Federal Court Cour fédérale

**Date: 20260223**

**Docket: IMM-227-25**

**Citation: 2026 FC 254**

**Toronto, Ontario, February 23, 2026**

**PRESENT: The Honourable Justice Thorne**

**BETWEEN:**

**CHUN HUNG YIM**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Overview

[1] The Applicant, Chun Hung Yim, is a citizen of China who applied for permanent residence in Canada, pursuant to the Start-Up Visa Program, in March 2021 [Visa Application]. Though the Applicant has since provided all requested documentation in relation to the Visa Application and by November 2025 had also satisfied all of the necessary assessments, the Visa Application currently remains pending.

[2] On December 20, 2024, the Applicant filed an application for leave and judicial review seeking an order in the nature of *mandamus* to compel the Minister of Citizenship and Immigration [Minister] to render a decision on his application for permanent residence. The Applicant claims that the delay in processing his Visa Application is not justified.

[3] The Respondent submits that a writ of *mandamus* is not warranted in the circumstances, as the delay at issue is due to Immigration, Refugees and Citizenship Canada [IRCC] processing the Visa Application in accordance with the processing priorities set out in Ministerial Instructions issued regarding the treatment of Start-Up Visa [SUV] Program applications.

[4] For the reasons that follow, this application is dismissed.

## II. Background

### A. *The Permanent Residence Application*

[5] As noted, in March 2021, the Applicant applied for permanent residence under the SUV Program. His family accompanied him as part of the Visa Application.

[6] As of November 2025, all correspondence, information and documents requested had been provided and the Visa Application had passed the attendant eligibility, security, criminal, and medical assessments.

[7] IRCC has yet to make a decision on the Visa Application, and at the time the Applicant had filed his application for judicial review approximately 46 months had passed since he had initially submitted the Visa Application.

B. *The 2024 and 2025 Ministerial Instructions*

[8] In April 2024 and December 2025, the Minister issued processing instructions for applications in the SUV Program pursuant to section 87.3 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] [Ministerial Instructions].

[9] Pursuant to these Ministerial Instructions, applications in the SUV Program that meet certain conditions are given priority processing over other applications that fail to meet these conditions. This is allegedly so that applications "with the strongest potential for economic contribution and long-term success in Canada" are prioritized. The Ministerial Instructions also set a limit on the total number of admissions from the SUV Program.

[10] The 2024 Ministerial Instructions (which were later updated and replaced by the 2025 version) provide that applications, including those received prior to the coming into force of the Ministerial Instructions, will be prioritized for processing if they are supported by a commitment from the applicant's designated entity that meets the following conditions:

- the commitment was made by an authorized venture capital fund (minimum of $200,000);

- the commitment was made by an authorized angel investor group (minimum of $75,000); or

- the commitment was made by an authorized business incubator, where the authorized business incubator is either a member of Canada's Tech Network (CTN) or has committed a minimum of $75,000 to the applicant or applicants' start-up proposal.

[11] The 2025 Ministerial Instructions, which both close the SUV Program to new applications and update the priority processing conditions, provide that SUV Program applications, including those received prior to the coming into force of the Ministerial Instructions, will be prioritized for processing if they are supported by a commitment that meets the following conditions:

- At least one member of the applicant's entrepreneurial team holds a valid work permit that is available only to applicants in the Start-Up Business Class; and
    - the commitment was made by an authorized venture capital fund (minimum of $200,000); or
    - the commitment was made by an authorized angel investor group (minimum of $75,000); or
    - the commitment was made by an authorized business incubator, where the authorized business incubator is either a member of Canada's Tech Network (CTN) or has committed a minimum of $75,000 to the applicant or applicants' start-up proposal.

[12] The 2025 Ministerial Instructions also specifically delineate the processing order for SUV Program applications, dictating that:

- Applications will be processed in the following order:
    - first, those applications which meet the above conditions;
    - second, those applications which meet the above conditions except for the requirement that at least one member of the entrepreneurial team holds a valid work permit available only to applicants in the Start-Up Business Class; and

    - finally, those applications which do not meet the above conditions.

- Within each category, applications will be processed on a first-in, first-out basis, as annual admissions (levels) space allows, in the order of the date on which they are received, if all other applications associated with the commitment certificate have also been received. Applications received on the same date will be considered for processing having regard to routine office procedures.

