

CANADA / JUDGMENT

HN v. Canada (Citizenship and Immigration)

2025 FC 1801

COURT

Federal Court

DECIDED

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Decision Content

Date: 20251110

Docket: IMM-14061-23

Citation: 2025 FC 1801

Toronto, Ontario, November 10, 2025

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

HN, AA, AB, AC, AD,

AE, AF, AG, AH, AI

Applicants

and

THE MINISTER OF CITIZENSHIP

AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview [1] The Applicant, HN [the Principal Applicant] and his dependents [collectively, the Applicants], are citizens of Afghanistan who seek an order in the nature of mandamus directing the Minister of Immigration, Refugees and Citizenship [the Minister] to process the Principal Applicant's expression of interest under the "Temporary public policy for the resettlement of Afghan nationals with a significant and/or enduring relationship to Canada" [the Policy].

[2] The Applicants submit that an order of mandamus should issue for substantially the same reasons given by Justice Gascon in *A.B.C.D. v Canada (Citizenship and Immigration)*, 2025 FC 1296 [A.B.C.D.], which they say is determinative of this application.

[3] The Respondent contends that A.B.C.D. is distinguishable as that decision was made without the benefit of certain evidence as well as arguments regarding how the Policy operated within the scheme of the Immigration and Refugee Protection Act, SC 2001, c 27 [Act]. According to the Respondent, these arguments show that the Minister's delegates did not have a public duty to act on the Principal Applicant's expression of interest under the Policy, and no duty of procedural fairness is owed to the Applicants based on the doctrine of legitimate expectations.

[4] For the reasons that follow, I am not persuaded that A.B.C.D. is distinguishable and I am granting this application on substantially the same terms as Justice Gascon ordered.

II. Facts A. The Principal Applicant's engagement with the Policy [5] The Principal Applicant is an Afghan national who operated a store located on the boardwalk of the North Atlantic Treaty Organization [NATO] airbase camp in Kandahar, Afghanistan from 2004 to 2008. The airbase was primarily made up of Canadian troops with whom the Principal Applicant interacted on a regular basis.

[6] Beginning in 2005, the Principal Applicant says that he and members of his family received regular threats while working on the NATO airbase and at their home, which caused the Principal Applicant to leave Kandahar and temporarily relocate to Kabul. After the Principal Applicant left his job at the NATO air base in 2008, he worked as a supplier for a store until he started his own business in 2011. The Principal Applicant continued to maintain his relationships with clients on the NATO airbase.

[7] The Principal Applicant explains that after American troops were found to have burned copies of the Quran in February 2012, hostility grew towards anyone who had any perceived affiliation with foreign forces. He claims that protestors came to his family home on February 24, 2012, looking for him as “the infidel and person who had worked in the Air Base with Canadian and NATO troops.” They attacked and injured the Principal Applicant’s elder brother after which the Principal Applicant and his nephew went into hiding.

B. The Policy [8] The Respondent has provided details of the Policy and the process for engaging it in the affidavit of Julie Clark [Clark] as well as the transcript of her cross-examination. Clark is currently the acting Senior Director, Resettlement Programs Branch at Immigration, Refugees and Citizenship Canada [IRCC]. Between August 2020 and January 2023, she was the Director of Resettlement Operations and was responsible for refugee resettlement processing at IRCC, including the coordination of application intake, assessment of sponsorship decisions and ensuring the achievement of resettlement commitments.

[9] On July 23, 2021, as conditions in Afghanistan rapidly deteriorated after the withdrawal of NATO forces, the Minister, together with the Minister of Foreign Affairs and the Minister of National Defence, announced the Policy to resettle Afghans who were integral to Canada’s efforts in Afghanistan and who assisted the Government of Canada.

[10] The Policy was enacted pursuant to the Minister’s authority under section 25.2 of the Act and allowed eligible Afghan nationals and their accompanying family members to be exempt from certain requirements of the Act and the Immigration and Refugee Protection Regulations, SOR/2002-227, in order to facilitate their resettlement to Canada as members of the Convention Refugee Abroad Class. As the Respondent emphasizes, the Policy was not only subject to caps, but subject to revocation at any time.

