Federal Court Cour fédérale

Date: 20231031

Docket: IMM-209-23

Citation: 2023 FC 1447

Montréal, Quebec, October 31, 2023

PRESENT: Mr. Justice Gascon

BETWEEN:

FANGYUAN RAN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ms. Fangyuan Ran, is a citizen of China. She submitted an application for leave and judicial review to obtain a writ of *mandamus* compelling Immigration, Refugees and Citizenship Canada [IRCC], and more specifically the Embassy of Canada in Beijing, to process and finalize her study permit application [Application], which she alleges has undergone an unreasonable delay.

[2] For the reasons that follow, Ms. Ran's application for judicial review will be granted. Having considered the evidence and the applicable law, I am satisfied that Ms. Ran meets the requirements of the test for an order of *mandamus*. The delay of more than 15 months already incurred for the treatment of her Application is clearly unacceptable and unreasonable in the circumstances, and IRCC has been unable to provide any explanation or justification for it. This situation warrants the Court's intervention and the issuance of an order requiring IRCC to complete the processing of Ms. Ran's Application within 30 days, in light of the imminent start of her contemplated studies.

II. Background

A. *The factual context*

[3] Ms. Ran intends to pursue a Ph.D. program in mechanical and industrial engineering at the University of Toronto. She initially anticipated beginning her studies in the fall of 2022. However, IRCC failed to make a decision on her Application by then, forcing Ms. Ran to defer the start of her program to January 2023. IRCC failed again to render a decision in time for the winter 2023 session, and Ms. Ran had to apply for a second deferral to September 2023. Ms. Ran had received a scholarship from the China Scholarship Council that required her to arrive in Canada no later than December 31, 2022, for which she also had to seek a deferral.

[4] As of today, Ms. Ran is still awaiting her visa. She was therefore unable to begin her studies in September 2023.

[5] The University of Toronto typically only allows students to defer their programs by one year and, consequently, it issued a new admission offer to Ms. Ran, for a start date in January 2024. This new offer was accompanied by substantial financial support from the University of Toronto for the duration of her four-year Ph.D. program. However, Ms. Ran's Ph.D. supervisor at the university stated that he had to make extraordinary efforts to obtain additional deferral opportunities for her, and that he cannot do so indefinitely. It is therefore unclear how many more deferral opportunities Ms. Ran will be able to benefit from.

[6] Moreover, Ms. Ran's husband arrived in Canada as a student at Humber College Institute of Technology and Advanced Learning in January 2023, as he was unable to delay the start of his own studies whilst awaiting a decision on his wife's Application. Ms. Ran observes that she has been separated from her husband for more than nine (9) months, which has caused a strain on their relationship and affected her emotionally and psychologically. Furthermore, the uncertainty surrounding her Application has negatively affected her ability to find work and provide for herself back in China.

B. ***The Application timeline***

[7] Ms. Ran's Application was submitted to IRCC on July 13, 2022. A security screening was subsequently initiated by IRCC on August 1, 2022. On August 11, 2022, the IRCC visa office in Guangzhou, China determined that Ms. Ran meets the eligibility requirements for a study permit.

[8] On September 26, 2022, Ms. Ran enquired about the status of her Application to the IRCC visa office. Shortly thereafter, on October 12, 2022, IRCC sent out a letter advising Ms.

Ran that her Application was undergoing standard background checks. The letter further informed Ms. Ran that this process might take longer than normal processing times.

[9] On November 28, 2022, Ms. Ran enquired again about her Application to the IRCC visa office. On January 3, 2023, IRCC sent a new reply letter, again advising Ms. Ran that her Application was undergoing standard background checks and that the processing time would be extended.

[10] Due to the numerous delays, Ms. Ran decided, on January 6, 2023, to file this application for leave and judicial review seeking a writ of *mandamus*.

[11] On January 18, 2023, Ms. Ran enquired again about her Application to the IRCC visa office. This was followed by another enquiry on February 2, 2023. IRCC sent her another reply letter thereafter. This letter continued to advise Ms. Ran that her Application was still undergoing standard background checks, and that the processing time would be extended yet again.

