Federal Court Cour fédérale

Date: 20250630

Docket: IMM-13713-24

Citation: 2025 FC 1163

Ottawa, Ontario, June 30, 2025

PRESENT: Mr. Justice McHaffie

BETWEEN:

LEANDRE BARAMPAHIJE
IDA BINOBA
DYLAN DAVID MAHORO
MARLYN-CRYSTAL MUGISHA
MAGALLY RUKUNDO

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The central issue on this application for an order of *mandamus* is now moot, as the applicants were granted permanent residence after the matter was heard. Two subordinate issues remain outstanding. The first is whether a document submitted by the applicants after the

hearing, namely a decision regarding Leandre Barampahije's admissibility, should be filed and remain on the Court record. The second is whether the applicants should be awarded costs.

[2] For the following reasons, I conclude the admissibility decision should be filed and remain on the Court record, and the application should be dismissed as moot, without costs.

II. The Security Clearance Decision

(1) Background to the issue

[3] The applicants, citizens of Burundi, were granted refugee protection in April 2021 and applied for permanent residence in June 2021. When no decision was made on their applications for a number of years, they brought this application in July 2024 for an order of *mandamus*.

[4] The application was heard on April 14, 2025. At that time, the parties' best information was that the only issue holding up the applicants' permanent residence applications was Mr. Barampahije's security clearance, and that it was still pending. In particular, a concern had been raised in respect of Mr. Barampahije's admissibility under paragraph 34(1)(b.1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], arising from certain acts taken in his former role as a public prosecutor in Burundi.

[5] In fact, however, a Senior Immigration Officer with Immigration, Refugees and Citizenship Canada [IRCC] had issued a [TRANSLATION] "Written decision on inadmissibility to

Canada" that was favourable to Mr. Barampahije on April 7, 2025, a week before the hearing [the April 7 Decision].

[6] The April 7 Decision was posted to Mr. Barampahije's account on the IRCC online portal on April 16, 2025, two days after the hearing, while the Court had the matter under reserve. The same day, with the consent of the Minister, the applicants advised the Court of this fact and submitted a copy of the April 7 Decision.

[7] The Minister subsequently advised that the April 7 Decision had actually been uploaded to Mr. Barampahije's portal inadvertently and asked that it not be distributed further. Further correspondence on this issue led to a case management conference, conducted on April 30, 2025, at which the Minister advised that the April 7 Decision was only a preliminary decision, although a final decision on the security clearance had been issued in the interim. The Minister asked that the April 7 decision not be filed or maintained on the Court record. At the conclusion of this conference, the Court gave the parties an opportunity to make written submissions on whether the document should remain on the public Court record, including whether any claim of privilege was made over the document.

[8] The applicants were granted permanent residence on May 21, 2025, and therefore withdrew their request for an order of *mandamus* on May 27, 2025. On June 5, 2025, the Minister confirmed that while they maintained the objection to the inadvertently disclosed April 7 Decision remaining on the record, they were not advancing a formal application for non-disclosure under the *IRPA*, the *Canada Evidence Act*, RSC 1985, c C-5, or the common law.

(2) The April 7 Decision should remain on the record

[9] As the Minister has maintained their objection, the Court must decide whether the April 7 Decision should be filed and remain on the public record. For the following reasons, I conclude that it should.

[10] The decision was originally submitted to the Court, with the consent of the Minister, in order to update the Court on the status of the matter that was the subject of the *mandamus* application. There is no dispute that in the context of a *mandamus* application it was appropriate, and indeed necessary, for the parties to keep the Court advised of any change in the status of the matter that might affect the order requested: see *Conille v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 168 at paras 47–48; *Mao v Canada (Citizenship and Immigration)*, 2025 FC 932 at para 19.

[11] While the Minister subsequently advised that the April 7 Decision had been released to the applicant inadvertently, and indeed that positive security clearance assessments are not generally released to applicants at all, it is clear that the applicants did no wrong in receiving the decision or in transmitting it to the Court. The April 7 Decision was an attachment to correspondence filed by the applicants to explain material changes affecting the applicants' status and thus relevant to their *mandamus* application. While the April 7 Decision was not ultimately what rendered the central issue on this application moot—it was the granting of permanent residence that had that effect—it was nonetheless directly relevant to the Court's consideration and treatment of the file after the hearing of the application.

[12] The Court's proceedings are presumptively open: *Sherman Estate v Donovan*, 2021 SCC 25 at paras 1–2, 37. As a general rule, documents that are properly filed with the Court are on the Court record and are available for the public to consult: *Sherman Estate* at para 1. This includes not only the formal record on an application for judicial review, but other aspects of the Court file, including non-confidential correspondence submitted by parties. While exceptional circumstances may arise in which competing interests justify a restriction on the open court principle, such restrictions are only justified to prevent a risk to a competing interest of public importance: *Sherman Estate* at para 3.

[13] In the present case, the only grounds on which the Minister objects to the April 7 Decision remaining on the record is that it was initially released to Mr. Barampahije in error. In my view, this is insufficient to justify its removal from the Court record. The situation might be materially different if the inadvertently disclosed record contained privileged, confidential, or prejudicial information: see *Sellathurai v Canada (Public Safety and Emergency Preparedness)*, 2011 FCA 223 at paras 1, 5, 42–46, 65–67. However, there is no such information in the present case. Rather, the document in question is limited to a decision as to Mr. Barampahije's admissibility under paragraph 34(1)(b.1) of the *IRPA*, in respect of which an earlier assessment and recommendation by the Canada Border Services Agency is already on the record. Nor is there any indication that there would be any material prejudice or that any other competing interest of public importance would be affected by the document remaining on the record.

