Federal Court Cour fédérale

Date: 20251119

Docket: IMM-98-25

Citation: 2025 FC 1837

Ottawa, Ontario, November 19, 2025

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

XUN YUEHONG

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for an order in the nature of *mandamus* brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27. The Applicant is a citizen of China. On September 28, 2020, she applied as a dependent applicant under the Federal Self-Employed Permanent Residence application of her husband, who is the principal applicant [Principal Applicant]. The Applicant seeks to compel the Minister of Citizenship and

Immigration [Minister] to render a decision in respect of her outstanding application. Her application for judicial review was brought only on her own behalf.

Background Facts

[2] The background facts are largely not in dispute. The Principal Applicant's Federal Self-Employed Permanent Residence application was filed on September 28, 2020.

[3] In an undated letter, Immigration, Refugees and Citizenship Canada [IRCC] advised the Principal Applicant that, due to inventory growth and the impacts of the COVID-19 disease, it was encountering processing delays but confirmed that his application for permanent residence had been received on September 28, 2020. On February 9, 2023, IRCC again confirmed to the Principal Applicant that his application had been received on September 28, 2020.

[4] The global case management system [GCMS] notes indicate that on April 17, 2023, a case analysis of the application and due diligence checks for the Principal Applicant were being undertaken (the most recent version of the GCMS notes available, which was provided as an exhibit to the September 23, 2025, affidavit of Corina Masancay, legal assistant with the Department of Justice [Masancay Affidavit], is referenced throughout this decision). IRCC also reviewed documentation submitted in support of the application and requested additional background information (Schedule A) and police certificates. On July 31, 2023, IRCC requested educational transcripts and diplomas for the Applicant. On August 24, 2023, IRCC submitted comprehensive background checks for the Applicant. On September 4, 2023, the Applicant submitted her college transcripts.

[5] Between March 20, 2024, and April 2025 the Principal Applicant and the Applicant sent numerous status enquiries to IRCC. IRCC responded advising that the application was undergoing background investigations. Further, that because these were being conducted by outside agencies, IRCC had no control over their processing time and was therefore unable to give an exact time frame in which it expected to conclude the verifications.

[6] On January 2, 2025, the Applicant filed her application for judicial review seeking a writ of *mandamus*.

[7] By status inquiry to IRCC dated March 21, 2025, the Principal Applicant advised that the National Security and Intelligence Review Agency [NSIRA] had confirmed that the Applicant's security check had been completed and attached a letter, dated March 10, 2025, from NSIRA. The letter was written on behalf of the Canadian Security Intelligence Service [CSIS] in response to a delay complaint made by the Principal Applicant. The letter states that on August 24, 2023, CSIS received a security screening request and that on February 19, 2025, it had provided its advice to the requesting client. Its advice was classified and could not be disclosed to the Principal Applicant. However, CSIS confirmed that its role in the security screening with respect to the Applicant's permanent residence application was complete. The letter also enclosed an Annex describing the immigration and citizenship screening program as well as an immigration security screening process map.

[8] The GCMS note entry for May 19, 2025, indicates that "COMPB results x spouse have been received. To E-BCRIM Review."

[9] On May 28, 2025, in response to a request for a status update, IRCC advised that the application was in queue for review and that it would be in contact with further instructions, or a final decision, when the migration office's review was complete. Similar responses were sent on June 12, 2025, and July 18, 2025.

[10] An August 4, 2025, GCMS entry, in response to an inquiry from the Principal Applicant, indicates that required documents previously filed in support of the application had expired and that a letter would be sent seeking updated information. The certified tribunal record [CTR] contains an August 6, 2025, letter from IRCC to the Principal Applicant requesting updated Schedule A forms (Background/Declaration) and police certificates for the Principal Applicant and the Applicant. The CTR also includes updated Certificates of No Criminal Record dated August 7, 2025, and new Schedule A forms, dated August 11, 2025. There is no corresponding GCMS entry as of September 8, 2025. However, a screenshot provided to the counsel for the Respondent by IRCC on September 18, 2025, which was attached as an exhibit to the Masancay Affidavit, and which is described as showing up to date correspondence with the Applicant, confirms that updated Schedule A forms and police certificates for the Principal Applicant and the Applicant were received on September 9, 2025 and September 5, 2025, respectively. That document also indicates that the Principal Applicant's security screening which had previously been passed has expired, as has his medical.

Preliminary Issue - Translation

[11] On October 14, 2025, the Applicant filed a motion seeking an order granting an extension of time to file a further affidavit and costs in the amount of $1,500. That motion was heard at the beginning of the time scheduled for the *mandamus* hearing.

[12] As a preliminary issue with respect to the motion for an extension of time, the Respondent submits that the Applicant's proposed further affidavit, which is written in English, ought to be inadmissible or given no weight because the Applicant acknowledges that she requires translation services for its content but has not met the requirements of Rule 80(2.1) of the *Federal Court Rules*, SOR/98-106 [Rules]. In her motion affidavit and proposed further affidavit, the Applicant states she has reviewed the contents of the affidavit using ChatGPT and two translation applications. The Respondent submits that the proposed further affidavit is deficient in two ways: there is no qualified interpreter and no jurat. The Respondent submits that all three of the Applicant's affidavits are of questionable reliability and that the Applicant's explanation for using these translation applications, that the timelines were brief, is not a valid excuse.

[13] Rule 80(2.1) states:

> Where an affidavit is written in an official language for a deponent who does not understand that official language, the affidavit shall
>
> > (a) be translated orally for the deponent in the language of the deponent by a competent and independent interpreter who has taken an oath, in Form 80B, as to the performance of his or her duties; and
> >
> > (b) contain a jurat in Form 80C.

