Federal Court  Cour fédérale

Date: 20190807

Docket: IMM-5332-18

Citation: 2019 FC 1051

Ottawa, Ontario, August 7, 2019

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

MAHMOUD ES-SAYYID JABALLAH AND HUSNAH AL-MASHTOULI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] The Applicants, Mahmoud Es-Sayyid Jaballah [Mr. Jaballah] and his wife, Husnah Al-Mashtouli, [Ms. Al-Mashtouli], bring an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] pursuant to subsection 18.1 of the *Federal Courts Act*, RSC 1985, c F-7. They seek an order of mandamus compelling the Respondent [the Minister] and his officials to finalize Mr. Jaballah's application

for permanent residence which was brought on October 7, 2016 under the spousal sponsorship of Ms. Al-Mashtouli.

[2] The Applicants believe that they meet all of the criteria for an order of mandamus. They state that they have waited double the average processing time without receiving a determination.

[3] The Respondent submits that the Applicants have not provided all of the requested information and, in any event, any delay in processing the application is not unreasonable.

[4] For the reasons that follow, the application is denied. The Applicants have failed to establish all the required elements for an order of mandamus.

II. Background Facts

A. *Arrival in Canada and Security Concern Allegations*

[5] On May 11, 1996, the Applicants and their four children arrived in Canada on false Saudi Arabian passports. They claimed refugee protection from Egyptian security authorities.

[6] Mr. Jaballah was found to be excluded from refugee protection by Article 1F(a) of the *United Nations Convention Relating to the Status of Refugees* as being inadmissible to Canada on security grounds described in paragraphs 34(1)(b), (c), (d) and (f) of the *IRPA*.

[7] Since that time Mr. Jaballah has been the subject of a number of security certificates issued pursuant to subsection 77(1) of the *IRPA*. There have been a number of corresponding court applications and appeals.

[8] The first security certificate was issued in March, 1999 and quashed in November, 1999. The second security certificate was issued in August, 2001, and ultimately quashed by operation of law in February, 2008 when Bill C-3 came into force. Shortly after that, a third security certificate was issued. That security certificate was quashed by Madam Justice Dolores Hansen of this Court on May 26, 2016.

[9] Full details of the history of the security certificate proceedings and the reasons for quashing the last security certificate are found in Justice Hansen's decision of May 26, 2016, as amended on June 24, 2016. It is reported at 2016 FC 586. An appeal of that decision was dismissed on October 3, 2016.

B. *Application for Landing under the Spouse or Common-law Partner in Canada class*

[10] On December 13, 2011, Ms. Al-Mashtouli obtained Canadian Citizenship.

[11] On October 7, 2016, Ms. Al-Mashtouli's application to sponsor Mr. Jaballah was received by the Minister and assigned an application number. That is the effective date of receipt of the application.

[12] On February 6, 2017, the Minister advised Mr. Jaballah via an automated message that to continue processing his application, more information was needed. He had submitted an incomplete Schedule A Background/Declaration [Schedule A] and/or incomplete Additional Family Information forms.

[13] Mr. Jaballah was advised that within 30 days he was to provide Schedule A details for every month and year for the past 10 years from the date of receipt of his application, which was October 7, 2016. For the Additional Family Information form he was to complete the required fields for all applicable family members.

[14] On February 7, 2017, Mr. Jaballah submitted a one-page reply titled "Work History" that indicated it was for the period October 7, 2006 to October 7, 2016. The page indicated that from "2001 to 2007" Mr. Jaballah was "detained", while for the period "2007 to date" he worked at Prestige Garage Door Services, Scarborough, Ontario. The file notes indicate this was received by facsimile transmission on February 8, 2017.

[15] On April 3, 2017, Mr. Jaballah's application was identified as part of the 2016 inventory reduction for certain Spouse or Common-Law Partner in Canada applications. The GCMS notes for that day indicate that the application requires closer review.

