Federal Court  Cour fédérale

Date: 20150923

Docket: IMM-1155-15

Citation: 2015 FC 1109

Québec, Quebec, September 23, 2015

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

ARTURO RANSANZ

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] The applicant challenges the legality of the decision of a Citizenship and Immigration Canada officer [Officer] in Los Angeles, dated December 23, 2014, denying his application for a permanent resident visa as an investor in the Economic Immigration class destined for the Province of Quebec.

[2] The applicant is a Mexican citizen. He has a wife and three children who are also citizens of Mexico. Since August 2009, the applicant has resided in Vancouver on a series of visitor visas, along with his family. On August 27, 2010, he applied for a *Certificat de sélection du Québec* [CSQ], which was issued to him on September 10, 2012. On November 7, 2012, he applied for a permanent resident visa in the Quebec Selected Investor category. Upon initial review of the application, a visa officer noted that the applicant's children were studying in Vancouver, stating that "it does not show intention to live in Quebec when entire family is in BC". This officer noted that an interview would be required once further documents were received.

[3] An interview took place on December 22, 2014 in Los Angeles at a local visa office. During the course of the interview, the Officer indicated that he had concerns about the applicant's intention to reside in Quebec, considering his family's strong ties to Vancouver. In response, the applicant showed the Officer an unsigned contract (a finder's agreement) with a business consulting firm in Montreal, and stated that his wife had recently been to Montreal to visit schools and properties. The Officer remained unsatisfied that the applicant intended to reside in Quebec, and concluded that he therefore did not meet the criteria for permanent residence as an investor in the Economic Immigration class. Accordingly, the Officer refused the applicant's application, leading to the present judicial review.

[4] The applicant raises a number of issues, which I have rephrased as follows:

1. Considering that the Officer was not satisfied that the applicant intended to reside in Quebec, and absent a finding of inadmissibility, did the Officer lack jurisdiction to refuse the application?

2. Did the Officer commit a breach of procedural fairness or otherwise render an unreasonable decision in refusing to consider or in discarding relevant evidence of the applicant's intention to move with his family from Vancouver and reside in Quebec?

[5] With respect to the first issue, the appropriate standard of review in determining whether in this case the Officer lacked jurisdiction to refuse the applicant's application is correctness (*Koroghli v Canada (Citizenship and Immigration)*, 2010 FC 1067 (CanLII) at para 20; *Chen v. Canada (Minister of Citizenship and Immigration*), 2007 FC 41 (CanLII) at para 10). This is different from cases where a specialized tribunal has been called to interpret its home statute or regulations (*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 (CanLII) at para 30; *Dunsmuir v New Brunswick*, [2008] 1 SCR 190, 2008 SCC 9 (CanLII) at para 54; *Canadian National Railway Co v Canada (Attorney General)*, 2014 SCC 40 at para 55). Here, the Officer acted on the assumption that he had the legal duty to verify whether a person is inadmissible and whether all the requirements of the IRPA and the Regulations are satisfied.

[6] With respect to the second issue, in submitting that the Officer's failure to consider evidence presented by the applicant constituted a breach of procedural fairness, the applicant

states that the appropriate standard of review is that of correctness (*Ijaz v Canada (Citizenship and Immigration)*, 2014 FC 920 (CanLII) at para 13-15; *Jahazi v Canada (Citizenship and Immigration)*, 2010 FC 242 (CanLII) at para 41). In contrast, the respondent treats this question as one related to the sufficiency of the evidence, thus subject to a standard of reasonableness.

[7] The jurisprudence relating to the standard of review appropriate for questions of procedural fairness is currently unsettled (*Bergeron v Canada (Attorney General)*, 2015 FCA 160 (CanLII) [*Bergeron*] at paras 67-69). Indeed, while the Courts have at times upheld a standard of correctness for questions of procedural fairness (e.g. *Air Canada v. Canadian Transportation Agency*, 2014 FCA 288, 468 N.R. 184 (F.C.A.) at para 26), they have also applied a more deferential standard (e.g. *Re: Sound v. Fitness Industry Council of Canada*, 2014 FCA 48 at para 42). Stratas J.A. has also pointed out the unsettled and (and potentially contradictory) nature of the Supreme Court's recent decision in this regard in *Khela v Mission Institution*, 2014 SCC 24 at paras 79 and 89 (*Bergeron* at para 67).

