

Federal Court



Cour fédérale

**Date: 20241008**

**Docket: IMM-8444-23**

**Citation: 2024 FC 1579**

**Toronto, Ontario, October 8, 2024**

**PRESENT: The Honourable Justice Fuhrer**

**BETWEEN:**

**AA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, a citizen of Russia, is a technology security professional. She was invited to submit an application for permanent residency [PR] after being accepted into the Express Entry pool of candidates and being nominated by the province of Ontario through its Provincial Nominee Program. Immigration, Refugees and Citizenship Canada [IRCC] acknowledged

receipt of the Applicant's PR application on March 5, 2022. To date, IRCC has not made a decision on her application.

[2] The Applicant seeks an order for *mandamus* to compel the Respondent to determine her PR application, arguing this Court has held that blanket statements about delays because of pending security checks are inadequate.

[3] The Respondent counters that the delay in processing the Applicant's PR application has not been longer than the nature of the process required under all the circumstances. I disagree.

[4] The primary issue for this Court's determination is whether the issuance of a writ of *mandamus* is warranted. In my view, it is.

[5] The secondary issue is whether the Applicant has shown "special reasons" justifying an award of costs in the circumstances. I find that she has.

[6] For the reasons below, the Applicant's application for *mandamus* will be granted, with the determinative issue being the unreasonableness of the delay in completing the review of the PR application.

## II. Preliminary issue: Applicant's Motion for Anonymity and Confidentiality

[7] The style of cause is amended with immediate effect to identify the Applicant as AA, further to the Order of this Court described next.

[8] Prior to the hearing of this matter, the Applicant brought a motion for anonymity under rule 8.1 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 [*FCCIRP Rules*], and for confidentiality under rule 151 of the *Federal Courts Rules*, SOR/98-106. At the hearing, the Applicant advised the Court that the parties had come to an understanding regarding the resolution of the motion. At the Court's request, the Applicant provided the Court with a draft Order to which the Respondent consented. Contemporaneously with this Judgment and Reasons, the Court has granted the Applicant's motion on the terms indicated in the Order issued on the same date.

[9] See Annex "A" for relevant provisions.

### III. Analysis

#### A. *Mandamus is warranted*

[10] The Applicant has demonstrated, to the Court's satisfaction, that she meets the *Apotex* test for *mandamus*: *Apotex Inc v Canada (Attorney General)*, [1994] 1 FC 742 at 766-769, 1993 CanLII 3004.

[11] There are eight preconditions that must be satisfied before the Court will exercise its discretion to issue *mandamus*. These are (as reproduced from *Almuhtadi v Canada (Citizenship and Immigration)*, 2021 FC 712 [*Almuhtadi*] at para 30):

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;

4. Where the duty sought to be enforced is discretionary, consideration must be given to the nature and manner of exercise of that discretion;
5. No other adequate remedy is available to the applicant;
6. The order sought will be of some practical value or effect;
7. There is no equitable bar to the relief sought; and
8. On a “balance of convenience,” an order of *mandamus* should be issued.

[12] Jurisprudence further guides that the *Conille* requirements for assessing the reasonableness of the delay overlay the *Apotex* test where the reason for seeking *mandamus* rests in the length of time an applicant waits for the (as yet unperformed) public duty to be performed: *Conille v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 9097 (FC) [*Conille*].

(See also *Abdolkhaleghi v Canada (Minister of Citizenship and Immigration)*, 2005 FC 729

[*Abdolkhaleghi*] at para 14.) These requirements are:

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.

[13] In my view, it is inherent in the invitation to a skilled foreign worker to make an application for permanent residency through the Express Entry – PNP program, that there is a public legal duty to act, the duty is owed to the applicant, and there is a right to the performance of that duty.

[14] As I see it, of the remaining factors of the *Apotex* test, the real question for this Court to consider here is the third requirement of the *Conille* assessment, that is whether IRCC has provided satisfactory justification for the delay. I find that it has not and that this issue is determinative because it tips the balance of convenience in favour of (or supports that it favours) the Applicant.

[15] From the time the Applicant's PR application was locked-in (March 5, 2022) until all other requirements were met but for the security checks (November 28, 2022) was just under eight months. According to Note 23 dated November 28, 2022 in the Global Case Management System [GCMS] notes, the only outstanding step in the determination of the Applicant's PR application was the background security clearance for her. Note 24 dated September 27, 2023 confirms an enquiry made by the Applicant. It is the last entry in the GCMS notes as of the date when the certified tribunal record was sent to and received by the Court on January 31, 2024.