[14] In the Applicant's proposed further affidavit, she states:

> 27. I confirm that I have reviewed the contents of this affidavit with the help of a translation application, ChatGPT, given the brief timeline to finalize, serve, and file it.
>
> 28. I confirm that through two translation applications, my counsel's translating orally from English to Chinese and mine translating orally from Chinese to English, I have received the contents of this affidavit with my counsel and signed it in her presence via video conference.

[15] The same wording is found in the Applicant's affidavit filed in support of her motion record.

[16] The Applicant's proposed further affidavit (and motion record affidavit) were not translated by a competent and independent interpreter under oath as required by Rule 80(2.1), nor were Form 80C jurats provided. The oath of interpreter set out in Form 80B requires the interpreter to swear or affirm that they understand the language of the deponent and the language in which the affidavit is written and that they will faithfully translate orally the affidavit and the oath for the deponent to the best of their skill and understanding. The Form 80C jurat confirms that the deponent of an affidavit was sworn by translation of the interpreter who has provided the required oath.

[17] In some circumstances, an affidavit that does not comply with Rule 80(2.1) can be found to be inadmissible (for example, in *Molchanova v Canada (Citizenship and Immigration)*, 2021 FC 1305 at paras 11-12). In other cases, challenged affidavits have been afforded little or no weight (for example, *Lin v Canada (Citizenship and Immigration)*, 2025 FC 1043 at para 72; *Al*

Mousawamaii v Canada (Citizenship and Immigration), 2018 FC 1256 at paras 15-18; *Tkachenko v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1652 at paras 4-8).

[18] When appearing before me, counsel for the Applicant submitted that Rule 80(2.1) is more of a technicality than a necessary Rule. Particularly in this case where the Applicant has used ChatGPT and two (unidentified) translations applications for oral translation between counsel and the Applicant. In effect, her view is that the Rule has not kept up with technological developments. She also submits that the fact that the affidavit is "on point" demonstrates that the translation was accurate. Further, that time constraints prevented the Applicant from obtaining proper translation.

[19] However, in my view, Rule 80(2.1) serves an important purpose. It ensures that the content of the affidavit has been accurately and reliably orally translated to the affiant. This is accomplished by requiring competent translators who have sworn or affirmed to the Court that they will faithfully translate the document to the best of their ability. It may be that in the future translation applications will be proven to have achieved a level of accuracy to allow them to be identified and accepted for use by the Court. But we are not there yet. I also note that the proposed further affidavit attaches as exhibits documents identified as medical reports. These are written in Chinese and are not accompanied by any affidavit attesting to the accuracy of the translation.

[20] As to the Applicant's submission that there was no time for proper translations, I note that the order granting leave was issued on August 21, 2025. In her motion affidavit the

Applicant claims that immediately after this she began to look for counsel to represent her. However, counsel whom she initially contacted were unavailable. On September 17, 2025, she was referred by one such counsel to her current counsel. While the Applicant has attached as exhibits to her affidavit communications between her current counsel and the Respondent's counsel, the only email provided to establish her efforts to initially retain counsel is the September 17, 2025, referral, nearly one month after the order granting leave and after the passing of the further affidavit filing deadline of September 15, 2025.

[21] In these circumstances, I will not strike the proposed further amended affidavit but will afford it little weight as its translation has not been established as reliable. In any event, I also note that much of the proposed further affidavit is devoted to establishing that the IRCC processing timeline has expanded since the filing of the application, which is not in dispute, and which is largely addressed by other evidence in the record before me. The Applicant also speaks to an access to information request and response dated June 9, 2025, that she received pertaining to the status of the application, including security screenings. That information is also largely found elsewhere in the record before me. The remainder of the affidavit is primarily concerned with updating medical information, which the Applicant acknowledges in her affidavit is in response to the Respondent's submissions in its memorandum of argument. Further, as noted above, the medical reports attached as exhibits (which are dated October 7, 2025) are written in Chinese and are accompanied by unverified translations.

Preliminary Motion – Extension of Time

[22] Given that I have found that the Applicant's proposed further affidavit is to be afforded little weight due to the lack of an appropriate translation, the motion for an extension of time is of reduced significance. However, I will address it below.

[23] By way of background, the Applicant was required to serve and file any further affidavits by September 15, 2025. The Respondent was required to file any further affidavits by September 25, 2025. The hearing of the matter was scheduled for October 29, 2025. The Applicant did not file a further affidavit within the required time.

[24] In her affidavit filed in support of her motion, the Applicant states that while she had been able to represent herself in writing, she felt that she would not be able to do so at an oral hearing. Accordingly, she sought legal counsel. As noted above, she claims that counsel she initially contacted were not available but on September 17, 2025, she was referred to her present counsel. Present counsel was retained on September 24, 2025, which was after the deadline for filing further affidavits had passed.

[25] On September 25, 2025, Applicant's counsel contacted counsel for the Respondent. Various communications followed, including a request for an extension of time to file a further affidavit, if required, in order to update evidence of hardship caused by delay. Counsel for the Respondent declined to consent to an extension for that purpose as the updated evidence could have been filed by September 15, 2025. Counsel for the Applicant then pointed out that the

Applicant had previously been self-represented and had only recently retained counsel. Further, that the potential need for a further affidavit had been prompted by the receipt of the Respondent's further evidence. She later indicated that she wanted to cross-examine the Respondent's affiant to understand the attached exhibits. Counsel for the Respondent in reply noted that the deadline for cross-examination was that day and that a more timely request could have been accommodated.

[26] Counsel for the Respondent did not consent to cross-examination but advised that they would seek instructions as to the request for an extension of time to file a further affidavit. Counsel for the Respondent subsequently declined to consent to an extension of time for the Applicant to serve and file any further affidavits but advised that if the Applicant brought a motion, they would consider the merits of the motion and respond accordingly. Counsel for the Respondent has not consented to the motion.