C. The Application Process [11] As of August 9, 2021, IRCC’s website instructed interested Afghan nationals to send an email with certain information to Canada-Afghanistan@international.gc.ca [GAC Email Box], which was created and managed by Global Affairs Canada [GAC]. According to the Respondent, such emails constituted “expressions of interest” (and not applications) though Clark acknowledges the term “invitation to apply” was not used in the August 9, 2021 version of the Policy.

[12] The GAC and the Department of National Defence [DND] were tasked with identifying Afghan nationals with “a significant and/or enduring relationship to Canada” who would then be referred to IRCC. Upon confirming the referral, and provided there remained capacity under the Policy, IRCC would send the Afghan national an invitation to apply [ITA] together with the formal application to be completed and returned to IRCC.

D. The Principal Applicant’s engagement with the Policy and follow-up [13] Immediately after the fall of Kabul in August 2021, the Principal Applicant believed that he would be killed because of his past services to NATO and Canadian troops. On August 21, 2021, he sent an email to the GAC Email Box. On the same day, he received an automatic response from GAC that acknowledged his email and advised that if the necessary information had been provided, the GAC thanked the

sender for the “application” and stated that the “application will be processed to assess eligibility.” It stated that “incomplete applications” would delay the process. The Principal Applicant provided the information by email to the IRCC dated August 31, 2021. He received an automated reply email from the IRCC in response, which indicated that “the first step in applying for resettlement” through the Policy, was an email to the GAC Email Box. The Principal Applicant replied back on the same day stating that he had already sent several emails to that account to no avail.

[14] Clark confirms that an investigation by IRCC in March 2024, disclosed that between August 21, 2021 and November 20, 2021, the Principal Applicant sent eight emails marked to the IRCC advising of the danger that he and his family faced from the Taliban and asking for an urgent response. He also made two webform enquiries between January 13, 2022 and August 4, 2022.

[15] The Principal Applicant took other steps:

(i) He sent emails to a Member of Parliament and a humanitarian organization founded by Canadian Armed Forces veterans and Canadian volunteers;

(ii) Between September 2021 and February 2022, the Principal Applicant also called IRCC many times to ask for help and on the occasions that his calls were answered, he says that IRCC either informed him that it was receiving a large volume of communications and told him to continue waiting until his application was processed, or sent him generic information on the Policy;

(iii) On August 4, 2022, the Principal Applicant forwarded a letter of support from retired Canadian Lieutenant-Colonel, Bernard Paquet dated December 20, 2021, which confirmed that the Principal Applicant previously worked with NATO and Canadian troops; and

(iv) In October 2023, the Principal Applicant retained counsel who wrote to IRCC by letter dated October 6, 2023, requesting that IRCC finalize his application and Temporary Resident Permits – a request which remains unanswered.

[16] The Principal Applicant says that he and his family remain in hiding in Afghanistan to this day.

III. Issues and Standard of Review [17] The only issue raised on this application is whether the Applicants have made out a case for a writ of mandamus. The parties agree that the relevant test that is set out by the Federal Court of Appeal in *Apotex Inc v Canada (Attorney General)*, [1994] 1 FC 742 (CA) at 766–769, *aff’d* [1994] 3 SCR 1100. Accordingly, the Applicants must demonstrate that:

(i) There is a public legal duty to act;

(ii) The duty to act is owed to the Applicants;

(iii) There is a clear right to the performance of that duty;

- (iv) There is no other adequate remedy available to the Applicants;
- (v) The order of mandamus will be of practical value or effect;
- (vi) There are no equitable bars to the relief sought; and
- (vii) The balance of convenience favours the issuance of an order in the nature of mandamus [collectively, the Test for mandamus].

[18] As a matter of horizontal stare decisis, the parties must additionally show why the decision in A.B.C.D. should or should not be followed (R v Sullivan, 2022 SCC 19 at para 75).

IV. Analysis [19] The Respondent only made specific representations with respect to elements (i) to (iii) and (v) of the Test for mandamus, each of which I address in the paragraphs which follow.

