

Federal Court



Cour fédérale

**Date: 20231030**

**Docket: IMM-10354-22**

**Citation: 2023 FC 1440**

**Ottawa, Ontario, October 30, 2023**

**PRESENT: The Hon Mr. Justice Henry S. Brown**

**BETWEEN:**

**MOHAMMADREZA JAVID**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Nature of the Matter

[1] This is an application for judicial review and *mandamus* compelling the Respondent to make a decision on the Applicant's application for permanent residence pursuant to section 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] The Applicant submits the processing delay is unreasonable, and claims he has met all requirements for an order in the nature of *mandamus*.

## II. Facts

[3] The Applicant is a citizen of Iran currently residing in Canada with his wife and children.

[4] The Applicant applied for permanent residence for himself and family under the Economic Immigration, Quebec Business Class. As required, he invested some \$220,000 in Quebec, and obtained a Certificat de Sélection du Québec [CSQ- Quebec Selection Certificate] on April 30, 2020, indicating Quebec accepted his application under the Quebec Business Class.

[5] It is common ground that in addition to Quebec's acceptance he needs to be accepted by the Respondent under *IRPA*. Canada has not yet completed its assessment under either admissibility or eligibility.

[6] He made his application through the Provincial Nominee Program [PNP], non-express entry on August 7, 2020. It has been now approximately 38 months since he submitted his application, but there is no decision yet.

[7] The Applicant acknowledges when he submitted his application, he knew and the Minister's website indicated the normal processing time for Quebec Business Class applications was 62 months. The processing time has since increased to 65 months.

[8] The last substantive file update was on March 2, 2022, when the Applicant's name was changed. Since then, there is one entry from March 14, 2023, indicating a telephone enquiry from a representative of the Applicant.

[9] It is also noted that biometrics (photographs and fingerprints, dated April 19, 2021) were received and complete as of March 2, 2022.

[10] Under 'Assessments', the following is noted:

Eligibility:	<b>Not Started</b>
Security:	<b>Not Started</b>
HIRV:	
Criminality:	<b>Passed</b>
Org Crime:	
Medical:	<b>Not Started</b>
Misrepresentation:	
Info Sharing:	<b>Complete</b>
Other Reqs:	
Final:	

[11] Under 'Paper File', it is listed as being at the Registry of the Centralized Intake Office. Under 'Application Assignment', there is no assignment. Under 'Eligibility Assessment', it is noted that eligibility for the Applicant under the PNP has not started.

III. Issues

[12] The Applicant raises the following:

1. Is there an undue and unreasonable delay by the Respondent in deciding the Applicant's study permit?
2. Is the Applicant responsible for the delay?
3. Has the Respondent provided a satisfactory justification for the delay?
4. Has the delay been prejudicial to the Applicant?

[13] The Respondent says the issue is whether the Applicant has demonstrated an Order granting *mandamus* is warranted. I agree.

IV. Standard of Review

[14] The Federal Court has jurisdiction with respect to the issuance of a writ of *mandamus* pursuant to section 18(1)(a) of the *Federal Courts Act*, RSC 1985, c F 7. Further, subsection 18.1(3)(a) stipulates on an application for judicial review, the Federal Court may “order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing.”

[15] The parties agree the test for *mandamus* is outlined by the Federal Court of Appeal in *Apotex Inc v Canada (Attorney General) (CA)*, [1994] 1 FC 742 [*Apotex*]. There, Justice

Robertson sets eight requirements to be satisfied before an order of *mandamus* may issue.

Notably all test must be met because failure on any one disentitles an applicant to *mandamus*:

- (1) there must be a legal duty to act;
- (2) the duty must be owed to the applicant;
- (3) there must be a clear right to performance of that duty;
- (4) where the duty sought to be enforced is discretionary, certain additional principles apply;
- (5) no adequate remedy is available to the applicant;
- (6) the order sought will have some practical value or effect;
- (7) the Court finds no equitable bar to the relief sought; and
- (8) on a balance of convenience an order of *mandamus* should be issued.

V. Submissions of the Parties

[16] The Applicant submits and I agree in the immigration context where *mandamus* is sought, the issue of whether to grant the remedy or not concerns the clear right to the performance of the duty, or more accurately, the reasonableness of the delay during which no such performance has occurred: *Abdolkhaleghi v Canada (Minister of Citizenship and Immigration)*, 2005 FC 729 at para 13, per Tremblay-Lamer J.

