Federal Court  Cour fédérale

Date: 20241219

Docket: IMM-17309-24

Citation: 2024 FC 2071

Ottawa, Ontario, December 19, 2024

PRESENT: Mr. Justice Norris

BETWEEN:

ARWA ALMSRAWI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER AND REASONS

I. OVERVIEW

[1] The applicant, a transgender woman, is a citizen of Syria. She lived in Saudi Arabia from 2011 until mid-February 2024, most of this time without legal status.

[2] In January 2024, Immigration, Refugees and Citizenship Canada (IRCC) accepted the applicant as a Government Assisted Refugee. The applicant was issued a permanent resident

visa, a confirmation of permanent residence, and a single journey travel document. While *en route* to Canada, however, the applicant was denied boarding after a layover in Istanbul, Türkiye. She was told this was because she is on a U.S. "No Fly List." A short time later, IRCC informed the applicant that her permanent resident visa had been cancelled and that her application for resettlement in Canada as a Convention refugee abroad was being re-opened. The applicant found herself stranded for several months in the international transit area of the Istanbul airport.

[3] By letter dated September 17, 2024, a Senior Migration Officer with IRCC informed the applicant that her application for resettlement in Canada was refused because she had failed to satisfy the officer that she is not inadmissible to Canada. The applicant had also requested a temporary residence permit (TRP) to allow her to enter Canada pending a new decision on her eligibility for resettlement as a Convention refugee. This request was also refused because, with the decision having been made on the resettlement application, it was now moot and because the officer was not satisfied that a TRP was otherwise warranted in the circumstances.

[4] Also on September 17, 2024, the applicant filed a notice of application for leave and for judicial review of the Senior Migration Officer's decision. The applicant has not filed her application record yet. I am case managing the application.

[5] The applicant has brought a motion in writing seeking: (1) an order adding the Minister of Public Safety as a respondent on the application for leave and for judicial review; (2) an order under Rule 14(2) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*,

SOR/93-22 (*FCCIRPR*) for the respondent to produce relevant documents in its possession or control (the specific documents the applicant seeks are listed below); and (3) an order expediting the application for leave. The respondent opposes the motion in all respects.

[6] For the reasons that follow, this motion will be dismissed. Briefly, first, there is no basis to add the Minister of Public Safety as a respondent because the decisions at issue were the sole responsibility of the Minister of Citizenship and Immigration. Second, the applicant is attempting to use Rule 14(2) of the *FCCIRPR* to obtain wide-ranging production of documents at the pre-leave stage, which is not its intended purpose. In any event, the applicant has not established that the Court requires the documents she seeks for the proper disposition of the leave application, as Rule 14(2) requires. Finally, the applicant has not established that an order expediting the leave application is warranted.

II. ANALYSIS

A. *Should the Minister of Public Safety be added as a respondent?*

[7] There is no dispute that the decisions at issue fall within the purview of the Minister of Citizenship and Immigration or that he is properly named as a respondent: see subsections 4(1) and (2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*) and paragraph 5(2)(b) of the *FCCIRPR*. The applicant submits, however, that the Minister of Public Safety should be added as a respondent out of an abundance of caution because officials acting under the authority of that Minister contributed information and advice in the decision making

process that led to the decisions under review, including by interviewing the applicant and by identifying potential concerns around the applicant's inadmissibility to Canada.

[8] The evidence on this motion establishes that officials acting under the authority of the Minister of Public Safety contributed to the decision making process, as the applicant alleges. I am not satisfied, however, that this requires that the Minister of Public Safety be named as a respondent.

[9] In my view, what is determinative is that it is the Minister of Citizenship and Immigration who is responsible for the administration of the *IRPA* "in respect of the matter for which leave is sought" (*FCCIRPR*, paragraph 5(2)(b)) – that is, the September 17, 2024, decisions. The applicant will not be hampered in advancing any of her grounds for review, including her allegation of abuse of process, if the Minister of Citizenship and Immigration is the only respondent. Importantly, the applicant is not seeking relief directly against the Minister of Public Safety, as can be the case in a *mandamus* application, for example, where delay in processing an application made to IRCC may be attributable to both Ministers and both Ministers may be required to take steps in response to the Court's order if *mandamus* is granted.

