Federal Court  Cour fédérale

Date: 20250303

Docket: IMM-3611-24

Citation: 2025 FC 388

Toronto, Ontario, March 3, 2025

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

MUHAMMAD ATIQ UR REHMAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] On this application for judicial review, the Applicant, a citizen of the United States of America, seeks a writ of *mandamus* directing Immigration, Refugees and Citizenship Canada [IRCC] to make a decision with respect to his pending permanent residence application under the spousal sponsorship category.

[2] The Applicant filed his application in May 2019. Following a back and forth between the Applicant and IRCC, the final documentation and information sought by IRCC was provided by the Applicant on December 27, 2021.

[3] On November 12, 2021, IRCC advised the Applicant that his application had been transferred to the visa office in New York for further review of his eligibility and admissibility.

[4] On January 7, 2022, IRCC made the following entry in the Global Case Management System [GCMS]:

> File reviewed. Comprehensive screening required. In particular, potential A37 inadmissibility […] Although FBI and biometrics show no indication of criminality, given content of Q-file I will pend crim decision until security screening is complete.

[5] The GCMS notes indicate that IRCC sent its partner agencies requests for updates twice in 2022 and the responses given were that the matter was still under review. No follow-up requests were made by IRCC from July 6, 2022, until April 4, 2024 (following the commencement of this application).

[6] The sole issue for determination on this application is whether the Applicant has demonstrated that a writ of *mandamus* ought to be granted.

[7] A writ of *mandamus* compels the performance of a particular statutory duty. It is an extraordinary remedy and *mandamus* applications must be assessed on the particular facts of each case [see *Tapie v Canada (Citizenship and Immigration)*, 2007 FC 1048 at para 7].

[8] In *Apotex v Canada (Attorney General)*, [1994] 1 FC 742, 1993 CanLII 3004 (CA), the Federal Court of Appeal affirmed the following conditions must be met to issue a writ of *mandamus*:

A. There must be a public duty to act under the circumstances;

B. The duty must be owed to the applicant;

C. There must be a clear right to performance of that duty; in particular:

   i. The applicant has satisfied all conditions precedent giving rise to the duty;

   ii. There was:

   - A prior demand for performance of the duty;
   - A reasonable time to comply with the demand unless refused outright; and
   - A subsequent refusal which can be either expressed or implied, for example, unreasonable delay;

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

E. The order sought must have some practical effect;

F. In the exercise of its discretion, the Court must find no equitable bar to the relief sought; and;

G. On a balance of convenience, an order of *mandamus* should issue.

[9] All eight conditions need to be satisfied in order for the Court to issue a writ of *mandamus* [see *A.R. v Canada (Citizenship and Immigration)*, 2025 FC 236 at para 29].

[10] The issue of reasonable delay is assessed within the third factor. A delay in performing a public legal duty may be unreasonable where the following three requirements are met: (i) the delay in question is *prima facie* longer than the nature of the process required; (ii) the applicant and his counsel are not responsible for the delay; and (iii) the authority responsible for the delay has not provided satisfactory justification [see *Conille v Canada (Citizenship and Immigration) (TD)*, [1999] 2 FC 33 at paras 23, 87]. There is no uniform standard for what constitutes a reasonable length of time. Each case turns on its facts, especially in light of the relevant immigration regime [see *Bidgoly v Canada (Citizenship and Immigration)*, 2022 FC 283 at para 33].

[11] In addition to the list of three requirements, a person seeking *mandamus* based on delay must also demonstrate significant prejudice which results from an unacceptable delay [see *Vaziri v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1159 at para 52; *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 at para 101].

[12] This case turns on the issues of: (i) delay in the processing of the Applicant's application and specifically, whether a reasonable justification has been provided by IRCC for the delay; and (ii) the balance of convenience.

[13] The Respondent asserts that a reasonable justification for the delay has been provided — namely, that the application is currently undergoing security screening by IRCC's partner agencies. As noted by the Applicant, the cause for the ongoing consultation with partner agencies appears to relate to a concern under section 37 of the *Immigration and Refugee Protection Act*, SC

2001, c 27, which addresses inadmissibility on grounds of organized criminality. The Respondent asserts that it is critical that the Court not abort or abbreviate investigations for inadmissibility and that the ability to make a final decision on the Applicant's application is subject to factors outside of IRCC's control.

[14] Unlike many cases before this Court where the Respondent simply makes a bald reference to the need for a security review to justify their delay, there is, in this case, some evidence as to the apparent nature of a security issue and steps taken by IRCC to follow up with their partner agencies. However, this evidence must be scraped out of the GCMS notes, as the Respondent did not file any affidavit evidence from anyone with actual knowledge of the processing of the Applicant's application to explain the delay. Moreover, there is no evidence of any steps taken by IRCC for a two-year period (from July 2022 until April 2024) to make further inquiries of their partner agencies regarding the status of this matter. Taken in its totality, I am not satisfied that the evidence before the Court is sufficient for me to find that IRCC has provided a reasonable justification for the entire period of delay [see *Jahantigh v Canada (Citizenship and Immigration)*, 2023 FC 1253 at paras 18–25].

[15] Notwithstanding these deficiencies in IRCC's evidence, I am not satisfied that the balance of convenience lies with the Applicant, as there is no evidence before me as to significant prejudice associated with the delay in processing his application. The Applicant's affidavit merely states, "[t]hese delays and the uncertainty about my future that the delays have prolonged have prevented me from being about [*sic*] to make important decisions for my life, my family and my business." This vague evidence is not sufficient to meet the Applicant's burden of demonstrating significant

prejudice. While there are certain hardships of a pending application that are evident from the record (such as the disruption caused by waiting for application approval), these do not translate to an entitlement to a writ of *mandamus*. Allegations of significant prejudice must be supported by evidence [see *Zarei v Canada (Citizenship and Immigration)*, 2024 FC 1513 at para 10]. For example, there is no evidence as to whether the Applicant has been separated from his wife during the processing of his application (as it is possible she has joined him in the United States) and there is no evidence as to how the delay has impacted his business or any specific "important decisions about [his] life". The evidence provided by the Applicant is simply insufficient to demonstrate significant prejudice arising from the delay.

[16] In the circumstances, I am not satisfied that the Applicant has demonstrated that a writ of *mandamus* is warranted and, accordingly, the application for judicial review shall be dismissed without prejudice to the Applicant's right to bring a further application for *mandamus* at a later point in time.

[17] The parties proposed no question for certification and I agree that none arises.

JUDGMENT in IMM-3611-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed without prejudice to the Applicant.

2. The parties proposed no question for certification and none arises.

"Mandy Aylen"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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