C. *Ms. Ran's information request*

[12] On August 18, 2023, Ms. Ran submitted a request under the *Privacy Act*, RSC 1985, c P-21 [Privacy Act] to know the status of her Application. On September 7, 2023, the Canadian Security Intelligence Service [CSIS] informed Ms. Ran that it had completed processing her security screening and that its recommendation was issued to the Canada Border Services Agency [CBSA] on June 26, 2023. However, a decision on Ms. Ran's Application is still outstanding. I pause to observe that Ms. Ran does not yet know the result of CSIS's security screening; she only knows that CSIS has completed its work and that CBSA has received the

result, meaning that IRCC arguably has all the elements needed to issue a decision on her Application.

D. *The requirements for a writ of* mandamus

[13] An order of *mandamus* is an extraordinary remedy under which the Court "can compel the performance of a clear affirmative legal duty by a public authority" (*Ahousaht First Nation v Canada (Fisheries, Oceans and Coast Guard)*, 2019 FC 1116 [*Ahousaht*] at para 73). 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" (*Wasylynuk v Canada (Royal Mounted Police)*, 2020 FC 962 [*Wasylynuk*] at para 76). As summarized by Justice Little in *Wasylynuk*, 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" (*Wasylynuk* at para 76).

[14] In *Apotex Inc v Canada (Attorney General)*, [1994] 1 FC 742 (FCA) [*Apotex*], aff'd [1994] 3 SCR 110, the Federal Court of Appeal stated that the following cumulative conditions must be satisfied before a court can issue a writ of *mandamus*:

> 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 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;
>
> 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 omitted]
>
> (*Ahousaht* at para 72, citing *Apotex* at pp 766–769).

[15] These criteria have been confirmed by the Federal Court of Appeal in *Hong v Canada (Attorney General)*, 2019 FCA 241 at paragraph 10, in *Canada (Health) v The Winning*

Combination Inc, 2017 FCA 101 at paragraph 60, and in *Lukacs v Canada (Transportation Agency)*, 2016 FCA 202 at paragraph 29.

[16] The Respondent, the Minister of Citizenship and Immigration [Minister], does not dispute that IRCC has a public legal duty to process Ms. Ran's Application. The main *Apotex* criterion contested by the Minister is whether there has been an unreasonable delay justifying this Court's intervention.

III. Analysis

A. *Unreasonable delay*

[17] To determine whether a delay in performing a public duty is unreasonable, the Court must look at the following criteria: 1) the delay in question is *prima facie* longer than the nature of the process required; 2) the applicant and their counsel are not responsible for the delay; and, 3) the authority responsible for the delay has not provided satisfactory justification (*Almuhtadi v Canada (Citizenship and Immigration)*, 2021 FC 712 [*Almuhtadi*] at para 32; *Thomas v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 164 at para 19; *Conille v Canada (Minister of Citizenship and Immigration)*, [1999] 2 FC 33 (FC) at para 23).

[18] Additionally, Ms. Ran must demonstrate that a prejudice has resulted from the delay (*Vaziri v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1159 [*Vaziri*] at para 52 referring to *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 at para 101).

[19] Each of these elements will be considered in turn.

(1) **The length of the delay**

[20] Regarding the length of the delay, at the time Ms. Ran submitted her application for leave and judicial review to the Court, it had been 29 weeks since she had submitted her Application without receiving a decision. More than 15 months have now elapsed since Ms. Ran submitted her Application, and IRCC has still not issued its decision on it. Ms. Ran points out that the estimated processing time for study permit applications made outside of Canada — as published by IRCC on January 10, 2023 — is nine (9) weeks. Ms. Ran thus submits that her Application falls well outside of this processing time, and that this constitutes a delay that is *prima facie* longer than the nature of the process required.

[21] The Minister responds that the 9-week processing time posted on IRCC's website is the service standard for most complete applications, but not all, and that, occasionally, additional time beyond the service standard is required to process study permit applications.

[22] Indeed, says the Minister, there is no uniform length of time for the limit of what is reasonable when there are delays in assessing an application (*Almuhtadi* at para 37). Delays in the processing of an application must therefore be assessed in light of the particular facts of each case (*Tapie v Canada (Citizenship and Immigration)*, 2007 FC 1048 at para 7). In the case of Ms. Ran's Application, the Minister claims that the delay has been caused by security screenings and the standard background checks that accompany such a screening. The Minister argues that screening regarding security and inadmissibility issues is a necessary and important requirement under the framework of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. Indeed, paragraphs 3(1)(h) and (i) of the IRPA explicitly state that maintaining the security of Canadian society and promoting international justice and security are among the objectives of

the Act. The Minister further underlines that this point has been reified by the Supreme Court and the Federal Court of Appeal (*Medovarski v Canada (Minister of Citizenship and Immigration)*; *Esteban v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51 at para 10; *Canada (Citizenship and Immigration) v Solmaz*, 2020 FCA 126 at para 53).

