog due to certain legislative changes to their mandate. The institution

acknowledged the problem with the backlog, and provided extensive affidavit evidence before the Court outlining the process they had undertaken to reduce the backlog, including the implementation of a prioritizing system for different cases and an estimated processing timeline for each priority. In the case herein, other than giving a general description of the process for assessing Ministerial Relief applications, the Respondent's affidavit evidence is bare, without acknowledging that a five-year wait to have a Ministerial Relief application assigned to an analyst can be an issue, let alone any steps that the Respondent may take to improve the processing time.

[27] The Respondent's reliance on the COVID-19 pandemic to justify long delays is equally lacking in merit, and has been rejected by the Court in *Saravanabavanathan v Canada (Citizenship and Immigration)*, 2024 FC 564 at paras 36-37. At the hearing, the Respondent asked the Court to take judicial notice of the COVID-19 pandemic and consider it as a factor for justifying the delay. While I can certainly take judicial notice of the pandemic, I need not accept the Respondent's assertion about its effect on processing time. Even if it may be reasonable to explain some delay due to the COVID-19 pandemic, the Minister in their affidavit evidence has not mentioned this nor given any information about the impact of COVID-19 on their operations.

[28] With regard to the timeline of the Applicant's application, I note an email from the CBSA dated December 18, 2023 in response to an email from Applicant's counsel dated December 5, 2023, which stated, "Ministerial relief cases are generally processed in accordance with their year of receipt. Therefore, [the Applicant's] application, filed in 2020, presently remains in

queue to be assigned for processing with other cases received that year." A similar statement can also be found in the Respondent's affidavit evidence.

[29] In other words, the fact that the Applicant has filed subsequent submissions does not change his position in the queue, so to speak, nor does it change the timeline by which the Minister will review his application.

[30] Having rejected all of the Respondent's justifications for the delay, below are the reasons why I find a delay of now almost five years is unreasonable.

[31] The Applicant has satisfied all of the conditions precedent giving rise to the duty of the Respondent to finalize his application. He has submitted his application forms and evidence and responded to all correspondence in a timely manner. Moreover, there have been several prior demands for the performance of the duty.

[32] While the Applicant did submit additional materials after March 2020 with the help of his *pro bono* counsel, this did not alter the fact that his application was considered complete in March 2020 and is still waiting to be assigned for review.

[33] I also note that the Respondent's affidavit does not even provide an estimate as to when the Applicant's file will be assigned to an analyst. Further, while the Respondent objects to the Applicant's expert evidence that the average processing time for all cases processed and provided by the CBSA between 2009 and 2022 is 10.2 years, the Respondent does not file any

evidence to counter that estimate. The only evidence before me from the Respondent is that generally it takes nine months after a file is assigned to an analyst to finalize a recommendation and put it to the Minister for a decision. The Respondent has chosen not to include any evidence indicating the average timeline from the date when an application for Ministerial Relief is received to the time it is assigned to an analyst, nor the average timeline between when a recommendation is put to the Minister and the date the Minister makes their decision.

[34] In *Tameh*, a delay of 45 months was considered to be the "outer limit" of what is reasonable. In *Douze*, a delay of three years was found unreasonable. In *Thomas*, Justice Fothergill held that a four-year delay with no steps taken in a Ministerial Relief application meets the *Conille* test for unreasonable delay.

[35] It has been nearly five years since the Applicant's Ministerial Relief application was accepted as complete, and yet the Respondent has taken no steps to advance his application.

[36] A five-year wait is unreasonable for any applicant. It is even more unreasonable for the Applicant, who is now in his 70s and has been living in Canada with a precarious immigration status for more than 15 years. The Applicant may not have the luxury of time to wait for a process for which an end is not yet in sight.

[37] In conclusion, I find that the Applicant has established that there has been an unreasonable delay in the processing of his application and that the Minister has failed to provide

satisfactory justifications for the delay. As such, the Minister has failed to discharge their duty to act.