[27] In her submissions, the Applicant sets out the test for granting an extension of time as found in *Canada (Attorney General) v Hennelly*, 1999 CanLII 8190 (FCA) and asserts that she has met all four elements of that test.

[28] The Respondent characterizes the proposed further affidavit as a reply affidavit. This characterization is based on the Respondent's view that the Applicant has conceded (by way of her email correspondence to counsel for the Respondent when requesting an extension of time) that it was upon review of the Respondent's further affidavit that she wanted to file an affidavit in response.-The Respondent submits that the reply affidavit should not be accepted for filing.

This is because the *Federal Courts Immigration and Refugee Protection Rules*, SOR/93-22 [*IRP Rules*] make no provision for the filing of reply affidavits and because the Applicant has not established that there are special circumstances that would warrant its acceptance for filing (*Ahmed v Canada (Citizenship and Immigration)*, 2025 FC 929 at para 13).

[29] The test for an extension of time is set out by the Federal Court of Appeal in *Canada (Attorney General) v Larkman*, 2012 FCA 204 [*Larkman*]. As that Court confirmed in *Rafique v Canada (National Revenue)*, 2023 FCA 112:

> [3] This Court has since slightly reworded and clarified the test: see *Canada (Attorney General) v. Larkman*, 2012 FCA 204 (*Larkman*) at paragraphs 61 and 62:
>
> > [61] The parties agree that the following questions are relevant to this Court's exercise of discretion to allow an extension of time:
> >
> > > (1) Did the moving party have a continuing intention to pursue the [appeal]?
> > >
> > > (2) Is there some potential merit to the [appeal]?
> > >
> > > (3) Has the Crown been prejudiced from the delay?
> > >
> > > (4) Does the moving party have a reasonable explanation for the delay?
> >
> > [62] These questions guide the Court in determining whether the granting of an extension of time is in the interests of justice. The importance of each question depends upon the circumstances of each case. Further, not all of these four questions need be resolved in the moving party's favour. For example, "a compelling explanation for the delay may lead to a positive response even if the case against the judgment appears weak, and equally a strong case may counterbalance a less satisfactory justification for the delay". In certain cases, particularly in unusual cases, other questions may be relevant. The overriding consideration is that the interests of justice be served… [Citations omitted]

[30] The Applicant submits that all four elements of the test have been met and that granting the extension would be in the interests of justice. More specifically, that her continued intention to pursue the present application is confirmed by her efforts to retain counsel from the time of leave onwards. As to the second element, she submits that the grant of leave by this Court confirms the merits of the underlying application and the "contents of the further affidavit she seeks to file confirm the merits and relevance of the further evidence sought to be put before the Court." On the third element, the Applicant argues that the Respondent has not provided any basis for refusing her request other than simply that the deadline for doing so has passed, and that there is no discernable prejudice to the Respondent. On the final element, the Applicant argues that it was reasonable for her to not have anticipated the need to file a further affidavit given she was self-represented. Further, that the length of time it took her to retain counsel was also reasonable given the "demonstrated unavailability" of previously consulted counsel and her language barrier. She also points to her counsel's two periods of absence as well as the Respondent's change of counsel and two periods of absence which she claims impacted the parties' discussions on the issues.

[31] As noted above, the Respondent submits that the proposed further affidavit is in reality a reply affidavit. Accordingly, the Respondent does not specifically address the *Larkman* factors.

[32] In my view, the Applicant demonstrated a continuing intention to pursue her application. The Applicant has not submitted any case law to support her view that the granting of leave is sufficient to demonstrate that the application has some merit. However, as will be discussed below, while the application may have some merit given that there has still not been a decision

made by IRCC with respect to the application, this is negated by the fact that the application cannot succeed because a statutory condition precedent has not been met. Specifically, the Principal Applicant has not been approved for or issued a visa which is a condition precedent for a decision on the Applicant's dependent visa.

[33] As to prejudice to the Respondent, in the context of its reply affidavit argument, the Respondent argues that the lack of reliable translation prejudices it. Further, that an applicant who is permitted to split their case by submitting a new affidavit or new arguments after counsel for the Minister has responded may give the applicant an inappropriate advantage (citing *Nguyen v Canada (Minister of Citizenship and Immigration),* 1999 CanLII 8817 (FC) at para 5 and *Zhou v Canada (Minister of Citizenship and Immigration),* 2003 FC 1060 at para 10). I am not persuaded that these circumstances, where the Applicant seeks to file a proposed further affidavit, amount to the splitting of the Applicant's case. In any event, having already found that the proposed further affidavit would be afforded minimal weight if it is admitted, any prejudice to the Respondent is mitigated.

[34] As to the final element of the *Larkman* test, in the Respondent's submissions on costs (discussed further below), it submits that a party's lack of legal training is not a reasonable justification for delay (*Abikan v Canada (Citizenship and Immigration),* 2023 FC 149 at para 26). It also argues it was the Applicant's choice to retain counsel who was on leave and that it is counsel's obligation to make arrangements to meet deadlines if they accept a retainer.

[35] I appreciate that applicants seeking to retain counsel to act for them on relatively short notice may encounter difficulty, given that counsels' calendars may already be full. However, the Applicant has not established that any efforts were made to retain counsel until September 17, 2025. Moreover, when appearing before me, the Applicant's counsel devoted much energy to emphasizing the fact that she had previously booked holidays during the period between when she had accepted the Applicant's retainer and the scheduled hearing of the judicial review application. However, this is not an explanation for the initial delay of the Applicant in filing a further affidavit. Nor is there evidence before me that any delay or prejudice arose as a result of discussions with, or availability of, Respondent's counsel. The decision of Applicant's counsel to accept the retainer, knowing that she had booked time off, was her own choice.