[16] IRCC's stated processing time of PR applications for provincial nominees – online via express entry – is six months. As of today, the Applicant's PR application has been pending for about 30-31 months from the locked-in date, about five times the average length of time for processing. Further, the Applicant has received no communication indicating that her application is complex (which could contribute to some delay beyond six months).

[17] That a background or security clearance is pending, in itself without something more, is not an adequate explanation for the delay: *Abdolkhaleghi*, above at para 26; *Almuhtadi*, above at para 40; *Bidgoly v Canada (Citizenship and Immigration)*, 2022 FC 283 at para 46; *Sowane v Canada (Citizenship and Immigration)*, 2024 FC 224 at para 29. Further, as this Court recently explained, the question of security inadmissibility could continue to be applicable, even if an applicant were granted permanent residence: *Vadiati v Canada (Citizenship and Immigration)*, 2024 FC 1056 at para 22.

[18] I am persuaded that a delay of this approximate length of time (at 30-31 months or five times the applicable average length of time) is unreasonable here when considered in the context of the Applicant's insecure situation, including a return to Russia earlier this year because of the death of her father, and the lack of access to the not insignificant "proof of funds" required to support her PR application.

[19] Having considered the *Apotex* test and the *Conille* requirements, I conclude that *mandamus* is warranted and will be granted on the terms indicated below.

B. *Costs are justified*

[20] The Applicant submits that there are special reasons (i.e. significant delay and absence of transparency) justifying a costs award under rule 22 of the *FCCIRP Rules*. (Rule 22 is reproduced in Annex "A" below.) The Respondent disagrees, arguing that the Applicant does not come close to the test.

[21] Ultimately, I agree with the Applicant that costs are warranted in this case.

[22] While I am sympathetic to the Applicant's argument that the Respondent here has chosen not to file any evidence explaining the delay (in contrast to *Almuhtadi*, above at paras 16-19 and 61), I am not persuaded that such a litigation strategy, in itself, meets the high threshold for a costs award: *Adewusi v Canada (Citizenship and Immigration)*, 2012 FC 75 at paras 23-25.

[23] That said, the Respondent raised a new issue at the hearing that was not raised earlier in the Respondent's memorandum of argument and that was unsupported by any evidence. The Respondent sought to justify the delay in dealing with Applicant's security clearance with reference to a recent incident involving study permits and thwarted terrorist activity by the permit holders. As I understand it, the implication of this submission is that security clearances generally are taking longer because the government is taking more care with them as a result of this incident.

[24] Leaving aside the impropriety of this unsupported bolstering effort by the Respondent, even if the Court were to take judicial notice of the incident, it does not address most of the period for delay at issue in the matter presently before the Court.

[25] In the circumstances, I am satisfied that there are special reasons justifying a modest lump sum costs award of \$500 payable by the Respondent to the Applicant.

#### IV. Conclusion

[26] For the above reasons, the Applicant's application for an order for *mandamus* will be granted. The Respondent will have 60 days from the date of this Judgment and Reasons to complete the security clearance and advise the Applicant of the outcome, and 120 days from the same date to make a final determination on the Applicant's PR application and to communicate the result to the Applicant. The Applicant is awarded lump sum costs in the amount of \$500 payable by the Respondent.

[27] Neither party proposed a serious question of general importance for certification. I find that none arises in the circumstances.



**JUDGMENT in IMM-8444-23**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is granted.
2. The security clearance portion of the Applicant's application for permanent residence shall be completed within 60 days of the date of this Judgment and the Applicant shall be informed forthwith of the outcome.
3. A decision shall be rendered on the Applicant's application for permanent residence within 120 days of the date of this Judgment, with the result communicated forthwith to the Applicant.
4. Costs are awarded to the Applicant in the amount of \$500 payable by the Respondent.
5. There is no question for certification.

"Janet M. Fuhrer"

---

Judge

**Annex “A”: Relevant Provisions**

*Federal Courts Act (R.S.C., 1985, c. F-7)*  
*Loi sur les Cours fédérales (L.R.C. (1985), ch. F-7)*

<p><b><i>Mandamus, injunction, specific performance or appointment of receiver</i></b></p> <p><b>44</b> In addition to any other relief that the Federal Court of Appeal or the Federal Court may grant or award, a mandamus, an injunction or an order for specific performance may be granted or a receiver appointed by that court in all cases in which it appears to the court to be just or convenient to do so. The order may be made either unconditionally or on any terms and conditions that the court considers just.</p>	<p><b><i>Mandamus, injonction, exécution intégrale ou nomination d’un séquestre</i></b></p> <p><b>44</b> Indépendamment de toute autre forme de réparation qu’elle peut accorder, la Cour d’appel fédérale ou la Cour fédérale peut, dans tous les cas où il lui paraît juste ou opportun de le faire, décerner un mandamus, une injonction ou une ordonnance d’exécution intégrale, ou nommer un séquestre, soit sans condition, soit selon les modalités qu’elle juge équitables.</p>
---	---