B. *The balance of convenience favours the Applicant*

[38] The Respondent submits the balance of convenience does not favour a grant of *mandamus*. According to the Respondent, several factors weigh against *mandamus*:

a. The Minister has many duties critical to the security of Canada and should be allowed to prioritize them as need be;

b. The Minister is also personally responsible for specific duties under the various legislations he administers;

c. Deciding a Ministerial Relief application requires the Minister to assess national interest considerations. This is a nuanced process that requires careful and considered analysis;

d. The Applicant is inadmissible to Canada under paragraph 34(1)(f) of the *IRPA* for being a member of an organization that has engaged in subversion by force of a government. The decision to exempt the Applicant from his inadmissibility cannot be made easily, but should be carefully considered, with the Minister weighing the appropriate factors;

e. The fact that the Applicant is not being deprived of a right that he is entitled to favours not granting *mandamus*; and

f. Granting *mandamus* in the present case would necessarily mean displacing other files, allowing the Applicant to "jump the queue:" *Mersad v Canada (Citizenship and Immigration)*, 2014 FC 543 at paras 23-25.

[39] Further, the Respondent submits the Applicant's requested timeline for a decision to be rendered is not feasible.

[40] I disagree.

[41] Without repeating myself, the Respondent's arguments about the Ministerial discretion and duties do not tip the balance in their favour for the reasons I have already outlined.

[42] The Chief Justice dealt with a similar argument the Respondent made in *Tameh* and noted as follows:

> [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.

[43] The Applicant has now been in Canada for 15 years. The Applicant submits evidence in support of his allegation that his mental health has suffered during the prolonged period of uncertainty while awaiting a decision on his application for Ministerial Relief. Among other things, the Applicant lives under the stigmatizing label of a foreign national security threat; he is subject to a reporting requirement under threat of detention, and continues to experience indefinite limbo that is causing serious harm to his mental health which his psychiatrist believes could even lead to suicide. The Applicant also faces practical difficulties in being able to work and earn a livelihood without immigration status.

[44] I also note that in the Applicant's restricted Pre-Removal Risk Assessment [PRRA], the CBSA found in February 2023 that the Applicant does not constitute a danger to the security of Canada, nor does the nature and severity of his acts reach a particularly serious level of gravity.

[45] While I acknowledge that the CBSA's restricted PRRA differs from the Minister's assessment of a Ministerial Relief application, I find the Respondent's continuing reliance on the Applicant's section 34 inadmissibility finding as the basis for not granting the relief somewhat disingenuous. It also reinforces the Applicant's point about the ongoing stigma he experiences due to the inadmissibility label.

[46] At the hearing, the Respondent made additional arguments stating the Applicant's situation has improved "significantly" given his positive PRRA decision, and that his immigration file has not remained stagnant.

[47] With respect, the Respondent's argument ignores the fact that even with the positive PRRA decision, the Applicant still faces an uncertain future in Canada, and the stigmatizing effect of the inadmissibility finding continues unabated.

[48] In light of the ongoing negative impact on the Applicant's physical and psychological health on the one hand, and the pressure on the Minister's workload to expedite the decision-making process on the other, the balance of convenience lies in the Applicant's favour.

C. *Remedy*

[49] The Applicant proposes a timeline of 90 days for his Ministerial Relief application to be decided, including 30 days for the CBSA to make a recommendation, 15 days for the Applicant to respond, and a decision by the Minister within the following 45 days. In addition, the Applicant asks for costs of $7,000.

[50] The Applicant submits costs are warranted both for “undue delay” and for the demonstrated harm he has been exposed to over fifteen years, including five waiting for Ministerial Relief, even though he does not and has never posed any threat to Canada’s security: *Aghdam v Canada (Public Safety and Emergency Preparedness)*, 2011 FC 131 [*Aghdam*] at paras 21-22. A cost order of $7,000 reflects denunciation of systemic maladministration that the Respondent has long allowed to persist and has not meaningfully addressed despite other cost orders on unreasonable Ministerial Relief delays in the past.

