

FEDERAL COURT

B E T W E E N:

**SAIMA ASRAR MOHAMMAD, ASRAR MUHAMMAD, NAJAM UL-NISA
MOHAMMAD, MARIA ASRAR MOHAMMAD, SUHAIB ASRAR MOHAMMAD,
ZUHAIR ASRAR MUHAMMAD, MAIMONA ASRAR, MOHAMMAD, MARWA
ASRAR MOHAMMAD**

Applicants

-and-

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

APPLICANTS' MEMORANDUM OF ARGUMENT

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PART I – STATEMENT OF FACT

A. Overview

1. This is an application for leave and judicial review of the Minister of Citizenship and Immigration's ("**Minister**") failure to comply with the statutory duty to render a decision on the Applicants' application for citizenship, which they submitted more than 16 years ago.
2. Despite numerous requests for information from the Applicants, the Respondent has not informed them of the reason for the delay.
3. The average processing time for processing a grant of citizenship application is 25 months. The Applicants have been waiting more than 16 years and 10 months.

B. Citizenship Application

4. The Applicants are all immediate family members, who arrived together in Canada on April 11, 2002, as permanent residents.¹
5. In 2005, the father of the family, Asrar Muhammad, mailed a single application for citizenship to Citizenship and Immigration Canada ("**CIC**") on behalf of all eight family members.² CIC subsequently informed the family that CIC received the application on December 5, 2005, and on April 3, 2006, the file was sent to the Scarborough office.³
6. Four of the Applicants, Suhaib, Zuhair, Maimona, and Marwa ("**Minor Applicants**"), were less than 18 years old when the application was submitted. The other four Applicants, Asrar, Najam, Saima, and Maria, were older than 18 ("**Adult Applicants**").⁴

¹ Affidavit of Saima Asrar Mohammad, Oct 31, 2022 ("Mohammad Affidavit"), paras 2-3, **Applicants' Record ("AR")**, p 8.

² Mohammad Affidavit, para 4, **AR**, p 8.

³ Mohammad Affidavit, para 5, **AR**, p 8.

⁴ Mohammad Affidavit, para 2, **AR**, p 8.

C. Applicants' Eligibility for Citizenship

7. All the Applicants meet all the criteria to be granted Canadian citizenship, with the exception that the Adult Applicants have not yet demonstrated their knowledge of Canada because they have not been invited to take the citizenship test. The particulars are as follows:
- a. All the Applicants are permanent residents of Canada and have no unfulfilled conditions relating to their status as permanent residents.
 - b. All the Applicants were physically present in Canada for at least 1,095 days during the five years immediately before December 5, 2005.
 - c. All the Applicants who were required under the *Income Tax Act* to file a return of income, filed their returns in respect of three taxation years that were fully or partially within the five years immediately before December 5, 2005.
 - d. The Adult Applicants have an adequate knowledge of English.
 - e. The Adult Applicants have adequate knowledge of Canada and of the responsibilities and privileges of citizenship and are prepared to demonstrate this knowledge in English by passing the citizenship test as soon as the Minister invites them to do so.
 - f. None of the Applicants are under any removal order or the subject of a declaration by the Governor in Council made pursuant to section 20 of the *Citizenship Act*.⁵
8. On November 5, 2010, CIC requested that Asrar Muhammad submit his fingerprints, and he did so within the requested amount of time.⁶

⁵ Mohammad Affidavit, para 6, **AR**, p 9.

⁶ Mohammad Affidavit, paras 7-8, **AR**, p 10.

