Federal Court Cour fédérale

Date: 20250721

Docket: IMM-9052-24

Citation: 2025 FC 1296

Ottawa, Ontario, July 21, 2025

PRESENT: Mr. Justice Gascon

BETWEEN:

A.B.C.D.

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION AND THE MINISTER OF FOREIGN AFFAIRS

Respondents

JUDGMENT AND REASONS

I. Overview

[1] The applicant, A.B.C.D. [hereafter referred to as Mr. D], is a citizen of Afghanistan. He has submitted an application for leave and judicial review to seek a writ of *mandamus* with directions compelling the respondents, the Minister of Citizenship and Immigration and the Minister of Foreign Affairs [together, the Ministers], to process his application for permanent

residence under the *Temporary Public Policy for the Resettlement of Afghan Nationals with a Significant and/or Enduring Relationship to Canada*, dated July 22, 2021 [Policy]. The Policy, which was established by Immigration, Refugees and Citizenship Canada [IRCC] pursuant to subsection 25.2(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] in July 2021, exempted eligible Afghan applicants from certain requirements under the IRPA and associated regulations to streamline their selection as Convention refugees. In the alternative, Mr. D. seeks a *mandamus* with directions compelling IRCC to grant him a Temporary Resident Permit [TRP] under subsection 24(1) of the IRPA.

[2] The Policy was put in place by the Canadian government following the withdrawal of international forces from Afghanistan in May 2021, which resulted in the Taliban regaining control of the country. This, according to Canada, created significant security concerns in Afghanistan. The Policy recognized the high vulnerability and elevated risk faced by individuals in Afghanistan who were associated with the Canadian government.

[3] This new temporary public policy was meant to facilitate the immigration of individuals with a significant and/or enduring relationship with the government of Canada, and their family members, as members of the Convention Refugees Abroad class. Under the Policy, individuals from Afghanistan could send what was internally known as an “expression of interest” to a Global Affairs Canada [GAC] email address to initiate a verification of their eligibility for IRCC’s application process. The expression of interest was then considered by GAC and/or the Department of National Defence [DND] to determine whether an individual had a significant and/or enduring relationship to Canada. After an initial favourable review by GAC and/or DND, an individual could be referred to IRCC. Once referred, IRCC would send the individual an

Invitation to Apply [ITA] with information on how to apply. At that stage, the individual could finally submit a formal application to IRCC under the Policy.

[4] The Ministers submit that Mr. D. fails to meet the test for *mandamus*, as he was never referred to IRCC by GAC or DND, and therefore did not receive an ITA. In light of this, argue the Ministers, there would be no legitimate expectation that Mr. D., who merely sent an expression of interest to a GAC email address, should be considered to have made an application for permanent residence under the Policy. In other words, the Ministers would owe no public legal duty to Mr. D. since he never truly applied under the Policy. The Ministers also argue that an order of *mandamus* would have no practical effect due to the Policy now being expired.

[5] This matter raises the following issues: (1) whether Mr. D. has met the test for the issuance of *mandamus*; (2) if *mandamus* is granted, whether it should be accompanied by certain directions; and (3) if *mandamus* is granted, whether costs should be awarded to Mr. D.

[6] For the reasons that follow, Mr. D.'s application for judicial review will be granted in part. In essence, the Ministers failed to carry out what the Policy required them to do. Based on the evidence and the law, I am satisfied that Mr. D. meets the requirements of the test for an order of *mandamus*. The Ministers are clearly accountable for the preliminary steps pre-ITA, meaning that GAC owes Mr. D. a public legal duty to process his expression of interest. *Mandamus* is also of practical effect here, since I will direct that GAC and IRCC (if there is a referral) consider Mr. D.'s application under the initial version of the Policy as it existed on August 3, 2021 — the date on which Mr. D. submitted his expression of interest. In my view, Mr. D. should not be unfairly prejudiced by the passage of time between GAC's negligence to

process his expression of interest and the date at which the cap of accepted applicants under the Policy was allegedly reached.

[7] This is a situation that warrants the Court's intervention and the issuance of orders ensuring that Mr. D.'s expression of interest will be promptly processed by GAC and IRCC, if he is referred. I also find that, in the circumstances, an award of costs in the amount of $15,000 is warranted.

II. Background

A. *The factual context*

(1) The Policy

[8] On July 23, 2021, IRCC, GAC, and DND jointly announced a special program to resettle certain Afghans who were integral to Canada's efforts in Afghanistan [July 2021 News Release]. The corresponding Policy was created on July 22, 2021 under subsection 25.2(1) of the IRPA. Its stated rationale was that "Afghan nationals in Afghanistan with a significant and/or enduring relationship with the Government of Canada will face an increased risk of being targeted for attacks and assassination campaigns due to the perception by insurgents that they have supported 'western interests'." However, the Policy itself was not made public at the same time as the July 2021 News Release, and was only published more than a year later, on August 29, 2022.

[9] The Policy allowed IRCC officers to exempt eligible Afghan nationals and their accompanying family members (as well as certain other members of their family) from some of the requirements of the IRPA and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], in order to facilitate their resettlement to Canada as permanent residents under the Convention Refugees Abroad class. Due to their activities on the ground in Afghanistan, GAC and DND were identified as referral partners for this Policy.

[10] The role of GAC and DND was to refer individuals to IRCC whom they determined had a significant and/or enduring relationship to Canada. To this end, GAC implemented and managed the "Canada-Afghanistan@international.gc.ca" mailbox [GAC Mailbox] for the purpose of receiving inquiries from Afghans about the Policy for both themselves and DND. At this stage, emails to the GAC Mailbox were considered "expressions of interest" and did not constitute a formal application under the Policy.

[11] Upon receiving referrals from GAC or DND, IRCC verified that the referred individual had not been the subject of a previous referral, had not made a previous application, and did not already have status in Canada. IRCC then issued the individual an ITA based on the program's capacity, with instructions on how to apply.

[12] Upon reception of an ITA, individuals then submitted a completed application to IRCC. Once received, IRCC confirmed that the individual's name was on the referral list, created an application in the Global Case Management System, and sent an acknowledgement of receipt to the individual containing their application number. A Unique Client Identifier would be generated at this point if the individual was not already a client in the system.

[13] The Policy was initially set to expire on January 21, 2022 or when a 2,500 cap of applicants was met. It was subsequently renewed by a series of other temporary public policies, with new expiration dates and revised caps. However, the Policy and those that followed it were not available to the public until August 29, 2022. Neither the new expiration dates nor the revised caps were published on IRCC's website before then, except for IRCC publishing a document mentioning an overall cap of 18,000 applicants in April 2022. In other words, only the July 2021 News Release was public before August 29, 2022.