A. The Minister's public duty to act [20] In A.B.C.D., Justice Gascon found that GAC failed to discharge its duty towards the applicant (referred to as "Mr. D.") to process the email Mr. D. sent to the GAC Mailbox. His conclusion was based on the following findings: (i) the Policy GAC and DND were tasked with making referrals to IRCC under the Policy; (ii) the GAC Mailbox was the sole point of entry to access consideration under the Policy; (iii) GAC had a duty to open emails sent to the GAC Mailbox and there was no evidence GAC had done so; (iv) GAC had a public legal duty to consider expressions of interest made before the Policy's cap was reached, which in the case of Mr. D. it failed to carry out; (v) GAC's assessment of expressions of interest was a preliminary step in a multi-step process under the Policy that can be considered to be applications or pre-applications, as demonstrated by the use of the word "application" in the autoreplies from the GAC Mailbox; and (vi) the structure of an administrative process cannot have the effect of immunizing decisions from judicial review (A.B.C.D. at paras 31-34).

[21] The Applicants submit that all of these same factors support a finding that the Minister's delegates owed the Applicants a public duty to process the Principal Applicant's expression of interest.

[22] The Respondent submits that the present case can be distinguished from A.B.C.D. based on a consideration of the legislative context of the Minister's public policy powers under section 25.2 of the Act and new evidence, neither of which were argued before Justice Gascon.

[23] The Respondent has cited various authorities which explain the nature of the Minister's discretion in carrying out public policies enacted under section 25.2 of the Act. According to the Respondent these authorities confirm that in granting exemptions from the obligations of the Act through the enactment of public policies, the Minister has a very broad discretion to determine the process and eligibility conditions for those who seek the benefit of such exemptions (citing *Tapambwa v Canada (Citizenship and Immigration)*, 2019 FCA 34 at paras 103-108 [Tapambwa], leave to appeal dismissed, 2019 CanLII 62557 (SCC), *Sahli c Canada (Ministre de la Citoyenneté et de l'Immigration)*, 2025 CF 1021). Exemptions are warranted only if the foreign national complies with those conditions and a claimant cannot

force the Minister to exercise discretion contrary to the public policy (Tapambwa at para 102). Those acting under the Minister's authority cannot ignore or waive the eligibility requirements under section 25.2 of the Act (Rohani v Canada (Citizenship and Immigration), 2024 FC 1037 at para 35) and equally, it is not the role of the Court to change the requirements decided on by the Minister and in so doing, effectively redraft a public policy (Universal Ostrich Farms Inc. v. Canada (Food Inspection Agency), 2025 FCA 147, leave to appeal to SCC refused 41992 (6 Nov 2025) [Universal]).

- [24] Additionally, the Respondent provided evidence to explain and justify the delay in processing expressions of interest. According to Clark, due to the high volume of expressions of interest and the limited capacity under the Policy, not everyone who submitted an expression of interest received an ITA from IRCC. Clark explained that the GAC and DND kept lists of Afghan nationals they were expecting to refer but whom the Government could not contact directly given the danger that doing so might place them in. An Afghan national in receipt of an ITA, would then submit a completed application to IRCC who would ensure that the applicant's name appeared on the referral list before creating an application in the Global Case Management System for processing.
- [25] According to Clark's review of IRCC records as of March 2024, there is no record of the Applicants having been referred to IRCC, nor were they ever invited to apply for the Policy. Clark also noted that there is no employment record for the Principal Applicant or his dependents, which she says is relevant to their eligibility. She states that the Principal Applicant's emails to the GAC Email Box do not constitute applications.
- [26] Based on this legislative context and new evidence, the Respondent makes two submissions.
- [27] First, the Minister has the power under section 25.2 of the Act to set the conditions for termination of a public policy, which the Minister did in establishing caps under the Policy. Where the caps set by the Minister have been met, the Policy provides no further duty in respect of an expression of interest. In the Respondent's view, the only instance where there would be a duty to process, would be with respect to those to whom an ITA has been issued and a completed application had been submitted. Expressions of interest should not be interpreted as "pre-applications" as Justice Gascon considered them to be (A.B.C.D. at para 32).
- [28] Second, the Respondent notes that Justice Gascon considered it relevant that the caps under the Policy were not immediately made public (A.B.C.D. at para 44). The Respondent has provided evidence from Clark as to why the cap numbers could not be telecast for security reasons. The Respondent emphasizes that the Policy was clear that the Policy was capped and could be revoked at any time. The Respondent contends that the cap and termination of the policy cannot be ignored.
- [29] I am not persuaded by these arguments.

