

Federal Court



Cour fédérale

Date: 20250411

Docket: IMM-8156-24

Citation: 2025 FC 680

Toronto, Ontario, April 11, 2025

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

AMIRHOSSEIN MAJIDI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] In December 2019, the Applicant submitted an application for permanent residence in Canada in the Start-Up Visa category. He is still awaiting a decision on this application. He now comes to this Court seeking a writ of *mandamus* directing the Respondent to make a decision on his application. In making this request, the Applicant alleges that the delays by Immigration,

Refugees and Citizenship Canada [IRCC] are unreasonable and that he has satisfied all the conditions required for a writ of *mandamus*.

[2] For the reasons that follow, this application for judicial review is granted.

II. BACKGROUND

[3] The Applicant, Mr. Majidi, is a dentist. He has also invented a “dental implant prosthetic and surgical life-saving kit” for which he has received patents in Canada, the United States and the European Union. Together with two other individuals, the Applicant applied for permanent residence in Canada under the Start-Up Business class [the SUV Class]. Their plan is to locate their business in Canada, which will include manufacturing, marketing, and sales to dentists who perform dental implant surgery. As noted above, the Applicant submitted his application under the SUV Class in December 2019.

[4] Almost two years later, in September 2021, the Applicant received correspondence from IRCC indicating that they had “begun” processing his application, and identifying various documents that it required for a decision. It appears that the Applicant replied to this correspondence within the time permitted.

[5] Roughly 18 months after IRCC’s initial correspondence, it sent the Applicant a “procedural fairness letter” outlining various concerns with his application. The Applicant responded to this correspondence, and shortly thereafter IRCC requested updated forms and police clearances. Once again, the Applicant promptly provided the requested documentation.

[6] It appears from the record that Mr. Majidi has not heard from IRCC in the roughly two years since this time, aside from a request to update his medical examination. His case status inquiries do not appear to have yielded further information as to the delays in processing his application.

[7] However, in response to this application for leave and judicial review, the Respondent has provided an affidavit sworn by the case officer who has carriage over the Applicant's SUV application. In that affidavit, the officer indicated that the security screening in respect of the Applicant's file has been completed, however, security screening is continuing for a family member of one of the other applicants associated with Mr. Majidi's SUV Class application. As such, the officer indicated that a final decision could not yet be made on Mr. Majidi's application. This is due to s.98.08(2) of the *Immigration and Refugee Protection Regulations* [IRPR], which provides as follows:

If there is more than one applicant in respect of the same business and one of the applicants who was identified in the commitment as being essential to the business is refused a permanent resident visa for any reason or withdraws their application, the other applicants must be considered not to have met the requirements of subsection 98.01(2) and their permanent resident visa must also be refused.

III. ISSUES

[8] The only question at issue is whether the delay in processing the Applicant's SUV Class application warrants the issuance of a *mandamus* order.

IV. ANALYSIS

[9] Mandamus is a public law remedy compelling the performance of a public legal duty. In *Wasylynuk v Canada (Royal Mounted Police)*, 2020 FC 962 at para 76, my colleague Justice Little set out both its meaning and application:

Mandamus is an order that compels the performance of a public legal duty. The duty is typically set out in a statute or regulation. An order of *mandamus* is the Court's response to a public decision-maker that fails to carry out a duty, on successful application by an applicant to whom the duty is owed and who is currently entitled to the performance of it. The test for *mandamus* thus requires careful consideration of the statutory, regulatory or other public obligation at issue, to determine whether the decision-maker has an obligation to act in a particular manner as proposed by an applicant and whether the factual circumstances have triggered performance of the obligation in favour of the applicant.

[10] The test for *mandamus* applications was established by the Federal Court of Appeal in *Apotex Inc v Canada (Attorney General)*, 1993 CanLII 3004 (FCA), [1994] 1 FC 742 (CA) at para 4; aff'd [1994] 3 SCR 110. It requires consideration of the following factors:

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

[11] The Applicant submits that each of the above criteria have been met and, as such, it is appropriate to order that a decision be rendered on the Applicant's SUV Class application within a time to be specified by the Court.

[12] The Respondent does not appear to contest that most of the above criteria are made out, but maintains that: 1) There is no evidence that IRCC has refused or failed to perform a duty it is obliged to perform; and 2) there is a reasonable explanation for the delay (the outstanding security screening of the family member of a co-applicant) and, as such, there is no unreasonable delay warranting a writ of *mandamus*. As such, I will consider these issues to determine whether an order of *mandamus* is appropriate in this case.

A. *Public Duty to Act*

[13] The Respondent did not provide detailed submissions to support their argument that there has been no failure to perform a public duty. The extent of the submission rests on s.98.08(2) of the IRPR, and to the fact that the delay in this case relates to the security clearance of a co-applicant's family member. More specifically, the Respondent states that "the IRPR prohibits the

performance of the specific duty the Applicant wants performed - the rendering of a final decision on his permanent residence application - until the admissibility of all concerned is conclusively determined.”

