

Federal Court



Cour fédérale

**Date: 20240105**

**Docket: IMM-1481-22**

**Citation: 2024 FC 23**

**Ottawa, Ontario, January 5, 2024**

**PRESENT: Madam Justice Sadrehashemi**

**BETWEEN:**

**LIZINDA SWANEPOEL**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, Lizinda Swanepoel, applied for and obtained a work permit supported by a Labour Market Impact Assessment [LMIA] on December 20, 2019. The work permit remained valid until December 17, 2021, but Ms. Swanepoel was unable to travel to Canada during that window due to pandemic-related issues.

[2] At issue on this judicial review is an inquiry made by Ms. Swanepoel's former counsel on December 13, 2021 through an Immigration, Refugees and Citizenship Canada [IRCC] webform [Webform]. Ms. Swanepoel argues this inquiry was a request for an extension of her visa and that IRCC failed to reasonably address the substance of this request when they responded, after her visa expired, that she would have to reapply for a new visa and obtain new medical results. Ms. Swanepoel also argues that due to missing documents in the certified tribunal record [CTR], there has been a breach of procedural fairness because relevant documentation was not considered in denying her request.

[3] In my view, the problem with Ms. Swanepoel's argument is the limited and confusing nature of the request that was before IRCC. Considering the nature and context of the request that was made, IRCC's decision was reasonable. I also find no breach of procedural fairness because the identified missing documents are irrelevant to the decision.

[4] Based on the reasons below, the application for judicial review is dismissed.

## II. Procedural History

[5] On September 17, 2019, Ms. Swanepoel applied for a work permit to become a Travel Reservations Supervisor at a company in British Columbia that received a positive LMIA for Ms. Swanepoel's position. In December 2019, IRCC approved Ms. Swanepoel's work permit and issued her a multiple-entry visa for Canada. Ms. Swanepoel's work permit and visa were valid until December 17, 2021.

[6] On December 13, 2021, Ms. Swanepoel's former representative contacted IRCC through the Webform and asked that an "extension option to fly at a later date" be provided due to the travel ban [Webform Inquiry]. On December 17, 2021, the day Ms. Swanepoel's visa expired, her former representative emailed the visa office in South Africa, explaining a previous request was made using the webform and asking whether a new visa could be issued without having to do new medicals. On December 19, 2021, IRCC responded, advising Ms. Swanepoel to submit a new application with new medical examination results.

[7] Ms. Swanepoel's former representative also contacted the Assistant Deputy Minister of IRCC about the issue. An IRCC representative advised that they would forward the information to the appropriate team for review and they would contact the applicant with next steps as appropriate.

[8] Ms. Swanepoel asked about next steps in January 2022 through her representative and through her prospective employer's Member of Parliament's office. The GCMS notes indicate that she was advised "that it would be better to make a new application WP than to make a request for extension since not in Canada yet."

### III. Preliminary Issue: Exclusion of Evidence

[9] On judicial review, Ms. Swanepoel provided two affidavits. These affidavits set out in detail the difficulties she faced coming to Canada after Canada issued a ban on travel from South Africa on November 21, 2021. These details were not before IRCC. Ms. Swanepoel does not explain in her affidavit why she could not have put these details before IRCC. These parts of her

affidavit do not fit within any of the exceptions to the general rule that evidence that was not before the decision-maker is not properly before this Court on judicial review (*Brink's Canada Limited v Unifor*, 2020 FCA 56 at para 13). Accordingly, in coming to my decision, I have not considered the information contained in the second sentence of paragraph 8, paragraphs 9 through 18, and paragraph 27 of Ms. Swanepoel's further affidavit, sworn on May 1, 2023, or paragraphs 8 to 14 and paragraphs 22–23, inclusive of Ms. Swanepoel's affidavit, sworn on April 23, 2022.

#### IV. Preliminary Issue: Rule 9 Reasons Inconsistent with Respondent's Position

[10] The cover letter from the High Commission in South Africa, Migration Unit, responding to the Court's Rule 9 request states, "no reconsideration or re-opening of application request was made, nor was there an extension request filed, therefore there is no decision with respect to any extension." The Respondent in their written and oral submissions made arguments characterizing IRCC's December 19, 2021 email as the reasons for the decision and that these were sufficient given the nature of Ms. Swanepoel's request.

[11] Ms. Swanepoel's counsel pointed out that the position taken by the Respondent's counsel is inconsistent with the position from the High Commission in South Africa. While this is an unusual situation, I have not found it to be material to my determination.

