

CANADA / JUDGMENT

Jebelli v. Canada (Citizenship and Immigration)

2025 FC 500

COURT

Federal Court

DECIDED

18 March 2025

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Jebelli v. Canada (Citizenship and Immigration) Court (s) Database Federal Court Decisions Date 2025-03-18 Neutral citation 2025 FC 500 File numbers T-2604-23 Decision Content Date: 20250318 Docket: T-2604-23 Citation: 2025 FC 500 Ottawa, Ontario, March 18, 2025 PRESENT: The Honourable Madam Justice Ngo BETWEEN: ALI JEBELLI Applicant and THE MINISTER OF CITIZENSHIP AND IMMIGRATION Respondent JUDGMENT AND REASONS I. Context [1] The Applicant, Ali Jebelli [Applicant], is seeking a writ of mandamus directing the Respondent to make a decision with respect to his application for citizenship that he submitted on November 2, 2020. The Applicant alleges that the delays by Immigration, Refugees and Citizenship Canada [IRCC] are unreasonable and that he has satisfied all the conditions required for a writ of mandamus.

- [2] For the reasons that follow, this application for judicial review is granted. II. Relevant Facts [3] The Applicant has been living continuously in Canada since 2011, obtaining both a Master's degree and a Doctorate in Electrical and Computer Engineering from the University of Ottawa in 2014 and 2016, respectively. He aspires to join the academic staff of a Canadian University as a professor. The Applicant, his wife and child (both Canadian citizens), currently living in Edmonton, Alberta.
- [4] On September 18, 2018, the Applicant acquired permanent residency status. On November 2, 2020, the Applicant applied for citizenship.
- [5] The Global Case Management System [GCMS] notes in the Certified Tribunal Record, show that on September 3, 2021, the Applicant's criminality assessment was completed and cleared. On February 6, 2022, the Applicant successfully passed his citizenship test. His security screening process started on April 19, 2022.
- [6] From April 2022 onwards and about every six months, the Applicant's file contained notes by IRCC of follow up with Canadian Security Intelligence Service [CSIS]. Since then, the Applicant's security screening remains "under review".

- [7] As of June 2022, the Applicant made numerous inquiries with IRCC seeking updates on the status of his file. The Applicant made an Access to Information request and sought assistance from legal counsel and his Member of Parliament. They were advised that his file was still undergoing background checks, or that his security screening was still being processed. On December 21, 2022, IRCC was informed by their CSIS partner that it was not feasible to proceed urgently with their investigation. This was in response to the Applicant's request on November 17, 2022, to expedite his application given his father's declining health.
- [8] As a result of the delay, the Applicant alleges that his situation has created much uncertainty and hardship in his life. He has been unable to secure a stable and suitable employment associated with his educational and professional credentials. This has led to significant financial difficulties. The Applicant states that without his citizenship, he is unable to visit his father in Iran whose health is rapidly declining. Moreover, the intellectual and emotional toll from interactions with IRCC has greatly affected the Applicant's energy and morale.
- [9] The Applicant alleges that IRCC has not provided any transparency to the status of his application. The responses from IRCC to numerous requests for updates have been neither substantive nor informative, often characterized by templated and generic replies. III. Analysis [10] The sole issue for determination on this application is whether the Applicant has demonstrated that a writ of mandamus ought to be granted.
- [11] Mandamus is a discretionary and equitable remedy. The parties' submissions appropriately addressed the conditions described in *Apotex Inc v Canada (Attorney General)*, 1993 CanLII 3004 (FCA), [1994] 1 FC 742 [Apotex] for a writ of mandamus: there must be a public duty to act under the circumstances; the duty must be owed to the applicant; there must be a clear right to performance of that duty; in particular: the applicant has satisfied all conditions precedent giving rise to the duty; there was :
1. a prior demand for performance of the duty;
 2. a reasonable time to comply with the demand unless refused outright; and
 3. a subsequent refusal which can be either expressed or implied, for example, unreasonable delay; no other adequate remedy is available to the applicant; the order sought must have some practical effect; in the exercise of its discretion, the Court must find no equitable bar to the relief sought; and; on a balance of convenience, an order of mandamus should issue. (*Ur Rehman v Canada (Citizenship and Immigration)*, 2025 FC 388 at para 8)
- [12] When determining whether there is a clear right to the performance of a public legal duty to act, three relevant factors have been outlined by the Courts: i) the applicant has satisfied all the requirements for a decision to be made; ii) the applicant has made a prior request that a decision be made; and iii) the decision-maker has either expressly refused to make a decision or it has taken unreasonably long to do so (*Saravanabavanathan v Canada (Citizenship and Immigration)*, 2024 FC 564 at para 19 [Saravanabavanathan] citing *Apotex* at

pp 766–767).