D. Requests for Information and Processing

9. The Applicants made many requests that their application be processed and requests for information about the status of their application, but after 16 years, no decision has yet been made on the application.
10. On October 24, 2013, Saima sent an email to CIC requesting an update and a response to the citizenship application. She emphasized that the Applicants had been waiting since 2005. CIC responded that the request had been referred to the local office and that the office would be in contact with her. Saima requested the contact information for the office, but she did not receive a reply.⁷
11. In 2016, the Applicants hired an attorney to send a letter to CIC requesting an update on the application, but they never received an acknowledgement of the letter or a response from CIC.⁸
12. On January 26, 2018, Saima sent an email to the Minister requesting an update.⁹
13. On February 27, 2018, the Ministerial Inquiries Division replied that the application was “on hold” pending completion of background checks and that Saima would be contacted as soon as all background checks have been completed. The Applicants have still not been contacted to let them know these have been completed.¹⁰
14. On February 16, 2021, Saima sent another email to the Minister requesting information about the status of the application. She asked for an explanation as to what was stalling the application and what steps, if any, the Applicants could take to expedite the process. The only response Saima received was an automatic reply stating that the service standard for a response is six weeks, if it is determined a reply is warranted.¹¹

⁷ Mohammad Affidavit, paras 9-11, **AR, p 10**.

⁸ Mohammad Affidavit, para 12, **AR, p 10**.

⁹ Mohammad Affidavit, para 13, **AR, p 10**.

¹⁰ Mohammad Affidavit, para 14, **AR, pp 10-11**.

¹¹ Mohammad Affidavit, paras 15-16, **AR, p 11**.

15. On March 1, 2021, Saima sent an enquiry through the Immigration Refugees and Citizenship Canada (“IRCC”) website’s contact form saying, “My family and I would like to know the status of our citizenship applications as we filed our applications in December 2005.”¹²
16. On March 10, 2021, an IRCC agent replied by email. He confirmed that the application is still in process and said that the Applicants would be informed as soon as a decision is reached or if additional information is needed.¹³
17. Saima has also called the Scarborough processing office on multiple occasions, but they never provided her with any justification for the delay.¹⁴

E. Unreasonable Delay

18. IRCC’s website states that as of October 31, 2022, the average processing time for a citizenship grant application is 25 months.¹⁵ As of the date of writing, it has been more than 202 months (16 years and 10 months) since the Applicants submitted their citizenship application, and the Minister has not rendered a decision.¹⁶

PART II – POINTS IN ISSUE

19. The Applicants submit that the following issues are to be determined:

ISSUE 1: Should the Court order *mandamus* compelling the Minister to immediately grant citizenship to the Minor Applicants and requiring the next steps in the Adult Applicants’ citizenship application proceed immediately?

ISSUE 2: Should the Court award costs to the Applicants?

¹² Mohammad Affidavit, para 17, **AR**, p 11.

¹³ Mohammad Affidavit, para 18, **AR**, p 11.

¹⁴ Mohammad Affidavit, para 19, **AR**, p 11.

¹⁵ Mohammad Affidavit, para 20, **AR**, p 11.

¹⁶ Mohammad Affidavit, para 21, **AR**, p 12.

PART III – SUBMISSIONS

ISSUE 1: *Mandamus*

20. The Applicants submit that it is appropriate for *mandamus* to be granted compelling the Minister to immediately

- a. grant citizenship to the Minor Applicants; and
- b. invite the Adult Applicants to take the citizenship test, and upon each Adult Applicant's passing of the citizenship test, to immediately invite said Adult Applicant to meet with a citizenship official for an interview, and upon each Adult Applicant's passing of the interview, to immediately grant said Adult Applicant citizenship.

21. The test for *mandamus* is as follows:

- 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, in particular;
 - a. The applicant has satisfied all conditions precedent giving rise to the duty; and
 - 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, certain additional principles apply;
- 5) no 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.¹⁷

22. All eight elements of the test for *mandamus* are met.

1) Legal Duty to Act

23. First, the Respondent has a public legal duty,

- a. to render a decision under s. 5(1) of the *Citizenship Act*, RSC 1985, c C-29 (“**Citizenship Act**”); and
- b. to grant citizenship to anyone who meets the criteria set out in s. 5(1)(a)-(f) of the *Citizenship Act*.

