

Federal Court



Cour fédérale

Date: 20210729

Docket: IMM-794-21

Citation: 2021 FC 803

Ottawa, Ontario, July 29, 2021

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

**DEQUAN LI
GUANGYU ZHENG**

Applicants

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for an order in the nature of *mandamus* compelling the Respondent Minister to complete the processing of the Applicants' One-Year Permanent Resident Card applications as well as an order for directing the Respondent to forward the PR cards directly to

their residential address in Canada. The Immigration, Refugees and Citizenship Canada [IRCC] Tribunal did not provide written reasons.

II. Background

[2] The Applicants, Mr. Dequan Li and Ms. Guangyu Zheng, are citizens of China. They cannot read or write in English. With the help of their daughter, Hong Yan Li, they applied for their Canadian permanent resident [PR] cards renewal on March 29, 2019.

[3] Nation-wide warrants for the Applicants' arrests were issued on April 12, 2019 due to their failure to appear before the Immigration Division of the Immigration and Refugee Board for an admissibility hearing.

[4] IRCC officials began processing the applications on April 25, 2019. An entry in Ms. Zheng's Global Case Management System [GCMS] file dated July 19, 2019 notes that she is eligible for a one-year PR card and that she also has an open warrant.

[5] In February of 2020, the Canada Border Services Agency [the "CBSA"] cancelled the warrants.

[6] On March 16, 2020, IRCC offices closed to the public due to the COVID-19 pandemic. Three days later, the Applicants filed an application for leave and *mandamus* to compel the Minister to process their applications (IMM-2009-20).

[7] On September 2, 2020, the IRCC sent a letter to the Applicants advising that their applications for renewal of their PR cards were approved. Replacement cards were processed for the Applicants on September 22 and are valid for one year from date of issue. The cards were sent to the IRCC's Vancouver office. The Applicants' request that the IRCC mail the PR cards to the Applicants' residential address in Canada was refused.

[8] I dismissed the application for leave and *mandamus* under IMM-2009-20 on October 26, 2020.

[9] On March 12, 2021, the IRCC sent a letter to the Applicants inviting them to retrieve their printed PR cards from the Vancouver office on March 31, 2021. The letters indicated that their in-person attendance was required, as per subsection 58(3) of the *Immigration and Refugee Protection Regulations*, SOR 2002-227 [the "IRPR"].

[10] It has now been over 2 years since they applied for new PR cards. At this point, the Applicants have not been in Canada for over two years because of the delay in processing their PR Cards. They have not been able to see their daughter or their two grandchildren (who are all Canadian citizens). If they were to return, they would be subject to fourteen days of quarantine due to the ongoing COVID-19 pandemic.

III. Issue

[11] Should an order in the nature of *mandamus* be issued to compel the Respondent to send the Applicants' PR cards directly to their Canadian residential address?

IV. Relevant Provisions

[12] The relevant provisions include section 53(1) of the *IRPR*:

**Permanent Resident
Cards**

Document indicating status

53 (1) For the purposes of subsection 31(1) of the Act, the document indicating the status of a permanent resident is a permanent resident card that is

(a) provided by the Department to a person who has become a permanent resident under the Act; or

(b) issued by the Department, on application, to a permanent resident who has become a permanent resident under the Act or a permanent resident who obtained that status under the *Immigration Act*, chapter I-2 of the Revised Statutes of Canada, 1985, as it read immediately before the coming into force of section 31 of the Act.

Carte de résident permanent

Attestation de statut

53 (1) Pour l'application du paragraphe 31(1) de la Loi, l'attestation de statut de résident permanent est une carte de résident permanent :

a) soit remise par le ministère à la personne qui est devenue résident permanent sous le régime de la Loi;

b) soit délivrée par le ministère, sur demande, à la personne qui est devenue résident permanent sous le régime de la Loi ou à celle qui a acquis ce statut en vertu de la Loi sur l'immigration, chapitre I-2 des Lois révisées du Canada (1985), dans sa version antérieure à l'entrée en vigueur de l'article 31 de la Loi.

[13] Further, section 55 of the *IRPR* provides that:

Delivery

55 A permanent resident card shall only be provided or issued in Canada.

Délivrance

55 La remise ou la délivrance de la carte de résident permanent se fait au Canada.

[14] Further still, section 58 provides that:

Attendance required

(3) A permanent resident who applies for a permanent resident card under section 56 must, in order to be provided with the card, attend at the time and place specified in a notice mailed by the Department. If the permanent resident fails to attend within 180 days after the Department first mails a notice, the card shall be destroyed and the applicant must make a new application in order to be issued a permanent resident card.

Exigence de se présenter

(3) Le résident permanent qui fait une demande aux termes de l'article 56 doit, afin de se voir remettre la carte de résident permanent, se présenter aux date, heure et lieu mentionnés dans un avis envoyé par courrier par le ministère. Si le résident permanent ne se présente pas dans les cent quatre-vingts jours suivant la première mise à la poste d'un avis, la carte est détruite et il doit, s'il veut qu'une autre carte lui soit délivrée, faire une nouvelle demande.

[15] Finally, section 59 of the *IRPR* provides that:

Issuance of new permanent resident card

59 (1) An officer shall, on application, issue a new permanent resident card if

(a) the applicant has not lost permanent resident status under subsection 46(1) of the Act;

(b) the applicant has not been convicted under section 123 or 126 of the Act for an offence related to the misuse of a permanent resident card, unless a pardon has been granted and has not ceased to have effect or been revoked under the *Criminal Records Act*;

Délivrance d'une nouvelle carte de résident permanent

59 (1) L'agent délivre, sur demande, une nouvelle carte de résident permanent si les conditions suivantes sont réunies :

a) le demandeur n'a pas perdu son statut de résident permanent aux termes du paragraphe 46(1) de la Loi;

b) sauf réhabilitation — à l'exception des cas de révocation ou de nullité — en vertu de la Loi sur le casier judiciaire, le demandeur n'a pas été condamné sous le régime des articles 123 ou 126 de la Loi pour une infraction liée à l'utilisation frauduleuse d'une carte de résident permanent;

(c) the applicant complies with the requirements of sections 56 and 57 and subsection 58(4);

(c.1) in the case of an applicant referred to in paragraph 12.1(m) who is 14 years of age or older, the applicant has provided their biometric information in support of their application; and

(d) the applicant returns their last permanent resident card, unless the card has been lost, stolen or destroyed, in which case the applicant must produce all relevant evidence in accordance with subsection 16(1) of the Act.

Issuance of new permanent resident card — effect

(2) A previously issued permanent resident card is revoked on the issuance of a new permanent resident card.

c) le demandeur satisfait aux exigences prévues aux articles 56 et 57 et au paragraphe 58(4);

c.1) dans le cas d'un demandeur visé à l'alinéa 12.1m) qui est âgé de quatorze ans ou plus, celui-ci a fourni ses renseignements biométriques à l'appui de sa demande;

d) le demandeur rend sa dernière carte de résident permanent, à moins qu'il ne l'ait perdue ou qu'elle n'ait été volée ou détruite, auquel cas il doit donner tous éléments de preuve pertinents conformément au paragraphe 16(1) de la Loi.

Effet de la délivrance de la nouvelle carte

(2) Emporte révocation de la carte de résident permanent préalablement délivrée la délivrance d'une nouvelle carte.

V. Analysis

[16] The parties agree that the test for *mandamus* was set out by the Federal Court of Appeal in *Apotex v Canada (AG)*, [1994] 1 FC 742 (FCA) at paragraph 45:

- 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 performance of that duty, including that the applicant has satisfied all conditions precedent giving rise to the duty and that there was a prior demand for performance of the duty;

- iv. Where the decision is discretionary, consideration must be given to the nature and manner of the exercise of the discretion;
- v. No other adequate remedy exists or is available to the applicant;
- vi. The order sought will be of some practical value or effect;
- vii. No equitable bar exists for relief; and
- viii. The balance of convenience favours the issuance of *mandamus*.

[17] The parties appear to agree that there is a public legal duty to act. The Minister has the duty to process PR applications and, if they are approved, to issue PR cards.

