

Federal Court



Cour fédérale

Date: 20241104

Docket: IMM-9741-22

Citation: 2024 FC 1756

Ottawa, Ontario, November 4, 2024

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

MARK NJENGA GICHURA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] In the week leading up to the judicial review hearing, the Court was advised that the Applicant's application for permanent residence ("PR Application") had been granted. Both parties agree the judicial review application before this Court that sought an order of *mandamus* to compel a decision on the PR Application is now moot.

[2] I heard arguments solely on the issue of costs. The Applicant argued that the delay in processing the PR Application was unreasonable and unjustified, warranting special reasons to award costs. The Minister opposed the request for costs. The Minister argued that the processing time was reasonable because of i) the complexity of this type of sponsorship application; ii) that processing took place during the COVID-19 pandemic; and iii) the delays caused by the Applicant and his sponsor in providing complete information.

[3] After considering the steps taken on the Applicant's file over the past four years, and the multiple requests for urgent processing due to the failing health of the Applicant's mother in Canada, I agree with the Applicant that there are special reasons to award costs in this case. I order costs against the Minister of Citizenship and Immigration in the amount of \$2500.00.

II. Background to the Mandamus Judicial Review

[4] The Applicant is a citizen of Kenya who was sponsored by his mother, a Canadian citizen. The Applicant's mother has major health problems and no other relatives in Canada. She applied to sponsor her son under the so-called "lonely Canadian" provisions, section 117(1)(h) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. This family sponsorship stream allows for the sponsorship of relatives, regardless of age, where the sponsor has no family in Canada and is not otherwise eligible to sponsor anyone else.

[5] The Applicant filed his PR Application in April 2020. In January 2021, Immigration, Refugees and Citizenship Canada ["IRCC"] confirmed that the Applicant's mother met the eligibility requirements to sponsor her son. The application was then forwarded to the High

Commission in Nairobi, Kenya for further processing. In January 2021, the IRCC requested that the Applicant provide a police certificate, medical examination, and biometrics. The Applicant provided his biometrics in August 2021, four months after the deadline that had been provided in the January 2021 letter.

[6] In October 2022, the Applicant filed the application for leave and judicial review asking for an order of *mandamus* to compel IRCC to make a decision on his PR Application.

[7] Neither the Applicant nor the sponsor received any further instruction from IRCC until June 2023, approximately 27 months after the January 2021 document request letter. There appears to have been eligibility notes made to the file in August 2021, but the substantive review took place in December 2022, approximately two years after the file was sent to Nairobi for further processing. At that time, an IRCC analyst noted the further documents required. The IRCC did not, however, send a letter requesting these documents at that time. This request came approximately six months later, in June 2023. There was no explanation provided for this delay.

[8] There were also multiple letters sent by the Applicant's sponsor's medical providers in Canada asking for expedited processing because of her serious health needs and the lack of any family support in Canada. There were also multiple calls made to IRCC by the Applicant's sponsor's Member of Parliament, requesting updates on the processing of the file.

[9] For the next year and a half, IRCC made a few further requests; each was responded to promptly by the Applicant and/or the sponsor. There is no explanation for why these requests

were not made at the same time. Some of the information requested had already been provided by the Applicant and/or the sponsor.

[10] On April 16, 2024, the Applicant's PR application is approved.

III. Special Reasons to Award Costs

[11] Costs are generally not awarded to either party in citizenship, immigration or refugee protection matters before this Court. Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 provides that costs may only be awarded where there are "special reasons". Misleading or abusive conduct or unreasonable and unjustified delay have been found to constitute a "special reason" that may justify making a cost award (*Ndungu v Canada (Citizenship and Immigration)*, 2011 FCA 208 at para 7; *M.F.S. v Canada (Citizenship and Immigration)*, 2023 FC 321 at para 5).

[12] The Applicant is not arguing misleading or abusive conduct on the part of the Minister but is asking for costs because of the unreasonable and unjustified delay in processing his PR Application. I have carefully reviewed the steps taken by IRCC during the approximate four-year period it took to process the Applicant's PR Application.

[13] The Minister submitted that the impact of the COVID-19 pandemic affected application processing timelines but filed no evidence about the specific impact of the COVID-19 pandemic on processing at the Nairobi office during the relevant time period. This Court has held without more detail about how the pandemic affected processing, general statements about the pandemic

usually cannot serve as a sufficient justification for a lengthy delay (*Bidgoly v Canada (Citizenship and Immigration)*, 2022 FC 283 at para 41; *Almuhtadi v Canada (Citizenship and Immigration)*, 2021 FC 712 at para 47; *Asiedu v Canada (Citizenship and Immigration)*, 2023 FC 1523 [*Asiedu*] at para 15).

[14] The Minister argues that part of the delay stems from the sponsor providing an incomplete “Family Information Sheet” in March 2021. The problem with this argument is that as soon as the sponsor is notified, in September 2023, that IRCC considers the form incomplete, she promptly completed it and sent it back approximately two weeks later. There is no explanation why IRCC did not realize for over two years that there had been a deficiency in the completion of this form. I also agree with the Applicant that the manner in which the sponsor had initially completed the form in March 2021 was understandable given the way the question is posed on the form. The other delay relied on by the Minister was the Applicant’s delay in providing his biometrics; as noted above, the Applicant provided this information in August 2021, four months after the deadline set out by IRCC.

[15] Ultimately, I do not find the Minister’s arguments about the Applicant’s and sponsor’s delays to be persuasive. These were minor delays in the context of a four-year period.

[16] The Minister did not file any evidence regarding the complexity of processing this type of sponsorship application. As I noted in *Asiedu*, which related to the same type of family sponsorship, “The Respondent has not provided any information about the nature of processing required for this category. Nor has the Respondent provided any explanation of why the nature of

processing of Family Class applications under the Other Relative stream requires a processing time of approximately four years” (*Asiedu* at para 13).

[17] The four-year processing time does not appear to be due to particular complexities, but rather is a result of lengthy periods of inaction that are unexplained. There is also no explanation for the multiple, staggered unrelated requests for documents and why these requests were not made at the same time. The delays in processing the PR Application are made more egregious here where the Applicant’s sponsor filed medical letters from health professionals in Canada asking IRCC to expedite processing due to her declining health condition and her urgent need for family support.

[18] Considering all these circumstances described above, I find IRCC’s delay in processing the Applicant’s PR Application to be unreasonable and unjustified. I find that this is an appropriate case to exercise my discretion to award costs in the amount of \$2500.00.

JUDGMENT in IMM-9741-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed due to mootness; and
2. Costs against the Minister of Citizenship and Immigration are ordered in the amount of \$2500.00

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9741-22

STYLE OF CAUSE: MARK NJENGA GICHURA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 1, 2024

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: NOVEMBER 4, 2024

APPEARANCES:

Jared Will FOR THE APPLICANT

Neeta Logsetty FOR THE RESPONDENT

SOLICITORS OF RECORD:

Jared Will & Associates FOR THE APPLICANT
Barristers and Solicitors
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario