Federal Court Cour fédérale

Date: 20250926

Docket: IMM-18191-24

Citation: 2025 FC 1590

Saskatoon, Saskatchewan, September 26, 2025

PRESENT: Madam Justice Go

BETWEEN:

SEYED MOSTAFA SALEHI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Seyed Mostafa Salehi [Applicant], a citizen of Iran, seeks a writ of *mandamus* compelling Immigration, Refugees and Citizenship Canada [IRCC] to decide his application for Canadian permanent residence [PR] visa under what was then called the Start Up Business Class Program [PR application]. The current name of the program is the Start-up Visa program. The Applicant submitted his PR application in August 2020.

[2] The Applicant's PR application is being determined alongside three other individuals who applied for their PR visas as essential members under the same start-up business. The Applicant's PR application is being held up due to security concerns regarding one of the essential applicants [Essential Applicant]. By the time the Applicant filed his application for leave and judicial review, his PR application had been in process for 51 months.

[3] While I am somewhat sympathetic to the Applicant's situation, I dismiss the application for the reasons set out below.

II. Preliminary Issues

[4] On September 20, 2025, the Respondent sought to file an affidavit of Judith Boer, counsel at the Department of Justice [Boer Affidavit], in which Ms. Boer declared that on September 19, 2025, her office received an email from a litigation analyst at IRCC stating that a Procedural Fairness Letter [PFL] has been sent to the Essential Applicant. The Boer Affidavit attached as exhibits, a copy of the PFL and a screenshot of the processing time for PR applications under the Start-up Visa program as of September 19, 2025 [Screenshot]. The Respondent sought the Court's permission to admit the Boer Affidavit into evidence.

[5] According to the Boer Affidavit and the PFL dated September 18, 2025, IRCC found that there are reasonable grounds to believe that the Essential Applicant in question may be inadmissible under paragraph 35(1)(b) of the *Immigration and Refugee Protection Act*, SC 2001, c.27 [*IRPA*]. IRCC gave the Essential Applicant 45 days from the date of the PFL to submit additional material.

[6] At the hearing, counsel for the Respondent argued the Court should admit the Boer Affidavit because the PFL is highly relevant and should be considered by the Court. The Respondent submitted that the purpose of the Boer Affidavit is to advise the Court of the existence of the PFL. Pursuant to subsection 98.08(2) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*], if one essential member of the start-up business is refused, all other applicants involved would also be refused. The fact that the PFL was sent is thus highly relevant.

[7] While the counsel for the Applicant did not expressly object to the admission of the late-filed PFL, he argues that the Court should note it as evidence of the Respondent acting in bad faith. Among other things, the Applicant's counsel argued that without the accompanying Global Case Management System [GCMS] notes, the Court cannot be certain that IRCC has indeed sent the PFL to the Essential Applicant, nor would the Court know if the Essential Applicant has received the PFL. Counsel further submitted that as noted in the PFL, IRCC cited, as the basis for their inadmissibility concern, the designation by the Minister of Public Safety [Minister] of the Iranian regime under paragraph 35(1)(b) of the *IRPA* as a government that, in the opinion of the Minister, engages or has engaged in terrorist activities and systemic or gross human rights violations. The Minister made the designation on November 14, 2022. Then on September 15, 2024, the Minister brought forward the start date of the designation of the Iranian regime to June 23, 2003, making any senior officials who served in the Iranian government at any time since that date inadmissible to Canada. Counsel for the Applicant submitted that in light of the above, the IRCC was aware of the Minister's designation since November 14, 2022, yet they waited until just days before the hearing before the Court to issue the PFL.

[8] Counsel for the Applicant further argued that, given the heavy redactions in the PFL, including a redaction of the identity of the person to which the PFL was addressed, the Court has no way of knowing whether the letter was in fact issued to the Essential Applicant as stated in the Boer Affidavit.

[9] While I find counsel for the Applicant may legitimately question the timing of the PFL and the lack of the GCMS notes, I find his supposition that Essential Applicant may not have been the actual recipient of the PFL problematic to say the least. In effect, the Applicant's counsel, as an officer of the court, was making an allegation against a fellow officer of the court of misleading the Court by filing a PFL unrelated to the case at hand. I note further that in the Boer Affidavit, Ms. Boer, herself a lawyer, made clear that the PFL pertains to "one of the applicants who applied together with the Applicant under the start up visa program." Yet, without any evidence, counsel for the Applicant accused the Respondent of filing a PFL that belongs to another applicant, contrary to Ms. Boer's sworn statement in her affidavit. The Court reminds counsel the importance of making submissions based on actual evidence, and not based on supposition that has no factual grounding.

[10] This allegation aside, I do not find the Applicant's arguments persuasive. While the Minister's designation took place in November 2022, it only began to take effect in September 2024. I acknowledge that this does not explain the apparent lack of action on the part of IRCC between August 2020 and now. However, without having access to the immigration records of the Essential Applicant, I am also not in a position to assess what was the source of the delay in

that file, and whether it was due to the Essential Applicant's own conduct, the IRCC or the latter's partner agency.

[11] While the Boer Affidavit was filed late, I admit it as evidence because the information contained within was not made available to the Respondent until September 19, 2025, and the information reflected in the PFL is relevant to the issues at hand. I also note that previously, the Respondent filed an affidavit of Michael Duguay, an acting Immigration Case Processing Officer at the IRCC [Duguay Affidavit] in which Mr. Duguay noted that the security screening for the Essential Applicant was initiated on March 2, 2023, and on August 8, 2025, IRCC received recommendations from partner with regard to the Essential Applicant. The Duguay Affidavit added that the file was then transferred to a visa office for further processing. The additional materials in the Boer Affidavit allow the Court to have the most up-to-date information regarding the processing of the Essential Applicant's application, which affects the timing of the processing of the Applicant's PR application.

[12] As to the Applicant's argument of bad faith, I adopt Justice Conroy's comment in her just released decision in *Doust v Canada (Citizenship and Immigration)*, 2025 FC 1546 at para 26: "I would agree that the timing of the issuance of the PFL on the eve of this hearing leaves the impression that the Respondent or its security partners may be dragging their feet. However, I am not prepared to make a finding of bad faith based on this alone [citation omitted.] While tardy, the PFL provides some justification for the delay."

[13] As I advised the parties at the hearing, I do not admit into evidence the Screenshot for two reasons. First, I do not find the information about the current processing time of the PR visa applications under the Start-up Visa program particularly relevant in my determination. Second, the Respondent referred to the 53-month processing time in their written submission. They could have included the Screenshot with the Duguay Affidavit but chose not to. The Respondent fails to provide any explanation for the late filing of this evidence.

[14] In conclusion, I admit the Boer Affidavit into evidence with the exception of paragraph 3 and Exhibit "B."

III. Analysis

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

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

1. There must be a public legal duty to act;
2. The duty must be owed to the applicant;
3. There is a clear right to performance of that duty;
4. Where the duty sought to be enforced is discretionary, consideration must be given to the nature and manner of exercise of that discretion;
5. No other adequate remedy is available to the applicant;
6. The order sought will be of some practical value or effect;

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

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

1. The delay in question has been longer than the nature of the process required, *prima facie*;
2. The applicant and his counsel are not responsible for the delay; and
3. The authority responsible for the delay has not provided satisfactory justification.

[18] Based on the parties' submissions, the contentious issues in this case are as follows:

a. Was there an unreasonable delay?
b. Did the Respondent fail to discharge a public legal duty to act owed to the Applicant?
c. Was there a procedural fairness breach?
d. Does the balance of convenience favour the Applicant?

A. *Was there an unreasonable delay?*

[19] The Applicant submits that the delay of about 51 months after submitting the PR application is unreasonable, considering the regular processing time for similar applications was 6 months when he applied. The Applicant cites *Mersad v Canada (Citizenship and Immigration)*, 2014 FC 543 at para 17 where the Court found that the respondent's initial time estimate can be used to gauge what reasonable amount of time should be required. The Applicant also references *Samideh v. Canada* (Citizenship and Immigration), 2023 FC 854 at para 29,

where the Court observed a 54-month delay for an application with the average processing time of 12 months and found a *prima facie* delay longer than the nature of the process required.

[20] The Applicant further argues that he and his counsel are not responsible for the delay because he submitted a complete application and complied with the IRCC requests. Rather, the Respondent is responsible for the delay and has not provided satisfactory justification even when they received a demand letter from the Applicant.

