

Federal Court



Cour fédérale

Date: 20250428

Docket: IMM-4699-23

Citation: 2025 FC 751

Ottawa, Ontario, April 28, 2025

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

**AYMAN M.A. KARAKRA
NANCY BASSAM ALOUSH**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS AND JUDGMENT

[1] Mr. Ayman M.A. Karakra (the “Principal Applicant”) and his wife Ms. Nancy Bassam Aloush (collectively “the Applicants”) seek judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”). They request an order of *mandamus* to compel the Minister of Citizenship and Immigration (the “Respondent”) to process their application for permanent residence made on humanitarian and compassionate (“H & C”) grounds pursuant to subsection 25(1) of the Act.

[2] The following details are taken from the Certified Tribunal Record (the “CTR”).

[3] The Principal Applicant is from the West Bank. His wife is a permanent resident of Israel. Both are Palestinian.

[4] They are the parents of five Canadian-born children who were born between 2012 and 2023.

[5] The Applicants arrived in Canada in December 2011 and tried to claim protection. The Principal Applicant was imprisoned for five months after being convicted of offences under sections 122 and 126 of the Act.

[6] The Applicants’ claim for refugee protection was dismissed by the Immigration and Refugee Protection Board, Refugee Protection Division in April 2014. Their application for judicial review was dismissed in December 2014, at the leave stage.

[7] The Applicants submitted their application for permanent residence on H and C grounds in February 2018. The first part of the process was completed by December 2020. In June 2022, Immigration, Refugees and Citizenship Canada (the “IRCC”) provided an update, advising that it was waiting for information from partner agencies.

[8] No decision was made before the Applicants filed their application for leave and judicial review on April 11, 2023, seeking an Order of *mandamus* on the following terms: “... requiring the officer to render a decision with respect to the Applicants' application.”

[9] The Federal Court of Appeal set out several factors for the grant of *mandamus* in its decision in *Apotex Inc. v Canada (Attorney General)*, [1994] 1 FC 742 (FCA). The third factor is relevant to this case, as follows:

There is a clear right to the 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.

[10] The Applicants now argue that the duty to process their application has not been met, that the process is “supposed” to take 18 months and that 70 months have elapsed since they submitted their application. They also submit that they are not responsible for the delay, and that there is no satisfactory justification for the delay.

[11] The Minister of Citizenship and Immigration (the “Respondent”) contends that the Applicants have not shown a failure on her part to satisfy a public duty to “act” nor have they shown an unreasonable delay.

[12] As well, the Respondent submits that the timelines provided by the IRCC are not “guarantees” but estimates of processing times. She argues that the explanation from the IRCC about awaiting information from partner agencies is a satisfactory explanation for the delay.

[13] In respect of the delay, the Respondent relies upon the decision in *Jaballah v. Canada (Citizenship and Immigration)*, 2019 FC 1051. In that decision the Court noted that a delay of 31 months was no “longer than the nature of the process required”.

[14] The parties were given the opportunity to address a later decision, *Jaballah v. Canada (Citizenship and Immigration)*, 2024 FC 163, where the remedy of *mandamus* was granted.

[15] In *Conille v. Canada (Minister of Citizenship and Immigration) (T.D.)*, [1999] 2 F.C. 33, Justice Tremblay-Lamer outlined the requirements for an unreasonable delay in the context of processing a citizenship application:

(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.

[16] In my opinion, the Applicants have shown that the delay of 70 months between submitting their application for permanent residence and filing the within application for leave and judicial review is longer than the nature of the process requires, *prima facie*.

[17] I am satisfied that the Applicants and their counsel are not responsible for the delay.

[18] The Respondent points to the progress that was made on the application between 2018 and 2020, and refers to the pandemic. In oral submissions, but not in the written argument, she referred to the continuing war between Israel and Hamas.

[19] With respect, the Covid pandemic can no longer be an excuse for delays in processing applications for permanent residence. No one knows when the conditions in the Middle East will settle.

[20] I am not satisfied that the Respondent has provided a satisfactory justification for the delay.

[21] In the result, the application for judicial review will be granted. There is no question for certification.

JUDGMENT IN IMM-4699-23

THIS COURT'S JUDGMENT is that the application for judicial review is granted and an Order of *mandamus* is granted, that the Respondent will process the Applicants' application for permanent residence within one hundred and twenty (120) days of this judgment. There is no question for certification.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4699-23

STYLE OF CAUSE: AYMAN M.A. KARAKRA ET AL v. MCI

PLACE OF HEARING: EDMONTON, ALBERTA

DATE OF HEARING: FEBRUARY 10, 2025

**FURTHER SUBMISSIONS
RECEIVED:** FEBRUARY 18, 2025 & FEBRUARY 26, 2025

REASONS AND JUDGMENT: HENEGHAN J.

DATED: APRIL 28, 2025

APPEARANCES:

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Meenu Ahluwalia	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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