[12] As I explain below, I find the request at issue to be sparse and ambiguous. It is understandable that in reviewing the record after the fact, given the nature of the request, there could be confusion as to whether a request was even made. Reading the materials generously, I

have assumed that what was filed could be characterized as a request for an extension. In reviewing the certified tribunal record, I am satisfied that there was a response from IRCC to Ms. Swanepoel's request. The December 19, 2021 email from IRCC responded to Ms. Swanepoel's former representative's email that referenced the Webform Inquiry, where the "extension option" was mentioned.

V. Reasonable Response Given Nature of Request

[13] The key correspondence in this judicial review is the inquiry made by Ms. Swanepoel's former representative via Webform on December 13, 2021. It stated the following:

ZV - Dear Officer, our client Ms. Lizinda Swanepoel was scheduled to land in Canada on 15 December 2021 due to the travel ban from South Africa for the new COVID variant she will not be able to fly to Canada. Her Visa in her passport expires the 17 December 2021. Kindly provide her with an extension option to fly at a later date.

[14] There were no details provided regarding Ms. Swanepoel's situation, other than that her visa was about to expire and there was a travel ban. The request was not flagged as an urgent one needing immediate attention. Ms. Swanepoel's former representative, having not heard back after three days, then contacted the Canadian visa office in South Africa referencing the Webform Inquiry and now asking whether a new visa could be issued without having to undergo a new medical examination: "Would you be able to issue a new visa without a new medical? Do you require her to complete a new medical?" In response to this inquiry, IRCC advised that a new application and new medicals were required.

[15] Ms. Swanepoel takes the position that IRCC's response is unreasonable because it is non-responsive to her request. The problem with this argument is the request itself is sparse, ambiguous and shifting. Ms. Swanepoel does not explain any specific problem with IRCC's response other than not agreeing with the outcome, nor does she identify what part of the response is not responsive to her limited request. Given the sparse information provided, the vague language, and the shift from "an extension option" to a "new visa without a new medical," I do not find the response indicating that a new application was required to be unreasonable.

[16] The information contained in Ms. Swanepoel's affidavits filed in this judicial review that explained Ms. Swanepoel's circumstances and the efforts she had taken to attempt to come to Canada prior to the expiry of her visa was unfortunately not before IRCC and is excluded from my assessment. Given the limited evidence and submissions made and the confusing nature of the request, I do not find IRCC's decision to be unreasonable.

#### VI. No Breach of Procedural Fairness

[17] Ms. Swanepoel argued that the record before IRCC was incomplete because correspondence was missing from the certified tribunal record. Ms. Swanepoel makes this argument principally in relation to a November 27, 2021 email. In her affidavit filed on judicial review Ms. Swanepoel states that she emailed IRCC on November 27, 2021 at the email address designated for COVID travel exemptions asking for an authorization letter to travel as her visa was about to expire. Ms. Swanepoel has not produced a copy of that email; nor has she explained why she has not provided a copy of the email.

[18] *Togtokh v Canada (Citizenship and Immigration)*, 2018 FC 581, on which Ms. Swanepoel relies, states at paragraph 16 that where “a document is known to have been before the tribunal, but is not before the Court and cannot be reviewed [...] the Court will be unable to determine the legality of the decision and the decision will be set aside if the missing document was central to the finding under review.” There is no explanation as to how this November 27, 2021 correspondence, which is not referred to in the Webform Inquiry or in any of Ms. Swanepoel’s subsequent inquiries, would have been material to IRCC’s decision on the visa extension request, which is what is being challenged on this judicial review.

[19] Ms. Swanepoel also argues that her former representative’s email exchange with the Assistant Deputy Minister is missing from the record. This exchange was provided by Ms. Swanepoel on judicial review. Again, it is unclear how this correspondence would be relevant to the decision being challenged, which is the refusal of Ms. Swanepoel’s request to extend her visa. This correspondence post-dates IRCC’s response, which stated that Ms. Swanepoel should reapply with new medicals.

[20] In these circumstances, I am not satisfied that there was a breach of procedural fairness.

[21] Neither party raised a question for certification and I agree none arises.

**JUDGMENT in IMM-1481-22**

**THIS COURT'S JUDGMENT is that:**

1. The application for judicial review is dismissed; and
2. No serious question of general importance is certified.

"Lobat Sadrehashemi"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1481-22

**STYLE OF CAUSE:** LIZINDA SWANEPOEL v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** CALGARY, ALBERTA

**DATE OF HEARING:** JULY 4, 2023

**JUDGMENT AND REASONS:** SADREHASHEMI J.

**DATED:** JANUARY 5, 2024

**APPEARANCES:**

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