Federal Court  Cour fédérale

Date: 20250912

Docket: IMM-8466-24

Citation: 2025 FC 1514

Ottawa, Ontario, September 12, 2025

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

A.B.

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Summary

[1] This is an application brought by a Palestinian woman living in Gaza City in the context of the ongoing war and humanitarian crisis in Gaza. The application is made for judicial review of the alleged failure by Immigration, Refugees, and Citizenship Canada [IRCC] to process her application in a timely manner for a temporary resident visa [TRV] pursuant to s. 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2] Her application was made in January 2024, within days of the Minister's establishment of a special policy for persons in Gaza City, the *Temporary public policy to facilitate temporary resident visas for certain extended family affected by the crisis in Gaza* [Policy]. The Applicant seeks an order of *mandamus* compelling the Respondent to render a decision in her as yet undecided TRV application.

[3] The Applicant submits she "has been waiting for a preliminary decision and instructions on how to leave Gaza for more than eighteen months in a deteriorating security and humanitarian situation." The Applicant is financially dependent on her Anchor and "barely [has] enough food and water." Relying on the lawyer's affidavit, the Applicant refers to the "deadly and rapidly deteriorating" conditions in Gaza including the lack of education, infrastructure, the forcible displacement, and the rising death toll.

[4] The reason her application is yet undecided is because she has not sent in her biometric information. Her biometric information is required by the Policy and is necessary to assess her admissibility which is a precondition of obtaining a TVR. The reason she has not submitted her biometrics is because she must send her biometrics from outside Gaza City. However, it is no longer possible for her to leave Gaza City given the geopolitical situation. While it was possible for Palestinians to leave when the Policy was established, that became impossible in May 2024 when the Rafah crossing into Egypt was closed.

[5] As of the hearing of this matter on September 4, 2024, the Applicant was unable to leave Gaza City until she obtains a TRV, which she cannot obtain until she leaves Gaza City and submits her biometrics, which is not possible because of the closure of the crossing.

[6] The Policy does not contain any exceptions to its requirement biometrics must be submitted before a TRV may be issued. This differs from at least one other special policy adopted by the Minister to assist those in crisis situations - and I fully agree the situation in Gaza is one crisis. The special policy adopted by the Minister to facilitate the exit of persons from Afghanistan in August 2021, permitted officers on a case-by-case basis to waive the requirement for biometrics and allowed the issuance of TRVs on the basis they would be provided once an applicant was outside the country. No such waivers are provided for in the Policy before the Court. Notably, it is generally the case that waivers may be requested in respect of a great number of matters under sections 25 and following of *IRPA*.

[7] The Court was told that the Policy while on the books is not fully utilized. The Policy permitted 5,000 TRV applications to be made, which was reached in March 2025. 1,750 TRVs have been issued. Of those, 864 persons have arrived in Canada. Doubtless, many remain in Gaza City and neighbouring communities.

[8] Under well-established law, *mandamus* may not be issued unless and until an applicant meets all legal requirements and is entitled to the order requested. In this case, that is an order compelling the Minister to issue the Applicant a TRV. Here, although without any fault on her

part, the Applicant has not sent in her biometrics. In summary, she therefore has not met all the legal requirements and is not yet entitled to the order requested.

[9] While I have every sympathy for the Applicant, given conditions of the Policy, and the Applicant's obligation to meet all of its conditions, I am unable to order *mandamus*. To do so would require the Court to rewrite the Policy, which is beyond the powers of the Court, and may only be done by the Minister. Indeed, the Federal Court of Appeal has just recently held "it is not the role of this Court to set, vary, or grant exemptions from governmental policy."

[10] Therefore, this application will be dismissed.

II. Facts

A. *The Policy*

[11] In response to the stated "ongoing war and the scale of the humanitarian crisis in Gaza," the Minister of Immigration, Refugees and Citizenship [Minister], in late 2023, established the Policy. The Policy came into force on December 22, 2023, and the application process opened on January 9, 2024. The Applicant filed her application a few days later on January 14, 2024.

[12] The Minister's Policy allows delegated officers to exempt applicants from certain requirements. To be eligible, the applicants must satisfy conditions prescribed in Part 1 of the Policy:

> **Part 1**
>
> 1. The foreign national:

> i. has submitted an application for a temporary resident visa;
>
> ii. was in the Gaza Strip on the day they submitted their application;
>
> iii. is a Palestinian Territory passport holder;
>
> iv. has identified an anchor, a Canadian citizen or Permanent Resident, who meets the requirements in Annex A;
>
> v. is the spouse, common law partner, child (regardless of age), grandchild, parent, grandparent or sibling of the anchor identified in condition iv. of Part 1;
>
> vi. has a signed statutory declaration from the anchor identified in condition iv. of Part 1 in which the anchor attests that:
>
> a. they have the intention to provide the support set out in Annex B for the foreign national and their family members as defined in section 1(3) of the Regulations, and
>
> b. they have not accepted, and understand they are not to accept, any financial compensation from the foreign national and their family members;
>
> vii. has submitted the application by electronic means (applied online) or with an alternate application format provided by the department if the foreign national or their representative indicated they are unable to apply online.