[17] In *Conille v Canada (Minister of Citizenship and Immigration) (TD)*, [1999] 2 FC 33, Justice Tremblay-Lamer outlined the requirements for delay to be considered unreasonable:

- (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 a  
satisfactory justification.

[18] The Applicant submits he is owed a decision by the Respondent and has met the *Apotex* requirements. The Applicant's position is that the normal 62 month (now 65 month) processing time for permanent residence applications through the Quebec Business Class program is procedurally unfair and unreasonable.

[19] The Applicant submits an indicator on what a reasonable timeframe is may be found by looking to how long other immigration programs take to process applications, including the Atlantic Immigration Pilot, Canadian Express Class, Home Support Worker Pilot, and Self-Employed Persons, to name a few.

[20] With respect, I disagree. I am not persuaded these other programs are sufficiently analogous to be appropriate comparables. Rather I would compare his delay to that of others in the same program stream, and to the delay he knew about, understood and accepted when he made his application. Nothing suggests anything unreasonable about his situation. The Minister argues that to issue an order for *mandamus* would effectively amount to "queue-jumping." I agree completely.

[21] The Applicant alleges the delay is longer than the process requires, and argues that the Minister of Citizenship and Immigration admitted this in a National Post article dated October

26, 2022. This allegation is not accurate; the person quoted was not the Minister but an immigration lawyer with no ascertained expertise proffering an opinion.

[22] The Applicant refutes the Respondent's argument that Canada holds an absolute discretion on how to distribute resources among its departments, and subsequently on how different applications are processed. The Applicant submits this is "suggestive of an arbitrariness." Again, I disagree. He chose to enter a lengthy and complicated process, as will be seen, and the delay is simple par for the course with this oversubscribed program.

[23] Finally, the Applicant submits the delayed processing time violates basic human rights, is antithetical to the Applicant's planned investment, and an injustice to have one's life put on hold for this amount of time. There is no merit in this claim because the Applicant put almost no evidence on the record to back it up and relies on a series of unsupported conclusory allegations.

[24] The Respondent submits the Applicant has not met the test for *mandamus*. Specifically, the Respondent argues that the Applicant has failed to establish the following: that there is a clear right to the processing of his application, that the delay is unreasonable, and that the balance of convenience favours the Applicant.

[25] The Respondent relies on *Vaziri v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1159 [*Vaziri*] per Justice Snider, where the Court recognized the Minister's entitlement to set priorities for admission targets. He says that is what is happening in this case. At paragraphs 51-55, Justice Snider states:

[51] Fortunately, the Court has further guidance in determining what amounts to unreasonable delay. In *Conille* at para. 23, Justice Tremblay-Lamer held that if a delay is to be considered unreasonable, it must meet three requirements:

- (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.

[52] The same guidance was adopted and applied in *Hanano*, above at para. 10, and *Shapovalov v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 753 at para. 13. To this list of three requirements, I would also add that a person seeking mandamus based on delay must also demonstrate significant prejudice which results from the delay (*Blencoe*, above at para. 101).

[53] There are two ways to look at whether the delay has been longer than the nature of the process required. The first way is to consider a PR application in a vacuum, without considering whether it relates to a parent or grandparent or to someone from another class. In that case, the deliberate delay at the sponsorship stage and at the beginning of the PR application stage clearly extends the amount of time required to process the Applicants' applications beyond the time strictly necessary to assess the applications.

[54] On the other hand, if one takes a wider and more detailed view, then the length of time taken is within the time that the nature of the process requires, because there are simply too many applications for Canada to allow them all, resulting in annual levels being set. Even among the number of applications that can be allowed within a given year, the Minister must discriminate between the classes in order to meet the goals of IRPA and the explicit policies of the Government. In this context, applications relating to parents and grandparents require a longer time to process than most other PR applications. The nature of the process is longer.

[55] I prefer the latter view. The "nature of the process" must be informed by a full understanding of where the Applicants' applications fit within the immigration scheme. It is inherent in the



system, as currently constituted, that some PR applications are processed differently than others. FC4 applications are processed slower, in accordance with policies. Therefore the length of time taken to process the Applicants' files must be viewed in light of this longer process. Upon the evidence before me, then, it does not seem that the delay to date – between 3 and 4 years – is excessive. It would appear that this is in accordance with the expected times to process FC4 applications that were filed in 2003. Indeed, the Respondent indicates that the Applicants' files are expected to be completed sooner than would be expected, since the rate of PR applications being received in the last year or two is lessening.

