

Federal Court



Cour fédérale

Date: 20250506

Docket: IMM-16611-24

Citation: 2025 FC 820

Ottawa, Ontario, May 6, 2025

PRESENT: The Honourable Madam Justice Blackhawk

BETWEEN:

ESMAEIL CHELOEI

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant seeks an order of *mandamus* to compel the Respondent to determine his visitor visa application submitted on September 29, 2023. The Applicant alleges that the delays by Immigration, Refugees and Citizenship Canada (“IRCC”) are unreasonable and that he satisfies all the conditions required for an order of *mandamus*.

[2] The Respondent argues that the Applicant’s application is being processed, and that any delays in the processing of his application are related to security screening requirements.

[3] For the reasons that follow, this application is dismissed.

II. Background

[4] The Applicant is a citizen of Iran. On September 29, 2023, he applied for a visitor visa to visit his spouse and daughters, who are studying in Canada.

[5] On January 4, 2024, the Applicant passed the eligibility requirements for a visitor visa. His application was then referred to security partners to initiate background checks.

[6] On February 21, 2024, in response to an inquiry about the status of his application, IRCC advised that the application was under review.

[7] On September 11, 2024, the Applicant filed this application for leave and judicial review, seeking an order of *mandamus* to compel IRCC to make a decision on his application.

[8] On September 25, 2024, IRCC requested the Applicant's military records and received some information on October 3, 2024.

[9] On February 19, 2025, IRCC sent the Applicant a letter requesting clarification of the information regarding his military service. Specifically, if this was service with the Iran Police, the Iran Army, or the Islamic Revolutionary Guard Corps ("IRGC").

[10] On February 26, 2025, IRCC received the Applicant's response, that he served in the IRGC for two years.

III. Issues and Standard of Review

[11] The sole issue for determination is: has the Applicant satisfied the test for granting an order of *mandamus*?

[12] An order of *mandamus* is a discretionary remedy that may be issued “to compel the performance of a statutory duty owed to the applicant” (*Bedard v Canada (Attorney General)*, 2024 FC 570 at para 25). The test for an order of *mandamus* was set out by the Federal Court of Appeal in *Apotex Inc v Canada (Attorney General)*, 1993 CanLII 3004, [1994] 1 FC 742 (FCA) at 766–769 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 either be expressed or implied, e.g. unreasonable delay;
4. Where the duty sought to be enforced is discretionary, the following rules apply:
 - (a) in exercising a discretion, the decision-maker must not act in a manner which can be characterized as “unfair”, “oppressive” or demonstrate “flagrant impropriety” or “bad faith”;
 - (b) *mandamus* is unavailable if the decision-maker’s discretion is characterized as being “unqualified”, “absolute”, “permissive” or “unfettered”;
 - (c) in the exercise of a “fettered” discretion, the decision-maker must act upon “relevant”, as opposed to “irrelevant”, considerations;

(d) *mandamus* is unavailable to compel the exercise of a “fettered discretion” in a particular way; and

(e) *mandamus* is only available when the decision-maker’s discretion is “spent”, i.e., the applicant has a vested right to the performance of the duty.

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 (or should not) issue

[Citations and emphasis omitted. See also *Lukacs v Canada (Transportation Agency)*, 2016 FCA 202 at para 29 and *Ur Rehman v Canada (Citizenship and Immigration)*, 2025 FC 388 [Ur Rehman] at para 8).

[13] All eight factors must be satisfied for this Court to issue an order of *mandamus* (*Ur Rehman* at para 9).

[14] Allegations of unreasonable delay are assessed within the third factor. A court may find that a delay in the performance of a public legal duty is unreasonable where the following three criteria are satisfied: (i) the delay is *prima facie* longer than the process requires; (ii) the applicant and/or his counsel are not responsible for the delay; and (iii) the authority responsible for the delay has not provided satisfactory justification (*Conille v Canada (Minister of Citizenship and Immigration)* (TD), 1998 CanLII 9097, [1999] 2 FC 33 (FC) at para 23; *Hersy v Canada (Citizenship and Immigration)*, 2024 FC 789 at para 27; *Ur Rehman* at para 9).

[15] What constitutes an unreasonable delay or length of time to render a decision is not a uniform standard; rather, each decision turns on its particular facts, considering the applicable regime (*Bidgoly v Canada (Citizenship and Immigration)*, 2022 FC 283 at para 33).

[16] In addition to satisfying the criteria for an order of *mandamus*, an applicant seeking *mandamus* based on delay must also demonstrate significant prejudice which results from the delay (*Vaziri v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1159 at para 52; *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 at para 101; *Ur Rehman* at para 11).

IV. Analysis

[17] The Applicant argued that the delay is unreasonable. The focus of the Applicant's argument is that the amount of time to process his application has exceeded the posted average processing time. At the time of his application, the IRCC website indicated that the average time to process visitor visa applications from Iran was 41 days. In support of his argument, the Applicant relied on *Mohamed v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16405 (FC). Further, the Applicant argued that there is a public interest in ensuring that applications are processed in a timely way, and this would not prejudice the Respondent.

[18] The Respondent said that there has been no unreasonable delay in this matter. They argued that the length of time taken to process the Applicant's application is attributable to necessary security screenings. In addition, they argued that the record for this matter illustrates that the Applicant's application has been moving forward. Finally, they noted that recent jurisprudence from this Court clarifies that processing times posted on the IRCC website are estimates, not guarantees.

