Federal Court Cour fédérale

Date: 20250902

Docket: IMM-16175-24

Citation: 2025 FC 1450

Ottawa, Ontario, September 2, 2025

PRESENT: The Honourable Mr. Justice Thorne

BETWEEN:

YONGGUANG ZHU

Applicant

and

THE MINISTER OF IMMIGRATION

JUDGMENT AND REASONS

I. Overview

[1] This is an application seeking an Order in the nature of *mandamus* to compel Immigration, Refugees and Citizenship Canada [“IRCC”] to render a decision in respect of the Applicant’s outstanding application for permanent residence [“PR”], which had been submitted over six years ago.

[2] For the reasons that follow, the application is dismissed as moot, as IRCC has already issued the PR decision.

II. Background

[3] The Applicant is a citizen of China who has lived with his family in Saskatchewan since April 2014. In February 2019, he submitted an application for permanent residence through the Saskatchewan Immigrant Nominee Program under the Entrepreneur Category. Over five years then passed without a decision being issued.

[4] The Applicant filed an application to this Court on August 30, 2024, seeking an order of *mandamus* to force a decision to immediately be rendered [the "*mandamus* application"].

[5] On May 26, 2025, the Court granted leave on the *mandamus* application. However, a decision was rendered a few days later in relation to the Applicant's outstanding PR application: by letter dated May 29, 2025, the IRCC refused the permanent residence application [the "Decision"]. In particular, this Decision found that the Applicant had submitted fraudulent documentation and was inadmissible to Canada, as per paragraph 40(1)(a) of the *Immigration and Refugee Protection Act* (S.C. 2001, c. 27).

[6] A week after having received the Decision letter, the Applicant filed a second, new Application for leave and for judicial review to this Court, in order to seek judicial review of the May 29, 2025 refusal Decision [the "second judicial review application"]

[7] However, the Applicant did not discontinue the present *mandamus* application, and nor did their legal representative advise either this Court or the Respondent of the second judicial review application. Instead, on June 26, 2025, the Applicant filed a motion asking the Court to

proceed with this *mandamus* application, arguing alternatively that it was not moot, or that it was in the interests of justice to determine the *mandamus* application despite the fact that it was moot. The motion then asked this Court, in the *mandamus* application, to essentially judicially review the refusal Decision, which it argues was unreasonable.

III. Preliminary Issue – The Motion is dismissed due to abuse of process

[8] The motion is dismissed on the grounds of abuse of process.

[9] In the hearing of this matter, the Applicant argued that the *mandamus* application was not moot, and that the Court should now judicially review the refusal decision, since the Decision had been issued almost immediately after the Applicant had been granted leave in relation to the *mandamus* Application. They argued that the Respondent's conduct in doing this had been improper, and that this rendered the Decision unreasonable and provided grounds for the Court to judicially review it.

[10] The Respondent argued that the *mandamus* application was now moot, since the relief sought by the Applicant – that a decision be rendered in his PR application – has since been issued. The Respondent further asserted that the Applicant is now seeking to fundamentally transform both the subject matter and relief requested in the *mandamus* application. They note that the Applicant is now asking the Court to judicially review the refusal decision, despite that no leave has been granted by the Court for such a judicial review to take place, and despite that the Applicant has also launched a separate, second judicial review specifically to challenge the refusal Decision – which has also not yet received leave to proceed. They assert that the motion

is an abuse of process which would result in duplicative judicial proceedings, waste judicial resources, and could result in the court issuing multiple or conflicting orders on the duplicate proceedings and thereby place the integrity of the administration of justice into disrepute.

[11] I have little difficulty in dismissing the Applicant's motion as an abuse of process. In essence, the Applicant seeks court scrutiny of the reasonableness and procedural fairness of the same decision in separate proceedings. They do this by requesting the outright transformation of one proceeding from a *mandamus* application into a judicial review of the now-rendered PR Decision that the *mandamus* application had originally been brought to prompt, while at the same time bringing a separate judicial review of the refusal Decision. I note that the Applicant also did not bring to this Court's attention the existence of the second judicial review application. Instead, that was initially done by the Respondent, who had further advised the Applicant that their *mandamus* application was moot. The Applicant was obviously also aware of the appropriate avenue to challenge the refusal decision – in a new judicial review application – as they sought to do just that, but they also proceeded to bring this motion. This attempt to have two kicks at the proverbial can in reviewing the refusal decision, and to further circumvent the Court's leave requirement constitutes a clear abuse of process.