[36] In sum, it is not necessary for all four *Larkman* criteria be satisfied. Rather, the question is whether on balance, the interests of justice would be served in granting the extension of time. Viewed in whole, I find that the test is not met because of the unexplained delay in retaining counsel. More significantly, however, because there is no merit to the application and because it is not in the interests of justice to permit the admission of the proposed further affidavit without translation that is in compliance with Rule 80(2.1).

[37] Given my findings above, it is not necessary to address the Respondent's submission that the proposed further affidavit is, in reality, a reply affidavit.

[38] The Applicant's motion for extension of time to file a further affidavit is denied.

Mandamus

[39] The test for *mandamus* is found in *Apotex Inc v Canada (Attorney General)*, 1993 CanLII 3004 (FCA) [*Apotex*]. In order for the remedy of *mandamus* to be granted, all of the following requirements must be established:

> 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 discretion is fettered and spent;
>
> 5) No other adequate remedy is available to the applicant;
>
> 6) The order sought will be of some practical value or effect;
>
> 7) There is no equitable bar to the relief sought; and
>
> 8) On a "balance of convenience", an order in the nature of mandamus should issue.

[40] This analysis will address only those elements contested by the Respondent.

Clear Right to Performance of a Public Legal Duty to Act

a) Condition Precedent

[41] The first requirement under this step is that the applicant has satisfied all conditions precedent giving rise to the duty. The Respondent argued, as a preliminary matter, that this judicial review is premature as it is conditional upon the approval of the Principal Applicant's application, which has not occurred. I will address this argument under this step of the test for *mandamus*.

[42] Paragraph 70(4)(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRP Regulations*] states that "[a] foreign national *who is an accompanying family member of a foreign national who is issued a permanent resident visa* shall be issued a permanent resident visa if, following an examination, it is established that (a) the accompanying family member is not inadmissible …" (italics added).

[43] Paragraph 10(1)(e) of the *IRP Regulations* requires an application that includes an accompanying spouse to "identify who is the principal applicant and who is the accompanying spouse." The application submitted to IRCC in this case names Yefan Zhang as the Principal Applicant and the Applicant (Xun Yuehong) as the accompanying dependent spouse. Subsection 10(3) of the *IRP Regulations* states that, with respect to applications of family members, the

application is considered to be an application made for the principal applicant and their accompanying family members. That is, there is one application.

[44] The Respondent submits that there has been no decision made or visa issued regarding the Principal Applicant and that this judicial review is sought only by the Applicant, the dependent family member. It does not seek a writ of *mandamus* for the Principal Applicant's application. Thus, the condition precedent has not been met and the application for *mandamus* is premature.

[45] When appearing before me, the Applicant argued, as I understood it, that the Principal Applicant had been found eligible for a visa and that all that stood between him and the issuance of a visa was the resubmission of required, but now expired, documents such as his medical, criminality checks (police certificates), and his security screening. The view being that, in effect, the visa had been approved or issued.

[46] I am not persuaded by this argument. There is no evidence that at the time of this hearing a decision has been made and/or that a visa has been issued to the Principal Applicant. Additionally, as the Respondent submits, the Applicant does not have a stand-alone permanent residence visa application. The approval of her visa is dependent upon the approval of the Principal Applicant's visa.

[47] While neither party submitted jurisprudence in support of their respective positions, in *Apotex* the issue of prematurity was addressed and the Federal Court of Appeal concluded that:

> As a general proposition, it is not difficult to accept a rule which seeks to eliminate premature applications for *mandamus*. It is certainly open to a respondent to pursue dismissal of an application where the duty to perform has yet to arise. However, unless compelling reasons are offered, an application for an order in the nature of *mandamus* should not be defeated on the ground that it was initiated prematurely. *Provided that the conditions precedent to the exercise of the duty have been satisfied at the time of the hearing, the application should be assessed on its merits.* Those who unnecessarily complicate the proceedings may expose themselves to costs even if successful. For the foregoing reasons this submission must fail.
>
> (emphasis in italic added)

[48] The Federal Court of Appeal in *Apotex* also cited *Hutchins v Canada (National Parole Board) (CA),* 1993 CanLII 2981 (FCA), [1993] 3 FC 505 [*Hutchins*]. There, in an appeal from a decision of the trial judge granting *mandamus* and in considering whether the respondent had an accruing right to a parole hearing, the Federal Court of Appeal stated:

> [10] With respect, I disagree. The respondent's right under paragraph 11.1(1)(e) was subject to a statutory condition, to wit the issuance of a deportation order. It was a statutory condition precedent to the existence of his right. The respondent had no right under that paragraph until the condition precedent to its existence had been satisfied. He had no right to a parole hearing for purposes of deportation unless and until a deportation order was issued against him. As such order was only issued after the repeal of paragraph 11.1(1)(e), the respondent did not meet the first criterion as he simply had no right.

[49] Applying this reasoning, the statutory condition contained in subsection 70(4) of the *IRP Regulations* – that the Principal Applicant's application must be approved before a permanent resident visa can be issued to an accompanying family member – is an unsatisfied condition

precedent in this case (see also *A.A. v Canada (Citizenship and Immigration)*, 2025 FC 1811 at para 62). Accordingly, the Applicant has not established that she has a "clear right to the performance of the duty." This may also mean that the order sought will be of no practical value or effect.

[50] Perhaps acknowledging this issue as a concern, at the hearing counsel of the Applicant sought to add the Principal Applicant to the existing application for judicial review. In my view, this request, made during oral argument, is simply too late. Nor would adding the Principal Applicant as a named applicant at this stage of the proceeding impact the existing arguments or the relief sought.

[51] As the *mandamus* test is conjunctive, this is determinative.