[8] Furthermore, as Stratas J.A. states in *Bergeron*, at para 70:

> As was the case in *Forest Ethics*, above, the line between a procedural concern and a substantive concern can be a blurry one. As this Court explained in *Forest Ethics*, there is much to be said for the view that the same standard of review—reasonableness with variable margins of appreciation depending on the circumstances (as described earlier in these reasons)—should govern all administrative decisions.

[9] In the case at hand, this blurry line is apparent, as the question of whether the Officer provided the applicant with a meaningful opportunity to respond to his concerns is heavily grounded in fact. It hinges not so much on whether the applicant was given notice of the

Officer's concerns about his intention to reside in Quebec – both parties concede that notice was indeed given – but rather on whether the Officer took sufficient account of the answers given and the evidence produced by the applicant with respect to the steps taken to buy a house, acquire a business, and find a school for the children in Montreal, all of which raises further credibility concerns. Be that as it may, I don't believe that the standard of review applicable to the second issue (as reframed above) is determinative of the present judicial application. Whatever the applicable standard, I would come to the same result.

[10] For the reasons that follow, I find that the Officer had jurisdiction to refuse the application on the basis that he was not satisfied that the applicant intended to reside in Quebec. Nevertheless, the Officer breached procedural fairness or otherwise rendered an unreasonable decision in refusing to consider or in discarding relevant evidence of the applicant's intention to move with his family from Vancouver and reside in Quebec.

Considering that the Officer was not satisfied that the applicant intended to reside in Quebec and absent a finding of inadmissibility, did the Officer lack jurisdiction to refuse the application?

[11] The applicant's application for permanent residence as an investor in the Economic Immigration class destined for the province of Quebec was made pursuant to subsection 12(2) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [IRPA], and subsections 88(1) and 90(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations], which read as follows:

88. (1) The definitions in this subsection apply in this Division.	88. (1) Les définitions qui suivent s'appliquent à la présente section.

"investor selected by a province" means an investor who	« investisseur sélectionné par une province » Investisseur qui, à la fois :
(a) intends to reside in a province the government of which has, under subsection 8(1) of the Act, entered into an agreement referred to in subsection 9(1) of the Act with the Minister whereby the province has sole responsibility for the selection of investors; and	a) cherche à s'établir dans une province ayant conclu avec le ministre, en vertu du paragraphe 8(1) de la Loi, un accord visé au paragraphe 9(1) de la Loi selon lequel elle assume la responsabilité exclusive de la sélection des investisseurs;
(b) is named in a selection certificate issued to them by that province.	b) est visé par un certificat de sélection délivré par cette province.
[…]	[…]
90. (1) For the purposes of subsection 12(2) of the Act, the investor class is hereby prescribed as a class of persons who may become permanent residents on the basis of their ability to become economically established in Canada and who are investors within the meaning of subsection 88(1).	90. (1) Pour l'application du paragraphe 12(2) de la Loi, la catégorie des investisseurs est une catégorie réglementaire de personnes qui peuvent devenir résidents permanents du fait de leur capacité à réussir leur établissement économique au Canada et qui sont des investisseurs au sens du paragraphe 88(1).
(2) If a foreign national who makes an application as a member of the investor class is not an investor within the meaning of subsection 88(1), the application shall be refused and no further assessment is required.	(2) Si le demandeur au titre de la catégorie des investisseurs n'est pas un investisseur au sens du paragraphe 88(1), l'agent met fin à l'examen de la demande et la rejette.

[12] Plainly stated, the Officer was not satisfied that the first requirement mentioned in subsection 88(1)(a) was met by the applicant. However, the applicant submits that the Officer lacked jurisdiction to refuse the applicant's permanent residency application, in light of the fact that he had already been selected by Quebec as an investor in the Economic Immigration class, and had not been found otherwise inadmissible.

