Federal Court  Cour fédérale

**Date: 20250410**

**Docket: IMM-9441-24**

**Citation: 2025 FC 671**

**Toronto, Ontario, April 10, 2025**

**PRESENT: The Honourable Madam Justice Turley**

**BETWEEN:**

**BEHROUZ TOUSI**
**SHAHRZAD FALAHATI**
**GANDOM TOUSI**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Overview

[1] The Principal Applicant Behrouz Tousi, his spouse, and their minor child [Applicants] seek an order of *mandamus* compelling the Respondent to make a decision on their applications for permanent residence, submitted February 10, 2020. They assert that Immigration, Refugees and Citizenship Canada [IRCC] has unreasonably delayed processing their applications.

[2] Along with three other individuals, the Principal Applicant applied for permanent residence under the start-up business class in accordance with subsection 98.01(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*]. These other individuals are not parties to this judicial review application and each submitted their own permanent residence applications.

[3] The delay in processing the Applicants' permanent residence applications is due to the ongoing security review of one of the Principal Applicant's business partners. This is because where there are multiple applicants designated as essential to the same start-up, the refusal of any one permanent residence application will result in the refusal of them all: *IRPR*, s 98.08(2).

[4] The Respondent argues that the Applicants' request for *mandamus* is "fatally flawed" because the Applicants have failed to adduce any evidence or arguments about the delay in processing the business partner's application. As further explained below, I do not agree. The *mandamus* jurisprudence makes clear that the authority responsible for the delay has the onus to provide a satisfactory explanation. Here, the Respondent had failed to provide a reasonable justification for the 62-month delay. This Court has repeatedly held that blanket statements regarding ongoing security checks are not a sufficient reason for visa processing delays.

[5] In the circumstances, I find that the balance of convenience favours the Applicants.

[6] I am granting the application. The Respondent must make a decision on the Applicants' permanent residence applications no later than 90 days from the date of this Judgment.

## II. Analysis

[7] The only issue for determination is whether the Applicants have established that an order of *mandamus* should be issued compelling the Respondent to make a decision on their permanent residence applications.

### A. The legal test for *mandamus*

[8] The legal test for an order of *mandamus* is well established. Eight preconditions must be satisfied:

(1) There must be a legal duty to act;

(2) The duty must be owed to the applicant;

(3) There must be a clear right to performance of that duty;

(4) Where the duty sought to be enforced is discretionary, certain additional principles apply;

(5) No other adequate remedy is available to the applicant;

(6) The order sought will have some practical value or effect;

(7) The Court finds no equitable bar to the relief sought; and

(8) On a balance of convenience an order of *mandamus* should be issued:

*Apotex v Canada (Attorney General)*, 1993 CanLII 3004 (FCA), [1994] 1 FC 742 (CA) at 766–769, aff'd 1994 CanLII 47 (SCC), [1994] 3 SCR 1100 [*Apotex*].

[9] To satisfy the third requirement above — a clear right to the performance of a public legal duty to act — applicants must establish that: (i) they have satisfied all the requirements for a decision to be made; (ii) they have made a prior request that a decision be made; and (iii) the decision-maker has either expressly refused to make a decision or has taken unreasonably long to do so: *Apotex* at 767.

[10] Furthermore, three requirements must be met for a delay to be considered unreasonable: (i) the delay in question has been longer than the nature of the process required, *prima facie*; (ii) the applicant is not responsible for the delay; and (iii) the authority responsible for the delay has not provided a satisfactory justification: *Conille v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 9097, [1999] 2 FC 33 at 43 [*Conille*].