[26] In this connection, the Respondent filed the evidence of Marcel Bak, Director of the International Network at the Respondent's National Headquarters. Mr. Bak speaks to how applications are prioritized due to the inventory levels set by each Province and Canada, and the prioritization in this case due to the backlog from the pandemic. The evidence is that now older applications are prioritized with a "first in-first out" processing principle in effect, among other things.

[27] With respect, this evidence adequately explains the processing delay in this case. Mr. Bak's evidence in this connection is at paragraphs 3-23. Because the matter is complicated it is set out more fulsomely:

3. In my current capacity as Director, Permanent Resident and Target Management, I am responsible for allocating operational targets to migration offices overseas by lines of business to meet admission levels set by the Cabinet Immigration Levels Plan. The Immigration Levels Plan is a three-year projection of how many permanent residents will be admitted to Canada, and it sets targets and ranges for overall admissions in each immigration category. I am also responsible for monitoring achievement of these targets during the year, liaising with the migration offices and making adjustments to targets as warranted by variation in operational conditions and capacities. Accordingly, I have knowledge of the matters herein deposed.

4. The Quebec Business Class includes categories of investors, entrepreneurs and self-employed persons and is one of those lines of business for which levels of immigration are annually established and for which I set targets for and monitor on a constant basis for the overseas offices of the International Network.

5. According to subsection 10(2) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (*IRPA*), the Minister of IRCC must consult with the government for each of the provinces with respect to the number of immigrants expected in each class and their distribution in Canada, taking into account regional and demographic requirements and settlement issues.

6. According to subsection 12(a) of the *Canada-Quebec Accord Relating to Immigration and Temporary Admission of Aliens*, 5 February 1991 (Canada-Quebec Accord), Quebec has exclusive jurisdiction over the selection of economic immigrants destined to Quebec.

7. Canada remains responsible for establishing levels of immigration annually, taking into account Quebec's advice on the number of immigrants that it wants to receive. Each year, as per requirements set out in the *Canada-Quebec Accord*, Canada informs Quebec of the options being considered with respect to future immigration levels, broken down into various immigration classes and in turn, Quebec informs Canada of the number of immigrants it wishes to receive in the coming year or years, also broken into classes.

8. The federal minister of Immigration, Refugees and Citizenship takes into account the needs expressed by the provinces in preparing his annual immigration plan. The *IRPA* requires the federal minister of Immigration, Refugees and Citizenship to table an annual report in each House of Parliament yearly. This report contains details of immigration levels for the coming year.

9. The last reports tabled by the Minister are the "2022 Annual Report to Parliament on Immigration", attached as **Exhibit "A"** to my affidavit (which can be found at the following web address: <https://www.canada.ca/content/dam/ircc/documents/pdf/english/corporate/publications-manuals/annual-report-2022-en.pdf>), and the "Immigration, Refugees and Citizenship Canada Departmental Plan 2023-2024" attached as **Exhibit "B"** to my affidavit (which can be found at the following web address: <https://www.canada.ca/content/dam/ircc/documents/pdf/english/publications-manuals/annual-report-2022-en.pdf>).

10. On November 1, 2022, in a document entitled “Notice – Supplementary Information for the 2023-2025 Immigration Levels Plan”, the Minister provided details in regards to the Immigration Levels plan for 2023, 2024, 2025. Said document is attached to my affidavit as **Exhibit “C”** (which can be found at the following web address: <https://www.canada.ca/en/immigration-refugees-citizenship/news/notices/supplementary-immigration-levels-2023-2025.html> ).

11. As it appears from the Notice – Supplementary Information 2023-2025 Immigration Levels Plan (Exhibit “C”), the Government of Canada established that a total of **465,000 individuals are expected to become permanent residents of Canada in 2023, 485,000 in 2024 and 500,000 in 2025.**

12. It should be noted that Canada’s plan reflects Quebec’s levels advice received in consultations, as described at paragraph 8 above. The official levels targets for admissions in Quebec’s Business Class, expressed by the province with minimum and maximum limits, are included in Table 2 (*Tableau 2*) of a document entitled “Plan d’immigration du Québec 2023”, which can be found at the following web address: [https://cdn-contenu.quebec.ca/cdn-contenu/adm/min/immigration/publications-adm/plan-immigration/PL\\_immigration\\_2023\\_MIFI.pdf](https://cdn-contenu.quebec.ca/cdn-contenu/adm/min/immigration/publications-adm/plan-immigration/PL_immigration_2023_MIFI.pdf). Said document is attached to my affidavit as **Exhibit “D”**.