[52] Regardless, I will also address the reasonable time to comply time with a demand for a decision and the unreasonable delay steps of the test.

b) Reasonable Time to Comply/Unreasonable Delay

[53] The Applicant submits that the Respondent must demonstrate, with evidence, ongoing and active case management and application-specific concerns impacting its finalization. She argues that she has now passed security checks but that the Respondent has not provided an explanation for the delay, nor a clear processing timeline, and therefore the delay warrants the grant of *mandamus*. This is particularly so where the Applicant has suffered mental and financial distress.

[54] The Applicant also argues that the Respondent cannot make a blanket reference to the pandemic without explaining what impact it had on the Applicant specifically. She submits that blanket references to the pandemic or security checks cannot justify delays that are significantly more than double the initial processing time posted.

[55] The Applicant submits that the test for the reasonableness of the delay, as set out in *Conille v Canada*, 1998 CanLII 9097 (FC) [*Conille*], has been met.

[56] The Respondent argues that IRCC has not refused to perform its duty. Rather, as demonstrated by the GCMS notes, it is actively working on processing the application which is progressing towards finalization.

[57] The Respondent submits that the processing of the application is proceeding within reasonable time limits. The estimated processing time for a federal self-employed application, as of September 17, 2025, was 61 months. As a result, the expected completion date was around October 28, 2025, which does not support the Applicant's argument that there has been a delay in processing times. The Respondent also argues that the processing times are not binding representations that entitle the Applicant to *mandamus* when exceeded. It submits there is no evidence that the processing in this case has taken *prima facie* longer than required. Further, that there is reasonable justification for the processing time because IRCC only received the background check results on May 19, 2025. The following five months do not constitute a delay for continuing to review the application, which review continues. Additionally, background checks and security concerns justify lengthy processing timelines in immigration applications.

[58] I note that the record indicates that IRCC confirmed receipt of the application on September 28, 2020, and advised of delays due to increased volume of applications and the pandemic. On April 17, 2023, IRCC started its review of the application, and in that regard, sought additional information from the Principal Applicant and the Applicant.

[59] In response to a complaint filed by the Principal Applicant against CSIS, on March 13, 2025, NSIRA advised the Principal Applicant that CSIS had received a security screening request with respect to the Applicant's permanent residence application on August 24, 2023. The letter stated CSIS completed its security review on February 19, 2025, and had provided its advice to the "client." The GCMS entry for May 19, 2025, states that "COMPB results x spouse has been received. To E-BCRIM Review."

[60] The affidavit evidence filed by the Respondent does not provide an explanation of what this means. However, the Immigration Security Screening Process Map provided to the Applicant with the NSIRA response, which is found in the CTR, indicates that CSIS sends its security advice to CBSA. CBSA then sends that and its own recommendation to IRCC/IRB. IRCC/IRB then reviews all available information and makes a decision.

[61] The GCMS notes do not indicate the status of that review or, more specifically, when the security checks for the Applicant were accepted by IRCC. However, a screenshot contained in the CTR does show the Applicant's "Security" as "Passed." Additionally, the IRCC communication of May 28, 2025, in response to a status inquiry by the Principal Applicant, indicates that the application was in the queue for review. This departed from the prior responses

which had indicated that the application was awaiting the results of background checks for the Applicant. It implicitly confirms that her security checks had been completed by CSIS, had been reviewed by CBSA and the results received by IRCC for review. On August 6, 2025, IRCC requested updated Schedule A forms and police certificates for the Principal Applicant and the Applicant. Updated Certificates of No Criminal Record dated August 7, 2025, and Schedule A forms, dated August 11, 2025, are found in the CTR. The last GCMS entry (in the document before the Court) records that on September 5, 2025, the Principal Applicant resubmitted an updated passport for the Applicant, which was uploaded on September 8, 2025. It appears that the Principal Applicant's medical and security, although both previously passed, have expired and remain outstanding.

[62] As the parties submit, *Conille* sets out three requirements to be met in order 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 and their counsel are not responsible for the delay; and (iii) the authority responsible for the delay has not provided satisfactory justification.

i. Time required

[63] The Applicant submits that at the time the application was submitted, the posted processing time was 24 months. A screenshot of her IRCC account from December 2024, provided as an exhibit to her January 28, 2025, affidavit, indicates that the application received on September 28, 2020, was taking longer than usual to process and that the estimated completion date was then February 28, 2023. A completion date of February 28, 2023, would

mean a processing period of 29 months. An exhibit to her affidavit filed in support of her leave application indicates that, as of January 22, 2025, the estimated processing time was 48 months.

[64] The Respondent has submitted, by way of an exhibit to the Masancay Affidavit, a copy of a portion of the IRCC website indicating that, as of September 17, 2025, the processing time was 61 months, which information is updated weekly.

[65] The evidence in the record confirms that the processing time has demonstrably expanded since the application was filed, from 29 months in December 2024, to 61 months as of September of this year. However, the Applicant offers no jurisprudence, and does not suggest, that this fact alone would entitle her to *mandamus.*

[66] Further, stated processing times are not binding on the Minister, and do not automatically entitle an applicant to a *mandamus* order if exceeded (*Almasi v Canada (Citizenship and Immigration)*, 2025 FC 1377 at para 13 [*Almasi*]; *Jaballah v Canada (Minister of Citizenship and Immigration)*, 2019 FC 1051 at paras 87-94, 104; *Jia v Canada (Citizenship and Immigration*), 2014 FC 596 at para 92, aff'd 2015 FCA 146; *Saravanabavanathan v Canada (Citizenship and Immigration)*, 2024 FC 564 at para 29).

[67] That said, although stated processing times are not binding, they do assist in understanding the average or baseline processing time, in order to assess whether a delay is *prima facie* longer than the nature of the process requires (*Jebelli v Canada (Citizenship and Immigration)*, 2025 FC 500 [*Jebelli*]):

> [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 nature of [sic] the process requires (*Saravanabavanathan* at para 30).