[13] The Policy defines the application process in three distinct stages. First, the anchor relative completes a statutory declaration and confirms their eligibility and commitment to supporting the applicant. Second, the anchor relative submits a webform with the required documents. If the application meets the requirements and space is available, the IRCC issues a

reference code. Third, the applicant submits their TRV application through the IRCC portal along with their reference code and other required documents.

[14] Upon receiving the TRV application, the IRCC conducts a "preliminary eligibility and admissibility assessment." Once the applicant passes this initial assessment, their name will be forwarded to the Israeli and Egyptian governments to facilitate their exit from Gaza through the Rafah border with Egypt.

[15] The Policy is clear from the outset that the Government of Canada will work with local authorities to advocate for the applicant's exit out of Gaza. However, it is noted that Canada does not decide who can leave Gaza and cannot guarantee that an applicant will be authorized to leave Gaza.

[16] Once an applicant has exited Gaza, they are required to provide their biometric data at a collection facility as it is "necessary for a full admissibility assessment." Biometric data is required of applicants who have not previously provided their biometric data within the last 10 years and who are between the ages of 14 and 79.

[17] Notably, the Policy has no exception to the requirement that applicants must submit biometric information before being considered for leaving Gaza. The record in this case indicates that there were waivers in this regard as exceptions in the Minister's Policy for Afghanistan dated August 21, 2021, as in the *Temporary Public Policy for the Resettlement of Afghan Nationals with a Significant and/or Enduring Relationship to Canada*:

> Biometrically-required clients who are physically outside of Canada must enroll their biometrics overseas prior to travelling to Canada, and results should be reviewed by an officer prior to making a final decision on the application. As biometrics enrollment overseas may be impossible or not feasible due to safety and security reasons, existing authority under section 12.8 of the IRPR may be relied upon by Designated Officers to allow for a biometrics exemption in the overseas context, on a case-by-case basis, in support of the temporary resident permit. Should R12.8 be exercised in the overseas context, biometrics may be enrolled from all biometrically-required persons at the ports of entry (POE) in support of any subsequent application for temporary residence or permanent residence.

[18] That said, there is no evidence of a general waiver of biometrics in any policy involving large numbers of applicants, be it Ukraine, Afghanistan, or Syria. The Afghanistan policy had individual specific case-by-case waivers as per the above.

B. *The Applicant's TRV application*

[19] The Applicant is a Palestinian woman residing in Gaza.

[20] An Applicant's relative [Anchor] is a Canadian citizen, and is the anchor relative for the pending TRV application.

[21] On January 14, 2024, within 5 days of the Policy, the Anchor submitted the TRV application on behalf of the Applicant. The Respondent sent a biometrics request and instruction letter on January 14, 2024.

[22] On January 17, 2024, the Anchor subsequently submitted a crisis webform stating the Applicant was “applying for the special temporary resident visa for Gaza given the crisis in Gaza.” On the same day, the Anchor received confirmation that the application would be considered under the Policy. On January 18, 2024, the Applicant submitted the statutory declaration form.

[23] On February 14, 2024, the Anchor requested an update on the application via webform:

> I would like to check on the application for super visa. The situation in Gaza is getting worse every single day, we are at risk of being killed, we lost our home which was bombed and now it is flattened, and we have no shelter, food or water. We are in great danger and the long processing time is taking a very long time, which is precious at this moment. every single moment counts and we are at risk of losing our lives every single moment.

[24] The Anchor claims neither she nor the Applicant received further communication from the Respondent. However, the Global Case Management System [GCMS] Notes indicate a reply was sent on February 14, 2024:

> Dear Sir/ Madam,
>
> Thank you for your email below. Your files have been received. We understand the current situation for you and your family is difficult. Please be assured that we are doing everything we can to assist clients under these circumstances. However, please refer to the following website for more information regarding the special program related to extended family members in Gaza. General inquiries can also be directed through the following webform or by phone at +1-613-321-4243 (M-F, 6:30 am to 7:00 pm, S-Su 6:30 am to 2:30 pm (EST)).” Also, please continue to monitor your online account to see any updates regarding your application.
>
> Best regards
>
> Immigration, Refugees and Citizenship Canada (IRCC)
> Immigration, Réfugiés et citoyenneté Canada (IRCC)

[25] The Respondent reviewed the documents on April 26, 2024.

[26] On May 13, 2024, a Migration Program Manager recognized the Applicant had not received her unique reference code and applied humanitarian and compassionate relief to overcome the requirements set out in s. 179 of the *Immigration and Refugee Protection Regulations,* SOR/2002-227.

[27] The application was assessed by a senior officer [Officer] on December 16, 2024. The Applicant passed the preliminary security screening, but IRCC noted her biometric data and social media links were outstanding.

[28] On December 18, 2024, the Applicant was requested to provide links to her social media accounts. The Officer asked internally on December 30, 2024, whether a new security screening would be required considering the absence of social media links. The Officer noted biometrics were still outstanding. The IRCC confirmed on January 28, 2025, the Applicant had passed her preliminary admissibility security screening despite not initially including social media links.

[29] On February 5, 2025, the Officer determined the Applicant was ready for visa, but biometric data was still outstanding.

[30] The Applicant has not been issued a TRV.