[14] On March 29, 2023, IRCC published a final "update and clarification" of the Policy. At the outset, this updated Policy clarified that IRCC had received enough referrals to meet its goal. That said, IRCC would continue issuing ITAs to referred individuals and processing applications accepted for processing by IRCC that were pending as of April 1, 2023. IRCC finally specified that this final iteration of the Policy would end on September 30, 2023, or once the total number of applications accepted into processing by IRCC under all editions of the Policy reached 20,600 individuals, whichever came first, with the view to fulfill the commitment of 18,000 admissions.

[15] On October 30, 2023, IRCC published a news release announcing that it had officially met its commitment to welcome 40,000 Afghans, and that the Policy was coming to an end. I pause to observe that, as acknowledged by counsel for the Ministers at the hearing, the record contains no evidence on the exact date on which any of the contemplated caps were actually reached.

(2) Mr. D.'s "application"

[16] Mr. D. is an Afghan citizen. He previously worked for an Afghan company that had a contract with the Canadian Armed Forces [CAF] in Afghanistan. Following the fall of the Afghan government in May 2021, Mr. D. found himself at risk from the Taliban due to his connection with the CAF.

[17] Mr. D. learned of the Policy through discussions with his CAF former supervisor and colleagues who also applied to come to Canada under the same policy. Five of his former colleagues who applied just as he did eventually received ITAs. Three of his former colleagues have arrived in Canada and now live in the country as permanent residents, while the other two's applications remain in process after having been issued ITAs.

[18] On August 3, 2021, Mr. D. followed IRCC's instructions about applying under the Policy and submitted his expression of interest. IRCC's website at the time indicated that the entry point to the resettlement program was to send an email to the GAC Mailbox. This was the sole entry point under the Policy. In his email, Mr. D. included the requested information for his eligibility to the program. He then received an autoreply requesting the same information he had already submitted. The email stated that once the details were received, the "application would be processed to assess eligibility and you will be contacted should we require anything further." Mr. D. again provided the information and received another autoreply.

[19] Since his initial email on August 3, 2021, Mr. D. has received almost only autoreplies, despite 17 follow-up inquiries to GAC and IRCC. He remains in Afghanistan to this day. He also

contacted IRCC, since GAC's website indicated that questions should be emailed to IRCC's "IRCC.SituationAfghanistan.IRCC@cic.gc.ca" mailbox. In his follow-up emails, Mr. D. restated that he was in grave danger and offered further documentation of his work for the Canadian government, including a letter of his recommendation from his CAF supervisor. Furthermore, in response to a follow-up email to GAC on October 3, 2021, he received an autoreply stating that the GAC Mailbox was no longer being monitored. This autoreply also reiterated that his "application" would be processed to assess eligibility and that he would be contacted if anything else was required. Various autoreplies from IRCC also repeatedly told him to "[r]est assured" that IRCC "will respond shortly" and that "IRCC continues to process applications on a priority basis."

[20] In April 2022, IRCC published a "transition binder" mentioning that the Policy was subject to an 18,000 cap. IRCC did not, however, personally inform Mr. D. that his "application" was not being considered due to the cap.

[21] On October 16, 2023, after being redirected to IRCC by GAC three days earlier, Mr. D. once again contacted IRCC, only to receive an autoreply including a disclaimer that not everyone who expresses an interest in resettlement will receive an ITA, that the 18,000 cap was met, and that he will not be able to receive a confirmation that an ITA was sent to him. Mr. D.'s former CAF supervisor also assisted him in contacting IRCC twice, and IRCC responded either with general information that applications are still being processed or with an autoreply.

(3) IRCC, GAC, and DND's investigation

[22] On April 2, 2024, counsel for Mr. D. sent a demand letter to IRCC requesting a decision regarding Mr. D.'s application and in the alternative, a TRP. IRCC responded on April 25, 2024, stating that Mr. D. did not have an "application" with IRCC and that he needed to have received an ITA to be able to apply under the Policy.

[23] In June 2024, a subsequent investigation by IRCC confirmed that there was no record of Mr. D. ever having been referred to IRCC by GAC or DND, and that he was therefore never issued an ITA. GAC and DND also personally reviewed their records and reaffirmed that they did not refer Mr. D. to IRCC. According to IRCC, emails to the GAC Mailbox were considered expressions of interest and did not constitute a proper "application" under the Policy. While the autoreplies from the GAC Mailbox continuously referred to an "application," the term was not meant in the formal sense of the word. According to the Ministers, simple language was used to recognize that individuals expressing an interest in the Policy may not have a sophisticated understanding of English or French.

B. *Relevant provision*

[24] The relevant provision is subsection 25.2(1) of the IRPA:

Public policy considerations	**Séjour dans l'intérêt public**
25.2 (1) The Minister may, in examining the circumstances concerning a foreign national who is inadmissible or who does not meet the	**25.2 (1)** Le ministre peut étudier le cas de l'étranger qui est interdit de territoire ou qui ne se conforme pas à la présente loi et lui octroyer le

requirements of this Act, grant that person permanent resident status or an exemption from any applicable criteria or obligations of this Act if the foreign national complies with any conditions imposed by the Minister and the Minister is of the opinion that it is justified by public policy considerations.	statut de résident permanent ou lever tout ou partie des critères et obligations applicables, si l'étranger remplit toute condition fixée par le ministre et que celui-ci estime que l'intérêt public le justifie.

III. Analysis

A. Mandamus *will be granted*

[25] In essence, the Ministers submit that Mr. D. fails to meet the test for *mandamus*, as he was never referred to IRCC by GAC or DND, and therefore never received an ITA allowing him to formally apply under the Policy. As a result, say the Ministers, the Court could not consider that there was any legitimate expectation that Mr. D.'s expression of interest to the GAC Mailbox was to be treated as a genuine application for permanent residence. In other words, the Ministers would owe no public legal duty to Mr. D., since he never submitted an "application" under the Policy. The Ministers also contend that an order of *mandamus* would have no practical effect due to the Policy having expired. A Court order compelling GAC to refer Mr. D. to IRCC would thus be of no effect, as no additional individuals can be accepted under the Policy.

[26] With respect, I am not persuaded by the Ministers' arguments. I rather find that Mr. D. has met the test for *mandamus*.

(1) The requirements for an order of *mandamus*

[27] An order of *mandamus* is an extraordinary remedy under which the Court "can compel the performance of a clear affirmative legal duty by a public authority" (*Ahousaht First Nation v Canada (Fisheries, Oceans and Coast Guard)*, 2019 FC 1116 at para 73 [*Ahousaht*]). 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" (*Wasylynuk v Canada (Royal Mounted Police)*, 2020 FC 962 at para 76 [*Wasylynuk*]). As summarized by Justice Andrew D. Little in *Wasylynuk*, 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" (*Wasylynuk* at para 76).