- [30] The decision in A.B.C.D. is consistent with the legislative context as articulated by the Respondent. The decision in A.B.C.D. does not seek to impose any objective content onto the Policy enacted by the Minister; rather, Justice Gascon's decision merely holds the GAC and DND to the process established by the Minister as represented in the Policy, and as represented to Mr. D. in the autoreply he received to his expression of interest and confirmed by the fact that the expressions of interest of similarly situated applicants were processed.
- [31] Nor do I see how A.B.C.D. effectively re-writes the Policy in respect of the caps and its termination. Justice Gascon held that the duty owed by GAC and DND was to process and assess all expressions of interest received before the Policy's cap was reached; however, the Minister offered no evidence that the cap was already full by the time GAC received Mr. D.'s expression of interest and Justice Gascon found it "highly unlikely" that the cap had been reached at the time GAC received Mr. D.'s email less than two weeks after the opening of the program (A.B.C.D. at paras 35, 44 and 45).
- [32] The Respondent has not remedied this deficiency in its evidence, choosing instead to rely on bald statements that the caps had been met as of the time of the Principal Applicant's expression of interest while providing no evidence of this critical fact (which is solely within its possession) nor any explanation for failing to do so. The Respondent's evidence is consistent with that which was before Justice Gascon and in this case, the Court draws an adverse inference that the Respondent did not provide evidence regarding the status of the cap under the Policy at the time of the Principal Applicant's expression of interest, because it would not have assisted its case (*Berhad v. Canada*, 2004 FC 501 at paras 217, 219).
- [33] I therefore find that the Applicants have shown that the Minister's delegates owed them a public legal duty to assess the Principal Applicant's expression of interest which was received before the cap was met under the Policy.

B. The duty is owed to the Principal Applicant based on his legitimate expectations [34] In A.B.C.D, Justice Gascon found that both GAC and the Ministers owed Mr. D. a public legal duty based on Mr. D.'s legitimate expectation that his expression of interest would be processed. The basis for this conclusion was that: (i) the Policy contains clear, unambiguous and unqualified representations about the expedited application process and explicitly provides that eligibility is dependent on a step carried out by GAC or DND who were charged with vetting and referring prospective applicants; (ii) GAC and DND are bound by the legitimate expectations that IRCC created; (iii) Mr. D. followed the appropriate steps to start the preliminary application process under the Policy and there was nothing more he could do; (iv) GAC's referral of his colleagues to IRCC confirms Mr. D.'s legitimate expectations that he would be subject to the very same process as his colleagues who applied at the same time; and (v) the Minister's autoreply which said that a response to the "application" would be processed further reaffirms the existence of Mr. D.'s legitimate expectations (A.B.C.D. at paras 36-43).

