CANADA / JUDGMENT

Sun v. Canada (Citizenship and Immigration)

2026 FC 336

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Federal Court

DECIDED
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Sun v. Canada (Citizenship and Immigration)

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Decision Content

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Docket: T-1163-24

Citation: 2026 FC 336

Vancouver, British Columbia, March 12, 2026

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

GUANQUN SUN

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The Applicant, a permanent resident of Canada, seeks an order in the nature of mandamus to compel the Respondent to render a decision on his application for citizenship submitted to Immigration, Refugees and Citizenship Canada [IRCC] in April 2021. In the alternative, the Applicant seeks an order setting aside the decision of a Citizenship Judge dated March 11, 2024, in which the Citizenship Judge refused his application for citizenship submitted July 21, 2022.

[2] For the reasons that follow, I am not satisfied that the Applicant has demonstrated that he is entitled to any of the relief sought on this application. Accordingly, the application shall be dismissed.

I. Background A. The statutory regime [3] Pursuant to subsection 5(1) of the Citizenship Act, RSC 1985, c C-29, the Minister shall grant citizenship to any person who makes an application for citizenship and meets the requirements set out in the section. Section 13 of the Citizenship Act sets out the conditions that must be met for an application to be accepted for processing:

Applications

Demandes

13 An application is to be accepted for processing under this Act only if all of the following conditions are satisfied:

13 Les demandes ne sont reçues aux fins d'examen au titre de la présente loi que si les conditions ci-après sont réunies :

(a) the application is made in the form and manner and at the place required under this Act;

a) elles sont présentées selon les modalités, en la forme et au lieu prévus sous le régime de la présente loi;

(b) it includes the information required under this Act;

b) elles contiennent les renseignements prévus sous le régime de la présente loi;

(c) it is accompanied by any supporting evidence and fees required under this Act.

c) elles sont accompagnées des éléments de preuve à fournir à leur appui et des droits à acquitter à leur égard prévus sous le régime de la présente loi.

[4] Section 27.2 of the Citizenship Act authorizes the Minister to make regulations prescribing the manner in which applications are to be made and notices to be given. The Citizenship Regulations, No. 2, SOR/2015-124, are the regulations that were in force at the relevant time. Subsection 2(1) of the Citizenship Regulations, No. 2 provided that an application under

subsection 5(1) of the Citizenship Act "must be made in the prescribed form and filed in the manner determined by the Minister" and detailed various information and materials that had to be provided by an applicant together with their application.

[5] Pursuant to the Citizenship Act and the Citizenship Regulations No. 2, IRCC issued operational instructions and guidelines regarding "Citizenship administration: General file processing — Accepting Applications" [Operational Instructions]. The Operational Instructions refer to section 13 of the Citizenship Act and define when an application is considered complete. Under the section entitled "For applications received at the [Case Processing Centre in Sydney] on or after June 11, 2015", the Operational Instructions provide:

An application must be complete to be accepted for processing and is considered complete only if all of the following conditions are satisfied:

- the application is made in the form and manner and at the place required;
- it includes the required information;
- it is accompanied by any supporting evidence and fees.

The date a person signs the application form is the date of filing. It is important to note that this is not the date on which the application is determined to be complete and accepted for processing. Where the date on an application is more than three months old (90 calendar days) and received (staledated), or where the date is a date in the future (postdated), the application will be treated as if it is unsigned. An unsigned application is not a duly completed application and will be returned to the applicant. See also the transitional provisions.

[...]

All applications received are checked upfront for completeness, and when the CPC-S receives an application without the requisite fee and/or without the required documents, the mailroom staff will

- not allocate the paid fees to the processing of the application;
- not record any data in GCMS;
- return the entire application package to the applicant with a notice letter indicating what information or document is missing in their application. Two options will be offered to them:

1. resubmit the application with the missing information or document; or
2. request the refund of the fees paid if the applicant no longer wishes to submit their application.

[Emphases in original.]

B. IRCC's processing of citizenship applications [6] In response to this application for judicial review, the Respondent filed the affidavit of Rozenn Beyer, a Citizenship Case Processing Officer with IRCC. In her affidavit, Officer Beyer explains the manner in which online citizenship applications are processed as well as IRCC's data retention policy.

[7] She stated that the first step in applying online for citizenship is to create an account. Once created, an applicant has 60 days to complete and submit an application through the portal, together with supporting documents and the fee receipt. Once submitted, the application and supporting documents are assigned to data entry program assistants for completeness checking. When an application is deemed incomplete, a data entry program assistant will select the reason for the return and select the "incomplete sent to client" button in the intake tool. The applicant will then receive a generic email advising that their application has been returned and to log into their account for more information. An applicant has 60 days from the date they receive this message to provide the missing information and to resign and resubmit their application. If an application is not resubmitted within the allotted 60 days, the account and the application are permanently deleted as per IRCC's retention policy.

