

Federal Court



Cour fédérale

Date: 20100414

Docket: IMM-3503-09

Citation: 2010 FC 405

Montréal, Quebec, April 14, 2010

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

**SHAHID, MUHAMMAD AMIN
SAIF, SHAZIA KHALID**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application by Muhammad Amin Shahid and Shazia Khalid Saif (together, the applicants) made pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (*IRPA*), for judicial review of the Minister's failure to take a decision on their application for landing and a remedy in the nature of *mandamus*.

[2] Mr. Shahid was granted refugee status in May of 2001. Thereafter, on June 11, 2001, he applied for landing so as to become a permanent resident of Canada. Although he was notified on

September 5, 2001 that he met the eligibility requirements and that a decision would be made within 18 months, no decision has yet been made on his application.

[3] Ms. Saif, his wife, came to Canada in November of 2001 and was granted refugee status in April of 2002. Mr. Shahid included her in his application for permanent residence.

[4] In 2002, Citizenship and Immigration Canada (CIC) received a letter containing grave allegations against the applicants. However, by November 23, 2004, a decision had been made not to investigate these allegations further.

[5] On November 22, 2005, Mr. Shahid was informed that his file had been transferred to the CIC's Montréal offices for a decision. At his request, in 2006, it was then transferred to Calgary, where the applicants had moved.

[6] On October 11, 2006, CIC's Calgary office requested additional documentation and the results of medical exams from the applicants. The applicants submitted these documents shortly thereafter. Apparently, some information was still missing so that background and security checks on the applicants could not proceed. However, they were not informed of this.

[7] The applicants' counsel wrote to CIC's Montréal office in February of 2009 to request information on the status of their file. His request was forwarded to CIC's Calgary office.

[8] The applicants' counsel also requested their file pursuant to the *Privacy Act*. Having obtained it, he realised that the immigration authorities may have been concerned, as early as 2007, about some conflicting information the applicants apparently provided, and that they were never informed of these concerns. The applicants prepared a document addressing these concerns, and their counsel submitted it to CIC on April 7, 2009.

[9] Having received no response from CIC, he wrote to them again on May 20, 2009, demanding that receipt of his letters and of the applicants' submissions be acknowledged and informing CIC that the applicants instructed him to seek a writ of *mandamus* by June 20, 2009. CIC did not respond to this letter.

[10] On July 10, 2009, the applicants filed this application for leave and judicial review and requested relief in the nature of *mandamus*.

[11] On July 17, 2009, CIC sent a letter to the applicants' counsel, informing him that their "medicals have expired and a new examination is required." Furthermore, CIC stated that it had not received the updated information submitted in April of 2009 and demanded that the applicants submit it again so that security checks could be conducted.

[12] The requested information was received by CIC by September of 2009.

[13] On January 8, 2010, CIC Calgary forwarded the updated information for processing (including new background checks) on an urgent basis. At the hearing, Counsel for the Minister informed me that the necessary security checks have been completed by April 8, 2010.

[14] The criteria which an applicant must satisfy for the Court to grant him or her relief in the nature of *mandamus* are well-known. They are set out by the Federal Court of Appeal in *Apotex Inc. v. Canada (Attorney General)*, [1994] 1 F.C. 742, 51 C.P.R. (3d) 339 (aff'd by *Apotex Inc. v. Canada (Attorney General)*, [1994] 3 S.C.R. 1100). They are as follows:

- (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 the performance of that duty, in particular:
 - (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) No other adequate remedy is available to the applicant.
- (5) The order sought will be of some practical value or effect.
- (6) The Court in the exercise of discretion finds no equitable bar to the relief sought.
- (7) On a “balance of convenience” an order in the nature of *mandamus* should issue.

[15] There is and can be no dispute that the Minister has a duty to process the applicants' application. Subsection 21(2) of the *IRPA* provides in the relevant part that “a person ... determined ... to be a Convention refugee ... becomes ... a permanent resident if the officer is satisfied that they have made their application in accordance with the regulations and that they are not inadmissible.” The applicants were determined to be convention refugees. Subject to their

application being found to be in accordance with the regulations and to their not being inadmissible they have a right to become permanent residents.

[16] There is also no dispute, at this point, that the applicants have satisfied all conditions precedent to the performance of the Minister's duty by providing all the necessary information. Nor is there any dispute as to the fact that they have repeatedly demanded that the Minister perform the duty.

[17] Thus the sole issue in this case is whether enough time has passed since the applicants made this demand, and whether the Minister can be inferred to have refused to act. *Apotex*, above, makes it clear that such an inference may be drawn from "unreasonable" delay in making a decision.

[18] In *Conille v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 F.C. 33, [1998] F.C.J. No. 1553 (F.C.T.D.), I concluded 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 his counsel are not responsible for the delay; and
- (3) the authority responsible for the delay has not provided satisfactory justification.

[19] I agree with the applicants that eight years is, *prima facie*, a much longer delay than routine background checks require. Moreover, while it may be possible that the applicants are responsible for some of that delay if their applications contained contradictory information as the Minister

asserts, they have provided updated information as soon as they were asked to do so and indeed before they were asked to do so. The period of over two years, between early 2007 and the spring of 2009, during which they were left in the dark as to CIC's concerns over their application is unexplained and unreasonable. It took the applicants' counsel's request for their file under the *Privacy Act* for them to find out why their application was not being processed. It took, apparently, the filing of this application for *mandamus* for CIC to respond to the applicants' counsel's letters, two of which the Minister admits it received on February 17 and May 27, 2009, respectively.

[20] CIC's lack of diligence in the applicants' file is shocking and in direct contradiction with *IRPA*'s objective, set out in its paragraph 3(1)(f), "to support, by means of consistent standards and prompt processing, the attainment of immigration goals established by the Government of Canada" (emphasis mine).

[21] In addition, as I held in *Conille*, above, the necessity to conduct security and background checks is no justification for administrative inaction. In the absence of any statutory limits on the length of an investigation, it can serve as a convenient excuse for indefinite delay, which the Court will not accept. In each case, the Court must ask itself whether the facts are such that the administrative delay is reasonable or not. Much of the delay in the case at bar appears to be due to CIC's neglect and is thus unreasonable.

[22] As the applicants have no administrative or other remedy, and the Minister has not shown that there is any bar, whether in equity or on a balance of convenience, to relief in the nature of *mandamus* in this case, I allow this application.

[23] An Order in the nature of *mandamus* requiring the Respondent to process the Applicant's application of permanent residence in Canada in accordance with the law and the *Immigration and Refugee Protection Act* is issued. The Respondent shall process the Applicant's application for permanent residence in Canada and provide him with a decision with respect to the issuance of permanent residence status within three (3) months of this Order.

JUDGMENT

An Order in the nature of *mandamus* requiring the Respondent to process the Applicant's application of permanent residence in Canada in accordance with the law and the *Immigration and Refugee Protection Act* is issued. The Respondent shall process the Applicant's application for permanent residence in Canada and provide him with a decision with respect to the issuance of permanent residence status within three (3) months of this Order.

“Danièle Tremblay-Lamer”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3503-09

STYLE OF CAUSE: SHAHID, MUHAMMAD AMIN ET AL.
v. THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: April 13, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** TREMBLAY-LAMER J.

DATED: April 14, 2010

APPEARANCES:

Jean-François Bertrand FOR THE APPLICANTS

Michel Pépin FOR THE RESPONDENT

SOLICITORS OF RECORD:

Bertrand, Deslauriers FOR THE APPLICANTS
Montréal, Quebec

Myles J. Kirvan FOR THE RESPONDENT
Deputy Attorney General of Canada
Montréal, Quebec