[14] I therefore conclude that the letter of counsel for the applicants, including the attachments thereto, should remain on the Court record and be entered in the Court's registry system as they would be in the ordinary course. No order will issue that those documents be returned or removed from the Court record.

III. Costs

[15] In their memorandum of argument filed on this application, the applicants indicated that they would discontinue the application, without maintaining any request for costs, if they were granted permanent residence before the judicial review hearing. Absent such an event (which did not occur), the applicants sought an order of costs in the amount of $7,000.

[16] Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 [*Rules*] provides that no costs are to be awarded in respect of applications for leave or judicial review under the *Rules* "unless the Court, for special reasons, so orders." The nature of "special reasons" within the meaning of Rule 22 was discussed by the Federal Court of Appeal in *Ndungu v Canada (Citizenship and Immigration)*, 2011 FCA 208 at paras 6–7.

[17] For the following reasons, I conclude that there are no special reasons justifying an award of costs in this matter.

[18] As noted above, the applicants have been granted permanent residence. The matter has therefore become moot, and the applicants have appropriately withdrawn their request for an order of *mandamus*. As a result, the Court has not needed to decide whether there was

unreasonable delay in the processing of the applicants' permanent residence applications that would justify a *mandamus* order. In any event, however, it is not every successful application for a *mandamus* order that merits an award of costs: *Sellathurai v Canada (Citizenship and Immigration)*, 2024 FC 1548 at paras 5–7, citing *Djikounou v Canada (Citizenship and Immigration)*, 2022 FC 584 at para 23. Neither the *Manivannan* case cited by the applicants nor the Court of Appeal's reference to the issuance of a decision "after an unreasonable and unjustified delay" establishes that circumstances that justify an order of *mandamus* inherently constitute "special reasons" under Rule 22: *Manivannan v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1392, 2008 CarswellNat 4769; *Ndungu* at para 7(5)(iv). This is confirmed by recent cases of this Court in which an order of *mandamus* has been granted, or dismissed as moot, without an award of costs: see, *e.g.*, *Javed v Canada (Citizenship and Immigration)*, 2025 FC 987 at paras 17, 19; *Contreras Monterroso v Canada (Citizenship and Immigration)*, 2025 FC 170 at paras 6–13; *Kaur* v *Canada (Citizenship and Immigration)*, 2024 FC 1155 at paras 21–25, citing *Nagulathas v Canada (Citizenship and Immigration)*, 2011 FC 1282 and *Kanthasamyiyar v Canada (Citizenship and Immigration)*, 2015 FC 1248.

[19] In the present case, the processing of the applicants' permanent residence applications took about four years. A complex issue pertaining to Mr. Barampahije's potential inadmissibility under paragraph 34(1)(b.1) of the *IRPA* had to be resolved. Contrary to the applicants' submissions, I see no abuse of process in the current circumstances in the Minister considering and addressing this issue as part of an admissibility determination despite the fact that a potential exclusion under section 98 of the *IRPA* and Article 1 F a) or c) of the *United Nations Convention Relating to the Status of Refugees* was raised but withdrawn before the Refugee Protection

Division. While the inadmissibility concern was based on the same factual underpinnings, an exclusion under section 98 and inadmissibility under paragraph 34(1)(b.1) raise two different legal matters. The Minister was entitled, and indeed obliged, to assess Mr. Barampahije's admissibility as part of his application for permanent residence. Nor do I view this as a case of "a more powerful or well-resourced party […] oppressing a party with lesser means," as the applicants submit.

[20] Still less do I accept the applicants' submissions arising from the context in which the April 7 Decision arose and was disclosed to the applicants, the Minister's counsel, and the Court. It is certainly unfortunate that counsel was not informed of the material change in the status of the applicants' applications before the April 14, 2025, hearing. The Court wishes to emphasize to both the Minister and the Department of Justice the importance of counsel and the Court having the most accurate and up-to-date information available both at the time of a *mandamus* hearing and thereafter.

[21] However, I see no support whatsoever for the applicants' contention that the fact that a decision had been made on Mr. Barampahije's admissibility was deliberately withheld in light of the pending hearing "such that it could be accurate to tell the Court that there might be an ongoing investigation at the time of the judicial review hearing." This is a serious allegation, and one that has been made without any factual basis except for the Minister's counsel being unaware of the April 7 Decision at the time of the hearing. I see no grounds to infer deliberate misfeasance or an intention to mislead—as opposed to inadvertence or, at worst, lack of diligence—from the mere fact of a lack of communication. If anything, the inadvertent

subsequent disclosure of the decision to the applicants supports a conclusion of human error or miscommunication rather than the deliberate plot to mislead the applicants and/or the Court that the applicants now allege.

[22] In all the circumstances, I conclude that despite the length of time in processing the applicants' applications for permanent residence, and even assuming that an order of *mandamus* would have been justified, there are no special reasons justifying an award of costs in this case. I also note that had I found there were special reasons justifying an award of costs, I would have reduced the amount of costs sought by the applicants by reason of the unsubstantiated allegations of deliberate misfeasance and intention to mislead made by the applicants against the Minister: *Contreras Monterroso* at para 12.

IV. Conclusion

[23] The application for judicial review is therefore dismissed as moot, without costs. The applicants' correspondence, with attachments, will be filed and remain on the Court record in the ordinary course, such that no order will issue removing it from the Court record.

[24] There is no question for certification.

JUDGMENT IN IMM-13713-24

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed, without costs.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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