

Federal Court



Cour fédérale

Date: 20251010

Docket: IMM-22177-24

Citation: 2025 FC 1687

Ottawa, Ontario, October 10, 2025

PRESENT: Mr. Justice McHaffie

BETWEEN:

CHONGXIAO YANG

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Chongxiao Yang seeks an order of *mandamus* to require the Minister of Citizenship and Immigration to make a decision on his application for a temporary resident visa [TRV]. For the following reasons, I am satisfied that Mr. Yang has shown that the requirements for an order of *mandamus* have been met and, in particular, that there has been an unreasonable and unexplained delay in the processing of his application. Recognizing that some concerns have been raised about potential inadmissibility, albeit in a somewhat indirect way as explained below, I will

order the Minister to make a decision on Mr. Yang's application for a TRV within 60 days of this judgment.

[2] The legal framework for a *mandamus* application is not in dispute. It was set out by the Federal Court of Appeal in *Apotex* and has been applied in the immigration context in, among numerous other cases, the well-established *Dragan* and *Vaziri* cases cited by the Minister and the more recent *Samideh* case cited by Mr. Yang: *Apotex Inc v Canada (Attorney General)*, 1993 CanLII 3004 (FCA), aff'd 1994 CanLII 47 (SCC); *Dragan v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 211 at para 39; *Vaziri v Canada (Citizenship and Immigration)*, 2006 FC 1159 at para 38; *Samideh v Canada (Citizenship and Immigration)*, 2023 FC 854 at para 23.

[3] While the test for a *mandamus* order has multiple parts, the parties agree that the only determinative issue in this case is whether Mr. Yang has a clear right to the performance of the Minister's statutory duty to make a decision. This in turn depends on whether there has been an unreasonable delay in the processing of Mr. Yang's application. The parties each cite the three criteria set out in this Court's decision in *Conille v Canada (Minister of Citizenship and Immigration)*, [1999] 2 FC 33, 1998 CanLII 9097 (FC) at p 43 as framing this factually driven determination:

- (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.

[4] Mr. Yang filed his TRV application in June 2022. At that time, he was hoping to accompany his daughter, who had obtained a student visa to attend high school in Ontario, to assist her in her enrollment. Since then, Mr. Yang has received no updates on his TRV application, beyond what are described in the relevant notes in the Global Case Management System [GCMS] as “patience” letters sent by Immigration, Refugees and Citizenship Canada [IRCC] in response to his numerous status enquiries. In the interim, according to Mr. Yang’s affidavit filed on this application, his daughter has now graduated from high school.

[5] The GCMS notes relating to Mr. Yang’s TRV application indicate that as of July 27, 2022, IRCC was awaiting “info from partners.” While not expressly identified in the GCMS notes, some additional contextual information is found in Mr. Yang’s affidavit and in an affidavit the Minister filed on consent a week before the hearing of this application.

[6] In addition to his June 2022 application for a TRV, Mr. Yang has also applied for permanent residence [PR] under the Atlantic High Skilled Program. He filed that application with IRCC seven years ago, in October 2018, and it also remains outstanding. As set out in the Minister’s affidavit, IRCC sent Mr. Yang a procedural fairness letter on February 12, 2025, in the context of his PR application. The letter raised concerns that Mr. Yang may be inadmissible pursuant to paragraphs 34(1)(a), (b.1), and (f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], as being a member of an organization that there are reasonable grounds to believe engages, has engaged, or will engage in (a) espionage against Canada or contrary to Canada’s interests, and/or (b.1) subversion against a democratic government, institution, or process.

[7] In particular, the procedural fairness letter cites Mr. Yang's employment as a police officer in the Economic Crime Investigation Brigade of the Bao'an Branch of the Shenzhen Public Security Bureau. It identifies concerns about covert operations, including one known as Operation Fox Hunt, conducted by China's Ministry of Public Security through its Economic Crime Investigation Units to "repatriate" Chinese nationals residing abroad accused of financial crimes.

[8] Mr. Yang responded to the procedural fairness letter on March 27, 2025, through a letter from his counsel. Mr. Yang's response provides information regarding his position, the nature of his employment, and the structure of the police force in China, and asserts there is no connection between his local policing role and Operation Fox Hunt.

[9] Since Mr. Yang's response over six months ago, no further decision or other steps have been taken in Mr. Yang's PR application. As noted, there have similarly been no steps taken or decision made on his TRV application.

[10] Mr. Yang's application for a TRV has now been outstanding for over three years. There is no fixed time for the processing of a TRV application, and no fixed time beyond which the processing of a TRV application will be considered unreasonable: see *Vaziri* at para 55. However, in the circumstances of this case, I agree with Mr. Yang that the delay in question has been longer than the nature of the process required, *prima facie*. Recognizing that analogies to other case law are necessarily imperfect due to different factual circumstances, I note that this Court has reached a similar finding in respect of TRV applications outstanding for similar or

shorter periods of time: *Sharma v Canada (Citizenship and Immigration)*, 2025 FC 796 at paras 1, 4; *Alinejad v Canada (Citizenship and Immigration)*, 2024 FC 1994 at paras 1–4, 21–23; *Doust v Canada (Citizenship and Immigration)*, 2025 FC 1546 at paras 20–21.