III. Issues

[31] The Applicant raises the following issue:

1. Has the Applicant met the test for the issuance of *mandamus*?

[32] The Respondent raises the following issues:

1. Much of the evidence that the Applicant has tendered is not admissible.
2. The test for *mandamus* has not been met.

IV. Relevant provisions

[33] Section 25.2(1) of *IRPA* outlines the powers of the Minister to grant a foreign national an exemption from applicable criteria:

Public policy considerations	**Séjour dans l'intérêt public**
25.2 (1) The Minister may, in examining the circumstances concerning a foreign national who is inadmissible or who does not meet the requirements of this Act, grant that person permanent resident status or an exemption from any applicable criteria or obligations of this Act if the foreign national complies with any conditions imposed by the Minister and the Minister is of the opinion that it is justified by public policy considerations.	**25.2 (1)** Le ministre peut étudier le cas de l'étranger qui est interdit de territoire ou qui ne se conforme pas à la présente loi et lui octroyer le statut de résident permanent ou lever tout ou partie des critères et obligations applicables, si l'étranger remplit toute condition fixée par le ministre et que celui-ci estime que l'intérêt public le justifie.

[34] Section 52.2(1)(c) of the *Federal Courts Rules*, SOR/98-106 addresses the formal requirements for expert witness affidavits:

Expert's affidavit or statement	**Affidavit ou déclaration d'un expert**
52.2 (1) An affidavit or statement of an expert witness shall	**52.2 (1)** L'affidavit ou la déclaration du témoin expert doit :
…	…
(c) be accompanied by a certificate in Form 52.2 signed by the expert acknowledging that the expert has read the Code of Conduct for Expert Witnesses set out in the schedule and agrees to be bound by it; and	**c)** être accompagné d'un certificat, selon la formule 52.2, signé par lui, reconnaissant qu'il a lu le Code de déontologie régissant les témoins experts établi à l'annexe et qu'il accepte de s'y conformer;

[35] Section 81(1) of the *Federal Courts Rules* addresses permissible contents of affidavits:

Content of affidavits	**Contenu**
81 (1) Affidavits shall be confined to facts within the deponent's personal knowledge except on motions, other than motions for summary judgment or summary trial, in which statements as to the deponent's belief, with the grounds for it, may be included.	**81 (1)** Les affidavits se limitent aux faits dont le déclarant a une connaissance personnelle, sauf s'ils sont présentés à l'appui d'une requête – autre qu'une requête en jugement sommaire ou en procès sommaire – auquel cas ils peuvent contenir des déclarations fondées sur ce que le déclarant croit être les faits, avec motifs à l'appui.

[36] Section 18.1(3)(a) of the *Federal Courts Act;* RSC 1985, c F-7 confirms the power of the Federal Court to grant an order of *mandamus:*

Powers of Federal Court	**Pouvoirs de la Cour fédérale**
(3) On an application for judicial review, the Federal Court may	**(3)** Sur présentation d'une demande de contrôle judiciaire, la Cour fédérale peut :
a) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing; or	**a)** ordonner à l'office fédéral en cause d'accomplir tout acte qu'il a illégalement omis ou refusé d'accomplir ou dont il a retardé l'exécution de manière déraisonnable;

[37] Section 22 of the *Federal Courts Immigration and Refugee Protection Rules,* SOR/93-22 provides costs are not allowed except for "special reasons":

Costs	**Dépens**
22 No 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.	**22** Sauf ordonnance contraire rendue par un juge pour des raisons spéciales, la demande d'autorisation, la demande de contrôle judiciaire ou l'appel introduit en application des présentes règles ne donnent pas lieu à des dépens.

V. Submissions of the parties

A. *Admissibility of the Applicant's affidavit evidence*

(1) Affidavit of the lawyer

[38] The Applicant relies on an affidavit of another lawyer in the office of the Applicant's counsel. The Applicant submits the lawyer's affidavit is admissible because it is background

information per *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright),* 2012 FCA 22 [*Access Copyright*]. The Respondent says it should be struck because it contains inadmissible hearsay evidence. Exhibited to the affidavit are several newspaper articles and press releases regarding the current situation in Gaza.

[39] Newspaper articles are generally inadmissible because they "lack the necessary reliability to be admitted as evidence before a court" (*Democracy Watch v Canada (Attorney General),* 2024 FCA 75 at para 7 [*Democracy Watch*]; *Bigeagle v Canada*, 2023 FCA 128 at para 94; and *A.B. v Canada (Citizenship and Immigration),* 2024 FC 1755 at para 36).

[40] I agree that jurisprudence from the Federal Court and Federal Court of Appeal confirms newspaper articles are hearsay and that without the authors of these documents before the Court, their evidence remains untested and reliability in question. However, Courts may find it permissible to admit these affidavits, particularly the newspaper articles on the situation in Gaza, where they are relevant and necessary as exceptions to the hearsay rule, as in my view these do provide relevant and necessary general background. I note the following from *Access Copyright* on the "recognized exceptions to the general rule against this Court receiving evidence in an application for judicial review" (at para 20) (which is not cited by either party but which is frequently cited and relied upon):

> [20] There are a few recognized exceptions to the general rule against this Court receiving evidence in an application for judicial review, and the list of exceptions may not be closed. These exceptions exist only in situations where the receipt of evidence by this Court is not inconsistent with the differing roles of the judicial review court and the administrative decision-maker (described in paragraphs 17-18, above). In fact, many of these exceptions tend to facilitate or advance the role of the judicial review court without