[14] This brings us to the somewhat unusual detail in this case, which is that the only cause of the delay is a matter related to a separate, yet co-dependent application. This raises the question as to how, in this context, we should view the applications of all the SUV Visa applicants. Counsel for the Applicant initially suggested that, at least for present purposes, the Applicant’s application could be severed from the other applicants, leaving any outstanding security clearances associated with them to be done separately. Following the Respondent’s submissions, counsel resiled from this argument, and agreed that s.98.02 of the IRPR requires that these applications be finalized together.

[15] Parallel to this, at the hearing I asked counsel for the Respondent if his interpretation of the SUV Visa class, and particularly s.98.02 of the IRPR, means that applications such as this should essentially be considered as if they are one large application. Counsel agreed with this proposition.

[16] Taking the above into consideration, I find that the Minister does have a public legal duty to act in this case, and that this duty to the Applicant incorporates the processing of any co-dependent applications. The Respondent has not provided any detailed argument, or authority, to the contrary. As such, I proceed on the basis that IRCC has a public duty to process the Applicant’s application, with everything that this may entail, and that, to date, this duty has not been fulfilled.

[17] Before moving on, I feel compelled to state the obvious here, which is that the Minister is not obliged to *grant* the Applicant's application. Indeed, if there is a security-related inadmissibility associated with one of the SUV co-applicants, the Minister is required to dismiss the application, pursuant to s.98.02 of the IRPR. What the Minister cannot do, however, is maintain that there is no public duty to process the Applicant's application, merely because a co-applicant's application has been held up by unexplained security-related delays - a topic to which I now turn.

B. *Unreasonable Delay*

[18] To assess whether any delay associated with an application has become unreasonable, the Courts have devised a further set of questions to consider (see, in particular *Conille v Canada (Minister of Citizenship and Immigration)* (T.D.), 1998 CanLII 9097 [*Conille*]):

1. Has the delay in question been longer than the nature of the process required, *prima facie*?
2. Are the applicant or their counsel responsible for the delay?
3. Has the authority responsible for the delay provided a satisfactory justification?

[19] In this matter, the Respondent has not disputed that the process has taken much longer than usual. Similarly, there is no suggestion that either the Applicant or his counsel have been responsible for any of the delays. As such, this matter turns entirely on the last of the above questions.

[20] In support of their positions, the parties present the Court with co-existent lines of jurisprudence. For example, the Applicant refers to several decisions in which this Court has found that “bare assertions” of ongoing security reviews are not an impenetrable shield against allegations of unreasonable delay: see for example *Ghalibaf v Canada (Citizenship and Immigration)*, 2023 FC 1408 [*Ghalibaf*] at paras 13-15 and the many cases cited therein.

[21] On the other hand, the Respondent refers to decisions in which this Court has emphasized the importance of security screening measures as a necessary and important requirement under the *Immigration and Refugee Protection Act*, and that these measures may justify lengthy processing delays: *Carrero v Canada (Citizenship and Immigration)*, 2021 FC 891 at paras 14-15; *Jaber v Canada (Citizenship and Immigration)*, 2013 FC 1185 at para 26. The Respondent also refers to *Seyoboka v Canada (Citizenship and Immigration)*, 2005 FC 1290 at para 9 for the proposition that when it comes to matters of security, “the Court must not issue an order of mandamus having the effect of an aborted or abbreviated investigation.”

[22] The coherent thread that ties these cases together lies in the nature, detail, and substance of the explanation or justification provided for the delay. In this case, the extent of that explanation can be drawn from the Respondent’s affidavit and is as follows:

As part of the admissibility assessment, a security screening for all applicants in the group, and named dependents, was initiated. It is still ongoing for a family member of one of the applicants in the group.

[...]

Therefore, until the security verification is completed for all clients in all the associated applications, I will not be able to make a final decision on the file.

The security screening on the Applicant's file (File No. E001307709) has been completed...

Once the security screening on the outstanding file is completed and the steps mentioned above are also completed, we will be able to make a final decision on this group. I however cannot provide a specific timeframe for the completion of security screening on that outstanding file.

[23] In my view, the above statement closely resembles the kind of “blanket statement” that Justice Norris found to be insufficient in *Ghalibaf*. Aside from the fact that the delay in this case relates to the family member of a co-applicant, there is simply no information in the above passage about the review itself, and the reasons for its length. This deprives the Court of its ability to assess whether the length of the security review is reasonable: *Jahantigh v Canada (Citizenship and Immigration)*, 2023 FC 1253 at para 19. Given my findings, above, on the intertwined nature of the SUV co-applications, I do not view the fact that one security clearance remains outstanding for the family member of a co-applicant provides, on its own, a sufficient justification for the delay in processing Mr. Majidi's application.

[24] I note here that it was open to the IRCC to explain that they were limited in what they could disclose about the security screening of an individual who is not a party to this application for judicial review. The Respondent could have argued that this concern for privacy was, in the unusual circumstances of this case, a satisfactory justification, since no further information could be provided. However, they have made no such argument.

[25] Given the above, I am satisfied that the Applicant has established that there has been an unreasonable delay in processing his application.

