Federal Court  Cour fédérale

Date: 20240705

Docket: IMM-9332-23

Citation: 2024 FC 1056

Toronto, Ontario, July 5, 2024

PRESENT: The Honourable Justice Battista

BETWEEN:

MOHAMMADREZA VADIATI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for a writ of *mandamus* compelling Immigration, Refugees and Citizenship Canada (IRCC) to issue a decision on the Applicant's application for permanent residence which was submitted over four years ago, in October, 2019. For the reasons that follow, I grant the application and order IRCC to issue a decision within 90 days of the date of the enclosed order.

II. Background

[2] The Applicant, Mr. Vadiati, is a 50 year-old Iranian citizen who fled Iran with his son in 2018 because he feared persecution based on his religious and political beliefs. On April 25, 2019, the Refugee Protection Division [RPD] granted him refugee protection in Canada.

[3] In May 2019, the Applicant filed an application for permanent residence in Canada for him and his dependent family members, specifically his son who is with him in Canada, and his wife and daughter who remain in Iran. In this application, he disclosed that he had been part of the Iranian Armed Forces, Sepah, as a conscript and then a soldier, between July 1996 and July 1998. Subsequently, he submitted a "Details of Military Service" form, received by IRCC in March 2020.

[4] The record shows that a criminal check was conducted on the Applicant prior to the initiation of a security check. Specifically, the Global Case Management System [GCMS] computerized file notes show the following entry on April 29, 2021: "Security not reviewed at this time, as criminality has not been reviewed/finalized. Following criminality review, security review to be requested at a later date."

[5] The criminality review resulted in a number of GCMS entries based on charges that were laid against the Applicant and eventually withdrawn. It is difficult to ascertain exactly when the security review for the Applicant began, but a GCMS entry indicates that a security update request was made to Canada's security partners on September 30, 2023.

[6] After numerous inquiries about the status of the application by the Applicant he commenced this application for *mandamus* on July 24, 2023.

[7] On May 27, 2024, IRCC sent a procedural fairness letter to the Applicant, expressing concerns that he may be inadmissible on security grounds "under paragraph 34(1)(f) for (b.1) and (c) of IRPA." These security concerns were based on information that the Applicant provided in March 2020 regarding his participation in the Islamic Revolutionary Guard Corps [IRGC]. The procedural fairness letter referred to the fact that the IRGC or attached groups have been recognized as terrorist organizations in Canada and by international partners since as early as 2012, and that on May 8, 2024, the Canadian House of Common "voted unanimously in support of a motion to add the IRGC to an official list of terrorist organizations."

III. Issues

[8] The parties agree that the main issue is whether the Applicant's circumstances satisfy all of the criteria for an order of *mandamus*. The criteria upon which they disagree is whether there has been an unreasonable delay in the processing of the Applicant's permanent residence application and whether, on a balance of convenience, an order of *mandamus* should be issued.

IV. Analysis

[9] The criteria for a writ of *mandamus* were confirmed by the Federal Court of Appeal in *Apotex Inc*. v. *Canada (Attorney General)*, 1993 CanLII 3004 (FCA), and are 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 be either expressed or implied, *e.g.* unreasonable delay;

(4) No other adequate remedy is available to the applicant;

(5) The order sought will be of some practical value or effect;

(6) The Court in the exercise of its discretion finds no equitable bar to the relief sought; and

(7) On a "balance of convenience" an order in the nature of *mandamus* should (or should not) issue.

[9] As stated above, the first point of disagreement between the parties concerns the existence of an unreasonable delay, which is now well over four years since the application was submitted. The Respondent acknowledges that processing has been longer than what may have been expected by the Applicant, but given the nature of security checks, the Respondent disagrees that the delay is unreasonable.

A. *Unreasonable delay*

[10] In my view, there are two central considerations in assessing the reasonableness of the delay: the first relates to the impact of the procedural fairness letter issued by IRCC on May 27, 2024, and the second consideration involves the justification put forward for the admittedly lengthy delay, namely, the security concerns in this case.

(1) The consequences of the recent procedural fairness letter:

[11] As stated above, a detailed procedural fairness letter was issued to the Applicant approximately one month ago. The goal of the letter was to give the Applicant an opportunity to address security inadmissibility concerns under s. 34(1)(f) of the IRPA. The Applicant responded to this letter on June 11, 2024.