[23] I am not persuaded by the Minister's arguments.

[24] First, the delay that Ms. Ran has now faced exceeds the normal processing time of study permit applications by a very material margin — more than seven (7) times the usual average of nine (9) weeks.

[25] I do not dispute that the security and inadmissibility considerations are important and lie at the heart of Canadian immigration policy and laws. However, in the case at bar, nothing in the evidence nor in the Minister's submissions points to any complex or particular features of the Application that would require extensive delays, or that could shed light on the unusual delay Ms. Ran has been facing. There is simply nothing in the record to explain the notable gap in the delay imposed on Ms. Ran compared to the average processing time. After contacting IRCC on multiple occasions to enquire about the status of her Application, Ms. Ran only received letters vaguely alluding to a standard background check, without any further information on the reasons for the delay.

[26] Furthermore, based on the information received from Ms. Ran's Privacy Act request, CSIS's security recommendation was issued to the CBSA four months ago, at the end of June 2023.

[27] Since the delay in addressing Ms. Ran's Application falls widely outside the normal timeframe for the processing of study permit applications and the security recommendation in the file has been issued for several months, I am satisfied that the delay in Ms. Ran's case is *prima facie* much longer than the nature of the process required.

(2) **Ms. Ran is not responsible for the delay**

[28] The second step of the test for unreasonable delays requires that the applicant and their counsel not be responsible for the delay.

[29] Nothing in this case indicates that Ms. Ran or her counsel have contributed to the delay to any extent. Quite the contrary. Ms. Ran submitted all of the required documents in a timely fashion and paid all the necessary fees. She even followed the progress of her file diligently, and regularly asked IRCC about the status of her Application. Ms. Ran has satisfied the procedural requirements of the IRPA and the regulations by providing the necessary supporting documentation and paying the required processing fees (*Almuhtadi* at para 35). Therefore, the second prong of the test is also satisfied.

(3) **No satisfactory justification**

[30] The third step of the test requires that the authority has not provided a satisfactory justification for the delay. Here, save for its repeated references to standard background checks, IRCC provided no justification for the delay, let alone a satisfactory one. I acknowledge that background checks are an important tool in the assessment of security concerns. Without a doubt, this is a process that IRCC must conduct with caution and rigour. However, blanket statements that delays are incurred because of pending security assessments are clearly

inadequate and insufficient to justify delays, as this Court has determined in multiple instances (*Ghaddar v Canada (Citizenship and Immigration)*, 2023 FC 946 [*Ghaddar*] at para 33; *Bidgoly v Canada (Citizenship and Immigration)*, 2022 FC 283 at paras 37–38; *Almuhtadi* at para 40; *Kanthasamyiyar v Canada (Citizenship and Immigration)*, 2015 FC 1248 at paras 49–50; *Abdolkhaleghi v Canada (Minister of Citizenship and Immigration)*, 2005 FC 729 at para 26). Even if I accept that IRCC's processing timeframe depends on the complexity of each case, no evidence whatsoever has been provided showing that Ms. Ran's Application raises any particular complexity to warrant such a stark deviation from the general processing timeframe.

[31] Moreover, if IRCC's explanation for the delay was the security screening process, it has expired a long time ago, at the end of June 2023. Yet, Ms. Ran's Application remains pending and no decision has been issued. I pause to underline that the Minister's only affidavit before the Court dates back to March 2023, at a time where Ms. Ran's security screening was still in progress. Surprisingly, no further affidavit has been filed by the Minister to explain IRCC's continued delays following the receipt of CSIS's report by CBSA. I am therefore faced with a situation where IRCC has failed to provide any justification or explanation for the current delay.

[32] In light of the foregoing, I conclude that the three prongs of the *Almuhtadi* test for unreasonable delays have been met, and the evidence clearly establishes, on a balance of probabilities, that the delay in performing IRCC's public duty in this case is unreasonable.

(4) **The issue of prejudice**

[33] I am also satisfied that Ms. Ran has suffered a prejudice because of the extensive delay she has experienced (*Vaziri* at para 52).