[11] One line of this Court's jurisprudence requires that, in addition to the three *Conille* requirements, an applicant must also demonstrate significant prejudice resulting from the delay: *Ur Rehman v Canada (Citizenship and Immigration)*, 2025 FC 388 at para 11; *Chirum v Canada (Public Safety and Emergency Preparedness)*, 2025 FC 259 at para 15; *Alinejad v Canada (Citizenship and Immigration)*, 2024 FC 1994 at para 19; *Abbasy v Canada (Citizenship and Immigration)*, 2024 FC 1982 at para 6; *Bedard v Canada (Attorney General)*, 2024 FC 570 at para 32; *Ran v Canada (Citizenship and Immigration)*, 2023 FC 1447 at para 18; *Chen v Canada (Citizenship and Immigration)*, 2023 FC 885 at para 16; *Coderre v Canada (Office of the Information Commissioner)*, 2015 FC 776 at para 40.

[12] This additional requirement originates from *Vaziri v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1159 [*Vaziri*]. In that case, the Court relied on the Supreme Court's decision in *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 [*Blencoe*] in concluding that "a person seeking *mandamus* based on delay must also demonstrate significant prejudice which results from the delay": *Vaziri* at para 52.

[13] This fourth requirement, however, has not been applied in the preponderance of cases since *Vaziri*, see for example: *Jebelli v Canada (Citizenship and Immigration)*, 2025 FC 500 at para 16; *AR v Canada (Citizenship and Immigration)*, 2025 FC 236 at para 31; *Mamut v Canada (Citizenship and Immigration)*, 2024 FC 1593 at para 90 [*Mamut*]; *Hersy v Canada (Citizenship and Immigration)*, 2024 FC 789 at para 27; *Saravanabavanathan v Canada (Citizenship and Immigration)*, 2024 FC 564 at para 20 [*Saravanabavanathan*]; *Oladele v Canada (Citizenship and Immigration)*, 2022 FC 1161 at para 42; *Sharafaldin v Canada (Citizenship and Immigration)*, 2022 FC 768 at paras 36–37; *Aguirre v Canada (Citizenship and Immigration)*, 2021 FC 678 at para 23; *Thomas v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 164 at para 19; *Tameh v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 288 at para 29; *Douze v Canada (Citizenship and Immigration)*, 2010 FC 1337 at para 28.

[14] In my view, requiring applicants to establish significant prejudice as an additional factor in proving unreasonable delay is not justified for two reasons. First, this additional requirement is not relevant to or consistent with the three *Conille* requirements, which are concerned with the "reasonableness of the time taken to perform a statutory obligation": *Conille* at 43. Whether an applicant has suffered significant prejudice is not germane to this inquiry.

[15] Second, *Vaziri*'s reliance on *Blencoe* is misplaced. The issue in *Blencoe* was whether state-caused delay in human rights proceedings amounted to an abuse of process. The Supreme Court held that, where there is no prejudice to hearing fairness, the delay must be inordinate and must have caused significant prejudice to amount to an abuse of process: *Blencoe* at para 115. Thus, whether the delay caused significant prejudice is a separate and distinct consideration to whether the delay itself was unreasonable.

[16] As the Supreme Court subsequently explained, "[t]he requirement for significant prejudice is grounded in the foundations of the doctrine of abuse of process in administrative law": *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29 at para 67 [*Abrametz*]. Various remedies are available to remedy abuse of process, including *mandamus*. However, *mandamus* can be sought "even before an abuse of process exists": *Abrametz* at paras 80–81.

[17] Based on the foregoing, in my view, it is a misapplication of *Blencoe* to require that applicants demonstrate significant prejudice when seeking an order of *mandamus*. The requirement for significant prejudice to establish an abuse of process should not be incorporated into the *mandamus* test. Applicants should only be required to prove the three *Conille* requirements, as set out in paragraph 10 above, to establish unreasonable delay.

B. The Applicants are entitled to an order of *mandamus*

[18] This case turns on whether the delay in processing the Applicants' applications has been unreasonable, and where the balance of convenience lies.

(1) The delay in processing the applications is unreasonable

[19] I find that the Applicants have satisfied the three requirements set out in *Conille*.