> offending the role of the administrative decision-maker. Three such exceptions are as follows:
>
> > (a) Sometimes this Court will receive an affidavit that provides general background in circumstances where that information might assist it in understanding the issues relevant to the judicial review: see, *e.g.*, *Estate of Corinne Kelley v. Canada*, 2011 FC 1335 at paragraphs 26-27; *Armstrong v. Canada (Attorney General)*, 2005 FC 1013 at paragraphs 39-40; *Chopra v. Canada (Treasury Board)* (1999), 168 F.T.R. 273 at paragraph 9. Care must be taken to ensure that the affidavit does not go further and provide evidence relevant to the merits of the matter decided by the administrative decision-maker, invading the role of the latter as fact-finder and merits-decider. In this case, the applicants invoke this exception for much of the Juliano affidavit.
> >
> > [Emphasis added]

[41] I also note this Court's decision in *Navaratnam v Canada (Citizenship and Immigration)*, 2015 FC 244 where it addressed the risks of proceeding on stale, inaccurate and out-of-date information where country conditions are evolving – as is the situation in Gaza now, a matter of which I take judicial notice. I note paragraphs 13 and 15:

> [13] I raised with both parties at the hearing the Court's concern about relying on outdated decisions in deciding this judicial review. I appreciate the general rule is that judicial review is conducted on the record subject to the filing of admissible new evidence. And while the RPD makes a comprehensive assessment under sections 96 and 97, the PRRA Officer on his or her subsequent review must also assess risk. But it is well known that the situation in Sri Lanka is changing. The original RPD decision was made in what might be called the after-glow of the peace. On December 17, 2010 the RPD identified a persuasive decision relaxing its position concerning the return to Sri Lanka of Tamil males from the North. However, this early optimism was misplaced as evidenced by Canadian and other refugee authorities. In December 2012 the UNHCR replaced its 2010 Guidelines for Tamils returning to Sri Lanka because the circumstances for

> Tamils returning to Sri Lanka had deteriorated. In the case at bar, the RPD's 2011 decision relied on the 2010 UNHCR Guidelines which while then current, are now no longer current.
>
> [15] Since the change in the UNHCR Guidelines, the situation for Tamils returning to Sri Lanka appears to have deteriorated further. In April, 2013 the Prime Minister of Canada's special envoy to Sri Lanka, after his investigation, reported that what was happening to Tamils in Sri Lanka was "soft ethnic cleansing". In October 2013, the Prime Minister of Canada boycotted the Commonwealth Heads of Government Meeting hosted by Sri Lanka because of Sri Lanka's human rights issues including treatment of Tamils. The Swiss ceased removals to Sri Lanka in later 2013. In terms of the position adopted by Canadian refugee authorities, I find it very noteworthy that on November 7, 2014 the RPD revoked its 2010 Tamil-related persuasive decision: see *Policy Note: Notice of Revocation of Persuasive Decision VA9-02166*. These are all matters of public record.

[42] As noted, the situation in Gaza is evolving and in my respectful view updated country condition evidence, tendered by way of affidavit, and in my view it is helpful because it will assist this Court in its analysis by providing general background.

(2) Affidavit of the Anchor

[43] The Respondent submits portions of the Anchor's affidavit are improper because they contain the Anchor's personal opinions, legal opinion, irrelevant information, and speculation. The Respondent points to:

> a. Paragraph 22: "I cannot look at this country the same with how they have abandoned my family."
>
> b. Paragraph 24: "… I see how the government acts in Canada – they ignore our applications for months on end and ignore the countless demonstrations that happen all over this country. Sometimes, I believe it would have been better that Canada never even opened the pathway to create false hope for my family to continue latching onto, if it was just going to be a lie."

c. Paragraph 28: “But since October 2023, it feels like this country has lied about everything; it is built on hypocrisy and false promises.”

d. Paragraph 37: “This lack of transparency between what they say they support and what they will actually protect is horrifying. This situation has made blatantly clear that Canada selects what they want to protect and leaves any other individuals behind.”

e. Paragraph 38: “With these actions, I have lost all respect for the Canadian government.”

f. Paragraph 38: “Canada doesn’t even see myself as equal to the people that I’m treating.”

[44] The Respondent submits the Anchor’s “feelings about how she would be treated by her employer if she were to be outspoken about Palestine” and whether her employer does more for Ukrainian refugees rather than people from Gaza are irrelevant to the issue of whether an order of *mandamus* should be grated. The Respondent further submits the Anchor’s impression that applicants under the Policy must provide more information and receive less support than applicants under other programs is speculative.

[45] Affidavits must “contain relevant information which would be of assistance to the Court in determining the application” by including “facts relevant to the dispute without gloss or explanation” [Emphasis in original] (*Canada (Attorney General) v Quadrini,* 2010 FCA 47 at para 18). Affidavits containing facts outside one’s knowledge, unsubstantiated opinions, argument, and legal conclusions may be struck, including where factual statements are intertwined with these statements (*Canada (Citizenship and Immigration) v Huntley,* 2010 FC 1175 at paras 263-274).