[68] In this case, IRCC advised the Principal Applicant that as a result of increased volume and the COVID-19 pandemic, IRCC was encountering delays in processing applications. More significantly, the record demonstrates that as of February 9, 2023, presumably when the COVID-19 delay and increased volume was overcome, IRCC began processing the application. It sent a request to CSIS for security screening on August 24, 2023. While it took 18 months for CSIS to complete that review and a further three months for CBSA to conduct its security review, IRCC received the security screening results in May 2025 and thereafter began conducting its own review. The Applicant's security clearance was "passed" by IRCC and the record demonstrates that the application continues to be processed. Thus, while there was a COVID-19 related delay, this is not a circumstance where the pandemic alone was offered as a blanket, ongoing justification for the delay.

[69] It has been approximately 61 months since the application was filed, and the estimated processing times have extended from 29 months to 48 months then 61 months. Considering these

processing times and factoring in the delays as a result of the pandemic and to obtain the required security clearance, which were both identified to the Applicant, and that currently it appears that IRCC is continuing to process the application, I am not convinced that the Applicant has established that the delay is *prima facie* longer than the nature of the process required.

ii. The Applicant and their counsel are not responsible for the delay

[70] There is no allegation nor is they any evidence in the record suggesting that the Applicant and her counsel are responsible for the delay.

iii. Satisfactory justification for the delay

[71] The Respondent argues that, in any event, there is reasonable justification for the processing time. IRCC did not receive the background check results until May 19, 2025, only five months ago. This five-month period since the background check results were received does not constitute a delay for continuing to review the application. Further, that the case law establishes that background checks and security concerns justify lengthy processing timelines in immigration applications.

[72] I note that while there may be occasions where background checks and security screenings justify delays, recent case law has stated that blanket statements that the screening is in progress is not a satisfactory justification. The Applicant submits that a “mere categorical reference” to the importance of security screening is not sufficient to justify delay. The cases

cited by the Applicant on this point are unable to be verified, however, this point was similarly made in *Jebelli*:

> [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.

[73] Similarly, in *Almasi*, Justice Diner held that the statement that "security remains under review" without any other information to provide any basis or explanation for the security concerns, or the expected investigation length, is akin to a blanket statement that security checks are pending (at para 19).

[74] However, as noted above, that is not the circumstance in this case. The delay for the security clearance lay with CSIS and has now been resolved. It is not an ongoing blanket justification offered to explain the delay.

[75] In sum, viewed in whole, while the pandemic, an increased volume of applications and the security clearances did cause delay, this was justified and was not unreasonable. The record demonstrates that the security checks for the Applicant have been completed for about five months, and the time that has elapsed since the updated criminality checks and Schedule A forms were submitted is less than three months. It also appears that the security clearance and medical for the Principal Applicant have expired.

[76] In my view, this delay is not unreasonable, particularly as it falls just outside the September 2025, estimated 61-month processing time, because the record demonstrates that the processing of the application is ongoing, and because it appears that the Principal Applicant's expired medical and security must now also be updated.

[77] Given my findings above and as the test for *mandamus* is conjunctive, it is not necessary to address the other elements of the test that are disputed by the Respondent.

Conclusion

[78] The statutory condition contained in subsection 70(4) of the *IRP Regulations* – that the Principal Applicant's application must be approved before a permanent resident visa can be issued to an accompanying family member – is an unsatisfied condition precedent in this case.

Accordingly, the Applicant has not established that she has a clear right to the performance of the duty. This is determinative. In any event, the delay in processing the application has been justified and is not unreasonable in the circumstances.

[79] Notwithstanding this conclusion, it appears IRCC should soon be in a position to render a decision on the application. It should do so without delay once the remaining expired elements of the application have been updated.

Costs

[80] The issue of costs took on an unwarranted and unnecessary emphasis in this application for judicial review. This was due to the conduct of Ms. Pantea Jafari, Applicant's counsel.

[81] In her motion for an extension of time, the Applicant sought costs in the amount of $1,500. The basis for this was her view that the Respondent unreasonably refused to consent to the motion.

[82] In her application for leave and judicial review, the Applicant did not seek an order as to costs. However, in her further memorandum of fact and law she seeks, among other relief, an order barring the Respondent from requiring updated medical and security checks and costs against the Respondent in the amount of $5,000. Her stated rational being that the Respondent failed to justify the time taken to process the application and failed to act diligently even when "the final outstanding clearance was finalized." She asserts that "it seems the true reason for delay was the Respondent's negligence and not even the outstanding background check."

Further, that the application ought to have been settled. She asserts that "the Respondent's lack of diligence in the processing of her application, it's positions throughout the litigation, and the significant waste of time and resources that she is made to suffer on account of each, constitute special reasons meriting an award of costs."

[83] The Respondent submits that the Applicant is not entitled to costs, nor the relief sought in her further memorandum that was not sought in her application for leave and judicial review or her initially filed memorandum, and that she should not be able to seek additional relief at this late stage. Further, that the objectives of immigration include protecting public health and safety, maintaining the security of Canadian society and promoting international justice and security. The Respondent argues that there is no basis to override these objectives, and that the Applicant has not provided any jurisprudence to support her request.

[84] The Respondent refers to Rule 22 of the *IRP Rules* and argues that the Applicant's reasons for seeking costs do not amount to special reasons, nor do they suggest that there has been unfair, oppressive, improper or bad faith conduct on the part of the Respondent.

[85] Finally, the Respondent requests that the Court consider granting costs of $500 payable by the Applicant's counsel personally for the "special reason that it appears that there has been misuse of artificial intelligence not declared." The Respondent states that the counsel's action could have resulted in mischief if the cases cited by the Applicant were relied on.

Analysis

[86] Rule 22 of the *IRP Rules* sets out the conditions for awarding costs in immigration matters. The Rule states "[n]o costs shall be awarded to or payable by any party in respect of an application for leave, an application for judicial review or an appeal under these Rules unless the Court, for special reasons, so orders."