[16] On April 18, 2017 the Minister sent a letter to Mr. Jaballah requiring that he and all family members 18 years or older submit a police certificate from the country where he has spent most of his adult life since the age of 18 - which is Canada.

[17] On May 8, 2017, counsel forwarded the original RCMP clearance certificate, dated May 2, 2017, indicating Mr. Jaballah had “no existing criminal record”. Counsel also confirmed that Mr. Jaballah had resided in Canada for 21 years as of May 11, 2017.

[18] On October 25, 2017, a pre-screening file review was conducted by the Minister to determine whether the application was complete and all supporting documents had been received. Mr. Jaballah was advised by email that further information was still required for both Schedule A and the Additional Family Information form. A deadline of December 2, 2017 was set for receipt of the information.

[19] On November 3, 2017, the Minister sent a fax to Mr. Jaballah’s representative requesting a response to the letter that had been emailed on October 25, 2017 and confirming that the medical results had been received. A copy of the October 25, 2017 letter was sent with the fax. As it turned out, the original email letter was not received as it was sent to either a former email address or a non-existent one that was identical but for one letter. Nothing turns on which version of events is correct.

[20] By November 22, 2017, a revised version of Schedule A was submitted although it was subsequently found to be incomplete.

[21] On January 30, 2018, Ms. Al-Mashtouli was asked to provide an RCMP clearance certificate based on her fingerprints. On the same day, Mr. Jaballah was advised that in order to

continue processing the application he needed to provide a valid Passport/Travel Document and birth certificate.

[22] On February 15, 2018, Ms. Al-Mashtouli provided her positive RCMP clearance.

[23] On March 6, 2018, Mr. Jaballah requested a waiver of the passport requirement. He had been denied a travel document because no valid original immigration status document was submitted with the request.

[24] On August 3, 2018, Mr. Jaballah's file was sent for comprehensive security screening.

[25] On August 15, 2018, Ms. Al-Mashtouli was advised that she was eligible to sponsor Mr. Jaballah.

[26] On October 4, 2018, the Applicants requested an explanation for the delay in processing the application and an indication as to when processing would be complete.

[27] On October 19, 2018, Mr. Jaballah was advised that the application was currently undergoing background checks as part of normal procedures.

[28] On October 30, 2018, Mr. Jaballah filed this application for an order of mandamus directing the Minister to finalize his landing application.

III. Preliminary Issue – Style of Cause

[29] The Applicants submit that the Minister of Public Safety and Emergency Preparedness [MPSEP] is a proper party to the application because Mr. Jaballah is subject to security screening by the CBSA, which is within the MPSEP portfolio. Their position is that both ministries should answer for any delays.

[30] The Respondent submits that the Minister of Citizenship and Immigration [MCI] is the Minister responsible for administering the *IRPA*, as outlined in subsection 4(1), except where otherwise provided. Determining whether a foreign national qualifies for permanent residence is not one of the exceptions; it is the sole duty of the Minister. Although the Minister relies on the CBSA for security screening, to which Mr. Jaballah is subject, it does not mean that the MPSEP is a proper respondent.

[31] I am not persuaded that the MPSEP should be named as a Respondent. Section 4 of the *IRPA* delineates the responsibilities each of the two Ministries has with respect to the *IRPA*.

[32] The CBSA is a partner agency for the purpose of security screening but it is not responsible for processing and determining the merits of the application. It is not necessary that MPSEP be a party Respondent to this application.

[33] The Applicants do not cite any jurisprudence or rule to support their argument that the MPSEP is a necessary party. Mr. Jaballah seeks mandamus in order to have his application for

permanent residence finalized. Legislatively that task is assigned solely to the MCI by subsection 4(1) of the *IRPA*.

[34] Subsection 4(2) of the *IRPA* specifies that the MPSEP is responsible for administration of the *IRPA* as it relates to: (a) examinations at ports of entry; (b) enforcement of the Act, including arrest, detention and removals; and, (c) establishing policies related to enforcement of the *IRPA* and admissibility on grounds of security, organized criminality or violating human or international rights and (d) declarations referred to in section 42.1 of the *IRPA*.