[21] I note the Court found in *Bidgoly v Canada (Citizenship and Immigration)*, 2022 FC 283 [*Bidgoly*] at para 33, each case turns on its facts, especially in light of the relevant immigration regime. In *Bidgoly*, the Court found a *prima facie* unreasonable delay as the delay was much longer than the 6 months as stated on the IRCC website, specifically noting that even though the application was submitted in July 2018, the security screening was not commenced until August 2019: *Bidgoly* at paras 34-35. Here, the processing time for the PR application was 6 months when the Applicant applied, based on the Applicant's affidavit evidence.

[22] While the Respondent submits that the current processing time for applications under the Start-up Visa program is 53 months, at the time when the Applicant submitted his application, the processing time was considerably shorter. The Respondent cites the Court's comment in *Saravanabavanathan v. Canada (Citizenship and Immigration)*, 2024 FC 564 [*Saravanabavanathan*] at para 29 to argue that "IRCC's publicly posted processing time data should not be considered a guaranteed service standard, but a simple indication as to average

processing times at any given point in time." However, I note that the Court in *Saravanabavanathan* continued to comment:

> [30] All of this being said, this court has also found that IRCC processing guidelines should be accorded weight in assessing delay: *Liang v Canada (Minister of Citizenship & Immigration)*, 2012 FC 758 at para 41. This is in part because of the first of the *Conille* factors: it is important to have some baseline understanding of average processing times in order to assess whether a specific delay in question is prima facie longer than the nature of the process requires.
>
> [Emphasis in original]

[23] I also acknowledge the Applicant's submission that the Respondent cannot rely on blanket assertions such as the impact of the pandemic and pending security checks without evidence or specific considerations that contributed to the delay: *Chen v. Canada (Citizenship and Immigration)*, 2023 FC 885 at para 18.

[24] I therefore agree with the Applicant that a 51-month delay is, *prima facie*, unreasonable.

[25] In this case, however, the Respondent provides evidence that the delay in the processing of the Applicant's PR application was caused by the security concerns of the Essential Applicant. Importantly, the Applicant's application can only be determined alongside the other essential applicants, pursuant to subsection 98.08(2) of the *IRPR* that applies to Start Up Business Class and that reads as follows:

Multiple applicants	**Demandeurs multiples**
(2) If there is more than one applicant in respect of the same business and one of the applicants who was identified in the commitment as being	**(2)** S'il y a plus d'un demandeur relativement à la même entreprise et que l'un d'entre eux, qui est indispensable à l'entreprise selon

essential to the business is refused a permanent resident visa for any reason or withdraws their application, the other applicants must be considered not to have met the requirements of subsection 98.01(2) and their permanent resident visa must also be refused.	l'engagement, se voit refuser la délivrance d'un visa de résident permanent pour quelque raison que ce soit ou retire sa demande, les autres demandeurs sont considérés comme ne satisfaisant pas aux exigences prévues au paragraphe 98.01(2) et ne peuvent se voir délivrer un visa de résident permanent.

[26] What distinguishes this case from other *mandamus* applications is that the Applicant's PR application is tied to three other essential applicants. All four applicants under the same start-up business and their dependent family members must all be admissible for their PR applications to be approved. If ultimately one of the essential applicants is found not to meet all the regulatory requirements, the Applicant's PR application will be refused.

[27] The Applicant's extensive submission does not address the impact of subsection 98.08(2) on his PR application whatsoever. In light of the record before me, I find the Respondent has provided satisfactory justification for the delay: *Conille.* As such, the Applicant has not demonstrated that there was unreasonable delay.

[28] While my finding above is sufficient to dispose of this application, I will nevertheless address the remainder of the parties' submissions.

B. *Did the Respondent fail to discharge a public legal duty to act owed to the Applicant?*

[29] The Applicant submits that the Respondent has the public legal duty to act and owes the Applicant the duty to process their application "within a reasonable period of time" as per *Jia v*

Canada (Citizenship and Immigration), 2014 FC 596 at para 78. The Applicant also cites *Murad v. Canada (Citizenship and Immigration)*, 2013 FC 1089 at paras 45-48 where the Court interpreted "shall" in legislations as a creation of public legal duty. He then relies on section 200 and subsection 70(1) of the *IRPR* as authority for the assertion that there is a duty on an IRCC officer to issue a permanent resident visa if the Applicant applied in accordance with *IRPR*.

[30] The Applicant's position is untenable in the context of this case. As noted above, his PR application is contingent upon the approval of the applications of all four essential members of the start-up business. Thus, while the IRCC owes a duty to the Applicant to process his PR application within a reasonable period of time, the Applicant is not eligible to receive a PR visa until all three other essential applicants are found to be eligible.