[51] Citing *Seyoboka v Canada (Citizenship and Immigration)*, 2005 FC 1290 [*Seyoboka*] at paras 8-10 and *Chong v Canada (Citizenship and Immigration)*, 2001 FCT 1335 [*Chong*] at paras 14-15, the Respondent argues the timeline for processing of the Applicant’s Ministerial Relief application would of necessity be much more than the expedited timeline requested by the Applicant. Decisions regarding Canada’s national security and public safety, the Respondent submits, should not be rushed.

[52] I find the cases the Respondent cites are distinguishable. In *Seyoboka*, the applicant had provided false statements about his employment with the Rwanda Armed Forces, and provided additional documents referring to his involvement in the genocide in Rwanda during the nine-year period waiting for a Ministerial Relief. There is no suggestion that the Applicant was ever involved in any military action, let alone genocide.

[53] In *Chong*, the Court found the officer had reasonable grounds to believe the applicant was a member of a criminal organization, and concluded that it was necessary to complete the background checks and that the delay was not unreasonable. Here, the Respondent has not yet assigned the Applicant's file to an analyst for review, nor provided any indication that they have begun to conduct background checks on the Applicant.

[54] I find the Applicant's proposed timeline shorter than what the Court has allowed in other *mandamus* cases involving Ministerial Relief applications. In these other cases, the shortest timeline the Court ordered was four months, and timelines were typically longer than six months including additional time for engagement between the Applicant and the CBSA. Also, typically, the Court gives the CBSA a bit more time to prepare their draft recommendation. I find 30 days for the recommendation stage to be insufficient, and I extend it to 60 days.

[55] I also note that in some of these *mandamus* cases, the applicant requested more time to respond to the CBSA's recommendation, as well as additional time to respond to the CBSA's revised recommendation, if any. Since the Applicant himself bears the risk of proposing a shorter

response time of 15 days and forgoing further opportunity to respond, I will not make any adjustment in that regard.

[56] Subject to the above adjustment, I am prepared to issue the *mandamus* order. Borrowing the Chief Justice's words in *Tameh*, the time has come to require the Minister to make a decision in the Applicant's case.

[57] With respect to the Applicant's request for costs, this Court has found undue delay in the processing of an application under the *IRPA* to constitute such "special reasons" for awarding costs on a number of occasions: *Aghdam*; *Tameh* at para 77; *Esmaeili-Tarki* at para 19.

[58] However, as noted in *Aghdam* at para 22, there has been no conduct in this matter that requires the sanction of an award of costs on a substantial indemnity or solicitor-client basis. In the exercise of my discretion, I fix the Applicant's costs at $3,500, inclusive of HST and disbursements.

## III. Conclusion

[59] The application for judicial review granted.

[60] There is no question for certification.

**JUDGMENT in IMM-15411-23**

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

1. The application for judicial review is granted and a writ of *mandamus* is hereby issued requiring the Minister of Public Safety and Emergency Preparedness to render a decision on the Applicant's request for Ministerial Relief in accordance with the following timeframe:
    a. Canada Border Services Agency shall disclose its draft Ministerial Relief recommendation to the Applicant within 60 days of the date of this order;
    b. The Applicant shall submit to the Canada Border Services Agency any response to the draft Ministerial Relief recommendation within 15 days;
    c. Canada Border Services Agency shall provide its final Ministerial Relief recommendation and any supporting materials to the Minister within 15 days of the Applicant's submissions;
    d. The Minister shall render a decision on the Applicant's application for Ministerial Relief within the following 45 days.
2. The Respondent shall pay to the Applicant costs of $3,500, inclusive of HST and disbursements;
3. There is no question for certification.

"Avvy Yao-Yao Go"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-15411-23 |
| **STYLE OF CAUSE:** | MAHMOUD OMAR CHIRUM v THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | FEBRUARY 5, 2025 |
| **JUDGMENT AND REASONS:** | GO J. |
| **DATED:** | FEBRUARY 10, 2025 |

**APPEARANCES:**

| | |
|---|---|
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| Asha Gafar | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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