[35] As there is no current event under review involving subsection 4(2) of the *IRPA,* only MCI is a necessary party to this application at this time. If there is a future event under section 4(2), such as removal of Mr. Jaballah, then the MPSEP becomes an appropriate party.

[36] The style of cause is therefore hereby amended to remove the Minister of Public Safety and Emergency Preparedness as a party Respondent.

IV. The criteria to consider in an application for an Order of Mandamus

[37] The legal test to be applied when determining whether to grant an order for mandamus is set out in *Kalachnikov v. Canada (Minister of Citizenship and Immigration),* 2003 FCT 777, citing *Apotex Inc. v Canada (Attorney General)*, [1994] 1 FC 742 (CA), affirmed by the Supreme Court of Canada in [1994] 3 SCR 1110:

1. There is a public duty to the applicant 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 a prior demand for performance of the duty, a reasonable time to comply with the demand, and a subsequent refusal which can be either expressed or implied;

4. There is no other adequate remedy. [See Note 5 below]

5. The "balance of convenience" favours the applicant (*Apotex Inc. v. Canada (A.G.)*, [1994] 1 F.C. 742 (C.A.), aff'd [1994] 3 S.C.R. 1100, *Conille v. Canada (Minister of Citizenship and Immigration)*, [1992] 2 F.C. 33 (T.D.)).

    In *Conille, supra*, [1999] 2 F.C. 33 (T.D.) , Tremblay-Lamer J. set out three requirements at paragraph 23, that 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.

V. Issues

[38] The primary issue in this matter is whether Mr. Jaballah is entitled to an order of mandamus with respect to his pending application for landing as a member of the family class as the spouse of Ms. Al-Mashtouli.

[39] The Applicants made submissions on all of the requirements for mandamus. The Respondent puts in issue only three of them, saying they have not been met by the Applicants. The issues as argued in this application are:

1. Whether the applicants have satisfied all conditions precedent giving rise to the performance of the duty.

2. Whether there was a prior demand for performance of the duty, a reasonable time to comply with the demand, and a subsequent refusal which can be either expressed or implied.

3. Whether the Minister acted in a manner which can be characterized as “unfair”, “oppressive” or demonstrates “flagrant impropriety” or “bad faith”.

[40] In the course of determining whether an order of mandamus should issue, I find that it is also necessary to determine whether Mr. Jaballah is a protected person under the *IRPA*

VI. Is Mr. Jaballah a Protected Person?

[41] If Mr. Jaballah is a protected person as defined in the *IRPA*, then he does not require a travel document or passport. Conversely, if he is not a protected person, the Spousal Sponsorship Application is not complete at this time as he has not provided either a passport or travel document.

[42] Mr. Jaballah has been unable to secure a travel document or a passport, either one of which is required to complete his Spousal Sponsorship Application. If he is a protected person as defined in the *IRPA*, then he does not require a travel document or passport.

[43] The Applicants say that Mr. Jaballah became a protected person when he received a positive decision in his August 2002 Pre-Removal Risk Assessment [PRRA], which is discussed in paragraph 98.1 of *Jaballah (Re)*, 2003 FCT 640 [*Jaballah 2003*].

[44] The Applicants also say that the danger finding originally made against Mr. Jaballah was quashed by operation of law when the Supreme Court of Canada in *Charkaoui v Canada (Citizenship and Immigration)*, 2007 SCC 9 declared the security certificate provisions in the *IRPA* to be of no force or effect and Bill C-3 amended those provisions in February, 2008.

[45] The Applicants conclude that all that is left is the risk assessment which found that Mr. Jaballah is at risk if returned to Egypt.

[46] I find that *Jaballah 2003* does not say that Mr. Jaballah is a protected person. To the contrary, in paragraph 100, Justice MacKay says ". . . The motion would have been unnecessary were it not for the continuing unexplained delay in deciding the application for protection, a delay which continues to this day."