[10] It is open to the applicant to challenge the reasonableness of the decisions in issue and the fairness of the decision making process in light of the record of the entire course of her dealings with Canadian officials, regardless of whether their authority derives from that of the Minister of Citizenship and Immigration or the Minister of Public Safety. As a result, there is no need to name the Minister of Public Safety as a respondent, even out of an abundance of caution.

B. *Should the respondent be ordered to produce the documents sought by the applicant?*

[11] The applicant seeks an order under Rule 14(2) of the *FCCIRPR* for the production of documents in the possession or control of IRCC. In particular, the applicant seeks production of the following:

a) All correspondence, notes, memos, briefs, records, transcripts and/or other documents relating to the applicant's listing on the U.S. "No Fly List."

b) The United Nations High Commissioner for Refugees resettlement registration package prepared in relation to the applicant.

c) The complete Global Case Management System (GCMS) notes from an interview with the applicant on October 22, 2023.

d) The complete GCMS notes underlying the January 2024 approval of the applicant's application for permanent residence.

e) The complete GCMS notes from an interview with the applicant by a Senior Migration Officer on April 16, 2024.

f) The audio recording and/or transcript of the April 16, 2024, interview.

g) The complete GCMS notes from an interview with the applicant by two Public Safety officials on July 4, 2024.

h) The forms the applicant completed with International Organization for Migration officials on July 3, 2024.

i) The decision and GCMS notes regarding an application for a temporary resident visa allegedly submitted by the applicant in 2019.

j) A copy of the applicant's Kingdom of Saudi Arabia driver's licence.

k) Correspondence, notes, memos, briefs, transcripts and/or other documentation relating to any follow-up by IRCC officials with Kingdom of Saudi Arabia authorities regarding the applicant.

l) The Canada Border Services Agency inadmissibility brief concerning the applicant.

[12] As I have already said, in my view, Rule 14(2) of the *FCCIRPR* is not meant to serve as a mechanism for the wide-ranging production of documents to an applicant at the pre-leave stage. Furthermore, and in any event, the applicant has not established that the documents she seeks are required for the proper disposition of the leave application, as Rule 14(2) requires.

[13] Rule 14 of the *FCCIRPR* provides as follows:

Disposition of Application for Leave	**Décision sur la demande d'autorisation**
14 (1) Where	**14 (1)** Dans l'un ou l'autre des cas suivants :
(a) any party has failed to serve and file any document required by these Rules within the time fixed, or	**a)** une partie n'a pas signifié et déposé un document dans le délai imparti, conformément aux présentes règles,
(b) the applicant's reply memorandum has been filed, or the time for filing it has expired,	**b)** le mémoire en réplique du demandeur a été déposé, ou le délai de dépôt de celui-ci est expiré,
a judge may, without further notice to the parties, determine the application for leave on the basis of the materials then filed.	un juge peut, sans autre avis aux parties, statuer sur la demande d'autorisation à la lumière des documents déposés.
(2) Where the judge considers that documents in the possession or control of the tribunal are required for the proper disposition of the application for leave, the judge may, by order, specify the documents to be produced and filed and give such other directions as the judge considers necessary to dispose of the application for leave.	**(2)** Dans le cas où le juge décide que les documents en la possession ou sous la garde du tribunal administratif sont nécessaires pour décider de la demande d'autorisation, il peut, par ordonnance, spécifier les documents à produire et à déposer, et donner d'autres instructions qu'il estime nécessaires à cette décision.
(3) The Registry shall, without delay after an order is made under subrule (2), send a copy of the order to the tribunal.	**(3)** Le greffe envoie sans délai au tribunal administratif une copie de l'ordonnance rendue en vertu du paragraphe (2).
(4) Upon receipt of an order under subrule (2), the tribunal shall, without delay, send a copy of the materials specified	**(4)** Dès réception de l'ordonnance rendue en vertu du paragraphe (2), le tribunal administratif envoie à chacune

in the order, duly certified by an appropriate officer to be correct, to each of the parties, and two copies to the Registry.	des parties une copie des documents spécifiés, certifiée conforme par un fonctionnaire compétent, et au greffe de la Cour deux copies de ces documents.
(5) [Repealed, SOR/2021-149, s. 8]	**(5)** [Abrogé, DORS/2021-149, art. 8]

