Federal Court Cour fédérale

Date: 20240719

Docket: IMM-13322-23

Citation: 2024 FC 1132

Toronto, Ontario, July 19, 2024

PRESENT: The Honourable Justice Battista

BETWEEN:

ALHASSAN AMAWLA
and FATIMA AMAWLA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is a judicial review application for a writ of *mandamus* compelling Immigration, Refugees and Citizenship Canada (IRCC) to issue a decision on the Applicants' applications for permanent residence, which were received by the Respondent over eight years ago, in May 2016.

[2] For the reasons that follow, I grant the application and order IRCC to issue a decision within 120 days of the date of the enclosed order. I also award costs to the applicant in the amount of $2,500.00 in recognition of the processing delay and the fact that most of the Applicants' requests during processing were ignored.

II. Background

[3] The Applicants applied for Canadian permanent residence as overseas dependents of their parents, who were determined to be Convention refugees by the Immigration and Refugee Board on April 11, 2016.

[4] The Applicants' parents, Wadad Alhorany and Kamel El Mawla, applied for permanent residence on May 20, 2016, and included the Applicants for concurrent processing in their applications. The parents made a request for expedited processing of the Applicants' applications in July 2016, based on their concerns for the safety of their children. No action was taken on this request.

[5] Almost four years after filing the application, the family grew worried about the safety and mental health of the Applicants given the delays in processing. On February 24, 2020, Ms. Alhorany submitted requests that 1) the Applicants be issued temporary resident permits (TRPs) to facilitate their entry into Canada during the processing of their permanent residence applications, 2) that her file be separated from her husband's file and that the Applicants' applications be attached to her file in order to facilitate processing, and 3) that her permanent residence application—together with the Applicants' applications—be expedited.

[6] The request to dissociate Ms. Alhorany's file from that of her husband was processed in or around June 2023. There has been no decision on the request for TRPs, and the request for prompt processing of the applications is essentially the subject of the present judicial review application.

[7] Ms. Alhorany became a permanent resident on July 12, 2023, after initiating a *mandamus* application in this Court. A decision has not been made on the Applicants' files.

III. Issues

[8] The issues in this judicial review application are whether the Applicants' circumstances satisfy all of the criteria for an order of *mandamus*, and whether an order of costs should be awarded to the Applicants. Regarding the first issue, the dispute between the parties concerns whether there would be a practical effect to the order of *mandamus*, and whether the balance of convenience favours the Applicants, who are seeking the order, or the Respondent, who resists the order.

IV. Analysis

[9] The criteria for a writ of *mandamus* were confirmed by the Federal Court of Appeal in *Apotex Inc* v *Canada (Attorney General) (CA)*, [1994] 1 FC 742, 1993 CanLII 3004 (FCA) and 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 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 its discretion finds no equitable bar to the relief sought; and

(7) On a "balance of convenience" an order in the nature of *mandamus* should (or should not) issue.

[10] In my view, all of the criteria have been met in this case.

[11] In assessing the reasonableness of the delay, I am guided by the criteria described in *Conille v Canada (Minister of Citizenship and Immigration) (TD)*, [1999] 2 FC 33, 1998 CanLII 9097 (FC) [*Conille*], which set out three factors for consideration:

(1) Has the delay in question been longer than the nature of the process required, *prima facie*?

(2) Is the applicant and/or applicant's counsel responsible for the delay? and

(3) Has the authority responsible for the delay provided a satisfactory justification?

[12] Regarding the first factor, the calculation of the length of the delay was initially in dispute between the parties. The Applicants argued that the delay should be measured beginning from the

time that their applications were filed, specifically, May 24, 2016—described as the "lock-in date" by the officer assigned to the files (Affidavit of Aaron Morrison, sworn May 15, 2024, para 11). This results in an eight-year delay. The Applicants rely upon *Latrache v Canada (Minister of Citizenship and Immigration)* (2001), 201 FTR 234, 2001 CanLII 22063 (FC), where Justice François Lemieux held at paragraph 17 that "the calculation for the purpose of determining the reasonableness of the delay should begin from the date when the application for permanent residence was filed by the applicant."

[13] The Respondent initially argued that the delay should be calculated from the time that the principal applicant on the applications, the Applicants' mother Ms. Alhorany, became a permanent resident. This occurred on July 12, 2023, resulting in a delay of one year. However, at the hearing of the judicial review application the Respondent conceded that the appropriate description of the delay is eight years.

[14] I agree with the parties that the appropriate description of the delay is eight years, beginning at the "lock-in date" of the Applicants' applications in 2016.

[15] Regarding the second factor from *Conille*, the Applicants have assumed responsibility for a delay of 10 months in the processing of their applications. This leaves the Respondent responsible for 86 months in processing the applications, which is 38 months longer than average posted processing times. No justification has been advanced for this delay.

[16] Given the excessive length of the delay, and the lack of justification for the delay, I find that the Applicants have a clear right to performance of the Respondent's duty to finalize the applications.