[12] The doctrine of abuse of process is a flexible doctrine rooted in a judge's "inherent and residual discretion to prevent abuse of the court's process": *Behn v Moulton Contracting Ltd.*, 2013 SCC 26 at para 39 citing *Toronto (City) v C.U.P.E., Local 79*, 2003 SCC 63 at para 35. A multiplicity of proceedings is not always an abuse of process, however: *Saskatchewan*

(Environment) v Métis Nation – Saskatchewan, 2025 SCC 4 at para 39. Indeed, the doctrine requires an analysis beyond the number or similarity of proceedings, as that case further notes:

> [40] […] the analysis needs to focus on whether allowing the litigation to proceed would violate such principles as judicial economy, consistency, finality and the integrity of the administration of justice, as discussed above. Where, for example, having duplicative proceedings would waste the resources of the parties, courts and witnesses, or risk inconsistent results and therefore undermine the credibility of the judicial process, this can amount to an abuse of process.

[13] The situation at hand occasions all of those consequences.

[14] I also note that the jurisprudence of both this Court, and the Federal Court of Appeal makes clear that an application for *mandamus* cannot simply be repurposed and converted into an application for judicial review of the related decision, as the Applicant's motion seeks to do. In the words of my colleague, Madam Justice Strickland, in the similar matter of *Mao v Canada (Citizenship and Immigration)*, 2025 FC 932:

> [24] Finally, I note that even if the Applicant does not agree with the IRCC's decision refusing her student visa, that is not relevant to the disposition of this application. That is because an application for *mandamus* cannot be converted into an application for judicial review of the resulting decision. A change in the subject matter of the judicial review is essentially a new judicial review. A new application for leave and judicial review would be required and leave would have to be granted before that issue could be addressed by the Court (*Zaghbib v Canada (Minister of Public Safety and Emergency Preparedness)*, 2016 FCA 182 at para 51 – 54, citing *Figueroa v Canada (Foreign Affairs and International Trade)*, 2015 FC 1341, *Farhadi v Canada (Citizenship and Immigration)*, 2014 FC 926 and Rule 302 of the *Federal Courts Rules*).

[15] I accordingly dismiss the Applicant's motion.

IV. The Matter is Moot

[16] The decision sought by the Applicant, to determine the outcome of his permanent resident application, has been issued. There remains no live controversy concerning the issuance of that decision. I further decline to exercise my discretion to hear this moot matter, given all of the circumstances.

[17] The two-part test for whether a case may be heard by the court is set out in *Borowski v Canada (Attorney General)*, 1989 CanLII 123 (SCC) 1 SCR 342 [*Borowski*]. At part one of the test, the Court asks whether there is a "live controversy" that affects or may affect the rights of the parties. If not, then the matter is moot. However, the Court may nonetheless decide to exercise its discretion to proceed with the hearing at the second prong of the test based on the consideration of three factors: (1) whether an adversarial context continues to exist between the parties; (2) concern for judicial economy; and (3) whether by ruling on the matter, the Court would be intruding on the legislature's law-making role: *Borowski* at pp. 358-362; cited recently by Justice Go in *Tetreault v Canada (Attorney General)*, 2025 FC 1337.

[18] The Decision sought was rendered on May 29, 2025, so there is no live controversy in relation to its issuance. Indeed, the entire point of the Applicant's *mandamus* application was to prompt the immediate issuance of a decision in relation to his languishing permanent resident application. Yet the Applicant now argues that the IRCC having done exactly what he had sought constitutes improper conduct on the part of the Respondent. In short, the Applicant has achieved exactly what he set out to attain through his *mandamus* application – to have a decision rendered in his long-delayed matter. The issue is that he understandably did not like the outcome of the

Decision. This may be, and if the Applicant wishes to challenge that Decision, he is free to seek to do so through the proper process: another judicial review of the refusal Decision. The Applicant has done this. It cannot be said that a live controversy remains in this, his *mandamus* application.