[14] For the sake of clarity, I begin by observing that, under the Court's current practices, Rule 14(2) can be invoked in two different ways. One way is as the authority for the Court to order the tribunal to produce specific documents that are required for the proper disposition of a leave application. The other way, which is engaged under the Court's settlement project, is as the authority for the Court to require the tribunal to produce the complete Certified Tribunal Record (CTR) (as defined by Rule 17 of the *FCCIRPR*) in cases where a judge is inclined to grant leave to proceed with the application for judicial review: see *Consolidated Practice Guidelines for Citizenship, Immigration and Refugee Protection Proceedings* (last amended October 31, 2023), at paragraph 40; see also *Abu v Canada (Citizenship and Immigration)*, 2021 FC 1031, [2022] 2 FCR 371, at para 32. This is done to put the CTR in the hands of the parties early in order to facilitate meaningful and informed settlement discussions when the order granting leave is eventually issued, if not before. This latter use of Rule 14(2) is not in issue here. Rather, the applicant is attempting to use Rule 14(2) as a mechanism for obtaining production of documents at the pre-leave stage.

[15] In my view, several considerations suggest that the applicant's requests for production under Rule 14(2) exceed this provision's intended purpose.

[16] First, the necessary pre-condition for a production order under Rule 14(2) is that a judge must "consider that documents in the possession or control of the tribunal are required for the proper disposition of the application for leave." Where satisfied that this is the case, the judge "may, by order, specify the documents to be produced and filed and give such other directions as the judge considers necessary to dispose of the application for leave." As I discuss further below, I would not completely exclude the possibility of an applicant using Rule 14(2) to obtain documentary production at the pre-leave stage. Nevertheless, it is clear from the wording of the provision that this is not its intended purpose. In particular, it is not the purpose of Rule 14(2) to provide a mechanism for an applicant to obtain the production of documents the applicant may require to make their case in support of the leave application. Rather, it is to ensure that the Court has everything it requires for the proper disposition of the leave application. If an order under Rule 14(2) results in additional documents being produced to an applicant, and if those documents prove useful to the applicant in making the case for leave, this is merely incidental to their being required by the judge for the proper disposition of the leave application.

[17] Second, the context in which Rule 14(2) is found – under the heading "Disposition of Leave Application" and immediately following Rule 14(1), which provides that a judge may, without further notice to the parties, determine the leave application on the basis of the materials then filed – strongly suggests that it should be invoked only once the parties have filed their materials (or the time for doing so has expired). It is only at that stage that the judge can tell whether *additional* documents besides those filed by the parties are required for the proper disposition of the leave application. Without the benefit of all of the parties' materials (as provided for in Rules 10, 11 and 13), it is difficult to see how a judge could ever tell, whether at

an applicant's behest or otherwise, whether any additional documents in the possession or control of the tribunal are required. More particularly, this context strongly suggests that Rule 14(2) is not intended to be used by an applicant as a means for obtaining documents the applicant might wish to include or rely on in their Rule 10 materials, as the applicant seeks to do here. This is because the Rule 10 materials should already have been filed before Rule 14(2) is invoked. Given the importance of the matter for her, the applicant's motivation for seeking more documents before perfecting her leave application is understandable. It should also be said, however, that when it comes time to determine whether the applicant has established a fairly arguable case, the judge considering the matter can be expected to bear in mind that the applicant may not have had access to all relevant documents when she perfected her leave application.

[18] Third, as the respondent submits, the applicant's attempt to use Rule 14(2) as a mechanism for obtaining documentary production at the pre-leave stage is inconsistent with the statutory imperative that applications for leave under the *IRPA* be determined "without delay and in a summary way" (*IRPA*, paragraph 72(2)(d)). Contrary to this requirement, pursuing documentary production at the pre-leave stage inevitably delays the determination of the leave application on its merits. This defeats the purpose of the leave requirement in the *IRPA*, which is to screen out unmeritorious applications promptly (*Varela v Canada (Minister of Citizenship and Immigration)*, 2009 FCA 145 at para 27). It also impedes the goal of addressing potentially meritorious applications promptly, as provided for in paragraphs 74(b) and (c) of the *IRPA*.

[19] Fourth, in effect, the applicant is attempting to use Rule 14(2) of the *FCCIRPR* as if it served the same purpose as Rule 317 of the *Federal Courts Rules*, SOR/2004-283 (*FCR*).