[47] The Respondent submits that the August 2002 PRRA only provided Mr. Jaballah with a "limited PRRA" as described in paragraph 114(1)(b) of the *IRPA* because he was a person described in subsection 112(3) in that he cannot be sent back to Egypt. Subsequent judicial reviews related to the decision made under subsection 172(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*] to remove Mr. Jaballah to Egypt did not determine that finding to be wrong.

[48] In a PRRA redetermination on September 23, 2005, Mr. Jaballah was found to be excluded from protection under paragraph 112(3)(d) of the *IRPA* for having a security certificate. This finding was confirmed by Mr. Justice MacKay in *Jaballah, Re,* 2006 FC 346 at paragraph 1 in which he sates:

> I find lawful the decision, made September 23, 2005, by a delegate of the Minister of Citizenship and Immigration (MCI), whereby Mr. Jaballah's application for protection under s. 112 of the Act was denied.

[49] The Respondent also points out that Mr. Jaballah had an outstanding PRRA application from 2008, which shows that he did not become a protected person in 2002.

[50] Subsequently, in *Jaballah (Re),* 2006 FC 1230 [*Jaballah 2006*] Justice MacKay made an order in which he expanded upon his order in *Jaballah 2003* by adding unnamed countries to the list of places to which Mr. Jaballah could not be removed pursuant to the then-existing security certificate. The Order, at paragraph 87.2, states that the Minister could not remove Mr. Jaballah "to any country where and when there is a substantial risk that he would face torture, death, or cruel and unusual treatment."

[51] Mr. Jaballah had a risk assessment which provided him with limited protection and prevented his removal to certain countries where he was at high risk. He does not automatically become a protected person because he falls within the restrictions set out in subsection 112(3).

[52] Subsection 114(1) sets out two different outcomes which may arise from a decision to allow protection:

114 (1) A decision to allow the application for protection has (a) in the case of an applicant not described in subsection 112(3), the effect of conferring refugee protection; and (b) in the case of an applicant described in subsection 112(3), the effect of staying the removal order with respect to a country or place in respect of which the applicant was determined to be in need of protection.	114 (1) La décision accordant la demande de protection a pour effet de conférer l'asile au demandeur; toutefois, elle a pour effet, s'agissant de celui visé au paragraphe 112(3), de surseoir, pour le pays ou le lieu en cause, à la mesure de renvoi le visant.

[53] Mr. Jaballah falls within paragraph 114(1)(b). The effect of the PRRA he received is not to confer upon him protected person status but rather to stay the removal order to Egypt or any other country to which the Order made in *Jaballah 2006* applies.

[54] Mr. Jaballah says that as the security certificates have been quashed all that remains is the risk assessment and therefore he is a protected person. In *Boroumand v Canada (Citizenship and Immigration)*, 2011 FC 643, Madame Justice Tremblay-Lamer determined that protected person status was not automatic after an exclusion in subsection 112(3) was found not to apply. She found that the risk determination that had been made was not a "decision to allow" the application for protection within the meaning of subsection 114(1).

[55] The language in the *IRPA* is that protected person status is something conferred. Mr. Jaballah has never been granted protected person status under any provision of the *IRPA*.

VII. Is the Spousal Sponsorship Application complete?

[56] The position of the Minister is that the Spousal Sponsorship Application is incomplete. According to the January 24, 2019 affidavit of the Case Processing Officer [CPO Affidavit] involved with Mr. Jaballah's file, his application is still incomplete and the issue of his identity remains outstanding. She confirms that the file contains no travel document, not even an expired passport and, there is no birth certificate or other identity document.

[57] The Minister says that an applicant for permanent residence has a duty to provide all reasonably requested information to allow the Minister to determine whether they meet the requirements of the legislation. Mr. Jaballah has not met his obligation as he has not provided one of the itemized passport/travel/identification documents required to be submitted by a member of the family class as set out in subsection 50(1) of the *IRPR*.

