Date: 20071015

Docket: IMM-288-07

Citation: 2007 FC 1048

Ottawa, Ontario, the 15th day of October 2007

Present: the Honourable Mr. Justice Harrington

BETWEEN:

SERGE TAPIE

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

[1] Serge Tapie is a national of Cameroon. On November 9, 2004 he claimed refugee status in Canada and almost immediately thereafter made an application for permanent residence.

[2] On May 26, 2005 he received two letters from the Department of Citizenship and Immigration's Case Processing Centre. One of the letters stated that [TRANSLATION] "It has been determined that you meet the eligibility conditions for permanent resident status as a person in need of protection. A final decision will be taken when you have met all the requirements of the regulations". The other letter stated that [TRANSLATION] "We are pleased to inform you that

processing of your application is complete. The Canada Immigration Centre in Montréal will contact you regarding the granting of permanent residence".

[3] Since receiving these letters, Mr. Tapie alleged that he has received no other information. Accordingly, he retained the services of counsel and, in January 2007, began this application for judicial review to obtain a writ of *mandamus*, directing the respondent to summon him forthwith and make a final decision, granting him permanent resident status.

[4] He alleged that he had in fact met all the eligibility requirements for permanent residence since refugee status was granted in 2004 and that the usual delay in making a decision on such an application is not more than six months. At the time this application was filed in this Court, he had already been awaiting a final decision for a little over two years.

[5] In the meantime, the interventions section of the Border Services Agency of the Minister of Public Safety and Emergency Preparedness was considering whether to apply for cancellation of his refugee status. Following an investigation pursuant to section 44 of the *Immigration and Refugee Protection Act*, a report issued on July 27, 2006 concluded that Mr. Tapie was not eligible as a result of obtaining his status by fraud, namely through the use of a false identity, and that the reasons given to support his alleged persecution in Cameroon were false.

[6] In August 2007, a few weeks after receiving leave to proceed with this application for judicial review, Mr. Tapie was informed that the Agency had sent an application to cancel his

refugee status to the Refugee Protection Division pursuant to Rule 57 of the *Refugee Protection Division Rules* and pursuant to section 109 of the Act:

109. (1) The Refugee Protection Division may, on application by the Minister, vacate a decision to allow a claim for refugee protection, if it finds that the decision was obtained as a result of directly or indirectly misrepresenting or withholding material facts relating to a relevant matter.	109. (1) La Section de la protection des réfugiés peut, sur demande du ministre, annuler la décision ayant accueilli la demande d'asile résultant, directement ou indirectement, de présentations erronées sur un fait important quant à un objet pertinent, ou de réticence sur ce fait.

[7] In the circumstances of the case at bar, a two-year delay is not unreasonable. Although at first sight it seems to be a long period of time for someone to wait to have permanent resident status granted, *mandamus* applications have to be assessed in terms of the particular facts of the case. The issuing of a writ of *mandamus* is an extraordinary remedy and the Federal Court of Appeal has laid down the conditions on which it may be granted (*Apotex Inc. v. Canada (Attorney General)*, [1994] 1 F.C. 742 (C.A.), [1993] F.C.J. No. 1098; *Conille v. Canada (Department of Citizenship and Immigration)*, [1999] 2 F.C. 33, [1998] F.C.J. No. 1553). The conditions that must be met for the panel to be able to issue a writ of *mandamus* were stated in *Apotex:*

> (i) there must be a public legal duty to act;
> (ii) the duty must be owed to the applicant;
> (iii) there is a clear right to the performance of that duty, in particular:
> (a) the applicant has satisfied all the 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;

(iv) no other adequate remedy is available to the applicant;

(v) the order sought will be of some practical value or effect;

(vi) in exercising its discretion, the panel found no equitable bar to the relief sought;

(vii) On the "balance of convenience", an order in the nature of *mandamus* should be made.

[8] The Court may refer to other points of reference in determining what is a reasonable delay. In *Conille*, at paragraph 23, Tremblay-Lamer J. explained that to be regarded as unreasonable a delay must meet the following three conditions:

(1) the delay in question was longer than the nature of the process required, *prima facie*;

(2) the applicant and his or her legal counsel were not responsible for the delay;

(3) the authority responsible for the delay did not provide satisfactory justification.

[9] In *Seyoboka v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1290, [2005] F.C.J. No. 1611, the Court dismissed the application for a writ of *mandamus* despite a nine-year delay between the applicant's application for permanent residence and the one seeking the cancellation of his refugee status. In his decision Pinard J. said:

> **[10]** Further, the Minister of Public Safety applied to the IRB to annul the applicant's refugee status. That application, though late, is certainly not frivolous. If it is granted, any right to permanent residence would be annulled. In the interim, therefore, until the application by the Minister of Public Safety is decided, in my opinion issuing a writ of *mandamus* would serve no purpose (see, for example, *Kang v. Minister of Citizenship and Immigration*, [2001] F.C.J. No. 1544 (QL), *Chaudhry v. Minister of Citizenship and Immigration*, [1998] F.C.J. No. 1695 (QL) and *Singh v. Minister of Citizenship and Immigration*, [1998] F.C.J. No. 585 (QL)).

[10] I am of the same opinion. The Minister of Public Safety and Emergency Preparedness had the right, and in my view was justified on the facts, to conduct such an investigation into Mr. Tapie's case. If the Immigration and Refugee Board agrees with the Minister's conclusions, it may decide to revoke Mr. Tapie's refugee status.

[11] For the moment, Mr. Tapie appears *prima facie* to meet the conditions for obtaining permanent resident status. However, if the Board comes to a negative conclusion after more careful study, he will probably not have met those conditions.

[12] For these reasons, I consider that there is no basis for issuing a writ of *mandamus*. The application for judicial review will be dismissed.

[13] No question was suggested for certification and the case does not raise any.

ORDER

THE COURT ORDERS THAT this application for judicial review, seeking an order to compel the Minister to proceed forthwith [TRANSLATION] “to issue permanent residence to Serge Tapie”, is dismissed.

“Sean Harrington”
Judge

Certified true translation

Brian McCordick, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-288-07
STYLE OF CAUSE:	*Serge Tapie v. The Minister of Citizenship and Immigration*
PLACE OF HEARING:	Montréal, Quebec
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REASONS FOR ORDER AND ORDER BY:	THE HONOURABLE MR. JUSTICE HARRINGTON
DATED:	October 15, 2007

APPEARANCES:

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