Rule 317 of the *FCR* does not apply in judicial review applications governed by the *FCCIRPR*: see Rule 4(1) of the *FCCIRPR*. Allowing Rule 14(2) of the *FCCIRPR* to effectively function like Rule 317 of the *FCR* would be inconsistent with the clear differences in wording of the provisions and with the distinct contexts in which the two provisions operate: see *Abu*, at paras 28-30 and the authorities cited therein. Subject to objections to production raised under Rule 318 of the *FCR*, Rule 317 provides that an applicant seeking judicial review of a decision is entitled to the CTR upon commencing the application. That is not the case in matters governed by the *FCCIRPR*. Under those Rules, an applicant is entitled to the CTR only after the Court has granted leave (see Rule 17 of the *FCCIRPR*) or, under the Court's settlement project, after a judge has determined that he or she is inclined to grant leave. Until then, the tribunal is only required to provide the reasons for the decision under Rule 9 of the *FCCIRPR*. (Of course, nothing prevents an applicant from obtaining additional relevant documents from the tribunal in other ways, including through procedural fairness disclosure while the matter was under consideration by the tribunal, or through requests under the *Access to Information Act*, RSC 1985, c A-1. As well, the respondent may file relevant documents in its response to the leave application.) In short, given the breadth and comprehensiveness of her request for documents, the applicant is effectively seeking production of the CTR sooner than she is legally entitled to it.

[20] Finally, the wording of Rule 14(2) of the *FCCIRPR* strongly suggests that it is to be invoked by the judge considering a leave application of his or her own motion, not by a party. As I have said, I would not rule out entirely the possibility that, after the parties' materials have been filed, an applicant could invoke Rule 14(2) to seek production of additional documents that are necessary for the proper disposition of the leave application. In *Tursunbayev v Canada*

(Public Safety), 2012 FC 532 [unreported], *Abdulahad v Canada (Citizenship and Immigration)*, 2020 FC 174, and *Canadian Association of Refugee Lawyers v Canada (Citizenship and Immigration)*, 2022 FC 1204, applicants had attempted to use Rule 14(2) to obtain documentary production and there was no suggestion that the provision could not be used in this way. I would suggest, however, that such a use of Rule 14(2) should be highly exceptional given the delay this will inevitably cause. As well, when Rule 14(2) is invoked by an applicant, the focus must still be on what *the judge* requires for the proper disposition of the leave application, not on what the applicant says they require to make out a case for the granting of leave. Given the relatively low threshold for granting leave – a fairly arguable case – it may be expected that it will be difficult for an applicant to demonstrate that additional documents are actually required to determine whether that test is met: see *Abdulahad*, at para 15.

[21] This brings me to the other main reason I would not order the documentary production the applicant seeks: the applicant has not established that the documents she seeks are required for the proper disposition of the application for leave. In her submissions, the applicant addresses this requirement only in passing and in a conclusory fashion. For the most part, her submissions focus instead on the relevance of the documents she seeks and their importance for her ability to show why leave to proceed with the judicial review application should be granted. The applicant states in her reply submissions, for example: “The documents are critical to making a fairly arguable case for leave” and they are necessary “to address gaps in the record and to ensure the Applicant can make her case” (*Applicant’s Reply*, paras 20 and 27). But this is not what must be demonstrated for production under Rule 14(2) of the *FCCIRPR* to be warranted.

[22] On the record before me, it appears that most if not all of the material facts on which the applicant relies in support of her leave application can be established by affidavit evidence, as contemplated in Rule 10(2) of the *FCCIRPR*. The applicant may well be correct that the documents she seeks are in the possession or control of the respondent and that they are relevant to the issues she wishes to raise in her application for judicial review. In that case, if the Court grants leave to proceed with the application, the documents the applicant is seeking in this motion along with anything else required by Rule 17 of the *FCCIRPR* must be included in the CTR. If the applicant is not satisfied that a complete CTR has been produced, she may raise this with the Court and seek appropriate relief: see *Abu*, at paras 39-40. But even if the documents the applicant is seeking are in the possession or control of the respondent and are relevant to the issues the applicant wishes to pursue on judicial review, it does not follow that the applicant is entitled to their production now, before leave has been granted or, under the settlement project, before the Court has issued an order for the production of the CTR. At this point, under Rule 14(2) of the *FCCIRPR*, the applicant is entitled to the documents she is seeking from the respondent only if a judge requires them for the proper disposition of the leave application. For the reasons I have given, the applicant has not persuaded me that this is the case.