[58] The Applicants contend that they have provided every document requested which they are able to obtain. They agree that the missing documents are a passport or travel document and a birth certificate or other identity document. They say they cannot obtain either.

A. *No Egyptian Passport or Travel Document*

[59] Mr. Jaballah says he is in possession of an old Egyptian passport. He says he cannot obtain a new one because Egypt is the country from which he fled.

[60] The Application Record contains an affidavit sworn by Patricia Watts, MSW who is a law clerk employed by Mr. Jaballah's counsel. She attests that "Mr. Jaballah obtained an Egyptian passport on January 31, 2018." It is not clear whether that refers to a copy of his old passport or a new passport. In any event, no copy of any Egyptian passport for Mr. Jaballah – old or new – is found in either the CTR or the Application Record.

[61] On February 9, 2018, Mr. Jaballah requested a Canadian travel document. The request was rejected on March 13, 2018 because no valid original immigration status document was submitted with the application. The Applicants take the position that Mr. Jaballah, as a protected person, should have received a travel document.

[62] As I have determined that Mr. Jaballah is not a protected person, this argument fails. In addition, as set out below, proof of protected person status is required in order to obtain the travel document and Mr. Jaballah did not submit any such proof.

[63] The application form for the travel document states in section 3 that proof of immigration status in Canada "as a stateless or protected person" requires submission of the original of one of the following valid documents, which will be returned:

- permanent resident current
- notice of decision issued by the Immigration and Refugee Board of Canada
- temporary resident permit
- positive pre-removal risk assessment decision letter
- verification of status

[64] Mr. Jaballah did not submit supporting documents with his application for the travel document. For proof of immigration status in Canada, Mr. Jaballah submitted the information that the Immigration and Refugee Board had made a decision May 11, 1996. He provided the relevant client identification number for it but not the decision. A handwritten entry on page 2 of the Travel Document Application then adds "+ PRRA Aug 2002", "See counsel's letter" and "+ IRCC LETTER Jan 30/18", being the letter requesting Mr. Jaballah to provide a travel document. No counsel's letter is in the CTR. Only the January 30, 2018 letter advising Mr. Jaballah to obtain a Passport/Travel Document and Birth Registration/Certificate appears to have been submitted with the Travel Document Application.

[65] Unable to obtain an Egyptian passport or a Canadian travel document, Mr. Jaballah requested a waiver of the passport requirement. The request was submitted online on March 6, 2018.

[66] On April 10, 2018, Mr. Jaballah emailed CPC-Mississauga [CPCM] advising them of this fact. CPCM forwarded the email on April 11, 2018 to "Officer MMER3". As of the date of hearing of this application, it appears that no response has been made to Mr. Jaballah's waiver request.

[67] The position of Mr. Jaballah is that he has done all that he can do and, in any event, over the last 17 years of litigation, the federal government has never questioned his identity so they must have been satisfied with it.

[68] The Minister submits that because Mr. Jaballah arrived in Canada using a false Saudi Arabian passport it is all the more important to confirm his identity.

[69] I am not persuaded that Mr. Jaballah has done all that he can do. He has stated, but not shown, that he is unable to obtain an Egyptian passport or birth certificate.

[70] The Supplementary Memorandum of Fact and Law states that Mr. Jaballah has "a copy of an old Egyptian passport, which was submitted, but no current one." A copy of it is not in either the Applicants' Record or the CTR.

[71] The GCMS notes do not refer to receipt of an Egyptian passport. The only reference is found at page 115 of the Application Record in an email from Ms. Watts to "CMB Imm Case Client Enquiry". The email chronologically lists a select number of historic events in the Spousal Sponsorship Application process. One such entry states "[o]n 31 January 2018, we received copy of Egyptian passport". The reference to "we" is to the Applicants. There is no attachment indicated in the email nor is that email found in the CTR. No copy of the Egyptian passport is in the Application Record.