(a) The delay is *prima facie* longer than the nature of the process requires

[20] This requirement is concerned with whether the delay clearly surpasses what would usually be required to process the type of application in question. As Justice Norris held, IRCC's published processing times "provide a helpful baseline understanding of average processing times in order to assess whether the specific delay in question is longer, *prima facie*, than is typically required": *Mamut* at para 94.

[21] The Applicants assert that the 62-month delay in their case is longer than what the nature of the process requires, *prima facie*. The average processing time for an application under the start-up class is 38–40 months. This satisfies me that the delay in processing the applications is longer than usual.

[22] The Respondent does not dispute this average timeframe but cites cases where significantly longer delays were found reasonable. However, whether more time is required than average due to security screening is properly considered under the third *Conille* requirement: *Mamut* at para 94.

(b) The Applicants are not responsible for the delay

[23] There is no suggestion that the Applicants are responsible for the delay in processing their applications. The evidence shows that the Applicants have responded to all of IRCC's requests for further information in a timely fashion. In fact, in December 2023, they were told that nothing more was required of them. Furthermore, the Applicants cannot be held responsible for the ongoing security review of the Principal Applicant's business partner.

[24] IRCC requested further information in December 2024 about undisclosed United States visa refusals, as well as the Principal Applicant's military service. The Respondent does not argue that the failure to provide this information at the outset renders the Applicants responsible for the delay. This request was made almost five years after their permanent residence applications were filed and cannot, in my view, be relied on to attribute the delay to the Applicants. Indeed, the jurisprudence seems to accept that the clock does not reset when IRCC requests additional information on permanent residence applications: *Fida v Canada (Citizenship and Immigration)*, 2024 FC 720 at para 29; *Abdalla v Canada (Citizenship and Immigration)*, 2011 FC 988 at para 16; *Latrache v Canada (Minister of Citizenship and Immigration)*, 2001 CanLII 22063 (FC) at paras 15–17.

(c) The Respondent has failed to justify the delay

[25] The Respondent argues that the Court cannot grant *mandamus* in this case because there is an "evidentiary vacuum". The basis for the delay in processing the Applicants' permanent residence applications is that the security review for one of the start-up's essential team members

is still in process. Pursuant to subsection 98.08(2) of the *IRPR*, refusing the application of any one essential member will result in the refusal of the whole team's applications. As a result, the Applicants must wait until the team member's security review is completed.

[26] This begs the question: who is responsible for the evidentiary vacuum? The Respondent argues that the Applicants failed to advance any evidence or argument about unreasonable delay, inaction, or bad faith in the processing of the other team member's application. On this basis, the Respondent asserts that "the Court has no basis to find an unreasonable delay and should not order the Respondent to do something which the law forbids": Respondent's Further Memorandum of Argument at para 19.

[27] The Respondent further argues that the Court is being asked to grant *mandamus* in a case that is not before it. The other team member whose application is holding up the processing is not a party to this application. At the hearing, the Respondent argued that the other team member should have also filed a judicial review application, which then could have been consolidated with the present case. They submit that this would have ensured that the Court had a proper record.

[28] I do not agree with the Respondent. Where, as here, the Respondent's delay is predicated on the processing of a related application, it was incumbent on the Respondent to explain that delay in this *mandamus* application. The third *Conille* requirement makes this clear — "the authority responsible for the delay has not provided a satisfactory justification": *Conille* at 43. The Respondent should have filed affidavit evidence explaining the delay. If there was information that

could not be disclosed for national security or other reasons, the Respondent could have invoked any relevant privilege.

[29] Furthermore, contrary to the Respondent's assertion, the Applicants are not asking the Court to order IRCC to do something that the law forbids. They are not asking for an order granting them permanent residence. Rather, they ask that IRCC make a decision one way or the other. The Applicants recognize that their applications are tied to two of the start-up's other essential members by virtue of subsection 98.08(2) of the *IRPR*, and that they risk being refused if either of those applications are rejected.