[12] The question is whether the procedural fairness letter should prevent *mandamus* because it demonstrates that processing is taking place in the Applicant's file, and that genuine security concerns exist. The Respondent asserts that regular steps have been taken as indicated by the GCMS records, and that, based on these regular steps, there has been no implied refusal to act.

[13] In *Jahantigh v. Canada (Citizenship and Immigration)*, 2023 FC 1253 [*Jahantigh*], Justice McHaffie considered the consequences of the issuance of a last-minute procedural fairness letter on an ongoing application for *mandamus*. He found that it rendered a request for an order requiring IRCC to "continue processing" the case moot, but that it did not render moot a request for an order requiring IRCC to decide the application [*Jahantigh*, paras. 9-12, 26] . He also noted that "not every step that has appearance of 'processing' will necessarily render all or part of a *mandamus*

application moot. The circumstances of the particular case, and the nature or of the steps taken, must be assessed." [*Jahantigh*, para. 13]

[14] In the present case, the Applicant is not seeking continued processing of the application, but a decision on the application. It is clear that continuous, although sporadic and very slow, processing has taken place on the application. A relevant question for assessing the impact of the procedural fairness letter is why it has arrived at this stage, more than four years into the processing of the application. The information on which the letter is based has been with the Respondent since the time the application was filed; the Applicant fully disclosed his work with Sepah from the beginning of the process.

[15] It is true that the Canadian government has recently added IRGC to its list of official terrorist organizations; however, that change in the organization's legal status did not change the nature or activities of Sepah, nor did it change the nature of the Applicant's involvement with the organization. This information has been with the Respondent since 2020.

[16] For these reasons, I find that the recent issuance of the procedural fairness letter should not impact the relief requested.

(2) Justification for the delay

[17] The Respondent states that the average processing time for permanent residence applications based on protected person status is 25 months. The processing time for the Applicant's application has been more than double that average. Applying the factors in *Conille v Canada (Minister of Citizenship and Immigration)* (TD), 1998 CanLII 9097 (FC), for assessing the

reasonableness of a delay, I find the delay in this case to be unreasonable. The delay is not the responsibility of the Applicant, and there is no satisfactory justification for the delay.

[18] Regarding the justification for the delay, the Respondent has relied upon the ongoing investigation into security concerns. The Respondent cites jurisprudence advising caution in the issuance of *mandamus* when it will have the impact of aborting or abbreviating an investigation into inadmissibility based on security, including *Seyoboka v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1290, paras. 8-10.

[19] However, the potential ground of inadmissibility alleged in this case, s. 34(1)(f), applies to both permanent residents and foreign nationals. The granting of permanent residence to the Applicant would not necessarily have to abort or abbreviate the investigation, and if the investigation results in a finding of inadmissibility on the basis of s. 34(1)(f), the Respondent could still take steps to enforce the inadmissibility by removing the Applicant's permanent resident status. The security investigation, therefore, is not a satisfactory justification for the delay.

B. *Balance of convenience*

[20] The balance of convenience assesses the impact of further delay on the Applicant against the impact of an order of *mandamus* on the Respondent. I find that the balance of convenience favours the Applicant for the reasons below.

[21] The impact of the delay on the Applicant includes the separation of more than four years from his wife and daughter who are in Iran. His family members are experiencing mental health issues such as anxiety and depression as a result of their continuing separation as well as the

insecurity that the Applicant's wife and daughter face in Iran. I disagree with the Respondent that "the Applicant has not experienced significant prejudice;" family separation of over four years and mental health difficulties constitute significant prejudice.

[22] As discussed above, the impact of *mandamus* on the Respondent would not necessarily interfere with the security investigation; the Applicant will still be subject to security inadmissibility, even if he becomes a permanent resident. Admittedly, if the Applicant is determined to be inadmissible on security grounds after becoming a permanent resident, more effort will be required by the Respondent to enforce the inadmissibility. This could involve interviews, inadmissibility reports and an inadmissibility hearing. However, given the unreasonableness of the delay caused by the Respondent and the impact of the delay on the Applicant and his family, it is my opinion that it is appropriate on balance that the Respondent bears this consequence if it does materialize.

JUDGMENT in IMM-9332-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted.

2. A decision shall be rendered on the Applicant's application for permanent residence within 90 days of the date of this order.

3. There is no question of general importance for certification.

"Michael Battista"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-9332-23
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