[13] The applicant points to subsection 9(1) of the IRPA, which states:

9. (1) Where a province has, under a federal-provincial agreement, sole responsibility for the selection of a foreign national who intends to reside in that province as a permanent resident, the following provisions apply to that foreign national, unless the agreement provides otherwise:	9. (1) Lorsqu'une province a, sous le régime d'un accord, la responsabilité exclusive de sélection de l'étranger qui cherche à s'y établir comme résident permanent, les règles suivantes s'appliquent à celui-ci sauf stipulation contraire de l'accord :
(a) the foreign national, unless inadmissible under this Act, shall be granted permanent resident status if the foreign national meets the province's selection criteria;	a) le statut de résident permanent est octroyé à l'étranger qui répond aux critères de sélection de la province et n'est pas interdit de territoire;
[Emphasis added]	[Soulignements ajoutés]

[14] The applicant asserts that the *Canada-Quebec Accord relating to Immigration and Temporary Admission of Aliens* [Canada-Quebec Accord] grants exclusive jurisdiction to Quebec for the selection of immigrant investors to that province. More particularly, the applicant relies on section 12, which states:

12. Subject to sections 13 to 20,	12. Sous réserve des articles 13 à 20 :

(a) Québec has sole responsibility for the selection of immigrants destined to that province and Canada has sole responsibility for the admission of immigrants to that province.	(a) Le Québec est seul responsable de la sélection des immigrants à destination de cette province et le Canada est seul responsable de l'admission des immigrants dans cette province.
(b) Canada shall admit any immigrant destined to Québec who meets Québec's selection criteria, if the immigrant is not in an inadmissible class under the law of Canada.	(b) Le Canada doit admettre tout immigrant à destination du Québec qui satisfait aux critères de sélection du Québec, si cet immigrant n'appartient pas à une catégorie inadmissible selon la loi fédérale.

[15] The applicant also relies on paragraph 3(d) of the *Act Respecting Immigration to Quebec*, RSQ, c 102, which states that the selection of foreign nationals wishing to settle in Quebec is intended to "favour the coming, among foreign nationals who apply therefor, of persons who will be able to become successfully established in Quebec". The applicant further notes that Annex 1 of the Canada-Quebec Accord provides:

14. Québec is responsible for the selection of immigrants destined to that province.	14. Le Québec effectue la sélection des candidats à l'immigration se destinant à cette province.
15. Immigrants selected by Québec shall be referred to federal authorities for assessment relating to the admission and the issuance of visas.	15. Les candidats sélectionnés par le Québec sont référés aux autorités canadiennes pour fins d'évaluation en fonction des exigences reliées à l'émission des visas et à l'admission.
16. Canada will determine whether an immigrant is admissible and, in appropriate cases, confer permanent resident status.	16. Le Canada vérifie l'admissibilité des immigrants et, s'il y a lieu, leur accorde le droit d'établissement.

[16] The applicant also submits that under Annex D of the Canada-Quebec Accord, parties must undertake appropriate consultations if difficulties arise in interpreting the definitions mentioned in section 3(a) of the Accord – including the definition of investors. The applicant states that there is a duty to consult with officials in the nominating province under the Provincial Nominee Program when a visa officer forms an intention to substitute his opinion for that of the province with respect to the likelihood that an applicant will be able to become economically established (*Kikeshian v Canada (Citizenship and Immigration)*, 2011 FC 658 (CanLII) at para 13).

[17] In addition, the applicant asserts that the intention to reside in Quebec was already a necessary condition or prerequisite for his receipt of a CSQ. The applicant cites the *Canada Citizenship and Immigration Overseas Processing Manual OP 9* [OP 9] at section 7.1, which provides: "Investors in Quebec's IIP [Immigrant Investor Program] must intend to settle in the province of Quebec and must obtain a Certificat de sélection (CSQ) as proof of their selection by Quebec." Therefore, as the applicant had already received a CSQ, he submits that his intention to reside in Quebec had been established, and the Officer overstepped his jurisdiction by deciding otherwise. In any event, the applicant submits that the *Overseas Processing Manual OP 7b*, Article 7.8, mentions that an officer is obliged to consult with an official of the nominating province and obtain a concurring opinion when contemplating a refusal, including in cases where an officer has reason to believe that the applicant does not intend to live in the nominating province.