[8] Officer Beyer confirmed that incomplete submissions are not accepted into processing as they are not a complete application and no records of previous incomplete submissions are kept beyond the retention period of 60 days.

[9] Officer Beyer was not cross-examined on her affidavit.

C. The Applicant's citizenship applications [10] In March 2021, the Applicant created an account with IRCC. On April 10, 2021, he submitted a citizenship application and made an online payment for the application processing fee. However, the Applicant did not receive an acknowledgment of receipt from IRCC's Case Processing Centre and his payment was not linked to any particular application.

[11] As confirmed by Officer Beyer (based on a review of the case processing system logs), in keeping with IRCC's processes, the Applicant's 2021 application was deemed incomplete and an automatic "incomplete sent to client" email (as described above) was sent to the Applicant requiring him to resubmit a complete application within 60 days. In that regard, the Applicant admits that, in August 2021, IRCC sent the Applicant a request for additional documents. However, the Applicant concedes that he did not respond to the request for documents as he was travelling at the time. As the Applicant did not resubmit his application within the 60-day retention period, his application and account were deleted in accordance with IRCC's data retention policy.

[12] On July 21, 2022, IRCC received a package from the Applicant that contained two citizenship applications — one dated April 10, 2021, and another dated June 21, 2022. IRCC allocated the Applicant's 2021 payment to the 2022 Application.

[13] On October 19, 2022, IRCC requested that the Applicant submit copies of his passport, which the Applicant provided. IRCC also obtained an Integrated Customs Enforcement Systems [ICES] report from the Canada Border Services Agency, which disclosed the dates on which the Applicant returned to Canada following travel outside of the country. A comparison of the ICES report and the Applicant's passport pages revealed multiple undeclared absences within the relevant period of his citizenship application.

[14] In late October or early November 2022, the Applicant was invited to an online interview with an IRCC officer during which the Applicant's undeclared absences were confirmed.

[15] On February 10, 2023, IRCC requested that the Applicant submit entry and exit records from the United States, which the Applicant provided three days later.

[16] On March 29, 2023, a Citizenship Officer reviewed the application package and sent the Applicant a procedural fairness letter [PFL] noting concerns that the Applicant may not meet the physical presence requirement and had failed to declare several absences. The PFL noted that the Applicant had an additional 142 days of undeclared absence. The PFL provided the Applicant with the opportunity to respond and submit additional information within 30 days from the date of the letter.

[17] On April 21, 2023, the Applicant's representative responded to the PFL, stating that the Applicant first applied for citizenship on April 10, 2021, but an acknowledgement of receipt was not received. The Applicant then had to travel outside of Canada due to a death in their immediate family and, as such, could not follow up to confirm that the 2021 application had been received by IRCC. The Applicant requested that the Citizenship Officer consider the 2021 application, as the Applicant met the physical presence requirement if his physical presence in Canada was calculated based on his 2021 application.

[18] On May 31, 2023, the Case Management Branch for Citizenship and Passport Cases and Citizenship Operations were contacted for guidance regarding the sign date and the relevant period of the application to be considered for the physical presence calculation. Based upon the information available, Citizenship Operations confirmed that there was no indication that a complete application for citizenship was received from the Applicant, or put into processing, prior to June 21, 2022, and so it was their recommendation that the physical presence calculation be based on the Applicant's 2022 application.

[19] On August 16, 2023, the Applicant's 2022 application was referred to a Citizenship Judge pursuant to subsection 14(1) of the Citizenship Act.

[20] On March 11, 2024, the Citizenship Judge denied the Applicant's 2022 application on the basis that the Applicant did not meet the minimum number of days of physical presence in Canada. In their decision, the Citizenship Judge noted the Applicant's request that IRCC process his 2021 application and stated:

According to the documents on file, IRCC has no record of you applying in 2021, other than the application for citizenship dated April 10, 2021 that it received on July 21, 2022 (along with your other application for citizenship dated June 21, 2022). It also has no record of requesting documents from you in August 2021, at least not in respect of an application for citizenship (whether IRCC contacted you for immigration / permanent residency purposes is another matter). There are no notes on file about an incomplete application or anything else that could explain what happened to the application you submitted in 2021, if indeed you did submit one then. While you have provided a receipt showing that you paid $630 (the cost of an adult application for citizenship) to IRCC on April 10, 2021, it is important to note that the IRCC online payment tool will accept a payment at any time, and then the applicant must submit the receipt when they make the application. Therefore, the fact that a payment was made on that date does not necessarily mean that you submitted a fully complete, ready to be processed, application on that date. You did not provide any other evidence that you submitted an application in April 2021, nor of any communication with IRCC in August 2021.

