

Federal Court



Cour fédérale

**Date: 20241009**

**Docket: IMM-15800-23**

**Citation: 2024 FC 1599**

**Calgary, Alberta, October 9, 2024**

**PRESENT: Justice Andrew D. Little**

**BETWEEN:**

**JEANNE MURARA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicant is a Rwandan national who has lived in Zimbabwe for more than twenty years. Born in 1980, she left Rwanda as a teenager in the 1990s. Since 2001 she has been recognized as a refugee by the United Nations High Commissioner for Refugees in Zimbabwe.

[2] In 2020, the applicant married her husband in Cape Town, South Africa. He is a citizen of The Congo who resides in South Africa. She advises that he is also a refugee.

[3] In early 2021, the applicant and her husband applied for permanent residence in Canada, sponsored by her sister and four others, all of whom reside in Canada.

[4] In 2022, while the application was pending, the applicant learned she was pregnant. At the time, she was in South Africa visiting her husband.

[5] The applicant's doctor advised that she should not travel. On October 12, 2022, the applicant advised IRCC by email that she was 11 weeks pregnant with twins and unable to travel back to Zimbabwe to attend a scheduled interview. She asked IRCC to postpone it, and the interview did not occur.

[6] The twins were born prematurely on March 8, 2023, in a hospital in South Africa.

[7] Oddly, before the applicant gave birth to the twins on March 8, an entry in the respondent's Global Case Management System ("GCMS") dated February 27, 2023, by an officer in Pretoria, South Africa, advised that the applicant "declares that she has had twins. New dependents to be added to application and sponsorship re-assessed".

[8] By letter to the applicant dated March 6, 2023, the immigration section of the High Commission of Canada in South Africa requested that she file birth certificates for her children by April 6, 2023, in order for her application for permanent residence to be processed.

[9] The evidence does not explain why IRCC took these actions on February 27 and March 6, before the twins were born on March 8, 2023.

[10] On March 18, 2023, the applicant and the twins were transferred to a different hospital in South Africa.

[11] The GCMS contains the following entry on April 21, 2023:

Birth certificates not received. File remains on hold as a result until documents received.

[Emphasis added].

[12] The GCMS contains the following entry on May 24, 2023:

Applicant has failed to comply with request sent on 6 March 2023. Request letter specified that the application could be refused for non-compliance if the applicant failed to comply.

Application refused. I am not satisfied that the applicant meets the requirements of the Act and is not inadmissible to Canada per Section 11(1). I am not satisfied that the applicant has produced all relevant evidence required per Section 16(1) of the Act.

### ***The Issue***

[13] As is apparent, the decision dated May 24, 2023, refusing the applicant's request for permanent residence was based on the absence of the requested birth certificates for the applicant's children. Indeed, the officer's two entries dated April 21 and May 24 did not refer to any response from the applicant to IRCC's letter dated March 6, 2023.

[14] That is the crux of the problem in this case, because the applicant testified that she did respond.

[15] The applicant's affidavit filed on this application stated that in response to IRCC's letter dated March 6, 2023, she sent an email to IRCC on April 3, 2023. Her email advised as follows:

Thank you for your mail.

According to the information from doctors, I was expected to give birth in the first week of April. It however, came into emergence for premature birth. Therefore, I am still at the hospital where the kids are getting maternity attention for early birth. A lett[er] from doctor confirming the hospitalisation is attached. For this reason, it is not yet possible to get birth certificates for both kids.

In [S]outh Africa, foreigners get birth certificates from Home Affairs after being discharged from hospital. We will send to you the birth certificates and a completed additional dependants/declaration form as soon as possible once out of hospital.

Thank you for your time and consideration.

[Emphasis added.]

[16] The applicant's email attached a typewritten note dated March 29, 2023, signed by a physician at the second hospital in South Africa. The note confirmed the birth of twins on March 8, 2023, that they were transferred to that hospital on March 18 and that both the applicant and her children remained there. As of March 29, the twins were not yet ready to be discharged.

[17] The GCMS does not contain any reference to the applicant's email dated April 3, 2023, and it was not in the Certified Tribunal Record filed on this application.

[18] On this application for judicial review, the applicant asks the Court to set aside the officer's decision on May 24, 2023, that refused her application for permanent residence on the basis mentioned above.

[19] The applicant submitted that she was deprived of procedural fairness because her application for permanent residence was refused without considering her email and allowing her to submit the twins' birth certificates.

[20] The respondent submitted that there was insufficient evidence before the Court that the applicant in fact sent the email.