[18] During the course of the hearing of this judicial review application, counsel for the respondent mentioned that the Minister was concerned about Quebec serving as a gateway for immigrants flowing into Canada, absent a "veto" power on the part of Canada that would enable the federal government to exclude applicants for reasons beyond findings of inadmissibility. It is exclusively for the province to determine based on subsection 9(1) of the IRPA whether the applicant would be economically successful in Quebec. Since the applicant was granted a CSQ, he satisfied the requirement found in the first part of subsection 90(1) – his "ability to become economically established". Nevertheless, the Officer still had jurisdiction to determine whether or not the applicant met the criteria under subsection 88(1) of the Regulations, according to which the applicant must intend in the first place to reside in the province (*and* be named in a selection certificate).

[19] The respondent further argues that different requirements apply for applicants falling within the Provincial Nominee Class as a class of skilled workers, and for those who are selected by the province as investors. Section 87 sets out provisions pertaining to the Provincial Nominee Class, including the requirements referred to by the applicant relating to consultation and the need for a concurring decision at subsections 87(3) and 87(4). Subsection 87(2) provides that a foreign national is a member of the provincial nominee class if:

(a) subject to subsection (5), they are named in a nomination certificate issued by the government of a province under a provincial nomination agreement between that province and the Minister; and	(a) sous réserve du paragraphe (5), il est visé par un certificat de désignation délivré par le gouvernement provincial concerné conformément à l'accord concernant les candidats des provinces que la province en cause a conclu avec le ministre;

(b) they intend to reside in the province that has nominated them.	(b) il cherche à s'établir dans la province qui a délivré le certificat de désignation.

[20] The respondent also refers to section 96 of the Regulations which goes on to specify that if a foreign national selected by a province is an *investor* (as in the case of the applicant), that individual shall not be assessed according to the selection grid set out at section 102, which is used to determine whether an applicant is likely to become economically established in Canada. The respondent points out that these requirements are not used to assess individuals in the provincial *investor* class, as such a requirement is removed once a CSQ is granted – something that is made explicit as an exception at section 96. In contrast to the provincial investor class, the respondent points out that those provincial nominees who are skilled workers are evaluated on their ability to become economically established in Canada, as per subsection 87(1), and it is on this aspect of the evaluation of the applicant that the requirements for consultation and concurrence specifically apply.

[21] In addition, the respondent submits that the applicant's argument on the obligation to consult based on Annex D of the Canada-Quebec Accord is also erroneous. Section 3(b) of the Accord states that the parties agree to undertake appropriate consultations only with respect to problems arising from the interpretation of the definitions provided for in section 3(a) – namely, the definition of investors in the Quebec regulations. The respondent submits that these provisions are not applicable in the case at hand because the Officer's decision was not related to whether or not the applicant met the provincial selection criteria, but rather to his intention to reside in Quebec.

[22] I substantially agree with the interpretation of the impugned provisions proposed by the respondent in his written submissions and reasserted at the hearing before the Court. The arguments made above by the applicant fail to account for the plain words used by Parliament in the impugned provisions and the economy of the IRPA is clear and the Regulations. [Note: the second half of this sentence is unclear] Subsection 11(1) of the IRPA is clear and prescribes that a visa officer shall only issue a permanent resident visa if the applicant "is not inadmissible and meets the requirements of this Act". These are conjunctive conditions (*Lhamo v Canada (Citizenship and Immigration)*, 2013 FC 692 (CanLII) at para 38).

[23] Indeed, the second criterion of "meeting the requirements of the Act" (ie. IRPA) is also found in paragraphs 70(1)(d) and (e) of the Regulations – which has to be read with paragraph 70(3) for a foreign national who intends to reside in the province of Quebec – and in paragraph 108(1)(a) of the Regulations:

70. (1) An officer shall issue a permanent resident visa to a foreign national if, following an examination, it is established that	70. (1) L'agent délivre un visa de résident permanent à l'étranger si, à l'issue d'un contrôle, les éléments suivants sont établis :
(a) the foreign national has applied in accordance with these Regulations for a permanent resident visa as a member of a class referred to in subsection (2);	a) l'étranger en a fait, conformément au présent règlement, la demande au titre d'une des catégories prévues au paragraphe (2);
(b) the foreign national is coming to Canada to establish permanent residence;	b) il vient au Canada pour s'y établir en permanence;
(c) the foreign national is a member of that class;	c) il appartient à la catégorie au titre de laquelle il a fait la demande;

(d) the foreign national meets the selection criteria and other requirements applicable to that class; and

d) il se conforme aux critères de sélection et autres exigences applicables à cette catégorie;

(e) the foreign national and their family members, whether accompanying or not, are not inadmissible.

e) ni lui ni les membres de sa famille, qu'ils l'accompagnent ou non, ne sont interdits de territoire.

[…]

[…]

(3) For the purposes of paragraph (1)(d), the selection criterion for a foreign national who intends to reside in the Province of Quebec as a permanent resident and is not a member of the family class is met by evidence that the competent authority of that Province is of the opinion that the foreign national complies with the provincial selection criteria.

(3) Pour l'application de l'alinéa (1)d), la sélection de l'étranger qui cherche à s'établir dans la province de Québec comme résident permanent et qui n'appartient pas à la catégorie du regroupement familial s'effectue sur preuve que les autorités compétentes de la province sont d'avis que l'intéressé répond aux critères de sélection de celle-ci.

[…]

[…]

108. (1) Subject to subsection (5), if a foreign national makes an application as a member of the investor class, the entrepreneur class or the self-employed persons class for a permanent resident visa, an officer shall issue the visa to the foreign national and their accompanying family members if

108. (1) Sous réserve du paragraphe (5), si l'étranger présente, au titre de la catégorie des investisseurs, de la catégorie des entrepreneurs ou de la catégorie des travailleurs autonomes, une demande de visa de résident permanent, l'agent lui en délivre un ainsi qu'à tout membre de sa famille qui l'accompagne si les conditions suivantes sont réunies :

(a) the foreign national and their family members, whether accompanying or not, are not

a) ni l'étranger ni aucun membre de sa famille ne sont interdits de territoire et tous

inadmissible and meet the requirements of the Act and these Regulations;	satisfont aux exigences de la Loi et du présent règlement;
[…]	[…]
[Emphasis added]	[Soulignements ajoutés]

[24] By analogy, the "intention to reside" criterion of subsection 88 of the Regulations is also found in the Provincial Nominee Class under paragraph 87(2)(b) of the Regulations, which provides that:

(2) A foreign national is a member of the provincial nominee class if	(2) Fait partie de la catégorie des candidats des provinces l'étranger qui satisfait aux critères suivants :
(a) subject to subsection (5), they are named in a nomination certificate issued by the government of a province under a provincial nomination agreement between that province and the Minister; and	(a) sous réserve du paragraphe (5), il est visé par un certificat de désignation délivré par le gouvernement provincial concerné conformément à l'accord concernant les candidats des provinces que la province en cause a conclu avec le ministre;
(b) they intend to reside in the province that has nominated them.	(b) il cherche à s'établir dans la province qui a délivré le certificat de désignation.

[25] Subsection 87(3) of the Regulations specifically grants federal officials the discretion to substitute their evaluation of an applicant's ability to become economically established in Canada, provided that they consult with the province that has nominated the individual, and that they have obtained the concurrence of a second officer (subsections 87(3) and 87(4)). Crucially, however, these requirements for consultation and concurrence apply specifically to the first

condition under subsection 87(2) only – namely, to considerations relating to the likelihood of the applicant's ability to become established in Canada, as per the criteria of the provincial nomination certificate at subsection 87(2)(a). An applicant's intention to reside in the province that has nominated him or her (subsection 87(2)(b)) is a separate requirement – one that is not subject to the requirements for consultation and concurrence, and which is additional to the issuance of a certificate of selection or a provincial nomination.