[28] The test for determining whether the Court should exercise its discretion to issue a writ of *mandamus* is set out in *Apotex Inc v Canada (Attorney General)*, 1993 CanLII 3004 (FCA), [1994] 1 FC 742 (FCA) [*Apotex*], aff'd [1994] 3 SCR 110. In *Apotex*, the Federal Court of Appeal stated that the following cumulative conditions must be satisfied before a court can issue a writ of *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 the 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, the following rules apply:

(a) in exercising a discretion, the decision-maker must not act in a manner which can be characterized as "unfair", "oppressive" or demonstrate "flagrant impropriety" or "bad faith";

(b) *mandamus* is unavailable if the decision-maker's discretion is characterized as being "unqualified", "absolute", "permissive" or "unfettered";

(c) in the exercise of a "fettered" discretion, the decision-maker must act upon "relevant", as opposed to "irrelevant", considerations;

(d) *mandamus* is unavailable to compel the exercise of a "fettered discretion" in a particular way; and

(e) *mandamus* is only available when the decision-maker's discretion is "spent"; i.e., the applicant has a vested right to the performance of the duty.

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;

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

[Citations omitted.]

(*Ahousaht* at para 72, citing *Apotex* at pp 766–769).

[29] These requirements have repeatedly been confirmed by the Federal Court of Appeal, namely, in *Right to Life Association of Toronto v Canada (Attorney General)*, 2022 FCA 220 at paragraph 17, in *Hong v Canada (Attorney General)*, 2019 FCA 241 at paragraph 10, in *Canada*

(Health) v The Winning Combination Inc, 2017 FCA 101 at paragraph 60, and in *Lukacs v Canada (Transportation Agency)*, 2016 FCA 202 at paragraph 29.

(2) GAC's failure to discharge its public legal duty

[30] For the following reasons, I find that GAC failed to discharge its duty towards Mr. D. to assess the expression of interest he duly transmitted to the GAC Mailbox.

(a) *GAC's public legal duty to consider expressions of interest*

[31] In my view, there can be no doubt that GAC had, at the very least, a public legal duty to consider expressions of interest made before the Policy's cap was reached. Under the Policy, IRCC expressly tasked GAC and DND with assessing incoming inquiries to determine whether a significant and/or enduring relationship to Canada existed, and with referring the names of Afghan nationals to IRCC when they met that criterion. IRCC then had a legal duty to issue an ITA to qualifying applicants and to decide their application upon reception. It is also undisputed that the GAC Mailbox was the sole point of entry to determine eligibility under the Policy. This means that GAC had a duty to open and assess emails sent to the GAC Mailbox.

[32] The Ministers argue that a duty to act was only engaged once IRCC issued an ITA to qualifying applicants. I agree with Mr. D. that such a view is nonsensical. Irrespective of how they are referred to, duly completed expressions of interest were preliminary applications that were initiated to receive an ITA. They were a necessary step to submit a formal application for permanent residence. Put simply, the multi-step process under the Policy was an integrated

continuum where each step, starting with the expression of interest, was linked to the preceding or following ones. In sum, the preliminary steps were applications in themselves, which is demonstrated by the use of the word “application” in the autoreplies from the GAC Mailbox.

[33] The Policy’s multi-step application process cannot have the effect of absolving GAC from having a legal duty to act at certain stages of the process. Acknowledging that GAC had no legal duty for the pre-ITA period of the Policy’s application process would create a built-in shield against accountability to Afghans whose lives Canada announced were at risk because of their connection to Canada. The Court cannot condone this. This would not only be contrary to the Policy itself but also contrary to the policy objectives of the IRPA. Paragraph 3(1)(f) of the IRPA requires that immigration goals be subject to “consistent standards and prompt processing,” while paragraph 3(1)(f.1) requires that the integrity of the Canadian immigration system be maintained through “the establishment of fair and efficient procedures.”

[34] The structure of a given administrative process cannot have the effect of immunizing decisions from judicial review. This would undermine the role of reviewing courts as guarantors of the rule of law, one aspect of which is the enforcement of executive accountability to legal authority and the protection of individuals from arbitrary executive action (*Tsleil-Waututh Nation v Canada (Attorney General)*, 2017 FCA 128 at para 78, citing *Reference Re Secession of Quebec*, 1998 CanLII 793 (SCC), [1998] 2 SCR 217 at para 70; see also *TVA Publications inc c Procureur général du Québec*, 2025 QCCS 943 at para 69). In consequence, when an administrative process provides for preliminary steps that gatekeep the rest of the process — such as an expression of interest under the Policy, these preliminary steps must accordingly be part of the decision subject to judicial review. For instance, this is why the Court may review

decisions of the Canadian Human Rights Commission not to refer a complaint to the Canadian Human Rights Tribunal (see, for example, *Canada (Attorney General) v Ennis*, 2021 FCA 95).

[35] However, I wish to be clear that, as is the case with formal applications for permanent residence, GAC's duty towards expressions of interest was merely to assess them, no more and no less. Its duty was not to refer all interested Afghan nationals to IRCC. It rather had to process all expressions of interest received before the Policy's cap was met, decide whether to refer, and, at the very least, inform unreferred Afghans that they did not qualify under the Policy (*Sowane v Canada (Citizenship and Immigration)*, 2024 FC 224 at para 21 [*Sowane*]; *Bidgoly v Canada (Citizenship and Immigration)*, 2022 FC 283 at para 30). In the case of expressions of interest made after the cap was reached, an automatic message that the cap was full might have sufficed.

[36] Finally, as will be explained below, GAC's public legal duty towards expressions of interest is also grounded on and informed by the doctrine of legitimate expectations.

(b) *A duty is owed to Mr. D.*

[37] Mr. D. submits that the Ministers owe him a duty of procedural fairness based on his legitimate expectation that his expression of interest would be processed. I agree. There was a legitimate expectation that GAC would assess Mr. D.'s expression of interest dated August 3, 2021 and that, if he were to be referred to IRCC, he would receive an ITA.

[38] The doctrine of legitimate expectations is part of the rules of procedural fairness. It provides that, if a public authority has made representations about the procedure it will follow in

making a particular decision, or if it has consistently adhered to certain procedural practices in the past in making such a decision, the scope of the duty of procedural fairness owed to the affected person will be broader than it otherwise would have been. The practice or conduct said to give rise to the reasonable expectation must be "clear, unambiguous and unqualified" (*Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras 94–95).