### ***Analysis***

[21] I agree with the applicant that the decision should be set aside as a matter of procedural fairness. The applicant made a written submission asking for additional time to file requested information, to which she did not receive any response. The officer refused the application but did not consider the applicant's email sent on April 3, 2023. The applicant has been deprived of her right to have a meaningful opportunity to be heard under the *audi alteram partem* principle of procedural fairness.

[22] As the parties' submissions at the hearing demonstrated, this case turns on whether the applicant in fact sent the email and its attachment to IRCC on April 3, 2023. The evidence shows that she did.

[23] First, in an affidavit filed in this Court, the applicant testified that she sent the email and attachment. The respondent did not object to its filing. The applicant was not cross-examined.

[24] Second, the applicant's affidavit attaches exhibits that support her testimony, including the email she sent and drafts of it. The drafts contain similar contents to the final version. They also expressly say "Draft to" beside the correct IRCC email address, an address that the applicant had used earlier in the application process to communicate with IRCC and from which she had received responding emails from IRCC. The draft emails contain time stamps earlier in the day on April 3 compared with the time of the final version. The drafts and final email all contain the file number for her application, which was a requirement or else the email would not be acted upon.

[25] Third, the respondent did not identify any evidence in the record that contradicts or is inconsistent with the sworn evidence from the applicant. I am not aware of any.

[26] The respondent argued that there was no evidence that the email was actually sent and that the evidence was insufficient because the applicant's affidavit did not attach a screenshot of her Sent Items showing that the email was sent on April 3, 2023. The respondent referred to *Beshah v. Canada (Citizenship and Immigration)*, 2023 FC 1168 and *Adams v. Canada (Citizenship and Immigration)*, 2021 FC 1104. However, it is incorrect to say that there is no evidence that the email was sent – the applicant testified that she sent it and provided exhibits in support, which distinguishes *Beshah* in which there was no such evidence: *Beshah*, at paras 6, 8. Unlike *Adams*, no other contemporaneous evidence casts doubt on the applicant's evidence that

she sent the email: see *Adams*, at paras 24-28. It is true that there was no acknowledgment of receipt or that her email was read. However, the absence of that information does not show that the applicant did not send it, particularly when there is no evidence that it is standard practice for every email to receive an acknowledgement.

[27] Although neither party filed evidence about how the applicant's sent emails should appear, looking at the exhibits attached to the applicant's affidavit, I am satisfied on a balance of probabilities that the draft emails and the final email are genuine and that the latter is substantively a "Sent Item". The exhibits satisfactorily support the applicant's testimony that she sent the email to the proper email address on that day.

[28] Several aspects of record in this application are puzzling. The respondent has not explained why, before the twins were born on March 8, an officer made the February 27 entry in the GCMS about the twins' birth and sent the letter dated March 6 requesting birth certificates by April 6. It is also curious that on April 21 (six weeks after the request and two weeks after the due date for response), the officer found that the birth certificates had not been received and stated that the file remained "on hold" until the documents were received – but without reference to the applicant's April 3 email requesting more time to send them and explaining why she needed that time. The officer then refused the application on May 24 without any explanation other than the absence of the requested birth certificates.

[29] For her part, the applicant's affidavit did not explain when she and her children were released from the hospital, or when she or her husband were able to obtain birth certificates for

the children from the South African government. However, it is apparent that she has been negatively affected by the fact that the contents of her email on April 3, 2023, and its attachment, were not considered when the officer refused her application for permanent residence on May 24, 2023.

***Conclusion***

[30] The application will be allowed and the decision of the officer dated May 24, 2023, will be set aside.

[31] The applicant's request for permanent residence will be remitted for redetermination by another officer, on the basis that (at minimum) the applicant should have a reasonable opportunity to provide copies of her children's birth certificates and to complete any required forms to update her application to reflect their birth.

[32] There is no question to certify for appeal.



**JUDGMENT IN IMM-15800-23**

1. The application is allowed. The decision dated May 24, 2023, is set aside. The applicant's request for permanent residence based on sponsorship is remitted for redetermination by another officer in accordance with paragraph 31 of the Reasons.
  
2. No question is certified for appeal under paragraph 74(d) of the Immigration and Refugee Protection Act.

"Andrew D. Little"

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Judge

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

**DOCKET:** IMM-15800-23

**STYLE OF CAUSE:** JEANNE MURARA v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION CANADA

**PLACE OF HEARING:** CALGARY, ONTARIO

**DATE OF HEARING:** SEPTEMBER 5, 2024

**REASONS FOR JUDGMENT  
AND JUDGMENT:** A.D. LITTLE J.

**DATED:** OCTOBER 9, 2024

**APPEARANCES:**

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Maria Green FOR THE RESPONDENT

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