[34] In her affidavit, Ms. Ran describes in detail the hardship that she has endured and is still enduring because of the delay in the processing of her Application. First, she has been separated from her husband — whom she recently married — for the past nine (9) months. According to her affidavit, this has caused her psychological and emotional distress. Furthermore, the financial burdens accompanied by the uncertainty as to the timeline of her Application have made it difficult for her to maintain consistent, gainful employment in China and have led to financial struggles. Finally, not only has she lost a full year of study so far but, if Ms. Ran's Application is not approved very soon, she may be precluded from undertaking her doctoral studies altogether, as her Ph.D. supervisor has indicated that he will not be able to continue requesting deferrals of her start date indefinitely.

B. *Remaining* Apotex *criteria*

[35] The Minister has not contested that Ms. Ran's request for a *mandamus* order meets the remainder of the *Apotex* criteria. In any event, I find that Ms. Ran's request for a *mandamus* order satisfies the remaining criteria.

[36] First, no other adequate remedy is available to Ms. Ran. Indeed, Ms. Ran has diligently followed up with IRCC on multiple occasions to enquire about the status of her Application, but she only received generic letters back. Ms. Ran has thus exhausted all other possible remedies.

[37] Next, the order sought will obviously be of some practical value or effect. Ms. Ran will receive some finality on her Application, which will assuage many of the prejudices she has encountered due to the delays. In addition, the uncertainty, which has led to financial difficulties and an inability for Ms. Ran to find a stable job in China, will be alleviated. Furthermore, Ms.

Ran's possibility to study in Canada altogether may be put in jeopardy if her Application is not processed soon, given the inability of her Ph.D. supervisor to defer her start date indefinitely.

[38] I further find no equitable bar to the relief sought by Ms. Ran. Indeed, the objectives of the IRPA with respect to maintaining the security of Canadians can still be pursued by IRCC despite the order that the Court will grant in this case (*Ghaddar* at para 41). This is particularly true in the present case, given that the security assessment by CSIS has now been completed, unlike in *Ghaddar* where it was still outstanding but "toward finalization." Furthermore, since Ms. Ran is not responsible for the delay and has not compromised her cause in any other way, she comes to the Court with clean hands (*Dragan v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 211 at para 47). There is therefore no equitable bar to an order of *mandamus*.

[39] Finally, the balance of convenience heavily favours Ms. Ran. The Minister has referenced the security objectives underpinning the IRPA as the basis for the delay, and emphasized that security investigations are an important step to fulfilling these objectives. I accept that these objectives are significant and of paramount importance in the immigration space. Indeed, this Court has agreed with the Minister that it is not for this Court to dictate the length of security investigations, within reasonable bounds (*Onghaei v Canada (Canada (Citizenship and Immigration)*, 2020 FC 1029 at para 43; *Zhang v Canada (Citizenship and Immigration)*, 2019 FC 938 at para 38; *Nada v Canada (Citizenship and Immigration)*, 2019 FC 590 at para 25). However, in the case at bar, the security objective issue is now moot, given that the security assessment by CSIS in Ms. Ran's file has been completed. On the other hand, the delay suffered by Ms. Ran with her Application has led to relatively significant psychological,

emotional, and financial prejudice. The balance of convenience therefore lies with Ms. Ran, not with IRCC.

IV. Conclusion

[40] For the above-mentioned reasons, Ms. Ran's application for judicial review is granted. An order of *mandamus* will be issued, requiring IRCC to determine Ms. Ran's Application within 30 days from the date of this decision. This way, Ms. Ran will be able to know whether she will be able to commence her Ph.D. studies in January 2024.

[41] The parties proposed no question of general importance for certification and I agree that none arises in this case. The style of cause is modified to reflect the correct name of the Respondent, the Minister of Citizenship and Immigration.

JUDGMENT in IMM-209-23

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 study permit application by November 30, 2023 at the latest, and to inform the Applicant of this determination within that time frame.

3. No costs are awarded.

4. The style of cause is hereby amended to name the Minister of Citizenship and Immigration as the proper Respondent.

5. There is no question of general importance to be certified.

"Denis Gascon"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-209-23
STYLE OF CAUSE:	FANGYUAN RAN v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	OCTOBER 31, 2023
JUDGMENT AND REASONS:	GASCON J.
DATED:	OCTOBER 31, 2023

APPEARANCES:

Achraf Al-Al-Sultan Al-Ghouri	FOR THE APPLICANT
Julien Primeau-Lafaille	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Sultan Avocats Inc. Barristers and Solicitors Laval, Quebec	FOR THE APPLICANT
Attorney General of Canada Montréal, Quebec	FOR THE RESPONDENT