[39] However, the doctrine of legitimate expectations does not create substantive rights, and it cannot hinder the discretion of a decision maker responsible for applying the law (*Moreau-Bérubé v New Brunswick (Judicial Council)*, 2002 SCC 11 at para 78; *Re Canada Assistance Plan (BC)*, 1991 CanLII 74 (SCC), [1991] 2 SCR 525 at pp 557–558). Moreover, the representations must be within the scope of the government official's authority, be procedural in nature, and not conflict with the government official's statutory duty (*Canada (Attorney General) v Mavi*, 2011 SCC 30 at para 68).

[40] In the present matter, the Ministers created legitimate expectations by virtue of adopting the Policy, which contains clear, unambiguous, and unqualified representations about the expedited application process for the resettlement of Afghan nationals who have a significant and/or enduring relationship with the Canadian government. The Policy explicitly provides that eligible applicants must have been referred to IRCC by GAC or DND following an assessment confirming their significant and/or enduring relationship with the Canadian government. In addition, while the Policy was enacted under IRCC's statutory authority, GAC and DND are nevertheless bound by the legitimate expectations IRCC created. As indicated by the July 2021 News Release, the Policy was conceived and implemented by all three ministers, and GAC and DND were delegated the authority to vet and refer prospective applicants.

[41] Pursuant to the Policy, Mr. D. was clearly owed a legal duty to have his expression of interest assessed. The Ministers do not contest that Mr. D. followed the appropriate steps to start the preliminary application process under the Policy. On August 3, 2021, Mr. D. sent his expression of interest with the required information to the GAC Mailbox, which is what IRCC's website requested at the time. He then received an autoreply confirming that his expression of interest would be processed. There was nothing more Mr. D. could do.

[42] In short, Mr. D.'s preliminary application step was complete. This does not mean that Mr. D. was bound to receive a referral, but he could reasonably expect GAC to decide on whether to refer him. This is further demonstrated by GAC's referral of his colleagues to IRCC — who had applied under the Policy in early August 2021, at the same time as Mr. D.. This confirms Mr. D.'s legitimate expectations that he would be subject to the very same process as his colleagues, although it does not ensure he would receive a positive determination at the referral stage. I pause to observe that the evidence before the Court undoubtedly points towards a conclusion that Mr. D. effectively qualified under the Policy.

[43] The Ministers' various autoreplies further reaffirmed the existence of legitimate expectations. In these autoreplies, IRCC stated more than once that Mr. D. should "[r]est assured that we have received your email and that we will respond to your enquiry shortly" and that "IRCC continues to process applications on a priority basis." Yet, IRCC never responded to Mr. D., and it ultimately turned out that it never began processing his application due to GAC's failure. Incidentally, the autoreplies from the GAC Mailbox kept referring to Mr. D.'s "application," thus conveying every indication that he had truly made an "application" under the Policy. On this point, the Ministers state that the word "application" was used to simplify the

process and that it was important to use simple language as Afghans may lack proficiency in English or French. Leaving aside the serious doubts I have about this explanation, this does not change the fact that the word used in communicating with Mr. D. was “application” and that it clearly supports the existence of a legal duty owed to him.

[44] At the hearing, the Ministers stressed that interest in the Policy was “extremely high” and that not every expression of interest could be considered before the cap was reached. I do not accept this argument. According to the evidence, the Policy was kept secret until August 27, 2022 for security reasons. Of course, the Ministers had every right to keep the cap a secret. But, in deciding to do so, they cannot argue that the hidden cap can serve to erase the legal duty they had towards Mr. D., as he had no way of knowing a cap existed until the publication of IRCC’s transition binder in April 2022, at the very earliest. I further point out that the autoreplies received by Mr. D. never mentioned a cap until October 2023.

[45] In any event, Mr. D. sent his expression of interest less than two weeks after the opening of the resettlement program. The Ministers offered no evidence that the cap was already full by the time GAC received Mr. D.’s expression of interest. It is also highly unlikely that, on August 3, 2021, his expression of interest had fallen outside the 18,000 cap that was later put in place. Consequently, the GAC could not refuse to consider Mr. D.’s expression of interest on the mere pretext that a cap was already reached.

(c) *There is a clear right of performance*

[46] For there to be a clear right of performance, an applicant must have satisfied all conditions precedent giving rise to the public legal duty. In addition, the following conditions must also be met: (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 express refusal or implied refusal through, among other things, unreasonable delay (Apotex at p 767; *Ahousaht* at para 72).

[47] I agree with Mr. D. that, in this case, he has a clear right of performance of GAC's duty to assess his expression of interest and of IRCC's duty to send him an ITA (if he is referred). I also note that the Ministers offer no substantive arguments on the issue of performance. They only submit that there is no clear right of performance due to there being no public legal duty.

[48] First, on no less than 18 occasions, Mr. D. requested that the Ministers perform their legal duty after he initially submitted his expression of interest on August 3, 2021. He almost exclusively received autoreplies. Moreover, it was reasonable for Mr. D. to also contact IRCC as to his expression of interest, as GAC's website indicated that questions should be directed to IRCC's "IRCC.SituationAfghanistan.IRCC@cic.gc.ca" mailbox. What is more, Mr. D. even tried to offer further documentation to facilitate the process, namely, a letter of his recommendation from his CAF supervisor, who herself also reached out to IRCC in his stead. There was nothing more that Mr. D. could reasonably do. He had demanded for performance of the Ministers' duty, but was stuck at the entry point of the Policy's application process, with no way forward.

[49] Second, Mr. D. allowed a reasonable time for the Ministers to comply with his demand. Mr. D. has gone years without a response to his expression of interest. On April 2, 2024, his counsel even sent a formal demand letter to IRCC that included the full timeline of the events and requested that a decision be rendered no later than May 8, 2024. His counsel also warned IRCC that she would apply for a *mandamus* if it did not comply. I observe that, even though GAC oversaw expressions of interest, Mr. D. had no choice but to contact IRCC instead of GAC. The GAC Mailbox was no longer monitored at the time, and Mr. D. was redirected to IRCC when he contacted GAC through another manner on October 13, 2023.

[50] Third, IRCC's response to Mr. D.'s demand letter on April 25, 2024 constitutes an express refusal. In its response, IRCC was content with stating that Mr. D. was never referred for consideration under the Policy and did not receive an ITA, meaning that, in IRCC's eyes, he never formally applied. There is no evidence that IRCC attempted to verify whether GAC even opened Mr. D.'s email containing his expression of interest as well as his follow-up emails. In other words, based on the evidence at hand, IRCC did not attempt to rectify GAC's negligence. Mr. D. was left with no choice but to bring this application for judicial review before this Court. In passing, I agree with Mr. D. that there would also be a clear implied refusal through unreasonable delay.