2) Duty Owed to Applicants

24. Second, the duty is owed to the Applicants since they are the persons who submitted a citizenship application.

3) Clear Right to Performance of the Duty

25. Third, the Applicants have a clear right to performance of the duty because the Applicants have satisfied all conditions precedent, there was a prior demand for performance, a reasonable time to comply with the demand, and a subsequent refusal can be implied by unreasonable delay.

i) Conditions Precedent Satisfied

26. All the Applicants have satisfied all conditions precedent to rendering a decision. All the Minor Applicants have satisfied the conditions precedent for granting citizenship, and all the Adult Applicants have satisfied all the conditions precedent for granting citizenship except for demonstrating their knowledge of Canada, since the Respondent has not given them the opportunity to do so.

¹⁷ [Canada \(Health\) v The Winning Combination Inc](#), 2017 FCA 101 at para 60; [Apotex Inc v Canada \(Attorney General\)](#), [1994] 1 FC 742, 69 FTR 152 (FCA), aff'd [Apotex Inc v Canada \(Attorney General\)](#), [1994] 3 SCR 1100, 176 NR 1.

27. The only condition precedent to the Minister rendering a decision is that a person make an application for citizenship. The Applicants fulfilled this by applying on December 5, 2005, and by providing all required information.¹⁸

28. The conditions precedent to the Minister granting citizenship are set out in s. 5(1) of the *Citizenship Act*. The following are the conditions precedent relevant to all the Applicants:

- a. Make an application for citizenship;¹⁹
- b. Be a permanent resident and have no unfulfilled conditions relating to their status as a permanent resident;²⁰
- c. Have been physically present in Canada for at least 1,095 days during the five years immediately before the date of application;²¹
- d. Met any applicable requirement under the *Income Tax Act* to file a return of income in respect of three taxation years that are fully or partially within the five years immediately before the date of application;²²
- e. Is not under a removal order and is not the subject of a declaration by the Governor in Council made pursuant to section 20.²³

29. All of the Applicants have fulfilled these five conditions.²⁴

30. The following are the conditions precedent relevant to the Adult Applicants, but not to the Minor Applicants:

¹⁸ Mohammad Affidavit, para 4, **AR**, p 8.

¹⁹ *Citizenship Act*, RSC 1985, c C-29, s [5\(1\)\(a\)](#).

²⁰ *Ibid*, s [5\(1\)\(c\)](#).

²¹ *Ibid*, s [5\(1\)\(c\)\(i\)](#).

²² *Ibid*, s [5\(1\)\(c\)\(iii\)](#).

²³ *Ibid*, s [5\(1\)\(f\)](#).

²⁴ Mohammad Affidavit, para 6, **AR**, p 9.

- a. if 18 years of age or more but less than 55 years of age at the date of his or her application, has an adequate knowledge of one of the official languages of Canada;²⁵ and
- b. if 18 years of age or more but less than 55 years of age at the date of his or her application, demonstrates in one of the official languages of Canada that he or she has an adequate knowledge of Canada and of the responsibilities and privileges of citizenship.²⁶

31. The Adult Applicants have fulfilled the first condition, and they are prepared to fulfill the second. The only barrier to fulfilling the second is that the Respondent has not let them demonstrate their knowledge of Canada because the Respondent has not invited them to take the citizenship test.²⁷

ii) Implied Refusal by Unreasonable Delay

32. The Applicants made a demand for performance of the duty when they submitted the application on December 5, 2005. They made additional demands for the performance of the duty in subsequent communications with IRCC and the Minister, including on October 24, 2013, January 26, 2018, February 16, 2021, and March 1, 2021.²⁸

33. The Applicants provided a reasonable time of more than 202 months (16 years and 10 months) to comply with the demand, which is much longer than the 25-month average processing time. Thus, a refusal should be implied.

34. Pursuant to the Federal Court's decision in *Conille v Canada*, delay is considered unreasonable if

²⁵ *Ibid*, s [5\(1\)\(d\)](#).

²⁶ *Ibid*, s [5\(1\)\(e\)](#).