[11] There is no contention that Mr. Yang is responsible for the delay. The only remaining question is therefore whether the Minister has provided a satisfactory justification. As noted, the Minister points to the security issue arising from Mr. Yang’s employment as a police officer in China, alluding to the resulting inherent complexity of the investigation. At the same time, as the Minister recognizes, he has not filed any evidence that speaks to the complexity of the investigation, the necessary length to conduct an inadmissibility determination under section 34(a), (b.1), and (f), or any remaining steps that may need to be undertaken. The concerns about bald assertions about the length of time needed for security screenings expressed in this Court’s prior case law are relevant: *Doust* at para 23; *Alinejad* at para 23; *Samideh* at para 36.

[12] It is also relevant to note that it has taken over seven years to address the security/inadmissibility concern raised in Mr. Yang’s 2018 PR application, rather than simply the three years since his TRV application was filed. Further, the issue appears to arise from employment information contained in Mr. Yang’s PR application itself, rather than any subsequently identified or discovered information, while IRCC’s procedural fairness letter cites “open sources” mostly dating from 2014 and 2015 in support of its concerns about China’s covert operations.

[13] The Minister has therefore not provided a satisfactory justification for the delay.

[14] The Minister raises two other issues in his written submissions, although these were not pressed in oral argument. First, the Minister contends that the balance of convenience does not favour a *mandamus* order given the Minister's statutory mandate to investigate inadmissibility concerns and the need to carefully investigate the potential inadmissibility of persons seeking to be temporary residents. While the importance of the Minister's statutory mandate to investigate inadmissibility cannot be understated, the need to exercise this mandate within a reasonable time is at the core of a *mandamus* order. The evidence does not demonstrate that the Minister has actually been engaged in exercising that statutory mandate in a reasonable time, such that mere invocation of the mandate cannot tip the balance of convenience against requiring him to do so. Nor is there any evidence that an order of *mandamus* would result in "speeding up and potentially compromising security screenings" as the Minister suggests.

[15] Second, the Minister refers to the fact that Mr. Yang has not demonstrated that he has suffered any significant prejudice resulting from the delay, citing paragraph 52 of this Court's decision in *Vaziri*. Counsel did not advance this argument in oral submissions, perhaps in light of this Court's decisions in *Tousi* and *Majidi*, rendered after the Minister filed his written representations: *Tousi v Canada (Citizenship and Immigration)*, 2025 FC 671 at paras 11–17; *Majidi v Canada (Citizenship and Immigration)*, 2025 FC 680 at paras 26–31. In each of these cases, the Court concluded that the requirement to demonstrate prejudice as part of the test for an order of *mandamus*, as expressed in *Vaziri*, was inconsistent with the Supreme Court of Canada's decisions in *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 and *Law*

Society of Saskatchewan v Abrametz, 2022 SCC 29. I agree with the reasoning presented in those cases.

[16] No other elements of the test for a *mandamus* order are contested, and I am satisfied that the requirements for such an order are met.

[17] Depending on the circumstances, this Court in issuing *mandamus* orders has required decisions to be made in 30 days [*e.g.*, *Alinejad* (TRV), *Sharma* (TRV)], 90 days [*e.g.*, *Tousi* (PR), *Samideh* (PR)], or even 120 days [*e.g.*, *AR v Canada (Citizenship and Immigration)*, 2025 FC 236 (PR)]. My conclusion above is that the Minister has already had more than enough time to make a decision on Mr. Yang's TRV application, including in respect of the inadmissibility issues raised in his PR application. Nonetheless, in the circumstances, to ensure the Minister has the necessary time to address the outstanding inadmissibility concern, and in the absence of any specific timing issue raised by Mr. Yang in his application, I will order that a decision be made on Mr. Yang's TRV application within 60 days of the date of this order.

[18] While Mr. Yang has requested costs in his notice of application, on balance I conclude that he has not demonstrated that there are special reasons justifying an award of costs in this case: *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, Rule 22; see *Barampahije v Canada (Citizenship and Immigration)*, 2025 FC 1163 at paras 16–18 and the cases cited therein.

[19] I agree with the parties that this matter does not raise a serious question of general important appropriate for certification pursuant to paragraph 74(d) of the *IRPA*.

JUDGMENT IN IMM-22177-24

THIS COURT'S JUDGMENT is that

1. The application for judicial review is granted, without costs.
2. A decision on the applicant's application for a temporary resident visa shall be made within 60 days of the date of this judgment.

"Nicholas McHaffie"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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