- [35] All of these same factors support the Principal Applicant's legitimate expectation that his expression of interest would be processed. There are two additional supporting facts: the Principal Applicant's uncontested evidence that a member of IRCC advised him on a phone call that his email would be processed; and the fact that unlike Mr. D., the Principal Applicant never received advice from IRCC regarding the status of the caps to the Policy.
- [36] The Respondent makes three arguments as to why A.B.C.D. should not be followed.
- [37] First, no duty was owed to the Applicants because the cap was reached before the Principal Applicant's expression of interest could be reviewed and that once the cap was reached, there was no further duty to assess any remaining expressions of interest. I have already determined that this argument is not made out on the evidence.
- [38] Second, according to the Respondent, "[i]t was neither appropriate nor required that GAC needed to assess every email before the mandatory cap was met. Triaging was obviously necessary in considering individuals with significant and enduring relationship [sic] to Canada." This argument was considered and rejected by Justice Gascon including by reason that the Policy and its caps did not become public until August 2022 and the fact that the duty arose out of not only the Policy, but by representations made to Mr. D (A.B.C.D. at para 44).
- [39] Finally, the Respondent argues that the A.B.C.D. decision imposes a "first-in-first-out" approach to the processing of expressions of interest and "effectively ignores" the Policy's cap in a now-closed Policy by re-writing it, which is not the Court's role (citing Universal at para 6). I have already determined that the Court is merely enforcing, not re-writing the Policy.
- [40] I find that the public duty owed by the Minister's delegates is owed to the Applicants based on their legitimate expectations.

C. Clear right to performance [41] The Respondent argues that the Applicants have not made out this element of the Test for mandamus. The Respondent acknowledges that the Principal Applicant sent an expression of interest in August 2021 to the GAC Email Box. However, according to the Respondent, the Principal Applicant has not shown that he has an application which the Minister has an obligation to process given Clark's confirmation on March 2024, that there is no record of the Applicants having been referred to IRCC, which is a prerequisite to being considered for an ITA.

- [42] The Respondent submits that the decision in A.B.C.D. reflects an "incorrect" understanding of the term "expression of interest" under the Policy and the legislative scheme under the Act. The Respondent argues that they are not "pre-applications," and they are owed no consideration once the caps are met and the Policy has been terminated.
- [43] I do not consider this argument to be persuasive. Clark's statement that expressions of interest are not applications reflects IRCC's intention, not its representations. As Justice Gascon found, eligibility under the Policy was dependent on GAC and DND assessing emails

submitted to the GAC Email Box and the message that was received in response to those submissions in the case of Mr. D. and the Principal Applicant, represented unequivocally that once the mandatory information was provided it would be processed to determine their eligibility.

[44] I find that the Applicants have a clear right to performance. As emphasized by Justice Gascon in *A.B.C.D.*, GAC has a duty to assess the Principal Applicant's expression of interest to decide whether to refer the Applicants to IRCC. GAC does not have a duty to refer the Applicants (*A.B.C.D.* at para 35). This distinction is important, and it renders the Respondent's reliance on the authority of *Jia v Canada (Citizenship and Immigration)*, 2014 FC 596, unhelpful: the Applicants are not asserting an absolute right to resettlement based on the mere fact of having made an application. While the Applicants originally requested that the Court issue a directed verdict directing the Minister to resettle the Applicants in Canada, at the hearing, counsel for the Applicants advised that the Applicants would be content with the form of the order issued in *A.B.C.D.*

D. The issue of practical effect [45] The Respondent's argument that an order of mandamus is of no conceivable value or effect with respect to the Applicants because any redetermination is bound to be refused given the completion of the cap and the termination of the Policy, must fail for the reasons given by Justice Gascon in *A.B.C.D.* The Order granted by Justice Gascon compels the GAC and DND to assess Mr. D.'s expression of interest under the Policy as it stood at the time of his submission. Like Justice Gascon, I am not prepared to allow the failure on the part of the Minister's delegates to fulfill their public duty to act to cost the Applicants an effective remedy (*A.B.C.D.* at paras 67-70 citing *Saeedy v Canada (Citizenship and Immigration)*, 2025 FC 354 and *Ramizi v College of Immigration and Citizenship Consultants*, 2025 FC 692).

[46] The only other argument made by the Respondent relates to the fact that the DND has no employment records for the Applicants. I agree with the Applicants that eligibility under the Policy was not stated to be based on an employment relationship, but on the finding of a significant and/or enduring relationship to Canada. However, it will be up to GAC and DND to assess the Principal Applicant's relationship as they would have assessed it at the time of his expression of interest.

[47] There are no equitable bars to the relief sought and the balance of convenience favours the issuance of an order of mandamus.