C. *Should the application for leave be expedited?*

[23] The applicant requests that the usual timelines governing an application for leave and for judicial review be abridged on the basis of her highly precarious circumstances. The applicant does not have secure status where she is currently staying, she is at risk of harm as a transgender woman, and she is experiencing a mental health crisis, not least because of the hardships she endured while in limbo for many months at the Istanbul airport and because of the uncertainty

surrounding her future. The applicant's circumstances are very sympathetic. I am not satisfied, however, that they warrant abridging the usual timelines applicable at this stage of the proceeding.

[24] The decisions for which the applicant seeks judicial review were communicated to her by letter dated September 17, 2024. The applicant filed her notice of application for leave and for judicial review the same day. In the application for leave, pursuant to Rule 9 of the *FCCIRPR*, the applicant stated that she had not received the reasons for the decisions. Accordingly, the Court's registry promptly requested that IRCC provide the reasons without delay. IRCC did so on October 10, 2024. In addition to providing another copy of the September 17, 2024, letter, IRCC also provided a copy of the officer's GCMS notes relating to the decision. Under the *FCCIRPR*, the applicant then had 30 days to file her application record, the respondent's materials would be due within 30 days after service of the application record, and the applicant's reply would be due within 10 days of service of the respondent's materials.

[25] If these steps had been taken on the usual timelines, the application for leave would probably now be ready for determination by the Court. Instead of proceeding this way, the applicant brought the present motion in an effort to obtain documents that, she contends, she requires before she can file her application record. For the reasons given above, this request was wholly unsuccessful. I do not doubt that the applicant made this request in good faith or that her counsel believed doing so was in her best interests. Nevertheless, the fact remains that this motion has delayed the progress of this application for leave and for judicial review significantly. In the circumstances, it does not strike me as fair to now require the respondent to file its

materials within a shorter timeframe than it is entitled to under the Rules – that is, within 30 days of receipt of the application record. Any shorter timeframe would place an additional burden on the respondent without appreciably lessening the overall time required for this application to be determined given the amount of time that has already passed since the applicant commenced the application. As well, in the absence of the applicant's application record, it is impossible to tell whether it would be fair (or even feasible) to impose a shorter timeline on the respondent (*Tiamiyu v Canada (Citizenship and Immigration)*, 2024 FC 59 at para 7).

[26] The applicant and her counsel have complete control over how long they take to file the application record and any reply to the respondent's materials. A Court order is not required for them to take these steps expeditiously.

[27] In sum, I am not satisfied that the interests of justice require an order expediting the matter at this stage. This is without prejudice to the right of the applicant to renew her request that the usual timelines be abridged in the event that the Court signals an inclination to grant leave by issuing a production order pursuant to the settlement project.

[28] The respondent has stated that the documents sought by the applicant may give rise to claims for non-disclosure under section 87 of the *IRPA*. Given that the production motion is being dismissed, at this point, this concern has become moot. It may arise again, however, in the event that the Court orders production of the CTR pursuant to the settlement project. Therefore, the dismissal of the present motion is also without prejudice to the right of the applicant to

request the expeditious determination of any non-disclosure claims should the Court order that the CTR be produced.

III. CONCLUSION

[29] For these reasons, the motion is dismissed.

[30] The parties agreed that the filing of the applicant's application record should be held in abeyance pending the determination of this motion. With this motion now having been disposed of, the applicant shall file her application record within 30 days of the date of this Order. All subsequent filings shall be in accordance with the timelines provided for in Rules 11 and 13 of the *FCCIRPR*.

ORDER IN IMM-17309-24

THIS COURT ORDERS that

1. The motion is dismissed.
2. The applicant shall file her application record within 30 days of the date of this Order.
3. All subsequent filings shall be in accordance with the timelines provided for in Rules 11 and 13 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*.
4. I remain seized with this matter as the Case Management Judge.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-17309-23
STYLE OF CAUSE:	ARWA ALMSRAWI v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

ORDER AND REASONS:	NORRIS J.
DATED:	DECEMBER 19, 2024

WRITTEN REPRESENTATIONS BY:

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