(3) The issue of whether GAC's duty is discretionary

[51] Before the hearing, counsel for Mr. D. notified the Court that she inadvertently omitted to discuss the fourth criterion of the *mandamus* test in her further memorandum. On this point, she asked the Court to rely on the submissions in her memorandum regarding the Ministers' duty

towards Mr. D.. Counsel for the Ministers consented to this, but did not offer any submissions of his own on this specific element of the test.

[52] A brief review of this Court's jurisprudence reveals that the criterion as to the discretionary nature of a duty is rarely subject to substantive discussion, let alone applied in requests for *mandamus*. Nonetheless, I will summarily address it below.

[53] As a reminder, where the duty at issue is discretionary, the following rules apply: "(a) in exercising a discretion, the decision-maker must not act in a manner which can be characterized as 'unfair', 'oppressive' or demonstrate 'flagrant impropriety' or 'bad faith'; (b) mandamus is unavailable if the decision-maker's discretion is characterized as being 'unqualified', 'absolute', 'permissive' or 'unfettered'; (c) in the exercise of a 'fettered' discretion, the decision-maker must act upon 'relevant', as opposed to 'irrelevant', considerations; (d) mandamus is unavailable to compel the exercise of a 'fettered discretion' in a particular way; and (e) mandamus is only available when the decision-maker's discretion is 'spent'; i.e., the applicant has a vested right to the performance of the duty" (*Apotex* at pp 767–768; *Ahousaht* at para 72). Importantly, this criterion only applies when the duty sought to be enforced is discretionary in nature.

[54] Here, I do not find that this criterion applies in this case. The duty sought to be enforced in this matter is GAC's duty to process Mr. D.'s expression of interest and decide whether to refer him to IRCC. By virtue of the legitimate expectations flowing from the Policy, this duty is not discretionary. Provided that the cap was not reached — and there is no evidence that it was, GAC must assess Mr. D.'s expression of interest. GAC does not have any choice in this matter.

This is similar to the duty to process a regular application for permanent residence. The visa officer's duty to assess under subsection 11(1) of the IRPA is not discretionary.

[55] Conversely, GAC and DND have full discretion to determine whether an expression of interest qualifies under the Policy and warrants a referral to IRCC. Such an act is truly discretionary in nature.

(4) The lack of other adequate remedies

[56] I agree with Mr. D. that he has no other available remedy under the Canadian immigration system, as regular immigration pathways are not meant for his situation. Subsection 25.2(1) of the IRPA expressly provides for the adoption of public policies granting permanent residence to individuals who are inadmissible or, in the case of Mr. D., do not meet the requirements of the IRPA. Here, the Ministers created the Policy for the purpose of circumventing the regular immigration process, given the dire circumstances in which certain Afghan nationals having assisted the Canadian government found themselves.

(5) Practical effects

[57] The Ministers submit that an order of *mandamus* would have no practical effect due to the Policy having long expired. According to them, any Court order would be of no effect, since no additional individuals can be accepted under the Policy.

[58] With respect, I do not agree. It is true that an order of *mandamus* to expedite a decision made under a program that no longer exists would typically have no practical effect. However, there are tools available to the Court to circumvent such a situation.

[59] After the hearing, I directed the parties to provide written submissions on whether the following two cases could have any bearing on this issue: *Saeedy v Canada (Citizenship and Immigration)*, 2025 FC 354 [*Saeedy*] and *Ramizi v College of Immigration and Citizenship Consultants*, 2025 FC 692 [*Ramizi*].

[60] *Saeedy* concerns the judicial review of the decision of an IRCC officer rejecting an application for permanent residence via another temporary public policy pursuant to subsection 25.2(1) of the IRPA. Mr. Saeedy's application was rejected because his required language test was taken after the date of his application, whereas the test had to be done beforehand.

[61] On judicial review, Justice Negar Azmudeh found that there was a breach of procedural fairness because there were legitimate expectations that Mr. Saeedy's application was being evaluated for its substance and that some level of flexibility was being offered due to the unprecedented times of COVID-19. Justice Azmudeh also found that the 28-month delay in rejecting the application after the program's end effectively deprived Mr. Saeedy of a meaningful opportunity to pursue his application. In other words, had the decision been made earlier while the program was still in existence, Mr. Saeedy could have reapplied if he was initially rejected. Importantly, Justice Azmudeh nevertheless remitted the matter for reconsideration, even though the temporary public policy at issue no longer existed (*Saeedy* at paras 26, 33, 50).

[62] In *Ramizi v College of Immigration and Citizenship Consultants*, 2025 FC 692 [*Ramizi*], Justice Michael Battista left the door open for a directive compelling a decision maker to consider an application as it existed at the time it was made. In *Ramizi*, the matter was a judicial review of the College of Immigration and Citizenship Consultants' [CICC] refusal to allow Mr. Ramizi to rewrite the examination to become an immigration consultant. One of the main issues was whether the matter was moot or futile based on the lack of an effective remedy. The concern was that even if the decision was quashed, it would be pointless to remit the matter because Mr. Ramizi would still be blocked from retaking the exam, given that his educational credential was completed more than three years ago. CICC policy requires that the exam be written within three years of a candidate's completion of their required educational credential.

[63] After explaining the conceptual distinction between mootness and effectiveness of remedy, Justice Battista went on to stress that, prior to dismissing a judicial review application due to an ineffective remedy, the Court should consider its powers under paragraph 18.1(3)(b) of the *Federal Courts Act*, RSC 1985, c F-7 [FC Act] to remit with directions or to issue declaratory relief. In that case, if there was a breach of fairness, the Court could quash the CICC's decision and remit the matter with a direction that the CICC consider Mr. Ramizi's request based on the circumstances that existed at the time he made the request, i.e., with an unexpired educational qualification. Such a direction would ensure that Mr. Ramizi "is not prejudiced by the passage of time since the breach and render the remedy effective" (*Ramizi* at paras 40–41).

[64] In support of the above proposition, Justice Battista refers to *Elahi v Canada (Citizenship and Immigration)*, 2011 FC 858 at paragraph 26 [*Elahi*], in which Justice Richard Mosley remitted a matter to the Immigration and Appeal Division [IAD] with a direction to apply the

IRPR as it read when Ms. Elahi initiated her appeal and it was first determined by the IAD. Otherwise, Justice Mosley asserted that "[n]ot to do so would render the remedy which the applicant obtained on this application a nullity and deny her natural justice" (*Elahi* at para 26).