C. *Was there a procedural fairness breach?*

[31] The Applicant first submits that the Officer breached their "duty of legitimate expectation" by making representation on the IRCC website regarding the processing time of 6 months whereas the application has been unreasonably delayed for 51 months. The Applicant then argues that the Respondent is acting on bad faith based on the delay of processing. The Applicants cites several cases in support of his position: *Masam v. Canada (Citizenship and Immigration)*, 2018 FC 751 in para 15; *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras 94-95; *Canada (Attorney General) v. Galipeau*, 2012 FC 1399 at para 42; *South Yukon Forest Corporation v. Canada*, 2010 FC 495 at paras 892-893; and *Morton v. Canada (Fisheries and Oceans)*, 2019 FC 143 [2019] 4 FCR 3 at para 231.

[32] I reject the Applicant's submission and I find no procedural fairness breach.

[33] As the Respondent submits, the duty of legitimate expectation does not arise in this case because the estimated time of processing similar applications is not a guarantee and there was no conduct that led the Applicant to expect his PR application to be completed by a specific date. I will add to these reasons, the consideration that the Applicant's PR application must be assessed in conjunction with the applications of the three essential members.

[34] I have already addressed the Applicant's bad faith arguments in the context of my analysis of the preliminary issues. My analysis above applies here equally.

D. *Does the balance of convenience favour the Applicant?*

[35] The Applicant submits that the balance of convenience favours him given the unreasonable delay and the lack of justification, just as the Court concluded in *Ben-Musa v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 764 [*Ben-Musa*] at para 33.

[36] I find *Ben-Musa* distinguished on the facts, not only because the circumstances surrounding the delay and the justification provided in *Ben-Musa* are completely different from the case at hand, but also because the application in question in *Ben-Musa* was not tied to any other application.

[37] Indeed, given the nature of the Applicant's PR application and its connection to that of the essential applicants, I find that the order sought by the Applicant will not be of practical value or effect, for reasons set out above.

[38] At the hearing, counsel for the Applicant submitted that a *mandamus* order will still be of practical value because the Court could impose a timeline on the Respondent to process his PR application based on the timeline set out in the PFL. Since the PFL gave the Essential Applicant 45 days to respond to inadmissibility concerns, the Court could simply add another 30 days to give the IRCC time to complete the processing after receiving a response from the Essential Applicant. Counsel for the Applicant further noted that it does not matter to the Applicant if imposing a timeline on the IRCC will lead to a refusal of the Applicant's PR application; what matters is that the Applicant will receive a decision in a timely fashion.

[39] I reject the Applicant's additional submissions for two reasons.

[40] First, what the Applicant's counsel is asking is for the Court to impose a timeline on the processing of another application that is not properly before the Court. While the PFL gives the Essential Applicant 45 days to respond, the Court is not in a position to dictate how and when the Essential Applicant may respond to the PFL; for instance, the Essential Applicant may seek an extension of time to respond to the PFL. Further, once the response is given, the IRCC may request further submissions and information. Given the Essential Applicant is facing serious allegations which may lead to the consequences of them being barred from Canada, I find it inappropriate to impose a deadline, let alone a short one that counsel for the Applicant is

proposing, on another applicant who was not here to speak for themselves. While the Applicant may want a decision sooner rather than later, the success of his PR application is intricately tied to that of the Essential Applicant, with whom the Applicant presumably have at least a business, if not personal, connection. I pause to note that restricting the ability of the Essential Applicant to respond to the IRCC's allegations is not fair to the Essential Applicant, nor is it in the Applicant's best interests.

[41] Second, even if I were to impose a time limit and, as counsel for the Applicant suggested, the parties could return to the Court for variations of the timeline should circumstances change, the Court's ability to determine the appropriate time limit is still hamstrung by the fact that it has no access to the Essential Applicant's file. As such, the Court will still not be in a position to fashion an appropriate timeline for the processing of the Applicant's application, and the case will be in the same place as it is today.

[42] For all these reasons, I find the balance of convenience does not favour granting a *mandamus*.

[43] As the Applicant fails to satisfy each element of the *mandamus* test, I therefore dismiss the application.

IV. Conclusion

[44] The application for judicial review is dismissed. There will be no costs.

JUDGMENT in IMM-18191-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There will be no costs.

"Avvy Yao-Yao Go"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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