13. It appears that for 2023, from 465,000 individuals, a maximum of **4,300** individuals would become permanent residents in the Quebec Business Class. As for **2024 and 2025**, the number of individuals that would become permanent residents in the Quebec Business Class is **yet to be determined**.

14. Quebec also determines the number of persons that it selects to apply for permanent residence each year by issuing a Certificat de selection du Québec. The official selection targets for Quebec’s Business Class, expressed by the province with minimum and maximum limits, are included in **Table 1 (Tableau 1)** of the “Plan d’immigration du Québec 2023”.

15. It appears that for 2023, Quebec intended that a minimum of 1,100 and a maximum of 1,500 persons be selected in the Quebec Business Class.

16. When my department is made aware of the Immigration Levels Plan as approved by the Government of Canada and announced by November 1 of each year, and Quebec’s final levels plan announced by Quebec, the Operations Planning and Performance

Branch determines the global targets for the International Network based on the number of persons selected by Quebec as well as the current application inventory. I am tasked to set targets to migration offices abroad once I receive the global targets. In this exercise, the International Network considers the following factors in setting the targets: the age and the distribution of the inventory in the network, as well as the capacity/resources of each migration office. It is important to note that targets are based on the number of persons not the number of applications, and it refers to the number of decisions.

17. In 2023, Quebec intended that a minimum of 4,000 and a maximum of 4,300 persons be admitted in the Quebec Business Class. As of **August 5, 2023**, the International Network had an inventory of 6,627 persons. The inventory is bigger than the expected admissions. Consequently the inventory is larger than the number we can finalize in one year.

18. As it appears from IRCC's document entitled "CIMM-Quebec Immigration –February 15 & 17 2022" (which can be found at the web address: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/transparency/committees/cimm-feb-15-17-2022/quebec-immigration.html>), during the pandemic, the Department prioritized applications from candidates who are in Canada, including the Quebec Skilled Workers category. As for permanent residence applications in general, during in 2020 and 2021, IRCC worked with Quebec to prioritize applications from individuals already living in Canada. Since 2022, IRCC focuses on finalizing the old inventory of applicants living outside of Canada. In the document "CIMM-Quebec Immigration – February 15 & 17 2022", the Department mentioned that as a result of the Covid-19 pandemic and the obligation of finalizing old inventory, processing times will appear to be increasing, as applications that are older will be finalized. Said document is attached to my affidavit as **Exhibit "E"**.

19. Application processing is done on each individual file, regardless of country of origin, in order to ensure that applications comply with the *IRPA* and that the applicants are eligible and not inadmissible. Furthermore, applications are processed on a first in, first out basis according to when the Department received them, in other words, in order of application received date.

20. The migration office in Paris (at the Canadian Embassy in Paris, France) will process the immigration application subject to this application for mandamus. Its target for 2023 is to process 650 persons in the Quebec Business Class. This target was allocated

taking into consideration the criteria mentioned above at paragraph 16 to ensure that applications are processed in the International Network at the same pace considering the age of the inventory in each migration office, as well as the capacity/resources of each migration office.

21. As of August 5, 2023, the migration office in Paris, made final decisions on 523 persons in the Quebec Business class. This is the latest available and confirmed figure.

22. Also, with regard to processing times, for the Quebec Business Class, as of August 9, 2023, the processing time is 62 months. See IRCC's document on processing times attached as **Exhibit "F"** to my affidavit (<https://www.canada.ca/en/immigration-refugees-citizenship/services/application/check-processing-times.html>).

23. This processing time is a measure of how long it took (from application received date to final decision date) to render a final decision on the 80th percentile case processed in this category in the past 12 months.

[28] In this case, I accept the admittedly lengthy delay is a result of lawful Ministerial policies, which prioritize the processing of applications at the Federal level in accordance with Canada's priorities so that they mesh with the processing and acceptance priorities of both Canada and Quebec. There is nothing untoward or unreasonable in this. This is a popular stream with a number of applicants and limited processing capabilities.

[29] The Court has accepted, as it does in this case again, the Minister's right to set processing priorities nationally as justification for such delays, again per Justice Snider in *Vaziri* at paragraph 57:

[57] I must next consider whether this is justification for the delay. In my view, the Respondent has provided a satisfactory justification for the delay, the substance of which I have discussed immediately above and also in some detail in the analysis of the first issue, above. In short, the delay is the direct result of lawful Ministerial policies which prioritize other PR applicants over the parents and

grandparents class, which were effected in response to an overwhelming level of applications that had been submitted to CIC in recent years. I am satisfied that a reasonable explanation for the delay has been provided.