[65] In his post-hearing submissions, Mr. D. submits that both *Saeedy* and *Ramizi* present relevant considerations. He explains that these decisions involve situations where the applicants would no longer qualify for their initial application due to the passage of time since their application was made, which could have rendered their right to judicial review illusory. In his opinion, *Saeedy* and *Ramizi* support the Court's ability to issue a direction that would place him in the same legal position that he would have been had no error occurred on GAC's end. In short, he believes that the Court is empowered to "turn back the legal clock."

[66] In response, the Ministers argue that neither *Saeedy* nor *Ramizi* are favourable to Mr. D.'s case. With respect to *Saeedy*, they believe that the situation in that case is distinguishable from the present matter: (i) the Policy's program requirements and procedure remained consistent throughout the various updates to the Policy, and GAC and IRCC did not provide Mr. D. with inaccurate information in relation to his "expression of interest;" and (ii) in *Saeedy*, there was no evidence that redetermination would necessarily result in a refusal by IRCC due to a cap being reached. As for *Ramizi*, they explain that the Court was dealing with the judicial review of an administrative decision — as opposed to a writ of *mandamus*, and that in any case, *Ramizi* stands for the proposition that the Court must decline to remit when faced with an ineffective remedy, which is the case here since the cap has been met (*Ramizi* at para 35).

[67] In my view, it is within the Court's power to "turn back the clock" and issue a direction compelling that the Policy be applied as it stood at the time of Mr. D.'s expression of interest. *Ramizi* may not be squarely on point here, but its principles are persuasive. I acknowledge that there is a difference between a writ of *mandamus* and the judicial review of an administrative decision. The former serves to compel a decision maker to render a decision, while the latter is the review of an existing decision. That said, both seek judicial oversight by the courts. *Ramizi* emphasizes the importance of considering whether an ineffective remedy can be made effective before dismissing an application for judicial review by declining to remit (*Ramizi* at para 40).

[68] I also find that *Saeedy* is relevant to the present matter. Contrary to the present case, it appears that the consequences of the temporary public policy's expiration in *Saeedy* was not a live issue subject to debate by the parties. Nonetheless, this decision is a sound illustration that the Court should not shy away from remitting an application under a temporary public policy on the grounds that the policy has expired, if the applicant could have had their application processed in time had it not been for the decision maker's fault. I am also not persuaded that *Saeedy* is distinguishable on the basis that there is evidence here that IRCC will inevitably refuse to process Mr. D.'s referral. There is no such evidence. Provided that the Court directs that the Policy be revived for the purposes of Mr. D.'s application, IRCC may well accept to do so. If not, IRCC may consider other possible solutions, including the issuance of a TRP to Mr. D..

[69] Dismissing Mr. D.'s application based on a lack of practical effects would effectively encourage public authorities to neglect the processing of applications under temporary programs for as long as it takes for the programs to expire. Here, the Ministers are solely responsible for why there would normally be no practical effects. They failed to do what they were tasked to do

under the Policy. Mr. D. sent his expression of interest on August 3, 2021, well before the 18,000 cap was met. Had GAC not been remiss in its duty to open his email upon receipt on August 3, 2021, Mr. D. would have likely been referred to IRCC and then subsequently issued an ITA, alongside his five colleagues who were issued ITAs before the cap was met. GAC even admitted in one of its autoreplies that it willingly stopped monitoring its own GAC Mailbox and has offered no justification whatsoever.

[70] Following *Ramizi* and *Saeedy*, I will direct that GAC and IRCC (if there is a referral) consider Mr. D.'s application under the initial version of the Policy as it existed on August 3, 2021. Such a conclusion is essential to render the order of *mandamus* effective. It will ensure that Mr. D. is not irredeemably prejudiced by the passage of time between GAC's negligence to process his expression of interest and the point at which the cap was reached.

[71] Considering the above, I find that an order of *mandamus* would have practical effects. Mr. D. still resides in Afghanistan. He affirms that he remains in danger in Afghanistan due to his prior work for the Canadian government. For example, he maintains that he and his family received death threats at their home and were forced to escape to another city. Mr. D. likely still qualifies under the Policy, as his connection to Canada is unchanged. An order of *mandamus* compelling GAC to process Mr. D.'s expression of interest could lead to a referral to IRCC, the reception of an ITA, and then finally an application for permanent residence, with the benefit of the various statutory and regulatory exemptions provided for by the Policy. In the alternative, if Mr. D. is referred but IRCC refuses or is unable to reopen the Policy for the purpose of processing his application, it has discretion to at least partly remedy this unfortunate situation through other means, such as the issuance of a TRP.

(6) No equitable bar to the relief sought

[72] The Ministers do not raise the existence of any equitable bar to the relief sought.

(7) Balance of convenience

[73] Mr. D. argues that the balance of convenience favours issuing *mandamus* since he is at risk in Afghanistan, while the Ministers are not at any risk in processing his expression of interest. The Ministers merely repeat that not all prerequisites for the issuance of a *mandamus* are met and that an order of *mandamus* would have no practical effect.

[74] There can be no doubt that the balance of convenience tilts in Mr. D.'s favour. I am mindful of the fact that a long and arduous administrative process does not necessarily mean that an applicant is automatically entitled to a writ of *mandamus* (*Sowane* at para 34; *Jia v Canada (Citizenship and Immigration)*, 2014 FC 596 at para 91). However, this is not a situation in which an applicant seeks relief due to unnecessary delay in an application process. Here, Mr. D.'s preliminary application was stuck at the very beginning of the applicable process because of gross governmental negligence in the implementation of a program that no longer exists. If the Court does not grant the relief sought by Mr. D. in some fashion, he will never have the benefit of a fair process and the possibility of seeing the light at the end of the tunnel, i.e., an ITA enabling him to finally apply for permanent residence.

(8) Conclusion on *mandamus*

[75] For the above reasons, I find that Mr. D. has satisfied the test for *mandamus*.

[76] The Ministers correctly point out that a *mandamus* cannot compel the exercise of a discretion in a particular way, and cannot dictate the result to be reached (*Canada (Chief Electoral Officer) v Callaghan*, 2011 FCA 74 at para 126). *Mandamus* therefore cannot be used to compel GAC to make a positive determination that Mr. D.'s expression of interest demonstrates a significant and/or enduring relationship to Canada. Nor can *mandamus* be used to compel IRCC to issue Mr. D. an ITA. However, while Mr. D. is not entitled to a particular result, he certainly has a right to a proper and fair process under the Policy.

[77] I therefore find it warranted to issue the following orders: (i) an order compelling GAC to process Mr. D.'s expression of interest and determine whether to refer him to IRCC within 30 days of this Court's decision; (ii) provided that he is referred, an order compelling IRCC to process his referral and determine whether to issue him an ITA within 30 days of his referral; and (iii) provided that he is issued an ITA, an order compelling IRCC to process and determine his application for permanent residence within 30 days of the reception of his application.