V. Conclusion [48] I find that the Minister and his delegates made representations both publicly and to the Principal Applicant personally, regarding the administrative process that IRCC would follow in carrying out the Policy, and those representations included a representation that expressions of interest like that submitted by the Principal Applicant, would be processed by GAC and DND. This representation was clear, unambiguous, unqualified and procedural in nature and therefore the Government may be held to this process (*Canada (Attorney General) v Mavi*, 2011 SCC 30 at para 68). I agree that an order requiring GAC and DND to process the Principal Applicant's expression of interest is appropriate for the reasons given by Justice Gascon in

A.B.C.D. at paragraphs 69-71.

VI. Costs [49] In A.B.C.D., Mr. D. sought a cost ward of \$31,150, representing legal fees equal to 66% of the hourly rates normally charged by his counsel, for the time spent on his matter. Justice Gascon awarded \$15,000 in costs finding that there were special reasons for the award including excessive delay on the part of the Minister's delegates, the fact that Mr. D.'s inquiries were ignored and more generally, by reason that the litigation "should never have been before the Court at all" given that the Minister could have remedied the situation once the issue was formally brought to the IRCC's attention.

[50] The Applicants in this case did not provide any support for their costs and instead rely on A.B.C.D. despite requesting substantially more (\$25,000). While costs should be grounded in the Court's past practice, they are ultimately discretionary. Unlike A.B.C.D., I cannot say that this matter should never have been before the Court given the Applicants' request for a directed verdict resettling the Applicants in Canada, which was only dropped during the course of the hearing. The Applicants' request was contrary to Justice Gascon's very clear holding in A.B.C.D. that mandamus cannot be used to compel GAC to make a positive determination that Mr. D.'s expression of interest demonstrates a significant and/or enduring relationship to Canada; nor could it be used compel IRCC to issue Mr. D. an ITA (A.B.C.D. at para 75).

[51] Accordingly, I am only prepared to award a lump sum award of \$7,500 plus disbursements related to the cross-examination of Clark.

VII. Certified Question [52] Despite the hearing of this matter originally being scheduled for hearing in April 2025 (which hearing was adjourned twice by the parties), two days before the hearing, the Court received three questions for certification purportedly in accordance with paragraph 37 of the Court's Amended Consolidated Practice Guidelines for Citizenship, Immigration, and Refugee Protection Proceedings, June 20, 2025 [Guidelines]. I say "purportedly" as the Guidelines require at least five days notice prior to the hearing for such questions which time is meant to allow for the parties to reach a consensus regarding the language of the proposed question. It is also intended to be fair to the Court in its preparation (*Medina Rodriguez v Canada (Citizenship and Immigration)*, 2024 FC 401 at para 44). The parties' failure to abide by the Guidelines is a sufficient basis to decline to consider them. However, I also note that neither counsel ultimately made any substantive submissions with respect to the questions, other than to say that if they were the losing party, then their question should be considered. Certified questions should not be used as a "Hail Mary."

JUDGMENT in IMM-14061-23

THIS COURT'S JUDGMENT is that:

This application for judicial review is granted in part.

Global Affairs Canada is ordered to process the Principal Applicant's expression of interest made on August 21, 2021, under the Temporary public policy for the resettlement of Afghan nationals in Canada, dated August 9, 2021, and to determine whether to refer him to Immigration, Refugees and Citizenship Canada within 30 days of this Court's decision.

In the event that the Principal Applicant is referred by Global Affairs Canada, Immigration, Refugees and Citizenship Canada is ordered to process the Principal Applicant's referral and to determine whether to issue him an Invitation to Apply under the Temporary public policy for the resettlement of Afghan nationals in Canada, dated August 9, 2021, within 30 days of his referral.

In the event that the Principal Applicant is issued an Invitation to Apply, Immigration, Refugees and Citizenship Canada is ordered to process and determine his application for permanent residence within 30 days of the reception of his application.

The Respondent shall pay to the Applicants costs in the lump-sum amount of \$7,500 plus disbursements related to the cross-examination of Julie Clark.

There is no question of general importance to be certified.

"Allyson Whyte Nowak"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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WHYTE NOWAK J.

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