[13] Evidence submitted by the Respondent asserts that these Ministerial Instructions were issued to support the attainment of the Canadian Government's goals of maintaining a sustainable immigration level consistent with the country's community and service capacity, through the reduction of permanent resident admissions (the Ministerial Instructions limited admission levels for both the SUV Program and the Self-Employed Persons Program to 500 individuals per year), while addressing the large application inventory in the SUV Program. As of September 2025, approximately 43,000 applications were pending.

## III. Preliminary Issue

[14] The Applicant has named the Minister of Public Safety and Emergency Preparedness as one of the respondents in this application for judicial review. However, pursuant to subsection 4(1) of the IRPA, the proper respondent in this case is solely the Minister of Citizenship and Immigration. None of the conditions identified in subsection 4(2) of the IRPA, which would make the Minister of Public Safety and Emergency Preparedness a proper respondent, apply in this matter. Accordingly, the title of these proceedings shall be amended to remove the Minister of Public Safety and Emergency Preparedness as a respondent.

## IV. Issue and Standard of Review

[15] The issue at play in this matter is whether the delay in processing the Applicant's SUV Class application warrants the issuance of a mandamus order.

[16] I note that a standard of review is inapplicable to this matter. This Court has repeatedly held that an application for a writ of *mandamus* does not require the standard of review to be determined (*Bedard v Canada (Attorney General)*, 2024 FC 570 at para 24, citing *Callaghan v Canada (Chief Electoral Officer)*, 2010 FC 43 at para 64 and *Samideh v Canada (Citizenship and Immigration)*, 2023 FC 854 at para 22).

## V. Relevant Legislation

[17] With respect to the authority to issue the Ministerial Instructions, the Respondent relies on section 87.3 of the IRPA:

> **Application**
>
> 87.3 (1) This section applies to applications for visas or other documents made under subsections 11(1) and (1.01), other than those made by persons referred to in subsection 99(2), to sponsorship applications made under subsection 13(1), to applications for permanent resident status under subsection 21(1) or temporary resident status under subsection 22(1) made by foreign nationals in Canada, to applications for work or study permits and to requests under subsection 25(1) made by foreign nationals outside Canada.
>
> […]
>
> **Attainment of immigration goals**
>
> (2) The processing of applications and requests is to be conducted in a manner that, in the opinion of the Minister, will best support the attainment of the immigration goals established by the Government of Canada.

**Instructions**

(3) **For the purposes of subsection (2), the Minister may give instructions with respect to the processing of applications and requests, including instructions**

(a) establishing categories of applications or requests to which the instructions apply;

(a.1) establishing conditions, by category or otherwise, that must be met before or during the processing of an application or request;

**(b) establishing an order, by category or otherwise, for the processing of applications or requests;**

**(c) setting the number of applications or requests, by category or otherwise, to be processed in any year; and**

(d) providing for the disposition of applications and requests, including those made subsequent to the first application or request.

**Application**

(3.1) **An instruction may, if it so provides, apply in respect of pending applications or requests that are made before the day on which the instruction takes effect.**

**Clarification**

(3.2) For greater certainty, an instruction given under paragraph (3)(c) may provide that the number of applications or requests, by category or otherwise, to be processed in any year be set at zero.

**Compliance with instructions**

**(4) Officers and persons authorized to exercise the powers of the Minister under section 25 shall comply with any instructions before processing an application or request or when processing one**. If an application or request is not processed, it may be retained, returned or otherwise disposed of in accordance with the instructions of the Minister.

…

[Emphasis added]

## VI. Analysis

[18] The framework pertaining to the issuance of a writ of *mandamus was* established by the Federal Court of Appeal in *Apotex Inc v Canada (Attorney* General*)*, [1994] 1 FC 742 (FCA) at 766-69, 1993 CanLII 3004, aff'd [1994] 3 SCR 1100 [*Apotex*]. It requires the satisfaction of eight separate factors:

> 1) There must be a public legal duty to act;
>
> 2) The duty must be owed to the applicant;
>
> 3) There must be a clear right to performance of that duty;
>
> > 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 discretion is fettered and spent;
>
> 5) no other adequate remedy is available to the applicant;
>
> 6) the order sought will have some practical value or effect;
>
> 7) the Court finds no equitable bar to the relief sought; and
>
> 8) on a balance of convenience an order of *mandamus* should be issued.