B. *Other directions to be issued*

[78] Mr. D. also asks this Court to issue other directions compelling GAC to refer him to IRCC and ordering IRCC to issue him an ITA or, in the alternative, a TRP.

[79] I do not find that these directions are warranted in the circumstances, as they would effectively amount to a directed decision by the Court.

[80] Paragraph 18.1(3)(b) of the FC Act provides that the Court may, on judicial review, "quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate […] a decision, order, act or proceeding of a federal board, commission or other tribunal" [emphasis added]. However, the Court should exercise considerable restraint in issuing directions that amount to a directed decision, as it gives rise to concerns about the Court accomplishing indirectly what it is not authorized to do directly, namely, substituting its own decision for that made by the decision maker by compelling the decision maker to reach a specific conclusion (*Shekhtman v Canada (Citizenship and Immigration)*, 2018 FC 964 at para 35).

[81] In the same vein, the Supreme Court has warned courts to respect the legislative intent to entrust the matter to the decision maker, unless a particular outcome is inevitable and redetermination would serve no useful purpose (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 139–142 [*Vavilov*]).

[82] The possibility of rendering a directed decision or an "indirect substitution" is an exceptional power that should be exercised sparingly and only in the clearest of circumstances (*Canada (Minister of Human Resources Development) v Rafuse*, 2002 FCA 31 at para 14 [*Rafuse*]). This will be the case, for example, when one particular outcome is inevitable (*Vavilov* at para 142; *Canada (Citizenship and Immigration) v Tennant*, 2019 FCA 206 at para 72). That

said, directing a particular result is rarely appropriate where the issue is essentially factual in nature (*Rafuse* at para 14; *Hoffman v Canada (Attorney General)*, 2023 FC 1103 at para 24).

[83] In this case, the question of whether Mr. D. has a significant and/or enduring relationship to Canada is entirely factual in nature. While he may likely qualify under the Policy based on the evidence before the Court, it will not be incumbent on the Court to decide so. This is for GAC and IRCC to determine.

[84] However, as explained earlier, I must issue a direction that, when processing Mr. D.'s expression of interest, GAC will apply the Policy as it read on August 3, 2021, i.e., the day Mr. D. submitted his expression of interest. IRCC will also have to apply the Policy in the same manner if Mr. D. is referred and receives an ITA.

C. *An award of costs is warranted*

[85] Mr. D. also asks for an order of costs, due to the Ministers' inaction. To be clear, he has no reproaches against counsel for the Ministers before this Court; his complaints are directed to the administrative decision makers. Mr. D. seeks a cost award of $31,150, representing legal fees equal to 66% of the hourly rates normally charged by his counsel, for all the time spent on the matter.

[86] In immigration matters, an award of costs is subject to section 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, which provides that no costs shall be awarded on applications for leave and judicial review but for "special reasons."

[87] It is trite law that the threshold for establishing the existence of "special reasons" is high (*Mamut v Canada (Citizenship and Immigration)*, 2024 FC 1593 at para 128 [*Mamut*]; *Ghaddar v Canada (Citizenship and Immigration)*, 2023 FC 946 at para 45 [*Ghaddar*]; *Almuhtadi v Canada (Citizenship and Immigration)*, 2021 FC 712 at para 56; *Taghiyeva v Canada (Citizenship and Immigration)*, 2019 FC 1262 at para 17; *Aleaf v Canada (Citizenship and Immigration)*, 2015 FC 445 at para 45).

[88] These "special reasons" can pertain, among others, to the nature of the case, to the behaviour of the applicant, to the behaviour of the minister(s) or of an immigration official, or to the behaviour of counsel (*Ndungu v Canada (Citizenship and Immigration)*, 2011 FCA 208 at para 7; *Jahazi v Canada (Citizenship and Immigration)*, 2024 FC 2072 at para 23; *Radiyeh v Canada (Citizenship and Immigration)*, 2022 FC 1234 at para 34).

[89] I observe that costs have regularly been awarded on the basis of excessive delay caused by immigration decision makers in cases of *mandamus* (*Mamut* at paras 129–130; *Amawla v Canada (Citizenship and Immigration)*, 2024 FC 1132 at paras 28–29 [*Amawla*]; *Ghaddar* at paras 46–49; *Samideh v Canada (Citizenship and Immigration)*, 2023 FC 854 at paras 46–48; *Tameh v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 288 at para 78; *Aghdam v Canada (Public Safety and Emergency Preparedness)*, 2011 FC 131 at paras 21–22).

[90] In *Sachdeva v Canada (Citizenship and Immigration)*, 2024 FC 1522 at paragraph 69, I also recently summarized other circumstances where there may be "special reasons":

> Conduct that amounts to "special reasons" for costs may include the following: unnecessarily or unreasonably prolonging proceedings, acting unfairly, oppressively, or improperly, engaging

> in conduct that was actuated by bad faith, and undermining the judicial system's integrity (*Canada (Public Safety and Emergency Preparedness) v Oko-Oboh*, 2022 FC 740 at para 10, citing *Taghiyeva* at para 18 and *Mayorga v Canada (Citizenship and Immigration)*, 2010 FC 1180 at paras 21, 47; *Dhaliwal v Canada (Citizenship and Immigration)*, 2011 FC 201 at para 31). This Court has also found "special reasons" where there has been reprehensible, scandalous, or outrageous conduct on the part of a party (*Kaur v Canada (Citizenship and Immigration)*, 2024 FC 1155 at para 22, citing *Toure v Canada (Citizenship and Immigration)*, 2015 FC 237 at para 16).

[91] Here, I do not dispute that, in handling this matter before the Court, the Ministers cannot be said to have unnecessarily or unreasonably prolonged the legal proceeding once it began, or to have acted in an unfair, oppressive, or improper manner, or in bad faith. However, what is at issue is the conduct of GAC and IRCC in handling Mr. D.'s "expression of interest." In my view, the unfortunate conduct observed in this case deserves a cost award to Mr. D.

[92] There can be no doubt that Mr. D. has suffered from excessive delay. He first contacted the Ministers in August 2021, in the very early days of the Policy. He then contacted them 17 additional times, never receiving a response other than autoreplies saying that his "application" was being considered — while it was not. The autoreplies continuously promised a response, which never came until the day the Ministers advised Mr. D. that the Policy in which he had diligently expressed interest was now full. Mr. D. and his family have been waiting for almost four years to be resettled in Canada.