[87] In *Liu*, Justice Roy stated "[a]s has been often said, 'special reasons' imply behaviour that is unfair, oppressive, improper or involving bad faith" (*Liu v Canada v (Citizenship and Immigration)*, 2024 FC 1516 at para 17).

[88] The Applicant has not established special reasons meriting an award of costs against the Respondent either with respect to the motion to extend time or the application for judicial review.

[89] The Applicant's reasons for seeking costs with respect to the motion is that the refusal to grant the extension of time was, in the circumstances, "palpably unreasonable." She adds that causing the Applicant to have to expend resources to bring the motion "and to cause counsel for the applicant to have to devote time to do so during her scheduled absence," was unreasonable to the point of warranting an award of costs.

[90] The Applicant's reasons for requesting costs with respect to the application for judicial review focus on the processing delay, her view that the delay was not justified, that IRCC failed

to act diligently even after her security check was received, IRCC's failure to settle the matter, and IRCC's positions throughout the litigation.

[91] On the latter point, it is apparent that in the opinion of Applicant's counsel, the Respondent should have agreed to settle the matter and/or should have agreed to her request for an extension of time to submit her proposed further affidavit. However, the Respondent was not compelled to accept Applicant's counsel's view. The refusal to agree to the motion was a discretionary decision and was based, in part, on the fact the counsel for the Applicant indicated that the reason for filing the proposed further affidavit was to respond to the Respondent's further affidavit with further and subsequent evidence as well as the delay. In my view, and while it may well have been open to the Respondent to take a different approach, this does not establish behaviour that is unfair, oppressive, improper or involving bad faith. The test is not, as the Applicant seems to suggest, whether the Respondent's approach was "reasonable." I do not agree that the circumstances of this case are somehow otherwise "special."

[92] Moreover, the Applicant has not been successful with respect to either the motion or her application for judicial review. I therefore decline the Applicant's request to grant costs against the Respondent.

[93] With respect to the Respondent's request for costs, in its further memorandum the Respondent submitted that the Applicant's further memorandum referred to 19 authorities, many of which do not appear as cited, are misleading or inaccurate. The Respondent prepared an Appendix A which identified 11 of these cases and explained why they were incorrect case

references. For example, in paragraph 14 of her further memorandum the Applicant cited "*Ayyad v Canada* (2023 FC 456)." However, the citation of 2023 FC 456 led to the decision *Joseph v Canada (Attorney General)*, which concerns a challenge of a decision of the Office of the Privacy Commission. A search of *Ayyad v Canada* led to the citation 2014 FC 1101, which is not a *mandamus* case but concerns a citizenship decision. One of the other two cases cited in support of that same paragraph similarly led to a different case that is not concerned with the point it is supposed to support.

[94] The Respondent submits that counsel for the Applicant owed a duty to the Court to verify the accuracy and reliability of the legal authorities upon which she seeks to rely (*NCR v KKB*, 2025 ABKB 417 at paras 109-110) and that the Court should not be burdened with "hunting for cases which do not exist or considering erroneous propositions of law" (*Hussein v Canada (Immigration, Refugees and Citizenship)*, 2025 FC 1060 at para 39 [*Hussein*]). Additionally, if the further memorandum was prepared with the use of artificial intelligence, then this had to be declared and verified by a human (*Hussein* at para 39; Federal Court Practice Direction *The Use of Artificial Intelligence in Court Proceedings* dated May 7, 2024). The Respondent submitted that the inclusion of non-existent and unreliable case law deprived it of the opportunity to effectively respond to the Applicant's submissions.

[95] Apparently unhappy with this written submission, on October 27, 2025, counsel for the Applicant wrote to the Court stating that "respondent's counsel allegations are unfounded and violate multiple rules of professional conduct." Additionally, while Applicant's counsel was "loath to react in kind to respondent counsel's seeming tactics, the inappropriate nature of her

accusations lead the applicant to seek the addition of a further remedy - costs on a solicitor-client basis." Further, that Respondent counsel's "tactics arguably crosses the line to a breach of professional obligations to all stakeholders, especially the Court."

[96] Counsel for the Applicant took the position that the cases cited in paragraphs 14-16 of her further memorandum are the same as those that were cited by the Applicant in her initial memorandum – which counsel acknowledged "do seem to be incorrect." Counsel then asserted that Respondent's counsel has a professional obligation to "immediately correct the resulting misapprehension on the part of the [applicant]" with a footnote reference to the "Law Society of Alberta Code of Conduct, September 23, 2025, section 7.2-5." Counsel for the Applicant made further assertions and concluded that she was left with the impression that the entire issue of the incorrect citations was "a rouse to deflect from the merits of the applicant's request for a writ of mandamus at best, and the taking advantage of a slip or mistake constituting sharp practice and unprofessional conduct otherwise." Applicant's counsel viewed the Respondent's submission as to the incorrect case references as a surprise additional preliminary issue and sought direction from the Court as to when that issue would be heard and sought permission to add to her Book of Authorities case law not cited in the Applicant's materials.

[97] By direction dated October 28, 2025, I advised that this issue was not a discreet new issue and no direction or guidance from the Court was required. If counsel for the Applicant was of the view that her citations were accurate (in her letter she, among other things, acknowledged that some of them may not be but asserted that Respondent should have brought the Applicant's errors to her attention and the failure to do so "gave present counsel confidence that the caselaw

was accurate") and on point, then she could establish this during the normal course of oral argument and by reference to the jurisprudence which she had cited and relied upon. In essence, this was a dispute about the applicability of the Applicant's jurisprudence. It would be addressed in the normal course during oral submissions at the hearing on October 29, 2025, which would proceed as scheduled. If necessary additional case law was required to address that issue, then relevant additional cases could be filed in support of same. Irrelevant cases should not be submitted. Counsel for the Applicant did not submit any additional cases.