²⁷ Mohammad Affidavit, para 6, **AR**, pp 8-9.

²⁸ Mohammad Affidavit, paras 9-19, **AR**, pp 10-11.

- a. the delay in question has been longer than the nature of the process required, prima facie;
- b. the applicant and his counsel are not responsible for the delay; and
- c. the authority responsible for the delay has not provided satisfactory justification.²⁹

35. All three elements in *Conille* are met.

- a. On its face, 202 months is longer than required by the nature of the process when the average processing time is 25 months;
- b. Neither the Applicants nor their counsel are responsible for any delay; and
- c. the Respondent has provided no justification for the delay.³⁰

36. Furthermore, even if the Respondent had provided a justification, administrative constraints, such as from complexity or voluminous reading cannot justify delay.³¹ Even if the process is contingent on receiving advice from other agencies, such as CSIS or CBSA, this also cannot justify the delay.³²

37. Finally, the fact that the case has been “on hold” for almost five years (since at least February 27, 2018) pending background checks³³ makes the delay unreasonable regardless of the total time elapsed. If a file has been frozen at one stage of the process, the delay is unreasonable regardless of the total length of time elapsed.³⁴

²⁹ *Conille v Canada (Minister of Citizenship and Immigration)*, [1999] 2 FC 33, [1998] FCJ No 1553 [Conille].

³⁰ Mohammad Affidavit, paras 20-21, **AR, pp 11-12**.

³¹ *Thomas v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 164 at paras [24-25](#).

³² *Almuhtadi v Canada (Citizenship and Immigration)*, 2021 FC 712 at para [41](#); *Singh v Canada (Minister of Citizenship and Immigration)*, 2005 FC 544 at para [16](#), [2005] FCJ No 669.

³³ Mohammad Affidavit, para 14, **AR, pp 10-11**.

³⁴ *Douze v Canada (Citizenship and Immigration)*, 2010 FC 1337 at paras [31](#) & [33](#), [2010] FCJ No 1680.

4) Duty is Not Discretionary

38. Fourth, the duty sought to be enforced is not discretionary since it is required by s. 5(1) of the *Citizenship Act*.

5) No Other Adequate Remedy Available

39. Fifth, no other adequate remedy is available to the Applicants since there is no other way for them to become citizens of Canada.

6) Order Will Have Practical Value and Effect

40. Sixth, the order sought will have a practical value and effect. It will compel the Minister to render a decision on the Applicants' application, which will afford the Applicants the rights, powers, and privileges of citizens of Canada

7) No Equitable Bar to Relief

41. Seventh, there is no equitable bar to the relief sought.

8) Balance of Convenience Favours Granting Mandamus

42. Eighth, the balance of convenience favours granting *mandamus* since no harm is caused by a decision being rendered immediately and the Applicants are deprived of their rights, powers, and privileges as citizens each day that a decision is not rendered.

ISSUE 2: Costs

43. The Applicants submit that this case warrants an award of costs pursuant to Rule 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22.

44. Rule 22 states that no costs shall be awarded "unless the Court, for special reasons, so orders."³⁵ Special reasons, similar to those in *Almuhtadi*,³⁶ exist here.

³⁵ *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, s [22](#).

³⁶ *Almuhtadi v Canada (Citizenship and Immigration)*, 2021 FC 712.

45. In *Almuhtadi*, the Federal Court granted *mandamus* compelling the Minister to render a decision on the family's permanent residency application.³⁷
46. The Federal Court found that the matter warranted an award of costs because of the following facts, which constituted "special reasons" under Rule 22:
- a. The applicants waited 57 months, which, at 2.7 times the average, was considered "far beyond the average processing time of 21 months".³⁸
 - b. Despite the applicants making numerous requests for further information, IRCC never informed them of the reasons for delay in processing their application, and the respondent did not offer to sever parts the application to allow those applicants whose applications were not being held up by security clearance to proceed.³⁹
 - c. The applicants were only informed of the reason for delay once they brought the application for judicial review and the respondent submitted its affidavit evidence.⁴⁰
 - d. IRCC failed to provide transparent information during the litigation process.⁴¹
47. Each of these reasons that merited a costs award in *Almuhtadi* are present in this case:
- a. The Applicants have waited more than 16 years and 10 months, which is more than 8 times the average processing time of 25 months.⁴²
 - b. Despite the Applicants' numerous requests for further information, IRCC never informed them of the reasons for delay in processing their

³⁷ *Ibid* at para [53](#).