[18] The Applicants take the position that the Minister has failed to perform this duty because ‘issuing the cards’, they submit, includes the implied duty of *physically* providing the cards to permanent residents. They concede that there is no explicit legal duty to issue the cards directly, but argue that there is also no legal impediment to doing so. They submit that while the IRCC offices were closed to the public, the Minister should have mailed the PR cards to the Applicants’ residential address in Canada, as holding the cards “in abeyance” defeats the purpose of issuing them.

[19] The Applicants appear to acknowledge that the IRCC offices are now open and that the Applicants were specifically invited to pick up their PR cards at the Vancouver office on March 31, 2021. However, the Applicants have not discontinued their leave application. They maintain that the Minister should still send the PR cards directly to the Applicants’ address, but for a different reason: they are outside of Canada and cannot return to Canada without their cards. It is

unclear to me how mailing the cards to a Canadian residential address would make it possible for them to be collected by the Applicants if they cannot return to Canada without the cards.

[20] Upon return to Canada, the Applicants would currently have to quarantine for fourteen days due to the COVID-19 pandemic. Therefore, they submit that even if they *could* return to Canada, there was not enough time between the letter dated March 12, 2021 and the appointment to pick up the PR cards on March 31, 2021 for them to possibly arrive in Canada and pick up the cards.

[21] The Applicants submit that there was an unreasonable delay in their PR application processing and that it was unreasonable for the Respondent to refuse to send the PR cards directly to the Applicants' Canadian residence, given the pandemic-related office closures and the quarantine requirements. There should be an implied obligation to issue PR cards in a practical way. Therefore, they submit that this Court should direct the Minister to mail the cards to their residential address in Canada.

[22] In contrast, the Respondent takes the position that the criteria for obtaining mandamus have not been met. The Minister has not refused to perform a duty as the PR applications have been processed, the cards have been printed, and the Applicants have been invited to the Vancouver office to pick up the cards. The Respondent submits that this Court does not have the jurisdiction to compel the Minister to mail the PR cards to the Applicants' Canadian residence because mailing the cards to a home address is not one of the Minister's duties.

[23] Given that the remedy of *mandamus* requires an applicant to establish that the respondent has refused to perform a duty demanded by the applicant, and that the Minister actively performed the duty by processing the Applicants' PR application, it is also the Respondent's position that the *mandamus* application is moot.

[24] The Minister has performed their public legal duty. There was no refusal to issue the PR cards. There is no dispute that the PR applications were processed and approved and the PR cards are ready to be picked up. This application for leave was granted on the basis that the IRCC offices were closed and there was no possible way for the Applicants to obtain their PR cards. Now that PR cards are ready to be retrieved and the offices are open, the application is moot.

[25] There is no basis for the Applicants' argument that PR cards *must* be mailed to people's homes. On the contrary, section 58(3) of the *IRPR* makes it clear that successful PR applicants *must* attend at the time and place specified by the Minister in order to be provided with the new PR card. In this case, the Minister specified March 31, 2021 at the Vancouver IRCC office.

[26] The fact that international travellers must quarantine for fourteen days is irrelevant as Section 58 of the *IRPR* also states that permanent residents have 180 days after the date of issue to pick up their cards in-person. Moreover, the schedule to pick up the PR cards can and could have been rescheduled on request.

[27] Based on the foregoing, the application is moot, but in any event, the Applicants have failed to satisfy the criteria for *mandamus*. The application is dismissed.

JUDGMENT in IMM-794-21

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-794-21

STYLE OF CAUSE: DEQUAN LI AND GUANGYU ZHENG v THE
MINISTER OF IMMIGRATION, REFUGEES AND
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APPEARANCES:

Lawrence Wong FOR THE APPLICANTS

Edward Burnet FOR THE RESPONDENT

SOLICITORS OF RECORD:

Lawrence Wong & Associates FOR THE APPLICANTS
Barristers and Solicitors
Vancouver, British Columbia

Attorney General of Canada FOR THE RESPONDENT
Vancouver, British Columbia