[93] As in *Amawla*, I am satisfied that costs are justified not only based on the length of the delay, but also based on the regrettable fact that many of Mr. D.'s requests and queries during the

application process were ignored (*Amawla* at para 29), or cavalierly dealt with through autoreplies conveying inaccurate information. What is more, the Ministers have failed to provide any evidence explaining the failure to ever respond to Mr. D.'s expression of interest. GAC confirmed that it never referred Mr. D. to IRCC but offered no explanation whatsoever. Faced with exceptional delay, the Ministers had to adduce evidence offering a compelling explanation (*Ghaddar* at para 47). General statements from autoreplies that the cap was full are not sufficient, especially since Mr. D. sent his expression of interest less than two weeks after the Policy began. As I held in *Sowane*, "blanket statements" about delays are wholly inadequate (*Sowane* at para 29). More is needed to justify exceptional delay.

[94] Furthermore, the Ministers unnecessarily and unreasonably prolonged the matter. While they cannot be faulted for their conduct during the proceeding before the Court, this litigation should not have been before the Court at all. They could have remedied the situation once the issue was formally brought to IRCC's attention in the demand letter on April 2, 2024. Following the demand letter, IRCC could have requested explanations from GAC and rectified the situation in an appropriate manner. Instead, IRCC chose not to deal with Mr. D.'s case, taking the position that it has no legal duty to act unless it issued an ITA. On this point, I note that the Certified Tribunal Record from IRCC is non-existent, which points to a lack of efforts by IRCC to meaningfully discuss with GAC regarding Mr. D.. In short, this litigation was wholly unnecessary and represents a failure by the Ministers of their self-imposed duty towards Afghans with a significant connection to the Canadian government.

[95] For all the above reasons, I agree with Mr. D. that an award of costs is warranted. In the exercise of my discretion, I will award costs to be paid by way of a lump sum, in accordance

with subsection 400(4) of the *Federal Courts Rules*, SOR/98-106, and I will fix them at the all-inclusive amount of $15,000.

IV. Conclusion

[96] For the reasons set forth above, Mr. D.'s application for judicial review is granted in part. An order of *mandamus* will be issued as follows: (i) GAC must process Mr. D.'s expression of interest and determine whether to refer him to IRCC within 30 days of this Court's decision; (ii) provided that he is referred, IRCC must process his referral and determine whether to issue him an ITA within 30 days of his referral; and (iii) provided that he is issued an ITA, IRCC must process and determine his application for permanent residence within 30 days of the reception of his application. In addition, I will direct that GAC and IRCC (if there is a referral) consider Mr. D.'s application under the initial version of the Policy as it existed on August 3, 2021. Finally, I will award costs to Mr. D. in the all-inclusive amount of $15,000.

[97] Moreover, I will not be certifying Mr. D.'s proposed questions pursuant to paragraph 74(d) of the IRPA, as explained below.

V. Certified Questions

[98] Mr. D. proposes the following certified questions:

> Does a legitimate expectation arise that an "application" will be reviewed under an IRCC emergency public policy when IRCC promises an applicant to engage with them prior to a formal application being submitted?

> If so, does this legitimate expectation give rise to a public legal duty to act before a formal application is received?

[99] In *Tesfaye v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 2040 at paragraph 76, I recently summarized the test for a certified question:

> [76] According to paragraph 74(d) of the IRPA, a question can be certified by the Court if "a serious question of general importance is involved." To be certified, a question must be a serious one that: (i) is dispositive of the appeal; (ii) transcends the interests of the immediate parties to the litigation; and (iii) contemplate an issue of broad significance or general importance (*Mason* at para 37; *Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at para 46; *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at para 36; *Mudrak v Canada (Citizenship and Immigration)*, 2016 FCA 178 at paras 15–16 [*Mudrak*]; *Zhang v Canada (Citizenship and Immigration)*, 2013 FCA 168 at para 9 [*Zhang*]). The question must also have been dealt with by the Court, and it must arise from the case rather than from the Court's reasons (*Obazughanmwen v Canada (Public Safety and Emergency Preparedness)*, 2023 FCA 151 at para 28 [*Obazughanmwen*]; *Mudrak* at para 16; *Zhang* at para 9; *Varela v Canada (Citizenship and Immigration)*, 2009 FCA 145 at para 29). Finally, and as a corollary of the requirement that it be of general importance, it must not have been previously settled in an earlier appeal (*Obazughanmwen* at para 28; *Rrotaj v Canada (Citizenship and Immigration)* 2016 FCA 292 at para 6; *Mudrak* at para 36; *Krishan v Canada (Citizenship and Immigration)* 2018 FC 1203 at para 98; *Halilaj v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 1062 at para 37).

[100] Here, I find that the questions proposed by Mr. D. do not meet the criteria for certification.

[101] The questions proposed by Mr. D. are highly fact-specific due to the uniqueness of the Policy's application process. The Policy was an extraordinary resettlement program in the

unusual context surrounding the fall of the Afghan government at the hands of the Taliban. While other temporary public policies for other countries exist (e.g., Ukraine), there is no evidence that their application process is anywhere nearly as convoluted as the one before this Court. I am not convinced that the questions transcend the interests of the immediate parties to this case or that they contemplate an issue of broad significance or general importance. Moreover, the proposed questions would not be dispositive of the appeal in light of the considerations other than "legitimate expectations" that underlie this decision.

[102] I will therefore not certify Mr. D.'s proposed questions.

JUDGMENT in IMM-9052-24

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted in part.

2. Global Affairs Canada is ordered to process the Applicant's expression of interest made on August 3, 2021 under the *Temporary Public Policy for the Resettlement of Afghan Nationals with a Significant and/or Enduring Relationship to Canada*, dated July 22, 2021, and to determine whether to refer him to Immigration, Refugees and Citizenship Canada within 30 days of this Court's decision.

3. Provided that the Applicant is referred by Global Affairs Canada, Immigration, Refugees and Citizenship Canada is ordered to process the Applicant's referral and to determine whether to issue him an Invitation to Apply under the *Temporary Public Policy for the Resettlement of Afghan Nationals with a Significant and/or Enduring Relationship to Canada*, dated July 22, 2021, within 30 days of his referral.

4. Provided that the Applicant is issued an Invitation to Apply, Immigration, Refugees and Citizenship Canada is ordered to process and determine the Applicant's application for permanent residence within 30 days of the reception of his application.

5. When processing the Applicant's expression of interest and application in accordance with the above paragraphs, Global Affairs Canada and Immigration, Refugees and Citizenship Canada shall apply the *Temporary Public Policy for the Resettlement of*

Afghan Nationals with a Significant and/or Enduring Relationship to Canada, dated July 22, 2021, as it read on August 3, 2021.

6. The Respondents shall pay to the Applicant costs in the all-inclusive, lump-sum amount of $15,000.

7. There is no question of general importance to be certified.

"Denis Gascon"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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