[19] The bulk of the Applicant's argument focused on the fact that his visitor visa application is taking longer than the estimated processing time posted on the IRCC website.

[20] In *Jia v Canada (Citizenship and Immigration)*, 2014 FC 596 [*Jia*], this Court was clear that statements set out on websites “do not give rise to any representation that would bind the respondent in respect of how long IIP applications would be in process” (at para 92). This is so for several reasons. First, there is no entitlement to having an application processed in a particular way. Second, there is no basis to assume that processing times and/or quotas will remain unchanged. Third, there is no basis to conclude that such representations should be viewed as binding (*Jia* at paras 92–94).

[21] The Applicant has not persuaded me that the fact that his application has taken longer to process than the estimated delay set out on the IRCC website is in and of itself a basis for granting the extraordinary relief of *mandamus*.

[22] I accept the submissions of the Respondent that security screening and background checks involve multiple government departments and must be comprehensive to fulfill the Minister’s obligations under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. IRCC works with security partners who have subject-matter expertise and tools to conduct necessary statutorily required security checks.

[23] While the processing time in this application has been lengthy, it is not unreasonable. The process has been ongoing since September 2023, roughly 18 months. The Applicant is an Iranian citizen and indicated that he had two years of mandatory service in the IRGC. The record for this application demonstrates that the Respondent has been taking steps to move the application forward.

[24] Some of the objectives of the *IRPA* are to “maintain the security of Canadian society” (*IRPA*, s 3(1)(h)) and to promote security “by denying access to Canadian territory to person who

are criminals or security risks” (*IRPA*, s 3(1)(i)). To ensure applicants are admissible prior to granting temporary residence, officers are required to ensure that security and background checks are completed. This process takes time.

[25] In this case, the record demonstrates that IRCC requested additional documentation and information to complete the necessary security checks related to the Applicant’s military service. While the Applicant provided some information in his initial application, this information was not complete. It was reasonable and justifiable for IRCC to request certified copies of the Applicant’s military records and additional information concerning the nature of his military service.

[26] Despite providing a prompt response to these inquiries, the information provided was not a complete response to the IRCC inquiries, which necessitated a subsequent request for further information on February 19, 2025.

[27] The Applicant submitted that the requests for additional information came late in the process and the most recent request for information followed the Order granting leave for this application. The Applicant argued that this demonstrates that the steps taken are only to “make it appear as though there has been activity on the file.” With respect, I do not agree. Nor do I agree that the security concerns in this matter are “11th hour” concerns. The Applicant alerted IRCC officials to his military service. It is reasonable and the Respondent is justified in taking steps to ensure that the Applicant does not pose a risk to the security of Canada and Canadians, in view of the objectives set out in the *IRPA*.

[28] This Court has cautioned against issuing an order of *mandamus* when it would have the effect of aborting or abbreviating a security investigation (*Seyoboka v Canada (Minister of*

Citizenship and Immigration), 2005 FC 1290 at para 9). The Respondent is justified in its efforts to complete a security check prior to issuing a visa.

[29] I am not persuaded that the balance of convenience favours the granting of an order of *mandamus*.

[30] The Applicant suggested that he has been prejudiced by the delay, as this is time away from his family and he seems to suggest that there is no prejudice to the Respondent. The Applicant's assertions that time away from his spouse and daughters has been prejudicial were not supported with evidence.

[31] Conversely, the Respondent argued that the Applicant has not presented anything to this Court to justify the prioritization of his application over others in the queue. The Respondent noted that if an order for *mandamus* is granted, this effectively permits the Applicant to "jump the queue" and have his application processed ahead of others who are also waiting for a decision. Further, the Respondent noted that some of the delay is because of the Applicant's failure to provide complete responses in his application and in the first request for additional information concerning his military service.

[32] An order of *mandamus* has an impact on the Respondent's ability to process other applications in the queue. I understand that the time taken to process the Applicant's application has been long and is a source of frustration; however, the Court must be satisfied that an applicant satisfies all necessary requirements, including the requirement that there has been significant prejudice (*Chen v Canada (Citizenship and Immigration)*, 2023 FC 885 at paras 20–21).

[33] I appreciate that the Applicant has been waiting some time to visit his spouse and daughters in Canada. The Applicant's family chose to study in Canada. There is no evidence that the Applicant's family has not been able to return to Iran to visit him, or that the family could not visit each other elsewhere. While I appreciate that the Applicant would like to come to Canada to see his family, there is no right to enter Canada. There is a process involved, and that process requires officers to ensure that all prospective visitors are persons who do not place the security of Canadians at risk, an important objective of our immigration system.

[34] While I agree with the Applicant that there is a public interest in having an immigration system that is efficient and expeditious, the Applicant has not persuaded me that the circumstances of his case warrant the extraordinary remedy of an order of *mandamus*.

V. Conclusion

[35] The Applicant has not demonstrated that the time taken thus far to process his application for a visitor visa has been unreasonable or is unjustified. Therefore, the Applicant has not met the high threshold required for an order of *mandamus*.

[36] The application for judicial review is dismissed.

JUDGMENT in IMM-16611-24

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question is certified.

“Julie Blackhawk”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-16611-24

STYLE OF CAUSE: ESMAEIL CHELOEI v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: APRIL 29, 2025

JUDGMENT AND REASONS: BLACKHAWK J.

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