[30] I also note Mr. Bak adds the following with respect to the Quebec Business Class:

17. In 2023, Quebec intended that a minimum of 4,000 and a maximum of **4,300** persons be admitted in the Quebec Business Class. As of **August 5, 2023**, the International Network had an inventory of 6,627 persons. The inventory is bigger than the expected admissions. Consequently the inventory is larger than the number we can finalize in one year.

[31] This evidence speaks directly to the growing backlog of applications, and the challenge that growing backlogs pose and pose on processing times.

[32] In post-hearing submissions, the Respondent provided additional information:

Second, and for clarification, at paragraph 13 of the Bak Affidavit, for 2023, Canada has set the target of having 465,000 individuals become PRs across all types of immigration classes and for all of Canada. Out of that number, Québec has set a maximum of 4300 individuals (not applications) to become PRs from the three Québec Business Class Categories. Each Canadian visa office in various countries that accept PR applications for Québec in its three Business Categories are allocated target numbers in order to issue PR visas and meet, **but not exceed**, the target set by Québec to allow 4300 individuals PR for 2023 (this number changes year to year depending on the needs of Canada and Québec). In addition, this allocated target includes an allowance for processing and issuing PR visas in late 2023 that will go to meet the eventual target set by Québec for 2024 (to be determined).

Keeping in mind, the actual number of applications will contain a varied number of dependents that may be part of an application i.e. 1 application may have 2 individuals, another may be for a family of 3, 4, 5, or more, so these individual numbers are subtracted from the 4300 PR visas for each PR application that is approved for the year. The targets set in each of the Canadian Visa Offices world-

wide are adjusted depending on the number of applications each office receives and whether an applicant whose application was approved actually lands within the year they are given their PR visa to land. i.e. if an applicant is a family of 5 and they are approved a PR visa under the Québec Business Category in July 2022, but decide to land in Canada in May 2023, this means that the number of PRs counts towards the target in 2023, not 2022, is reduced by 5; and the number of PRs that may be allowed for 2023 may need to be decreased as a result of this carry-over.

[Emphasis in original]

[33] With respect, there is an established process for processing applications in the Quebec Business Class. This processing is done in accordance with priorities set by both Quebec and Canada (represented by the Respondent Minister) within Canada's global response to Business Class applications. This is not a case where the department has delayed and or is acting beyond the policies implemented in conjunction with Quebec: see *Ghaddar v Canada (Citizenship and Immigration)*, 2023 FC 946 per Justice Gascon and *Bidgoly v Canada (Citizenship and Immigration)*, 2022 FC 283 per Justice Favel.

[34] No doubt the uncertainty of waiting five or more years for a decision is challenging. But, and again with respect, this delay was well known to the Applicant when he chose to pursue permanent resident status in the Quebec Business Class stream. He knew all along the wait would be as long as it is. He could have elected to proceed under other, faster, economic immigrant streams. He choose not to and did so with his eyes open.

[35] In my respectful view, the evidence of Mr. Bak provides a satisfactory justification for the delay. The affidavit evidence provides a detailed overview of how applications for permanent residence are processed by the Respondent's department, the relationship between Quebec and

Canada establishing the inventories, and how the Respondent allocates resources within the parameters of the *Canada-Quebec Accord*.

VI. Conclusion

[36] The delay is reasonably explained and justified in this case. I have no hesitation in finding there is no unfairness, procedural or otherwise in this case, and that the balance of convenience favours the Respondent. Therefore, this application will be dismissed.

VII. Certified question

[37] The parties do not raise a certified question, and I agree none arises.

[38] That said, the Respondent in post-hearing submissions proposed a question to certify that was not raised in argument and which does not form any part of these reasons. I respectfully decline the Respondent's request. No question will be certified.

VIII. Costs

[39] This is not a case for costs.



**JUDGMENT in IMM-10354-22**

**THIS COURT'S JUDGMENT is that** this application is dismissed, no question of general importance is certified and there is no Order as to costs.

“Henry S. Brown”

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Judge

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

**DOCKET:** IMM-10354-22

**STYLE OF CAUSE:** MOHAMMADREZA JAVID v MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY WAY OF ZOOM VIDEOCONFERENCE

**DATE OF HEARING:** OCTOBER 17, 2023

**JUDGMENT AND REASONS:** BROWN J.

**DATED:** OCTOBER 30, 2023

**APPEARANCES:**

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