[21] The Citizenship Judge recognized that it was possible that the Applicant had tried to submit an online application in April 2021. However, IRCC could not process the 2021 application when it was received in July 2022 as it was “stale dated” because it was not received by IRCC within 90 days of the date of signature as required by the Operational Instructions.

II. Analysis A. Irregular Notice of Application [22] As noted above, in his Notice of Application, the Applicant seeks an order in the nature of mandamus to compel IRCC to render a decision on his 2021 application and, in the alternative, judicial review of the Citizenship Judge’s decision on the 2022 application. The Respondent asserts that it is improper for the Applicant to seek such relief in one application and that the Applicant ought to have commenced a separate application to judicially review the decision of the Citizenship Judge. I agree with the Respondent.

[23] In Zaghbib v Canada (Public Safety and Emergency Preparedness), 2016 FCA 182, the Federal Court of Appeal had before it a situation wherein the applicant had commenced an application for judicial review seeking mandamus (to compel the respondent to investigate whether the applicant had been a victim of marriage fraud) and then, at the hearing, had sought to set aside a specific decision that had been rendered (a decision by the respondent that it was unable to investigate the matter within a reasonable timeframe and closing its file). The Federal Court of Appeal found that the mandamus application was moot as a result of the decision to close the investigation file and considered whether some other form of relief could be available to the applicant. The Federal Court of Appeal stated:

[50] Can we return the matter to the Federal Court for consideration of whether the respondent’s decision was reasonable? The effect would be to convert what began as an application for judicial review seeking mandamus to an application for judicial review seeking to set aside a specific decision. Since both are applications for judicial review, one could argue that this is a single ongoing application for judicial review, in which the relief sought changed in the course of the application. The reality is a little more complex in that not only is different relief sought but a different decision or matter is being reviewed.

[51] A change in the subject matter of the judicial review is essentially a new judicial review. The language of subsection 72(1) requires leave for the commencement of an application for judicial review of any matter ("a decision, determination or order made, a measure taken or a question raised" – note the use of the singular). In the same vein, Rule 302 of the Federal Courts Rules SOR/98-106 stipulates that an application for judicial review shall be limited to a single order in respect of which relief is sought. To that extent, my earlier reference to "a single ongoing application for judicial review" is inapt.

[52] What little authority there is on this question in the Federal Court is against the proposition that an application for mandamus can be converted into an application for judicial review of the resulting decision: see Figueroa v. Canada (Minister of Foreign Affairs Trade Development), 2015 FC 1341, [2015] F.C.J. No. 1415 [Figueroa]); Farhadi v. Canada (Minister of Citizenship and Immigration), 2014 FC 926, [2014] F.C.J. No. 959.

[24] The Federal Court of Appeal ultimately determined that it was unable to provide any relief to the application within the framework of the application that was before the Court in that matter.

[25] The basis for seeking alternative relief in this case is even less compelling than in Zaghbib, and, even in that case, the Federal Court of Appeal still found that alternative relief was not available. Here, the Applicant had the Citizenship Judge's decision in hand when he commenced his application for judicial review. He was therefore well aware of their determination regarding his 2021 application. He was not caught off guard by a decision being made, mid-application, on the matter for which he sought mandamus. As such, the Applicant should have commenced two applications for judicial review — one seeking a writ of mandamus to compel IRCC to process his 2021 application and a second one seeking judicial review of the Citizenship Judge's decision on his 2022 application.

[26] So, what is the Court to do with this irregularity? In considering how to proceed, I am mindful that, unlike other matters before this Court where an applicant seeks to convert a mandamus application into a review of the decision on its merits after leave has been granted, in this case, the Applicant was granted leave pursuant to subsection 72(1) of the Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA], when both forms of relief were before the Court and notwithstanding this irregularity. I am also mindful that in his Further Memorandum of Fact and Law, the Applicant made no submissions at all on the request for a writ of mandamus and, instead, has only made submissions regarding the decision of the Citizenship Judge. In the circumstances, I will consider both aspects of the application.

B. The Applicant is not entitled to a writ of mandamus [27] A writ of mandamus is an extraordinary remedy and mandamus applications must be assessed on the particular facts of each case [see Tapie v Canada (Citizenship and Immigration), 2007 FC 1048 at para 7]. The legal test for an order of mandamus is well-established. The following eight preconditions must be satisfied by an applicant for the Court to issue a writ of 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 other 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.