[46] I note that the Respondent cites *Benoit v Canada*, 2003 FCA 236, [2003] FCJ No. 923 [*Benoit*] at paragraphs 105-107; however, not only is *Benoit* over twenty years old, but the paragraphs cited refer to the reliability of oral testimony, not affidavits.

[47] In her Reply, the Applicant reiterates the contents of the Anchor's affidavit. The Applicant submits the contents of the affidavit are facts within the Anchor's personal knowledge and are required to show "significant prejudice" because of the delay in processing the TRV application.

[48] With respect, I agree with the Respondent that the Anchor's affidavit contains personal opinions, legal opinion, irrelevant information, and speculation. The Respondent does not identify which paragraphs should be struck; however, based on the excerpts referred to in the Respondent's Memorandum, paragraphs 22, 24, 28, 37, and 38 will be struck for improperly containing personal opinion; paragraphs 13 and 25 will be struck for improperly containing irrelevant information; and paragraph 37 be struck as speculative.

(3) Affidavit of law professor

[49] Professor Jamie Liew is a Professor of Law at the University of Ottawa. The Applicant relies on her affidavit which "provides an opinion on the efficacy of the Gaza program." The Respondent objects, saying it is unclear whether the professor's affidavit is an expert affidavit or lay person affidavit containing impermissible disguised opinion evidence (*Winning Combination Inc. v Canada (Attorney General)*, 2020 FC 1102 at para 22).

[50] The difference between a lay and an expert witness is critical. Yet, as noted, it is not clear under which category this affidavit is submitted. The jurisprudence establishes that "A lay witness may not give opinion evidence" and may only testify to "facts within the deponent's personal knowledge" (*Seklani v Canada (Public Safety and Emergency Preparedness),* 2020 FC 778 at para 19). Therefore, if this is a lay affidavit, the opinions are not admissible.

[51] On the other hand, if the professor's affidavit is that of an expert, it is admissible but of course only if it conforms with the requirements of Rule 52.2(1)(c) of the *Federal Courts Rules. Rule* 52.2(1)(c) requires an expert affidavit to "be accompanied by a certificate in Form 52.2 signed by the expert acknowledging that the expert has read the Code of Conduct for Expert Witnesses set out in the schedule and agrees to be bound by it."

[52] This certificate has, inexplicably, not been filed and it seems no effort has been made to cure this defect.

[53] At the hearing, Applicant's counsel said the affidavit was that of an expert, but conceded the necessary certificate was absent. Counsel volunteered to produce it quickly. But both the concession and the offer to produce come far too late, particularly since the Respondent raised it in its original Memorandum of December 5, 2024 and its Further Memorandum of August 19, 2025. With respect, I am unable to excuse deliberate non-compliance with the Court's Rules.

[54] That said, even if it was to be admitted, the affidavit does not provide any precedent involving a general waiver of admissibility assessments or general waiver of the requirement to

provide biometric information. Waivers may be applied for in any case under s. 25 and following of *IRPA*, and it is not clear if any have been applied for or granted.

B. *Mandamus*

[55] The Applicant seeks *mandamus* to compel the IRCC to render a decision on the Applicant's pending TRV application. In this connection I respectfully adopt my colleague Justice Little's determinations in *Wasylynuk v Canada (Royal Mounted Police)*, 2020 FC 962 at paragraph 76:

> [76] *Mandamus* is an order that compels the performance of a public legal duty. The duty is typically set out in a statute or regulation. An order of *mandamus* is the Court's response to a public decision-maker that fails to carry out a duty, on successful application by an applicant to whom the duty is owed and who is currently entitled to the performance of it. The test for *mandamus* thus requires careful consideration of the statutory, regulatory or other public obligation at issue, to determine whether the decision-maker has an obligation to act in a particular manner as proposed by an applicant and whether the factual circumstances have triggered performance of the obligation in favour of the applicant.

[56] The Applicant states and I agree the test for *mandamus* is that set out by Mahoney, Robertson and McDonald JJ.A. in *Apotex v Canada (Attorney General)*, [1994] 1 FC 742 (FCA):

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.
    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. by 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.

(1) Legal duty to act

[57] The Applicant submits the Minister has a legal duty to process applications pursuant to the Policy as set out in s. 25.2(1) of *IRPA.* Once a policy has been created under this section, the Applicant submits that the Minister has a duty to render decisions in accordance with the Policy. The Applicant further submits ss. 3 and 11(1) of *IRPA* form the statutory framework which informs the Minister's duty. Section 11(1) outlines an officer's duty to assess applications made by foreign nationals which should be considered alongside the objectives set out in s. 3 to see families reunited in Canada, maintain efficient and fair procedures, and to ensure "consistent standards and prompt processing."

[58] The Respondent acknowledges and I agree there is a legal duty to process the TRV application, but I am unable to find there is a legal duty to process the application within any particular definite time period.

(2) Duty owed to Applicant

[59] The Applicant submits she has a legitimate expectation her application would be processed in reasonable time, and that the delay is unreasonable.

[60] A legitimate expectation arises where there is a "clear, unambiguous and unqualified" representation creating the expectation that certain procedures will be followed (*Agraira v Canada (Public Safety and Emergency Preparedness),* 2013 SCC 36 at paras 94-97 [*Agraira*]; *Burton v Canada (MPSEP)*, 2012 FC 727 at para 23; *Canada Union of Public Employees v Ontario (Minister of Labour),* 2003 SCC 29 at para 131; *Afroz v Canada (MCI),* 2004 FC 1726 at paras 18-19). *Agraira* is a judgment of the Supreme Court of Canada.