[26] In relation to the applicant's submission that Article 7.8 of OP 7b requires that an officer consult and confer when contemplating a refusal, I do not believe that this guideline is applicable under the circumstances, as it refers to applicants falling within the PNC as a class of skilled workers, rather than those who are selected by the province as investors. Finally, the requirement to consult regarding the definition of investors in section 3(b) of Annex D of the Canada-Quebec Accord relates to the definition of investors in the Quebec regulations, and is therefore not applicable in this case, as the Officer accepted that the applicant met the provincial requirements for the issuance of a CSQ.

[27] To summarize, under the IRPA, it is the federal government who has the final authority to grant permanent resident visas to foreign nationals. In this case, the Officer found that the applicant did not meet the admissibility criteria provided for under the Regulations and the IRPA, and thus denied his application according to subsection 90(2) of the Regulations. As a result, the Officer did not commit a reviewable error in refusing the applicant's application, in spite of the fact that the province of Quebec had issued a CSQ. Accordingly, the Officer did not have to find that the applicant was inadmissible, as per sections 33 to 43 of the IRPA, in order to

refuse his application for a permanent resident visa (*Qing v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1224 (CanLII) at para 7).

Did the Officer's failure to provide the applicant with a meaningful opportunity to respond to the concerns about his intent to reside in Quebec constitute a breach of procedural fairness?

[28] The Computer Assisted Immigration Processing System notes [CAIPS notes] from the in-person interview conducted with the applicant reveal the following:

> Asked p/a [applicant] why he decided to live in BC since 2009 if their intention is to settle in PQ, why not live in PQ to start with. Stated it isn't so much that they decided to live in BC, it's just that they decided to live there for 2 yrs only. […]
>
> Informed p/a that he indicated in his appln nil French language skills, his children have been attending BC schools because he wants to become fluent in English, the whole family have resided in BC since 2009, and that he owns properties in BC. Why would he then want to settle in PQ and not BC, when it would appear that he is already settled in BC.
>
> Informed p/a that I still have concerns about his intention to settle in PQ. […] Overall, most of what has transpired with him and his family in Canada, is actions, i.e. where they've live in Canada, bought properties in BC, bank accounts in BC, kids attending school in BC, very limited time spent in PQ, do not give any indication that he intends to settle in PQ. Gave p/a chance to respond to my concerns.

[29] The applicant submits that he should have been given a meaningful opportunity to respond to the Officer's concerns about his intention to reside in Quebec, including the opportunity to produce evidence to refute such concerns (*Khwaja v Canada (Citizenship and Immigration)* 2006 FC 522 at para 17). The applicant concedes that the Officer did indicate his concern during the interview about the applicant's intention to reside in Quebec, raising the

specific grounds of this concern (including the amount of time the applicant and his family had spent in Vancouver and the fact that the applicant had purchased properties in British Columbia, rather than Quebec). In response to these concerns, the applicant showed the Officer the unsigned finder's agreement with a business consulting firm in Montreal, whereby the applicant would retain the firm to identify target pharmaceutical companies available for purchase in Montreal. He also explained to the Officer at the interview that his wife had recently visited Montreal to look at properties, and had visited schools where they were considering enrolling their children. He stated that Mexico is not a safe place for his children, and that they would have the chance of a better life in another environment.

[30] However, the applicant states in his affidavit that the Officer only "briefly glanced" at the finder's agreement, and "refused to read it when he saw that it had not yet been signed." The applicant submits that the Officer should have weighed this agreement as a demonstration of his intention to reside in Quebec. Similarly, the applicant notes that the Officer clearly "refused to look at" and "refused to acknowledge" other pieces of evidence that he produced to counter the Officer's concerns, including plane tickets that showed travel to Montreal prior to the interview, email correspondences between the applicant's wife and admissions personnel at two Montreal schools, and email correspondences between the applicant's wife and a Montreal real estate agent. The applicant states that it was impossible for the Officer to have adequately taken cognizance of these documents because he refused to look at them or arbitrarily discarded them in his final analysis. Therefore, the applicant states that this disregard for the evidence constituted a breach of procedural fairness or otherwise rendered his decision unreasonable.

[31] On the other hand, the respondent submits that there has been no breach of procedural fairness and that there is no obligation on the part of the deciding officer to refer in his or her decision to all the evidence produced during an interview. Furthermore, the respondent notes that the Officer did indeed take note of the unsigned agreement and also explicitly mentioned the applicant's wife's visit to Montreal. Thus, even if the Officer did not specifically mention the email exchanges in his notes, he did take cognizance of these factors in his decision-making process. The respondent also points out that the applicant's wife's recent visit to Montreal to look at residential property and schools for the children was only undertaken prior to the in-person interview, and after the applicant had been made aware that such an interview would be necessary.

[32] I am satisfied that a reviewable error has been made by the Officer. While the Officer acknowledged the existence of the unsigned agreement, the CAIPS notes do not indicate what weight (if any) he accorded to this highly relevant and uncontradicted evidence. The Officer also made note of the applicant's wife's recent trip to Montreal (erroneously stating that the applicant had also accompanied her), but the CAIPS notes do not refer to any of the documentation presented as supporting evidence by the applicant pertaining to this trip, including the email correspondence with the admissions personnel and the real estate agent. Indeed, in his affidavit, the applicant notes that the Officer "refused to review any of these documents." As Justice Evans noted in *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* 1998 CanLII 8667 (FC) at para 17 [*Cepeda-Gutierrez*]:

> the more important the evidence that is not mentioned specifically and analyzed in the agency's reasons, the more willing a court may be to infer from the silence that the agency made an erroneous finding of fact "without regard to the evidence".

[33] Given the potential importance of this evidence to the Officer's finding of fact on the applicant's intention to reside in Quebec, and in the absence of reasons by the Officer indicating the probative value he accorded it, it would appear that the Officer rendered his decision without proper regard to the evidence, and thus committed a reviewable error. In addition, while I accept that a visa officer is under no obligation to refer to all the evidence produced during an interview, "a blanket statement that the agency has considered all the evidence will not suffice when the evidence omitted from any discussion in the reasons appears to squarely contradict the agency's finding of fact" (*Cepeda-Gutierrez*, above, at para 17). In this case, it appears that in spite of the explanations and corroborating evidence provided by the applicant to address the concerns raised in the interview, the Officer had already made up his mind regarding the applicant's intention to reside in Quebec. Moreover, the Officer appears to have arrived at this conclusion unreasonably, based on inferences drawn from his assessment of the applicant's degree of establishment in Vancouver, which should not – in and of itself, and in the face of evidence to the contrary – have been taken as determinative of the applicant's intentions.

[34] Finally, I find that a credibility issue was raised with respect to the suggestion by the respondent's counsel that the research into real estate and schools in Montreal was only undertaken in anticipation of the in-person interview. If the Officer suspected that the applicant's wife's recent trip to Montreal had only taken place because the applicant was aware of his upcoming interview, as the respondent implies before this Court, the Officer should have raised this concern and given the applicant an opportunity to respond during the interview, as this issue directly went to the applicant's credibility (*Moradi v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1186 (CanLII) at paras 17-18).

Conclusion

[35] For the foregoing reasons, I conclude that the Officer did not lack the jurisdiction to refuse the applicant's application, in light of the fact that he had already been selected as an investor in the Economic Immigration class destined to the Province of Quebec and had not been found inadmissible. I also conclude that the Officer did not have a duty to consult the province of Quebec or to obtain a concurring decision from a different officer prior to refusing the applicant's permanent residency application. I do find, however, that the Officer breached procedural fairness or ignored relevant evidence, or otherwise failed to provide the applicant with a meaningful opportunity during his in-person interview to respond to the credibility concerns he may have had with respect to the evidence related to the travel to Montreal prior to the interview and the documentary evidence in this regard.

[36] The parties have both proposed questions of law for certification but it is not necessary to certify these questions as none would be determinative of an appeal made in this case by the respondent.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is allowed. The impugned decision made by the Officer is set aside. The matter is returned to another visa officer for redetermination. No question is certified.

"Luc Martineau"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1155-15
STYLE OF CAUSE:	ARTURO RANSANZ v THE MINISTER PUBLIC SAFETY AND EMERGENCY PREPAREDNESS
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	SEPTEMBER 10, 2015
REASONS FOR JUDGMENT AND JUDGMENT:	MARTINEAU J.
DATED:	SEPTEMBER 23, 2015

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