[See Apotex Inc v Canada (Attorney General) (CA), 1993 CanLII 3004 (FCA), [1994] 1 FC 742 at 766–769, aff'd 1994 CanLII 47 (SCC), [1994] 3 SCR 1100; A.R. v Canada (Citizenship and Immigration), 2025 FC 236 at para 29].

[28] To satisfy the third requirement above — a clear right to the performance of a public legal duty to act — applicants must establish that: (i) they have satisfied all the requirements for a decision to be made; (ii) they have made a prior request that a decision be made; (iii) there was a reasonable time to comply with the demand; and (iv) the decision-maker has either expressly refused to make a decision or has taken unreasonably long to do so [see Apotex Inc, supra at 767].

[29] Furthermore, three additional requirements must be met for a delay to be considered unreasonable: (i) the delay in question has been longer than the nature of the process required, prima facie; (ii) the applicant is not responsible for the delay; and (iii) the authority responsible for the delay has not provided a satisfactory justification [see Conille v Canada (Minister of Citizenship and Immigration) (TD), 1998 CanLII 9097 (FC), [1999] 2 FC 33 at para 23]. There is no uniform standard for what constitutes a reasonable length of time. Each case turns on its facts, especially in light of the relevant immigration regime [see Bidgoly v Canada (Citizenship and Immigration), 2022 FC 283 at para 33].

[30] For the Applicant to be entitled to mandamus, the Applicant needs to establish that the Respondent had a legal duty to act — that is, a legal duty to process his 2021 application. That legal duty would only arise if the Applicant submitted a complete application, as an incomplete application is not an application within the meaning of the Citizenship Act [see Gennai v Canada (Citizenship and Immigration), 2017 FCA 29 at para 6, where the Federal Court of Appeal considered analogous provisions in the IRPA and the Immigration and Refugee Protection Regulations, SOR/2002-227]. Here, the undisputed evidence before the Court is that, following the submission of his 2021 application, the Applicant received correspondence from IRCC advising that he needed to submit additional information — in other words, his 2021 application was incomplete. The Applicant admits receiving this correspondence and not responding thereto.

[31] While the Applicant asserts that it is impossible to know whether his application was, in fact, incomplete given the absence of any records produced by the Respondent related to his 2021 application, the burden rests on the Applicant, in seeking mandamus, to demonstrate that it was complete for processing. Contrary to the Applicant's assertions, the fact that the Applicant was able to submit the application and reach the stage of making a payment does not establish, on a balance of probabilities, that his 2021 application was complete. While the Applicant has provided a copy of his online 2021 application and his accompanying physical presence in Canada calculations, he has not provided the Court with a copy of the supporting documents that he asserts that he submitted, nor otherwise attempted to demonstrate to this Court that his application was complete. It is of note that the Applicant has not produced a copy of the communication that he received from IRCC alerting him to the deficiency in his 2021 application to demonstrate to the Court — with reference to his application — that IRCC's determination was erroneous. There is no evidence before the Court that this communication (which was sent to his Gmail account) is no longer accessible to the Applicant.

[32] Based on the limited evidence before the Court, and in light of the Applicant's admission that IRCC had notified him in August 2021 that additional information and documents were required, I am not satisfied that the Applicant has demonstrated that his application was complete. In the absence of a complete application, no legal duty was owed to him to process such application as no application was available for IRCC to process. On this basis alone, the Applicant cannot succeed in obtaining a writ of mandamus.

C. The Citizenship Judge's decision was reasonable and the Applicant was not denied procedural fairness [33] The applicable standard of review for the merits of the Citizenship Judge's decision is that of reasonableness. When reviewing for reasonableness, the Court must take a "reasons first" approach and determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified [see Mason v Canada (Citizenship and Immigration), 2023 SCC 21 at paras 8, 59]. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and one that is justified in relation to the facts and law that constrain the decision-maker [see Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65 at paras 15, 85]. The Court will intervene only if it is satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see Adeniji-Adele v Canada (Citizenship and Immigration), 2020 FC 418 at para 11].

[34] Breaches of procedural fairness in administrative contexts have been considered reviewable on a correctness standard or subject to a "reviewing exercise…'best reflected in the correctness standard' even though, strictly speaking, no standard of review is being applied" [see Canadian Pacific Railway Company v Canada (Attorney General), 2018 FCA 69 at para 54]. The duty of procedural fairness is "eminently variable," inherently flexible and context-specific. It must be determined with reference to all the circumstances, including the Baker factors [see Vavilov, supra at para 77]. A court assessing a procedural fairness

question is required to ask whether the procedure was fair, having regard to all of the circumstances [see Canadian Pacific Railway Company, supra at para 54].