[61] The Applicant submits the test for determining whether a legitimate expectation exists is as "would a reasonable person think that the promise was serious, and should a reasonable person be entitled so to think?" (*Apotex Inc. v Canada (C.A.),* [2000] 4 FC 264 at para 128).

[62] The Applicant submits she had a legitimate expectation to the timely processing of her TRV application based on the language of the Policy and the Respondent's past conduct. First, the Applicant submits the language used by the Respondent in crafting the Policy reflects the seriousness of the circumstances of individuals in Gaza and confirms that her application would be processed "in a timely manner that reflects the urgency of the situation in Gaza – quickly and flexibly."

[63] Second, the Applicant relies on the affidavit of the law professor to substantiate her claim that prior temporary policies have been "created rapidly in an ad hoc manner, frequently in response to chaotic and dangerous emergency situations" and have been able to "process applicants 'within relatively short timeframes in response to emergency situations.'" While this affidavit has been found inadmissible, I accept this submission based in the new background evidence previously admitted.

[64] The Applicant also relies on, and I agree *A.B.C.D. v Canada (Minister of Citizenship and Immigration)*, 2025 FC 1296 is an example of legitimate expectations arising from a similar policy for Afghan nationals. Justice Gascon confirmed his applicant had "legitimate expectations by virtue of adopting the Policy, which contains clear, unambiguous, and unqualified representations about the expedited application process" (at para 40).

[65] The Respondent submits that no representations were made as to processing time, approvals, or who may exit Gaza. Having reviewed the record on this point, I am not persuaded any such representation was made.

[66] That said, in the circumstances, I agree with the Applicant and Gascon J. that she had a legitimate expectation her TRV application would be dealt with in a "timely manner." Otherwise, the Policy could be nullified and promises of the Policy emptied of its effective content. However, the obligation to process her application under this Policy in a timely manner only arises when she meets the requirements of the Policy, leaves Gaza and provides her biometrics, albeit through no fault of her own she is unable to do any of this.

(3) Clear right to performance of the duty

(a) *Prior demand for performance*

[67] The Applicant submits that there has been a prior demand for performance. Both the Applicant and the Anchor "have made repeated inquiries about the status of the application." The Applicant submits her compliance with the conditions under the Policy "ought to be understood as a demand for performance on the part of the Minister in the form of conducting their preliminary eligibility and admissibility assessments and facilitating their exit from Gaza."

[68] This is not disputed. In my view, the Applicant succeeds on this point.

(b) *Reasonable time to comply*

[69] The Applicant submits there has been a reasonable time for the Respondent to comply with the demand as eighteen months have passed since the application was commenced "with no action from the Respondent."

[70] While the Respondent makes no submission on this issue, I am not persuaded the Applicant succeeds on this point. It seems to me the Applicant fails on this ground because – once again through no fault of her own - she has not provided her required biometric information which is a condition of the Policy. I cannot fault the Minister for delay caused by the Applicant not having complied with the Policy's requirements. In my view, the time to assess reasonable delay on this point has not begun to run and will not until the conditions of the Policy are met.

(c) *Unreasonable delay*

[71] The assessment of unreasonable delay is informed by the factors from *Conille v Canada (Minister of Citizenship and Immigration) (1998)*, 1998 CanLII 9097 (FC) at 43: (1) the delay has been longer than the nature of the process required, *prima facie*; (2) the Applicant and counsel are not responsible for the delay; and (3) the authority responsible for the delay has not provided a satisfactory justification.

[72] Delay is assessed on a case-by-case basis and there is no uniform length of time for what is considered reasonable (*Bhatnager v M.E.I.*, 1985 CanLII 5558 (FC) at 317).

[73] The Applicant submits the delay has been longer than the nature of the process requires. Relying on the affidavit of the law professor, although the circumstances surrounding each temporary public policy are distinct, "past immigration policies set in place in other emergency situations demonstrate that the Respondent has the expertise and operational capacity to efficiently process visas in difficult circumstances within relatively short timeframes."

[74] However, this affidavit is not admissible as previously found. In any event, I am not persuaded anything more can be done until the Applicant brings herself in compliance and provides her biometrics, or the Policy is amended.

[75] As noted above, it seems to me the Applicant also fails on this ground because – again through no fault of her own - she has not provided her required biometric information. In my

view, the time to assess reasonable delay on this point, once again, has not begun to run and will not until the conditions of the Policy are met.

[76] The Applicant submits that the assessment of unreasonable delay must also consider the resulting prejudice to the Applicant and her family. This Court has found unreasonable delay where it resulted in "severe substantive detriment to the applicant" (*Dragan v Canada (Minister of Citizenship and Immigration) (T.D.),* 2003 FCT 211 (CanLII), [2003] 4 FC 189 at para 57).

[77] I fully agree an accept these submissions and they favour the Applicant.