[19] As noted, these requirements are conjunctive, so in order for a writ of *mandamus* to be issued, an applicant must have satisfied all eight conditions (*Yuehong v Canada (Citizenship and Immigration)*, 2025 FC 1837 at para 39).

[20] In *Conille v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 9097 (FC) [*Conille*], the Federal Court held that an unreasonable delay in performing a statutory duty may warrant the issuance of *mandamus*. It established that three requirements must be met if a delay is to be considered unreasonable: 1) the delay in question has been longer than the nature of the process required, *prima facie*; 2) the applicant and their counsel are not responsible for the delay; and 3) the authority responsible for the delay has not provided satisfactory justification (*Conille* at para 23).

A. *The criteria for the issuance of a writ of mandamus is not satisfied*

[21] Upon review of the record and the able submissions of both parties, I find that a writ of *mandamus* cannot be issued in this matter. This is because the third condition of the conjunctive test for a writ of *mandamus*, that there is a clear right to performance of the duty, has not been satisfied. In particular, it has not been established that there was an unreasonable delay in processing the Applicant's Visa Application, as the Respondent has provided a satisfactory justification for the significant delay.

[22] To that end, the Respondent submits that the evidence establishes that the IRCC has not refused to process the Visa Application, which is, in fact, being processed, but rather that there has not yet been a decision because IRCC is proceeding with the evaluation of the Visa

Application according to the processing priorities set out in the Ministerial Instructions. Under these guidelines, which apply retroactively, the Applicant's Visa Application is not eligible for priority processing because the designated entity supporting the Application, Empowered Startups Ltd, is not a member of Canada's Tech Network and has not committed any capital to the Applicant's start-up proposal.

[23] Thus, the Respondent submits IRCC is not failing to process the Visa Application, but that the Applicant's Visa Application is rather behind those applications that do meet the criteria for priority evaluation, and has not yet been processed. The Respondent asserts that the prioritization of certain applications over others is not an implicit or explicit refusal to process the Application, but rather a deliberate policy choice, and one that is enabled by section 87.3 of the IPRA.

[24] The Respondent further submits that the delay in processing the Visa Application, while admittedly lengthy, is not unreasonable considering the circumstances and overall context. They note the reasonableness of a delay "'must be informed by a full understanding of where the [a]pplicants' applications fit within the immigration scheme', which may legitimately provide for the slower processing of certain types of applications". (*Jia v Canada (Citizenship and Immigration)*, 2014 FC 596 at para 89 [*Jia*], citing *Vaziri v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1159 at para 55 [*Vaziri*]) They also note that relevant circumstances in this case include the volume of applications received and the priorities set by the Government and the Minister under the IRPA. They contend that a high volume of applications in the SUV Program constitutes a reasonable explanation for delay in processing, as does the Government's current goal of reducing immigration and stabilizing permanent residence admissions (*Wang v*

*Canada (Citizenship and Immigration)*, 2025 FC 1832 at para 29 [*Wang*]; *Jia* at paras 71-77; *Vaziri* at para 54).

[25] The Respondent also submits that the Applicant's Visa Application is not being singled out or neglected; rather, it is being processed according to the same processing priorities as all other SUV Program applications under the Ministerial Instructions. They note that, pursuant to these, IRCC will continue processing the Visa Application only after processing all the other applications which qualify for priority evaluation, and then also processing the other applications which do not meet the priority conditions but were submitted before the Applicant's.

[26] In short, the Respondent argues that the Ministerial Instructions are a legitimate exercise of the Minister's authority under section 87.3 of the IRPA, and that their operation justifies the delay in question (*Jia* at paras 77-78, 85, 89-90). They add that differential treatment according to the priorities is a matter of policy and ministerial discretion, and assert that it is not the role of the Court to set, vary, or grant exemptions from such government policy (*Universal Ostrich Farms Inc v Canada (Food Inspection Agency)*, 2025 FCA 147 at para 6 [*Universal Ostrich Farms*]; *AB v Canada (Citizenship and Immigration)*, 2025 FC 1514 at para 91; *Li v Canada (Citizenship and Immigration)*, 2011 FCA 110 at para 37).