[35] The Applicant does not take issue with the Citizenship Judge's determination of his 2022 application per se. Rather, the Applicant's grounds of review target the treatment of his 2021 application by both the Citizenship Judge and IRCC.

[36] The Applicant asserts that the Citizenship Judge fettered their discretion by deeming the 2021 application stale dated, as the Citizenship Judge had the discretion to accept the 2021 application and was not bound by the Operational Instructions. The Applicant points to the powers in subsection 13.2(2) of the Citizenship Act, which he asserts vested the Citizenship Judge with the discretion to reopen the 2021 application, as a deemed abandonment can be rebutted. I find that there is no merit to this argument. Section 13.2 is inapplicable here, as an application must first be determined to be complete — and thus, legally in existence — before it can be considered abandoned. Here, the 2021 application could not be abandoned as it was found by IRCC to never have existed in the first place due to it being incomplete. Moreover, reliance on the Operational Instructions to not accept an application for processing does not amount to a fettering of discretion (whether by IRCC or the Citizenship Judge) but, rather, is consistent with and required by section 13 of the Citizenship Act [see Golichenko v Canada (Citizenship and Immigration), 2016 FC 657 at para 33].

[37] The Applicant asserts that the deletion of his 2021 application from IRCC's system and IRCC's failure to produce a complete record before this Court resulted in a breach of procedural fairness, as it prevents anyone from assessing whether the Applicant's 2021 application should have been designated as incomplete in the first place. The Applicant further asserts that the deletion of his 2021 application from IRCC's system was done without legal authority, as there were no regulations in place at the time to govern the online filing of citizenship applications, and that IRCC's retention policy was a "homemade" policy that prejudiced or extinguished his statutory right to apply for citizenship.

[38] The problem with these arguments is that they have nothing to do with the Citizenship Judge's decision. Rather, they are a collateral attack on IRCC's practices and document retention policy, which are not the matters under review before this Court. In any event, I see no issues with the practices adopted by IRCC to address the filing of online applications, to address incomplete applications or to deal with the deletion of incomplete applications from IRCC's systems. As noted by the Respondent, section 4 and subsection 6(3) of the Privacy Act, RSC 1985, c P-21, state that a government institution may only collect personal information if it relates directly to an operating program or activity and such information must be disposed of in accordance with the regulations and directives and guidelines issued by the designated Minister. As such, it was in keeping with the Minister's obligations under the Privacy Act to implement a data retention and deletion policy for incomplete online applications within the IRCC database. It is also of note that if the 2021 application had been in paper format, it would have been returned to the Applicant and there would similarly be no record of it in IRCC's system such that both paper and online applications are treated in a

similar manner.

[39] Moreover, and importantly, it was open to the Applicant to dispute IRCC's determination that his 2021 application was incomplete when he received the communication from IRCC in August 2021 advising him that he was missing information, yet he took no steps to do so. Instead, he ignored the communication. It is not now open to the Applicant to attack that determination on this application for judicial review.

[40] The Applicant asserts that the Citizenship Judge's decision was procedurally unfair as they were not aware of the fact that IRCC had received and then deleted his 2021 application such that the Citizenship Judge had an incomplete record before them. While perhaps better framed as an argument going to the reasonableness of the Citizenship Judge's decision, I find that the Applicant has not demonstrated a basis for the Court's intervention. The Citizenship Judge had the complete application before them as transmitted by the Applicant in July 2022. The Citizenship Judge accurately noted that there was no record in IRCC's system of the Applicant's 2021 application and that there was no indication as to what may have happened to it (which is consistent with the Operational Instructions, which confirms that there would be no record of any data in the GCMS). As the Applicant's 2021 application was deleted from IRCC's system, there were no further records to place before the Citizenship Judge, such that they cannot be said to have had an incomplete record before them.

[41] As the Applicant has failed to demonstrate that he is entitled to a writ of mandamus and has failed to demonstrate that the Citizenship Judge's decision was unreasonable or that he was denied procedural fairness in relation thereto, his application for judicial review shall be dismissed.

[42] While the Applicant requested an order awarding him costs of this application, given that he was unsuccessful, I see no basis for such an award. Moreover, even if the Applicant had been successful, I am not satisfied that "special reasons" exist, within the meaning of Rule 22 of the Federal Courts Citizenship, Immigration and Refugee Protection Rules, SOR/93-22, for an award of costs.

JUDGMENT in T-1163-24

THIS COURT'S JUDGMENT is that:

The application is dismissed.

"Mandy Aylen"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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AYLEN J.

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