³⁸ *Ibid* at para [58](#) see para [34](#).

³⁹ *Ibid* at paras [59-60](#).

⁴⁰ *Ibid* at para [61](#).

⁴¹ *Ibid* at para [62](#).

⁴² Mohammad Affidavit, paras 20-21, **AR**, pp 11-12.

application.⁴³ If it is being held up by delays in one Applicant's background check, the Respondent has not informed the Applicants of this nor of which Applicant is the specific reason for delay, and the Respondent has not offered to sever parts of the application to allow those Applicants whose applications are not being held up by background checks to proceed.

- c. The Applicants have still not been informed of the reason for delay. If they are informed by way of the Respondent's affidavit, this will be the same situation as in *Almuhtadi*.
- d. The Respondent has, so far, been completely non-transparent and failed to provide any information to the Applicants in the litigation process.

48. Therefore, the Applicants respectfully request that they be granted costs.

PART IV – RELIEF SOUGHT

49. The Applicant seeks the following relief if leave is granted:

- a. An order pursuant to section 18.1 of the *Federal Courts Act* compelling the Minister of Citizenship and Immigration to immediately grant citizenship to Marwa Asrar Mohammad, Maimona Asrar Mohammad, Zuhair Asrar Muhammad, and Suhaib Asrar Mohammad;
- b. An order pursuant to section 18.1 of the *Federal Courts Act* compelling the Minister to immediately invite Maria Asrar Mohammad, Saima Asrar Mohammad, Najam ul-Nisa Mohammad, and Asrar Muhammad ("**Adult Applicants**") to take the citizenship test, and upon each Adult Applicant's passing of the citizenship test, to immediately invite said Adult Applicant to meet with a citizenship official for an interview, and upon each Adult

⁴³ Mohammad Affidavit, paras 9-19, **AR, pp 10-11**.

Applicant's passing of the interview, to immediately grant said Adult Applicant citizenship;

- c. The costs of this application; and
- d. Such further and other relief as counsel may request and this Honourable Court may permit.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 31 October 2022



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PART V – LIST OF AUTHORITIES

Legislation

- 1 [Citizenship Act](#), RSC 1985, c C-29
- 2 [Federal Courts Act](#), RSC 1985, c F-7
- 3 [Federal Courts Citizenship, Immigration and Refugee Protection Rules](#),
SOR/93-22

Jurisprudence

- 4 [Almuhtadi v Canada \(Citizenship and Immigration\)](#), 2021 FC 712
- 5 [Apotex Inc v Canada \(Attorney General\)](#), [1994] 1 FC 742, [1993] FCJ No 1098
- 6 [Apotex Inc v Canada \(Attorney General\)](#), [1994] 3 SCR 1100, [1994] ACS no 113
- 7 [Canada \(Health\) v The Winning Combination Inc](#), 2017 FCA 101, 413 DLR (4th) 362
- 8 [Conille v Canada \(Minister of Citizenship and Immigration\)](#), [1999] 2 FC 33, [1998] FCJ No 1553
- 9 [Douze v Canada \(Citizenship and Immigration\)](#), 2010 FC 1337, [2010] FCJ No 1680
- 10 [Singh v Canada \(Minister of Citizenship and Immigration\)](#), 2005 FC 544, [2005] FCJ No 669
- 11 [Thomas v Canada \(Public Safety and Emergency Preparedness\)](#), 2020 FC 164