[72] No specifics have been given of the steps that Mr. Jaballah took when attempting to obtain his Egyptian passport or identity documents, current or expired. No evidence of any correspondence that Mr. Jaballah or his counsel may have had with Egyptian authorities or others, such as family members, is in either the CTR or the Application Record.

[73] It is up to the Applicants to submit the necessary documentation to support their application. The Court does not have any evidence upon which to find that Mr. Jaballah is not able to obtain an Egyptian passport, even an expired one. To the contrary, he provided both an email and a written submission indicating that he did receive an Egyptian passport. In the written submissions it is referred to as an "old Egyptian passport" and in the Watts Affidavit it is referred to as "an Egyptian Passport".

[74] The statement that Mr. Jaballah is unable to obtain an Egyptian passport is not supported by any correspondence showing a request for such a passport or a denial of a passport. There are no specifics of the process which led Mr. Jaballah to conclude that he could not obtain an Egyptian passport of some sort. He has alleged that he at the very least has recently received an old Egyptian passport.

[75] For all the foregoing reasons, I am not able to find that Mr. Jaballah has done all that he could to obtain a travel document nor that he is unable to obtain an Egyptian passport.

B. *Egyptian Birth Certificate*

[76] The Applicants submit that despite numerous attempts, Mr. Jaballah was unable to obtain his Egyptian birth certificate. It is not clear whether he also submitted a waiver request in relation to his birth certificate. As none appears in the CTR, I must assume no such request was made.

[77] This assertion fails for the same reasons as the Egyptian passport. There is no evidence of the numerous steps attempts made by Mr. Jaballah to obtain his birth certificate. There is no correspondence requesting a copy of his birth certificate. Nor is there any correspondence either acknowledging or rejecting such a request.

[78] Mr. Jaballah says that he filed a copy of his Egyptian marriage certificate dated 1984 and it provides the salient information concerning his birth. I agree that the marriage certificate does contain some of the information one would expect to find in a birth certificate. It provides his national identification number as well as his place and date of birth: Al Sharkiya, July 1, 1962 and his mother's name. It also states he is an Egyptian citizen.

[79] There is no evidence before the Court that when the marriage certificate was issued Mr. Jaballah was required to provide his birth certificate or that the authorities who issued the marriage certificate were able to ascertain that information from government records as opposed to the Applicants' self-reporting.

[80] More importantly, the marriage certificate is not, by itself, an acceptable identity document. In the instructions which accompany the Adult Travel Document Application, section M "Documents to support Identity" are required to include the name, date of birth, signature and photo of the person applying. It is permissible to use one or more documents which when combined, provide that information.

[81] The missing travel and identification documents are important. They are legislatively required to enable the Minister to fulfill his statutory obligations.

[82] It is not an answer to say that the Minister has various bits and pieces of information on file already as a result of the security certificate processes or that they have been involved with Mr. Jaballah's case for twenty years. The application for permanent residence as a member of the family class is a separate and distinct process from the former national security certificate proceedings. Different legislative provisions are in play. Different government departments are responsible. Completely different factors are taken into consideration and assessed.

[83] The Applicants say there are extensive GCMS notes in the file and the reviewing officers in this matter ought to have read them. That again is putting the onus on the officers to determine Mr. Jaballah's application by ferreting out information that presumably is readily available to him and ought to have specifically been drawn to the attention of the officers.

[84] Based on the evidence in the record, I find that the Spousal Sponsorship Application is incomplete as it is missing both a travel document and an identity document.

[85] While that finding is sufficient to deny this mandamus application I also will consider whether the Minister's processing times have been unreasonable.

VIII. Has there been an Unreasonable Delay in the Processing Time?

[86] In *Conille v Canada (Minister of Citizenship and Immigration)*, [1999] 2 FC 33, the Court found that there were three requirements to be met in determining whether a delay in processing an application — in that case a citizenship application — has been unreasonable. A delay will be unreasonable if all of the following are found:

(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.

A. *Has the delay in question been longer than the nature of the process required?*

[87] The Applicants submit the average processing time for determination on a Spousal Sponsorship Application as published online by the Minister at the time of their application was 12 months. Family reunification was stated to be a key immigration commitment therefore on December 7, 2016 the government announced changes to enable processing of most spousal sponsorship applications within a 12 month time frame.

[88] The Minister points out that the predicted 12 month time period was not a guarantee.

[89] Exhibits H and I to the affidavit of Patricia Watts contain, respectively: (1) a webpage print out of the December 6, 2018 website processing time tool for In-Canada spousal sponsorship applications and (2) printouts of two archived news releases about faster processing

times for spouses being reunited in Canada. One is dated December 15, 2016 and the other February 14, 2018.

[90] The December 15, 2016 news release includes this statement:

> We will process the majority (about 80 percent) of applications within 12 months from the day we receive them.

[91] That news release also contained an important caveat regarding the 12-month timeframe:

> Cases that are more complex would need more time to process.

[92] A February 14, 2018 news release reported that more than 80% of the spousal sponsorship backlog had received final decisions and the inventory had been reduced from 75,000 persons to 15,000 as of December 31, 2017.

[93] The website processing time tool in Exhibit H contained additional important information about the expected processing time for applications:

> We are committed to processing most complete applications within the above time.
>
> Your application may be delayed or returned if it is not complete.
>
> [Emphasis in original.]

[94] The Applicants acknowledge their matter is complex but say they have waited 31 months for their application to be processed and that is unreasonable. They would like to start the timeclock running as of the October 7, 2016 date that their application was received by the Minister and end it on or about October 7, 2017. To do so ignores both the complexity of the

application and the statement that the commitment to the 12-month time frame was made with respect to complete applications, which theirs still is not.

B. *Were the Applicants and their counsel responsible for the delay?*

[95] The Minister argues that any delay was contributed to by Mr. Jaballah's failure to submit this basic information during the almost 10 month period from February 2017 to November 2017.

[96] Mr. Jaballah was first notified on February 6, 2017 that updated Schedule A and Additional Family Information forms were required as information was missing.

[97] On February 7, 2017, an updated Work History, part of the Schedule A form, was submitted for the period October 7, 2006 to October 7, 2016**.** The GCMS notes indicate it was received by fax on February 8, 2017 and uploaded to the file. The resubmitted Work History indicated that Mr. Jaballah was detained from 2001 to 2007.

[98] According to the GCMS notes, on April 18, 2017 a letter requesting missing documents was sent to the Applicants by batch email. There is no copy of the letter in the CTR as it was part of a batch process.

[99] On November 22, 2017, a revised Schedule A was submitted but it was determined to be incomplete. It appears to have been the same as the originally submitted Schedule as it does not provide any address history for the month of October, 2006.

[100] The Applicants state that the Minister knew where Mr. Jaballah was in October 2006 as he was in detention.

[101] That is not a reasonable excuse for omitting the information.

[102] While many government officials may have known that Mr. Jaballah was in detention, it does not mean that the immigration officials processing his Spousal Sponsorship Application had the information. Nor does it require or oblige them to fill in the form for him. To complete deficient applications for applicants would be a very dangerous precedent with many legal implications.

[103] It is not up to the officials processing Mr. Jaballah's application to complete it for him. It was something that he very easily could have done but for some reason has failed or refused to do.

[104] In light of these two findings, the question of a satisfactory explanation for any delay does not arise.

IX. Conclusion

[105] For all the reasons given above, I am not persuaded that the Applicants have fulfilled all the criteria for an order of mandamus. The application is denied.

[106] There is no question for certification on these facts.

[107] I do not consider this an appropriate case for costs.

JUDGMENT IN IMM-5332-18

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended to remove the Minister of Public Safety and Emergency Preparedness as a party Respondent.

2. The application for an order of mandamus is denied.

3. There is no question for certification.

4. No costs.

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5332-18
STYLE OF CAUSE:	MAHMOUD ES-SAYYID JABALLAH AND HUSNAH MOHAMMAD AL-MASHTOULI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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