- [13] The Respondent identified that the key question in this case is whether the delay in processing the Applicant's citizenship application has been unreasonable, such that there has been an implied refusal to act. This was the focus of the Respondent's arguments opposing the application for a writ of mandamus.
- [14] The Respondent recognizes the Applicant's significant frustration in this matter. However, the Respondent submits that the GCMS notes clearly demonstrate that the file has not been dormant and that IRCC has been responsive and engaged. A security screening is a reasonable reason for delays. The Respondent also states that where an application is more complex or non-routine, more time may be necessary and warranted beyond the standard average times published. The Applicant has not demonstrated any prejudice and as such, the Respondent submits that the balance of convenience favours IRCC.
- [15] With respect, I have not been persuaded by the Respondent's arguments.
- [16] The criteria to determine whether a delay is to be considered unreasonable is well established in *Conille v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 9097 (FC), [1999] 2 FC 33 at paragraph 23 [Conille]: the delay in question has been longer than the nature of the process required, *prima facie*; the applicant and his counsel are not responsible for the delay; and the authority responsible for the delay has not provided satisfactory justification.
- [17] I agree with the Respondent that processing times are not necessarily guarantees. However, this Court has found that IRCC's processing guidelines should be accorded weight when assessing delays. Under the analysis of the first factor in *Conille*, it is important to have some baseline understanding of the average processing time to assess whether a specific delay is *prima facie* longer than the nature of the process requires (Saravanabavanathan at para 30).
- [18] According to IRCC's website, the processing time for citizenship applications was 450 days. At the time the Applicant filed his application for leave and judicial review, more than 1170 days or about 39 months had passed since submitting his citizenship application in 2021. As of the date of the hearing, approximately 1592 days have passed since the Applicant filed his citizenship application. The time that has lapsed is now about three times the average processing time.
- [19] With respect to the second factor in *Conille*, the Respondent agrees that the Applicant and his counsel are not responsible for the delay.
- [20] However, on the third factor, the Respondent argued that the delay was justified. Screening regarding security, criminality, and background checks are a necessary and important requirement that may justify lengthy processing delays in applications. Although I agree that this principle is reflected in the case law, the Respondent also rightfully concurred that the Court's jurisprudence is clear that blanket statements that a security check investigation

is pending is not sufficient to justify a delay (Saravanabavanathan at para 34 citing Ghaddar v Canada (Citizenship and Immigration), 2023 FC 946 at para 33; Bidgoly v Canada (Citizenship and Immigration), 2022 FC 283 at paras 37-38 [Bidgoly]; Almuhtadi v Canada (Citizenship and Immigration), 2021 FC 712 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). To rely on difficulties associated with security assessments, the Respondent had to provide evidence. A simple statement without more explanations is insufficient (Bidgoly at para 46).

- [21] In the Applicant's case, the GCMS notes state that "security remains under review" without any other information. This is akin to a "blanket statement that security checks are pending". In addition, there is no information in the record that would explain whether there were security concerns. Indeed, neither the record nor the facts of this case provide any support for the Respondent's contention that the Applicant's file was non-routine or complex which would have justified longer processing times. It was also confirmed at the hearing that the application was never put on hold during the security screening process.
- [22] Finally, counsel for the Respondent provided an update about the Applicant's file at the hearing. However, counsel acknowledged that the information was not formally before the Court as she was only informed about this new information on the morning of the hearing.
- [23] While the Court appreciated the update, there is no assurance in any event that a decision on the application is imminent. There is no evidence to support any justification for the delay. As such, I find that the delay is unreasonable.
- [24] In the circumstances of this case, I also conclude that the balance of convenience favours the Applicant. I disagree with the Respondent's submission that the Applicant has only experienced inconvenience due to the time it has taken to process his application. The Applicant's evidence demonstrated the adverse impact of the delay on his and his family's lives.
- [25] The application is granted for a writ of mandamus. I am satisfied, having considered the test set out in Apotex and Conille, the record and the parties' arguments that the Applicant has met the requirements warranting an order from the Court. IV. Remedy
- [26] In the Applicant's written arguments, he sought an Order requiring the Respondent to deliver a decision within 30 days following the Court's judgment. The Respondent did not provide any arguments or concerns about the time frame of the request for relief. There is no evidence or submissions suggesting that the Applicant's proposed deadline is unreasonable or would be unfair to the Respondent.

- [27] With that said, having reviewed the case law provided by the parties where a writ of mandamus was granted, a 90-day time frame often appears in such Orders. As such, a decision on the Applicant's citizenship application will be rendered as soon as possible, but no later than 90 days from the date of this Order. V. Conclusion [28] The application for a writ of mandamus is granted.
- [29] The parties do not propose any question for certification, and I agree that in these circumstances, none arise. JUDGMENT in T-2604-23 THIS COURT'S JUDGMENT is that: The application for judicial review is granted. A decision shall be rendered on the Applicant's citizenship application as soon as possible but no later than 90 days from the date of this Order. There is no question for certification. "Phuong T.V. Ngo" Judge FEDERAL COURT SOLICITORS OF RECORD DOCKET: T-2604-23 STYLE OF CAUSE: ALI JEBELLI V THE MINISTER OF CITIZENSHIP AND IMMIGRATION PLACE OF HEARING: EDMONTON (ALBERTA) DATE OF HEARING: MARCH 12, 2025 JUDGMENT AND REASONS: NGO J. DATED: MARCH 18, 2025 APPEARANCES: Ali Jebelli FOR THE APPLICANT (ON HIS OWN BEHALF) Maria Green FOR THE RESPONDENT SOLICITOR OF RECORD: Attorney General of Canada Edmonton (Alberta) FOR THE RESPONDENT

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