[30] The Respondent argues that, in any event, they provided a satisfactory justification for the delay — "background checks and security concerns are a necessary and important requirement under the *IRPA*, and may justify lengthy processing delays in permanent residence applications": Respondent's Further Memorandum of Argument at para 20. This Court, however, has repeatedly held that such blanket statements are insufficient: *Peng v Canada (Citizenship and Immigration)*, 2025 FC 2 at para 21; *Mamut* at para 103; *Sowane v Canada (Citizenship and Immigration)*, 2024 FC 224 at para 29; *Ghalibaf v Canada (Citizenship and Immigration)*, 2023 FC 1408 at para 14; *Jahantigh v Canada (Citizenship and Immigration)*, 2023 FC 1253 at paras 19–25 [*Jahantigh*]; *Bidgoly v Canada (Citizenship and Immigration)*, 2022 FC 283 at para 38; *Almuhtadi v Canada (Citizenship and Immigration)*, 2021 FC 712 at para 40.

[31] While the Respondent is correct that, in certain circumstances, an outstanding security check can justify delay, this must be accompanied by "some information about the review and the

reasons for its length": *Jahantigh* at para 20. Here, the Respondent has provided no such information.

[32] Finally, the Respondent relies on IRCC's December 2024 information request as an additional, secondary justification for the delay. However, as already discussed, this further request was made 58 months after the applications were filed and thus cannot justify the delay in processing up until then. The Respondent acknowledged in their oral submissions that if this was the only reason for the delay, they "would have weaker ground to stand on".

[33] For the foregoing reasons, I find that the Respondent has failed to provide a satisfactory justification for the 62-month delay in processing the Applicants' permanent residence applications.

(2) The balance of convenience lies in the Applicants' favour

[34] In considering this last *Apotex* factor for an order of *mandamus*, "courts retain the discretion to refuse to issue an order where the public interest outweighs the interests of those who would otherwise be entitled to the order": *Saravanabavanathan* at para 45, citing *Khalil v Canada (Secretary of State)*, 1999 CanLII 9360 (FCA), [1999] 4 FC 661 (CA).

[35] The Respondent has not "identified any public interest considerations that would cause the balance of convenience to tilt in their favour": *Saravanabavanathan* at para 47. They simply refer to the duty to ensure the integrity of the immigration system and the need to carefully review applications before granting visas: Respondent's Further Memorandum of Argument at para 31.

This, however, is always the case and does not, in and of itself, tip the balance in the Respondent's favour.

[36] The Applicants, on the other hand, have been waiting over five years for an answer on their permanent residence applications under the start-up business class. They explain that due to the delay, "their lives are on pause and their futures are uncertain": Applicants' Memorandum of Argument at para 28. They have diligently responded to requests for information and have regularly followed up with IRCC for status updates.

[37] The Respondent argues that the Applicants have not established significant prejudice: Respondent's Further Memorandum of Argument at para 33. However, the jurisprudence they rely on speaks of significant prejudice as a factor in assessing the reasonableness of the delay. As explained in paragraphs 11–17 above, in my view, this additional requirement is not justified. The Respondent has not cited any jurisprudence dictating that significant prejudice is necessary to find that the balance of convenience favours an applicant. While evidence of prejudice may favour the granting of relief, it is not required.

(3) Remedy

[38] The Applicants request that the Court order IRCC to render a decision on their applications within 30 days of the Court's Judgment. In the circumstances, however, I find that 90 days is a more appropriate timeframe.

## III. Conclusion

[39] The application is granted. The Applicants have met all the requirements for an order of *mandamus*. A decision must be made on their applications for permanent residence no later than 90 days from the date of this Judgment.

[40] The parties did not propose any question for certification, and I agree that none arise.

**JUDGMENT in IMM-9441-24**

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

1. The application for judicial review is granted.
2. A decision on the Applicants' applications for permanent residence must be made within 90 days from the date of this Judgment.
3. There is no question for certification.

"Anne M. Turley"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-9441-24 |
| **STYLE OF CAUSE:** | BEHROUZ TOUSI, SHAHRZAD FALAHATI, GANDOM TOUSI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
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