[78] Relying on the affidavit of her Anchor, the Applicant states that both she and her Anchor experienced the pain of family separation. The Anchor "has also suffered significant physical, emotional, and financial prejudice," having spent "hundreds to thousands of dollars the visa application fees, sending money to sustain her family in Gaza, and preparing for their eventual arrival in Canada. [The Anchor] has even mentioned pausing major life investments, like a down payment for a new home." The Anchor notes that she feels that her anxiety worsens as if she is "just waiting for the news of their inevitable death."

[79] The Applicant submits she "has been waiting for a preliminary decision and instructions on how to leave Gaza for more than eighteen months in a deteriorating security and humanitarian situation." The Applicant is financially dependent on the Anchor and "barely [has] enough food and water." Relying on the lawyer's affidavit, the Applicant refers to the "deadly and rapidly

deteriorating" conditions in Gaza including the lack of education, infrastructure, the forcible displacement, and the rising death toll. I accept this background evidence.

[80] The Applicant emphasizes they have never been contacted about next steps or provided with information about her exiting Gaza. However, the record shows the Applicant knew and knows that she must exit Gaza and provide biometric information, which is confirmed in the Applicant's own affidavit submissions. The Applicant's affidavit also demonstrates the Applicant was aware the Rafah crossing into Egypt has been closed since May 7, 2024, because the Applicant relies upon a copy of the IRCC document dated May 27, 2024, which says:

> **CIMM – Exit permission from Gaza – May 27, 2024**
>
> [REDACTED] appears where sensitive information has been removed in accordance with the principles of the Access to Information Act and the Privacy Act.
>
> **Key Facts**
>
> All clients in Gaza must leave Gaza at the Rafah crossing into Egypt for processing to continue. Local authorities, including the governments of Israel and Egypt, are responsible for granting exit permission.
>
> Once applicants have left Gaza, the Government of Canada will provide two nights' accommodation and meals in Cairo. If families need to stay longer than two days, they must cover the additional costs and ensure the validity of their Egyptian visa.
>
> The Rafah Border has been closed since May 7. At this time there are no crossings into Egypt, however Canada is ready to receive applicants in Cairo once the border reopens.
>
> **Key Messages**
>
> The governments of Egypt and Israel have established an official exit process from Gaza, which the Government of Canada must honor. We will continue to collaborate with our partners to facilitate the secure exit of our clients.

As part of this process, we have put forward names of people who passed preliminary eligibility and admissibility reviews to local authorities for approval, but do not ultimately decide who can exit Gaza.

Israel has agreed to Canada's request to facilitate the exit of extended family members in Gaza as part of their expanding humanitarian efforts.

We continue to engage with partners in the region to facilitate exit for individuals falling under our consular operation as well as applicants under Immigration, Refugees and Citizenship Canada's (IRCC's) public policy.

Supplementary Information

If pressed on getting people out of Gaza:

The Government continues to engage in diplomatic efforts to facilitate exit for individuals falling under our consular operation and applicants under IRCC's public policy.

If pressed on individuals who left Gaza and entered Egypt before Canada's program opened:

Those who have been able to exit Gaza who do not have a pending application or have been unable to apply under the Temporary Resident Pathway for certain extended families affected by the crisis in Gaza may apply through any of our existing immigration programs.

IRCC will process these applications.

If pressed on the use of unofficial means for exits out of Gaza (e.g. companies like Hala):

IRCC is aware of instances of people exiting Gaza on their own. However, Canada cannot use nor condone the use of unofficial means to leave Gaza. If applicants under the Temporary Public Policy are successful in leaving, they should advise the Canadian Embassy in Cairo as soon as possible.

The Government of Canada has put forward names of people who passed preliminary eligibility and admissibility assessments to local authorities for approval, but does not ultimately decide who can exit Gaza.

If pressed on individuals with pending applications who exited Gaza on their own and are now in Egypt:

If individuals who have a pending visa application as part of the special measures exit Gaza on their own, we will continue to process their application. Once in Egypt, we will collect their biometrics and finalize their TRV application.

If pressed on documentation for Palestinians exiting Gaza:

The Canadian Mission in Cairo has conducted interviews with clients who left under assisted departures in order to confirm their identities.

We request identity documents from all clients and, to date, have been able to obtain such documents (e.g., in the form of Palestinian ID cards, birth certificates, marriage certificates, divorce certificates, family registration documents, school documents).

REDACTED.

If pressed on individuals in Gaza with valid Supervisas or TRVs outside the public policy (e.g., open work or study permits):

If clients with a valid TRV or Supervisa are in Gaza and need assistance leaving, they may self-identify via our crisis webform. In the webform, individuals must include their unique client identifier (UCI) number, TRV document number, phone number, whether their travel document or identify documents have been damaged, and a notice of consent to disclose personal information document.

IRCC will validate their information to confirm the status of their TRV or Supervisa. Once the status of their TRV has been validated, we will forward their name to local authorities to facilitate their exit from Gaza via the Rafah border crossing once the border reopens.

The Government of Canada does not decide who can leave Gaza and cannot guarantee that these clients will be authorized to cross the Rafah border.

Date modified: 2024-09-24

[81] In these circumstances and with the greatest respect, I see no practical point or any need to require the Minister to contact the Applicant and provide her with information about next steps she already has.