[98] During the hearing I indicated to Applicant’s counsel that the focus with respect to the issue of costs proposed by the Respondent should be on the accuracy and source of her case references rather than her allegation of professional misconduct. However, counsel for the Applicant chose to double down on her allegations of professional misconduct by Respondent’s counsel, again asserting that law societies require that counsel immediately alert others of mistakes.

[99] Counsel for the Respondent advised that she had looked at the section of the Law Society of Alberta Code of Conduct relied upon by counsel for the Applicant, although its relevance was not clear as neither counsel are members of the Law Society of Alberta. Regardless, counsel for the Respondent pointed out that it indicates that where a lawyer has become aware that *they* have inadvertently misled another party then *they* must immediately correct the misapprehension.

[100] Indeed, the Law Society of Alberta Code of Conduct states as follows:

> **Correcting Misinformation**
>
> **7.2-5** If a lawyer becomes aware during the course of a representation that:
>
> > (a) the lawyer has inadvertently misled an opposing party, or
> >
> > (b) the client, or someone allied with the client or the client's matter, has misled an opposing party, intentionally or otherwise, or
> >
> > …
>
> then, subject to confidentiality, the lawyer must immediately correct the resulting misapprehension on the part of the opposing party.

[101] In this matter, it is obvious that any professional obligation to correct the Applicant's erroneous case references lay with Applicant's counsel. She acknowledged that she did not check the case references and that at least some of them were incorrect. She apparently relied on the (then) self-represented Applicant's initial memorandum submissions made by her client without verifying their applicability or accuracy. Instead of taking responsibility for this, counsel for the Applicant misrepresented the Law Society of Alberta Code of Conduct rule in an effort to shift the responsibility for correcting her own errors to the Respondent's counsel.

[102] With respect to the Applicant's authorities, I would also note in passing here that in addition to the concerns raised by the Respondent, the further memorandum filed by counsel for the Applicant contained few hyperlinks and that she did not file a list of authorities. At the hearing she provided a litany of reasons why this was not done, including feeling unwell, having to attend a conference, and three of her cases taking longer than she expected. She asked to be

permitted to provide a list of authorities in the week after the hearing. She also sought to include authorities not cited in her further memorandum. The Respondent objected to this request because it could not respond to cases that had not been identified and was therefore potentially prejudiced. Ultimately, and reluctantly, I agreed that counsel for the Applicant could file a list of authorities with hyperlinks the following morning but only citing those cases already referenced in her further memorandum and those she had specifically identified during the hearing – even though she had not provided those cases to the Court and to Respondent's counsel prior to the hearing which is the normal course. However, despite this very considerable leeway, counsel for the Applicant did not file a list of authorities the next morning, or at all.

[103] Instead, after the hearing, on October 30, 2025, counsel for Applicant wrote to counsel for the Respondent asserting that the Applicant's security clearance had been finalized on May 27, 2025, although not captured in the CTR or the Respondent's further affidavit, and that the document request made by IRCC in August 2025 pertained to the expired criminality screening of the Applicant and Principal Applicant. The Applicant asserted this to be a critical fact and sought confirmation of IRCC of this fact. Further, that counsel for the Respondent notify the Court "of the incorrect facts that were put forward." This compelled counsel for the Respondent to write to the Court providing the email from counsel for the Applicant and advising that the Respondent's position remains that security screening assessments are ongoing in processing the application but providing further clarification and correction, if necessary, if she unintentionally misspoke or mislead the Court. Specifically, while the Applicant's security screening has "passed," the security screening of the Principal Applicant has expired. Thus, security and other

screening assessments are ongoing in processing the application and the issuance of a visa to the Applicant is dependent upon the granting of a visa to the Principal Applicant.

[104] The clarification provided was, in fact, the Courts understanding of the status of the application.

[105] Notwithstanding this response by Respondent's counsel, the Applicant then wrote to the Court on October 31, 2025, acknowledging the Respondent's letter but making further representations as to the Applicant's case and again asserting that Respondent's counsel had intentionally misled the Court. She stated that while she no longer sought cost personally against Respondent's counsel (I note that this was new relief that arose in her October 27, 2025, letter to the Court) she maintained her claim of costs against IRCC.

[106] These further post hearing representations were not invited by the Court, were not necessary and will not be considered.

[107] Frankly, the conduct of Applicant's counsel in this matter is concerning. Applicant's counsel could have simply admitted to, and corrected, the errors in her case references and addressed the assertion that artificial intelligence may have been used in the preparation of her further memorandum, thereby potentially refuting the Respondent's costs submission. However, she instead has expended considerable resources of the Court and of the Respondent in addressing her ill-advised and misguided allegation of professional misconduct on the part counsel for the Respondent which she then expanded upon in her post-hearing correspondence.

[108] Pursuant to Rule 400, the Court has full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid. In this case I am satisfied that special reasons, which imply behaviour that is unfair, oppressive, improper or involving bad faith, exist so as to justify an award of costs in the amount of $500 against Applicant's counsel personally. I also decline her request that, in the event of such an award, her identity be anonymized.

JUDGMENT IN IMM-98-25

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed;

2. Costs in the amount of $500 are payable personally and immediately by Ms. Pantea Jafari, Applicant's counsel, to the Respondent; and

3. There is no question for certification.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-98-25
STYLE OF CAUSE:	XUN YUEHONG v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	BY VIDEOCONFERENCE USING ZOOM
DATE OF HEARING:	OCTOBER 29, 2025
JUDGMENT AND REASONS:	STRICKLAND J.
DATED:	NOVEMBER 19, 2025

APPEARANCES:

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Sydney Ramsay	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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Attorney General of Canada Winnipeg, Manitoba	FOR THE RESPONDENT