C. *The Question of Significant Prejudice*

[26] While not raised by either party, at the outset of the hearing into this matter, I asked counsel for submissions on whether a further pre-requisite to obtaining *mandamus* relief – the requirement to demonstrate significant prejudice arising from the delay – should be considered. I asked this question because some recent decisions of our Court have said just this: see *Alinejad v Canada (Citizenship and Immigration)*, 2024 FC 1994 at para 19; *Abbasy v Canada (Citizenship and Immigration)*, 2024 FC 1982 at para 6; *Bedard v Canada (Attorney General)*, 2024 FC 570 at para 32; *Chen v Canada (Citizenship and Immigration)*, 2023 FC 885 at para 16.

[27] These recent cases have suggested that the “significant prejudice” requirement is, in effect, a fourth criterion to establish unreasonable delay. The inspiration for the addition of this criterion appears to come from paragraph 52 of this Court’s decision in *Vaziri v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1159, which, in turn, imported it by analogy from the abuse of process context discussed by the Supreme Court of Canada in *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 at para 101.

[28] I agree that prejudice may, in some cases, be a relevant factor in determining whether a Court should issue a writ of *mandamus*. I am not convinced, however, that the high bar of “significant prejudice” necessarily flows from the abuse of process context to the *mandamus* context, or that a new, independent criterion is necessary to consider the issue of prejudice. As noted above, the *mandamus* analysis is already characterized by a comprehensive framework involving the 8-part *Apotex* test, plus the 3-part *Conille* test. In my view, the question of prejudice can easily be incorporated into the present framework, most appropriately under the

balance of convenience stage of the analysis. Where the question of prejudice does *not* belong, in my respectful view, is in the assessment of unreasonable delay. I note that my colleague Justice Turley has very recently, and coincidentally, come to precisely this conclusion in *Tousi v Canada (Citizenship and Immigration)* 2025 FC 671 [*Tousi*]. I entirely agree with Justice Turley's conclusions on this issue, as set out at paras 13-17 of *Tousi*.

[29] Where an applicant has suffered no prejudice from a delay (or indeed has benefitted from a delay, as sometimes happens), it may well be that the balance of convenience in respect of any processing delays will rest with the Minister. Conversely, where, in addition to having met the other *Apotex* requirements, the Applicant can point to *some* prejudice, the balance will typically tilt in favour of the *mandamus* relief sought. To be clear, I am not suggesting that prejudice be included as an integral component of the balance of convenience assessment. I merely note that it *may* be a relevant factor in some cases.

[30] Further, while I accept that prejudice may be a relevant factor in assessing *mandamus* applications, I am not convinced that the notion of “significant prejudice,” as it has arisen in the abuse of process context, should directly and with no alterations be imported into the *mandamus* context. In *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29, the Supreme Court of Canada recently re-visited the concept of abuse of process arising from delay in the administrative law context. In doing so, the Court also discussed various remedies – both those intended to prevent an abuse of process, and those capable of addressing such abuses once they have already occurred. One of the processes discussed by the Court was *mandamus*. The Court stated (at paras 80-81):

Mandamus can be sought to compel administrative decision makers to carry out their duties and, in so doing, to limit delay in administrative proceedings: *Blencoe*, at para. 150. A party who believes he or she is facing undue delay can seek such a remedy, or an order for an expedited hearing, even before an abuse of process exists, rather than “waiting in the weeds” in the hopes of obtaining a stay at some future point: *Blencoe*, at para. 182. Mandamus may also be ordered as a remedy for an abuse of process if one is found.

My comments here do not intend to change any of the standards applicable for obtaining an order of mandamus generally. They merely affirm that it may also be an appropriate tool to prevent and address abuse of process.

[31] It is clear from the above that *mandamus* can be an important tool in preventing abuses of process from occurring, together with the significant prejudice that necessarily accompanies such abuses. Considered in this light, it does not make sense to incorporate the “significant prejudice” criterion from the abuse of process context into the *mandamus* context. To do so would, perversely, *require* a level of hardship that *mandamus* is specifically intended to prevent.

[32] In briefly applying these principles to the case at hand, I am satisfied (and the Respondent did not seriously dispute) that the Applicant has experienced some prejudice arising from the delay in processing his application. Most notably, he has created an entire business plan to commence a business in Canada, that is in part dependent on the time-limited patent protection he has received. The clock on this protection is ticking, and in the meantime, the Applicant is unable to move forward with his business plans in Canada, or elsewhere, should his application ultimately be denied.

V. CONCLUSION

[33] For the above-mentioned reasons, I will grant this application for judicial review and an order of *mandamus* will be issued.

[34] That said, I also recognize that Mr. Majidi's application is more complicated than many applications that come before this Court, in part because it requires that several separate, yet co-dependent, applications be processed in lockstep. As such, I will grant IRCC 90 days to complete processing of Mr. Majidi's application.

[35] The parties proposed no question of general importance for certification and I agree that none arises in this case.

JUDGMENT in IMM-8156-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.
2. A writ of *mandamus* is ordered compelling IRCC to process and issue its decision on the Applicant's application for permanent residence within 90 days of the issuance of this decision.
3. No costs are awarded.
4. There is no question of general importance to be certified.

"Angus G. Grant"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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DATED: APRIL 11, 2024

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