[82] The Applicant also argues that stating the Applicant's background or security clearance is pending without additional explanation is not considered an adequate explanation for delay, particularly if there is a "long delay without adequate explanation" (*Abdolkhaleghi v Canada (Minister of Citizenship and Immigration),* 2005 FC 729 at para 26 [*Abdolkhaleghi*]) [Emphasis in original]. She argues that, where there is delay without adequate explanation, an order of *mandamus* may be granted. An "adequate explanation" is relative to the complexity of the security considerations (*Abdolkhaleghi* at para 26). With respect, I disagree in the circumstances of this case where necessary biometrics are missing, albeit without any fault on the part of the Applicant.

[83] Notably, the Applicant submits she is not responsible for the delay. I completely agree. The Applicant commenced her application shortly after it opened, submitted the webform and documents as required, and has "responded to all requests for additional information." But however promptly she proceeded, it remains the case she has not complied with the conditions of the Policy which I am obliged to accept as given.

[84] To be clear, in this respect, the Applicant acknowledges the biometric requirement at paragraphs 17-21 of her Further Memorandum:

> a. There is no means by which to have biometrics collected within Gaza;

> b. Israel “continues to exercise control of the land, sea and air borders of the Gaza Strip and imposes restrictions on the movement of people and goods”;
>
> c. There are “zero operational crossings out of Gaza since Israel's closure of the Rafah border on May 6, 2024”; and
>
> d. “[A]pplicants are expected to provide biometrics at a biometric collection facility in order to complete the admissibility screening.”

[85] These circumstances were known when the Policy was established. Whether stated or not, the extremely unfortunate reality is that Canada has no ability to guarantee the Applicant’s exit from Gaza. In addition, there is no evidence Canada has failed to work with its partners to assist the Applicant to leave Gaza. She is an innocent victim of circumstances which very regrettably Canada has not been able to change.

(4) No other adequate remedy is available

[86] The Applicant submits there is no other appropriate remedy available to address the delay in processing her application.

[87] The Respondent makes no submissions on this issue, nor is it necessary to consider this issue given my finding she has no right to performance of the alleged duty to issue her a TRV until the Policy conditions are met. The same applies to the issues of whether the Order would have any practical effect (of which in any event would be difficult to establish), and whether there are equitable bars to relief (although none were suggested).

(5) Balance of convenience favours granting *mandamus*

[88] The Applicant submits the balance of convenience favours granting the order for *mandamus* as the delay has caused "unnecessary emotional distress and hardship, and most significantly, has prolonged the risks to the Applicant's life and safety in Gaza." The Applicant has been "waiting for the results of preliminary eligibility and admissibility assessments and instructions on leaving Gaza to complete biometrics" for nine months. I have no doubt of the facts.

[89] The Respondent submits the balance of convenience does not favour granting *mandamus* because the Minister cannot continue processing the Applicant's application until she leaves Gaza and provides her biometric data. The Respondent further submits that the conditions precedent for a decision to be made have not been satisfied.

[90] In my respectful view, the balance of convenience favours the Respondent. On both the current and earlier versions of the "Crisis in Gaza: How to apply" webpage, there is language stipulating that the Respondent cannot guarantee that the Applicant will be able to exit Gaza. The biometrics instruction letter is dated January 14, 2024, and the Respondent submits it was received by the Applicant the same day her application was commenced. Respectfully, it seems the Applicant had notice of the requirements to complete the admissibility assessment and brought this application in place of doing so.

[91] Very regrettably, and while I have every sympathy for the situation the Applicant and others like her find herself in, the Policy requires them to exit Gaza and deliver biometrics in approved manner to the Minister. To hold otherwise would be to impermissibly rewrite the Ministerial Policy. In effect, and with respect, the Applicant asks the Court to rewrite the Policy. That is not permitted on an application for *mandamus*, nor generally. Indeed, this law was very recently considered and confirmed in *Universal Ostrich Farms Inc. v Canadian Food Inspection Agency,* 2025 FCA 147 at paragraph 6: "it is not the role of this Court to set, vary, or grant exemptions from governmental policy." While this general proposition is correct, it is of course subject to *Charter* considerations; no *Charter* issues were advanced in this case.

C. *Declaratory relief*

[92] In addition to an order of *mandamus*, the Applicant seeks declarations. There is no need to consider these points given the Applicant has not shown a legal right to the order given required biometrics have not been filed.

VI. Conclusion

[93] The Applicant has failed to meet several tests for the issuance of *mandamus*. Therefore, this application for *mandamus* must be dismissed.

VII. Certified question

[94] Neither party proposes a question for certification and none will be stated.

VIII. Costs

[95] The Applicant seeks her costs but makes no submissions in her Memorandum except to state that she "continues to reserve the right to make submissions on costs at a later date." The Applicant reiterates this position in her Reply. These were not forthcoming and therefore I decline to order costs.

[96] As noted by the Respondent, I also agree the Court should decline to consider costs, given the Applicant's failure to comply with paragraph 74 of this Court's Amended Consolidated General Practice Guidelines:

> **Costs**
>
> 74. During the hearing of a motion, application or action, the parties should be prepared to inform the Court as to whether they have agreed on the disposition and/or quantum of costs. If the parties have not settled the disposition and/or quantum of costs, they should be prepared to make submissions on those issues to the presiding judge or associate judge before the end of the hearing.

JUDGMENT in IMM-8466-24

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

2. No question of general importance is certified.

3. There is no order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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