[19] In the context of this *mandamus* application, I agree that an Applicant "who brings an application for mandamus to force a decision maker to make a decision cannot complain when the decision maker makes the decision before being ordered to do so by the Court": *Zaghbib v Canada (Public Safety and Emergency Preparedness)*, 2016 FCA 182 at paras 45 to 46. Incidentally, I also note that a decision-maker's response to an application for *mandamus* is not by itself evidence of bad faith: *Zaghbib v Canada (Public Safety and Emergency Preparedness)*, 2016 FCA 182 at para 45.

[20] Regardless, it is clear that the Applicant has preserved their rights by seeking leave for judicial review of the refusal Decision, through which Court scrutiny of that Decision and an appropriate remedy may be obtained.

[21] Finally, I note that considerations of whether an adversarial context continues to exist between the parties, concerns for judicial economy and whether the Court would be somehow intruding on the legislature's law-making role, all militate toward not exercising my discretion to hear this moot matter. I accordingly will not do so.

V. Costs

[22] The Applicant in this matter occasioned an abuse of process by essentially seeking to convert his *mandamus* application into a judicial review of the refusal Decision, while simultaneously launching a second judicial review of that Decision. This was done despite being informed by the Respondent that his *mandamus* application was moot. The Applicant also failed to advise the Court of the existence of the second judicial review, until his hand was forced by the Respondent discovering the second judicial review and themselves alerting the Court. The Court has made clear that there is no dispute that in the context of a *mandamus* application it is appropriate, and indeed necessary, for the parties to keep the Court advised of any change in the status of the matter that might affect the order requested: see *Conille v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 168 at paras 47–48; *Mao v Canada (Citizenship and Immigration)*, 2025 FC 932 at para 19; *Barampahije v Canada (Citizenship and Immigration)*, 2025 FC 1163 at para 10.

[23] Given these factors, the Respondent submits that it should be entitled to costs, on a solicitor and client basis, particularly considering the lack of merit of the motion, and what it describes as clear Federal Court of Appeal precedent holding that *mandamus* applications cannot simply be converted to wholly different judicial review proceedings. It requests costs in the amount of $1,250.

[24] The Applicant argues that they believe that the *mandamus* application was not moot, and that given the delay in the Respondent issuing the permanent resident application decision, they should be entitled to costs against the Respondent. The Applicant also states that while they did

not seek to discontinue their *mandamus* application upon receiving the permanent resident Decision, neither did the Respondent file a motion to do so, prior to the hearing.

[25] I have already found that the Applicant's motion constituted an abuse of process, and I have no hesitation in concluding, with reference to Rule 401 of the *Federal Courts Rules* (SOR/98-106), that this was a motion that should not have been brought. However, I note that the Applicant is correct that the Respondent also took no steps to have the m*andamus* application discontinued prior to the hearing. As a result, the award of costs issued pursuant to Rule 400 will be lower than it otherwise would have been. I find it just and reasonable to award costs in favour of the Respondent, fixed in an all-inclusive, lump sum amount of $500, payable within 30 days.

VI. Conclusion

[26] For the reasons set out above, this application for *mandamus* is dismissed. The parties proposed no question for certification, and I agree that none arises.

JUDGMENT in IMM-16175-24

THIS COURT'S JUDGMENT is that:

1. The Applicant's motion is dismissed.
2. The application for *mandamus* is dismissed.
3. No question of general importance is certified.
4. The Applicant shall pay to the Respondent costs fixed in the amount of $500, payable within 30 days.

"Darren R. Thorne"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-16175-24
STYLE OF CAUSE:	YONGGUANG ZHU V. MINISTER OF CITIZENSHIP & IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	AUGUST 20, 2025
REASONS AND JUDGMENT:	THORNE J.
DATED:	SEPTEMBER 2, 2025

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