[17] As stated above, the Respondent opposes the order of *mandamus* on the basis that the order will have "no practical effect." The Respondent relies upon the evidence of regular steps in processing that have taken place since the Applicants' mother obtained permanent residence in July 2023. The Respondent states that its duty is being performed and any delays over the last year have been the responsibility of the Applicants, who provided incomplete and/or inaccurate information in response to the Respondent's attempt to process the applications in a timely manner. Over the last year this has resulted in three requests for clarification and further information, two procedural fairness letters, and an interview.

[18] The Respondent relies upon *Liang v Canada (Citizenship and Immigration)*, 2012 FC 758 [*Liang*]. *Liang* involved requests for *mandamus* from applicants under the skilled worker class after amendments were made to the *Immigration and Refugee Protection Act*, SC 2001, c 27, which allowed for the prioritization of applications meeting specified criteria. Justice Donald Rennie denied the order of *mandamus* for one of the applicants, Ms. Gurung, on the basis that active processing was taking place in her file. At paragraph 50, Rennie J. stated: "… the evidence before the Court is that her application is currently being actively processed and there is thus no purpose to be served by an order for *mandamus*."

[19] However, *Liang* is distinguishable from the present application. The request in *Liang* was for an order of *mandamus* requiring the Minister of Citizenship and Immigration to process their applications for permanent residence. Once Rennie J. ascertained that the processing of Ms. Gurung's application was occurring, *mandamus* was found to have no practical effect.

[20] The Applicants in the present case, by contrast, have not requested an order of *mandamus* requiring the Respondent to process their applications. They have requested an order of *mandamus* compelling the Respondent to finalize their applications. The order would therefore have the practical effect of ensuring the completion of processing, not simply the continuation of processing. In the context of children who have been separated from their parents for eight years, the order would have immense practical impact.

[21] Regarding the balance of convenience, the Respondent indicates that processing has recently been active and it has been the Applicants who have been responsible for delays over the last year.

[22] While accepting their responsibility for some of the recent delays, the Applicants assert their lack of confidence in the Respondent's commitment to finalizing their applications in a timely manner based on the pattern of past processing. They highlight the fact that it recently took the Respondent seven months—from September 2023 to April 2024—to respond to information that the Applicants submitted.

[23] I agree with the Applicants that the pattern of previous processing of these applications leaves little confidence that the applications will be finalized in a timely manner in the absence of an order of *mandamus*. In addition to the recent seven-month delay, the Respondent delayed three years to respond to Ms. Alhorany's February 2020 request to dissociate her file from the Applicants' father's file, and to attach the Applicants' files to hers. No action at all took place on the 2020 request for TRPs, and certainly nothing was done to expedite the processing of these applications based on the Applicants' perceived risk. For these reasons, I find that the balance of convenience favours the Applicants, and an order of *mandamus* will issue.

[24] The parties requested and were granted an opportunity to present a jointly prepared proposed order for the Court's consideration in the event that an order of mandamus was granted. They presented a proposed order which required that a decision be rendered on the Applicants' applications within 120 days of the order, which I will incorporate into the relief granted.

[25] The jointly prepared order also proposed that I grant an opportunity to extend the 120 day deadline either on consent by the parties or on motion by a party. However, once I dispose of this matter by issuing an order, the matter ends. I am unaware of any continuing jurisdiction of the Court to entertain motions and the parties suggested none. Moreover, even if I had such authority I would decline to exercise it in the interest of finality of Court decisions.

V. Costs

[26] The Applicants request costs in the amount of $2,500 based on a number of factors, including the excessive length of the processing delay and the fact that many of their requests during processing have been ignored.

[27] The Respondent opposes costs on the basis that processing efforts have been made over the past year and the Applicants have been responsible for the bulk of delays during this recent period. In the alternative, the Respondent proposes that costs should be no greater than the lowest end of column III of the table to Tariff B, which is currently $1,980. The Respondent suggests that any sum greater than that amount would result in a windfall to the Applicants.

[28] Rule 22 of the *Federal Courts Immigration and Refugee Protection Rules*, SOR/93-22 provides that "[n]o costs shall be awarded to or payable by any party in respect of an application for leave, an application for judicial review or an appeal under these Rules unless the Court, for special reasons, so orders." However, the parties agree that costs have been awarded by the Court in recognition of excessive delay in cases involving *mandamus*: *Ghaddar v Canada (Citizenship and Immigration)*, 2023 FC 946; *Aghdam v Canada (Public Safety and Emergency Preparedness)*, 2011 FC 131.

[29] I believe that costs are justified in this judicial review application not only based on the length of the delay, but based on the fact that many of the Applicants' requests and queries during the processing of their applications have been ignored. Aside from their ignored requests to speed up processing, they received no response to the request for TRPs, and the request to separate their parents' files and attach their applications to their mother's file was not processed for three years. Within the last year, it took seven months to respond to information provided by the Applicants; this delay occurred after this application for *mandamus* was commenced.

JUDGMENT in IMM-13322-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. A decision shall be rendered on the Applicants' applications for permanent residence within 120 days of the date of this order.
3. Costs are awarded to the Applicants in the amount of $2,500.00.
4. There is no question of general importance for certification.

"Michael Battista"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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STYLE OF CAUSE:	ALHASSAN AMAWLA AND FATIMA AMAWLA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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