[27] The Respondent adds that the balance of convenience also does not favour the issuance of a writ of *mandamus*, as the Government has made legitimate policy choices regarding its immigration goals and immigration levels, and how it can best achieve those goals and levels, through the Ministerial Instructions. They note that the Applicant has not established exceptional circumstances that would warrant enabling him to circumvent the established processing order

and priorities established in the Ministerial Instructions, and "jump the queue" in front of the other applicants who are also waiting for decisions on their applications (*Wang* at para 36; *Jia* at para 103; *Mersad v Canada (Citizenship and Immigration)*, 2014 FC 543 at paras 25, 27 [*Mersad*]).

[28] In my view, the evidence in this matter makes clear that the Ministerial Instructions establish a priority sequence for the processing of SUV Program applications, such that the applications that satisfy the three conditions are processed on a priority basis. Unfortunately, the Applicant's Visa Application simply did not meet any of the priority criteria, since the designated entity supporting the Visa Application was neither a member of Canada's Tech Network, and nor had it committed to investing any capital into the Applicant's start-up proposal. Per the Ministerial Instructions, the Visa Application is therefore to be processed after the qualifying prioritized applications, as well as any other non-prioritized applications that happened to be filed before the Applicant's.

[29] In these circumstances, and in light of the evidence that essentially establishes that the IRCC has not refused to, or failed to process the Visa Application, but simply has not yet reached it in the queue, it cannot be said that the IRCC has not provided a satisfactory justification for the delay in processing the Visa Application (*Conille* at para 23). Thus, although the first *Conille* factor is met, as the delay has been *prima facie* longer than the nature of the process required, the third factor is not satisfied. The Applicant therefore has not established that his delay is an unreasonable one that warrants a writ of *mandamus*.

[30] This Court has repeatedly held that policy choices made in response to immigration goals set by the Government can reasonably justify a delay in processing a permanent residence application (*Vaziri*; *Mersad*; *Wang*; *Jia*). That is the case here, where the evidence indicates that the Ministerial Instructions were adopted to respond to the Government's immigration goals, while addressing the large application inventory in the SUV Program.

[31] Finally, issuing the *mandamus* order sought by the Applicant would circumvent, and indeed repudiate, the processing priorities established in the Ministerial Instructions. While the Applicant is understandably disappointed by the processing time for his application, this is simply not the role of the Court (*Universal Ostrich Farm*). Doing so would also see the Applicant bypass the numerous other applicants who, like him, are also waiting for decisions on their applications (*Wang*; *Jia*; *Mersad*). In the matter at hand, I cannot find that the Applicant has established circumstances sufficiently exceptional to warrant such action. As the Court noted in *Mersad*, at paragraph 27:

> Applying the *Conille* factors, the delay is more than the actual process requires and is not attributable to the applicants. However, I am unable to find that the authority responsible for the delay, the Minister, has failed to provide an adequate justification. The fact is that a great many people with significant financial resources, such as the applicant, wish to immigrate to Canada and the country can only absorb so many of them on an annual basis. Parliament has entrusted the determination of what that number should be and of the measures to put the necessary administrative machinery in place to achieve that objective to the executive branch of government. This Court should not intervene to force the consideration of one applicant's case over the many that are ahead of him in the queue.

[32] In short, I am not satisfied that all of the *Apotex* factors have been satisfied, as it has not been established that the Respondent has failed to fulfil a public legal duty to act owed to the

Applicant, nor that the balance of convenience would favor such a step. Nor has an unreasonable delay in performing a statutory duty warranting the issuance of *mandamus* been shown.

[33] Finally, I note that the Court commends counsel for both parties for their well thought out and judiciously considered submissions in this matter.

## VII. Conclusion

[34] For the foregoing reasons, the application for a writ of *mandamus* is dismissed.

[35] The parties proposed no question for certification, and I agree that none arises.

**JUDGMENT IN IMM-227-25**

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

1. The application for a writ of *mandamus* is dismissed.
2. The style of cause shall be amended to solely identify the Minister of Citizenship and Immigration as the Respondent.
3. No question of general importance is certified.
4. No costs are awarded.

"Darren R. Thorne"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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|---|---|
| **DOCKET:** | IMM-227-25 |
| **STYLE OF CAUSE:** | CHUN HUNG YIM v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | VIDEOCONFERENCE |
| **DATE OF HEARING:** | FEBRUARY 17, 2026 |
| **JUDGMENT AND REASONS:** | THORNE J. |
| **DATED:** | FEBRUARY 23, 2026 |

**APPEARANCES:**

| | |
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| Quinn Ashkenazy | FOR THE RESPONDENT |

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