*Federal Courts Rules (SOR/98-106)*  
*Règles des Cours fédérales (DORS/98-106)*

<p><b><i>Motion for order of confidentiality</i></b></p> <p><b>151 (1)</b> On motion, the Court may order that material to be filed shall be treated as confidential.</p> <p><b><i>Demonstrated need for confidentiality</i></b></p> <p><b>(2)</b> Before making an order under subsection (1), the Court must be satisfied that the material should be treated as confidential, notwithstanding the public interest in open and accessible court proceedings.</p>	<p><b><i>Requête en confidentialité</i></b></p> <p><b>151 (1)</b> La Cour peut, sur requête, ordonner que des documents ou éléments matériels qui seront déposés soient considérés comme confidentiels.</p> <p><b><i>Circonstances justifiant la confidentialité</i></b></p> <p><b>(2)</b> Avant de rendre une ordonnance en application du paragraphe (1), la Cour doit être convaincue de la nécessité de considérer les documents ou éléments matériels comme confidentiels, étant donné l’intérêt du public à la publicité des débats judiciaires.</p>
--	--

*Federal Courts Citizenship, Immigration and Refugee Protection Rules (SOR/93-22)*  
*Règles des cours fédérales en matière de citoyenneté, d’immigration et de protection des réfugiés (DORS/93-22)*

<p><b><i>Anonymity Order</i></b></p> <p><b>8.1 (1)</b> A party to an application for leave may make a written request, in Form IR-5 as</p>	<p><b><i>Ordonnance d’anonymat</i></b></p> <p><b>8.1 (1)</b> Toute partie à une demande d’autorisation peut demander par écrit à la</p>
--	---

<p>set out in the schedule, that the court make an order that all documents that are prepared by the Court and that may be made available to the public be amended and redacted to the extent necessary to make the party's identity anonymous.</p> <p>(2) A party who opposes the request may, in that Form IR-5, make a written objection to the request.</p> <p>(3) A request or an objection to a request, as the case may be, shall be served and filed and set out the grounds for the request or objection.</p> <p>(4) A request shall be determined at the same time, and on the basis of the same materials, as the application for leave.</p> <p>(5) The Court may make an order under subrule (1) if, after taking the public interest in open and accessible court proceedings into account, the Court is satisfied that the party's identity should be made anonymous.</p> <p>(6) An order under this rule continues in effect until the Court orders otherwise, including for the duration of any appeal of the proceeding and after final judgment.</p>	<p>Cour, selon la formule IR-5 figurant à l'annexe, d'ordonner que tous les documents préparés par la Cour qui pourraient être mis à la disposition du public soient modifiés et caviardés dans la mesure nécessaire pour assurer son anonymat.</p> <p>(2) Toute partie qui s'oppose à la demande peut, selon la formule IR-5, s'y opposer par écrit.</p> <p>(3) La demande ou l'opposition à une demande est signifiée et déposée et indique les motifs sur lesquels elle se fonde.</p> <p>(4) Il est statué sur la demande en même temps que sur la demande d'autorisation et à la lumière des mêmes documents.</p> <p>(5) La Cour peut rendre l'ordonnance visée au paragraphe (1) si, compte tenu de l'intérêt du public à la publicité des débats judiciaires, elle est convaincue de la nécessité d'assurer l'anonymat de la partie en cause.</p> <p>(6) L'ordonnance rendue en vertu du présent article demeure en vigueur jusqu'à ce que la Cour en ordonne autrement, y compris pendant la durée de toute procédure d'appel et après le jugement définitif.</p>
<p><b>Costs</b></p> <p><b>22</b> No 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.</p>	<p><b>Dépens</b></p> <p><b>22</b> Sauf ordonnance contraire rendue par un juge pour des raisons spéciales, la demande d'autorisation, la demande de contrôle judiciaire ou l'appel introduit en application des présentes règles ne donnent pas lieu à des dépens.</p>

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-8444-23

**STYLE OF CAUSE:** AA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 25, 2024

**JUDGMENT AND REASONS:** FUHRER J.

**DATED:** OCTOBER 8, 2024

**APPEARANCES:**

Lev Abramovich FOR THE APPLICANT

Bernard Assan FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Abramovich Immigration Law FOR THE APPLICANT  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario