Federal Court Cour fédérale

**Date: 20180409**

**Docket: IMM-4044-17**

**Citation: 2018 FC 383**

**Ottawa, Ontario, April 9, 2018**

**PRESENT: The Honourable Madam Justice Strickland**

**BETWEEN:**

**TAHIRA YASMIN**
**MIAN MUZAFFAR ALI JAVED**
**MUHAMMAD USAMA**
**MUHAMMAD FARHAN**
**MARYAN JAVED**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## JUDGMENT AND REASONS

[1] The Applicant, Tahira Yasmin, seeks judicial review of the August 17, 2017 decision of a visa officer ("Officer") of the High Commission of Canada, in London, which pursuant to s 87(3) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227

(“IRP Regulations”), refused her application for permanent residence in Canada as a member of the provincial nominee class.

[2] For the reasons that follow, this application is dismissed.

**Background**

[3] The Applicant is a citizen of Pakistan. She applied for permanent residence in Canada under the Saskatchewan Immigrant Nominee Program (“SINP”). The province approved her application on April 21, 2015. The High Commission in London then reviewed her application for permanent residency, which included her International English Language Testing System (“IELTS”) results. The reviewing Officer was concerned that the Applicant’s demonstrated English language proficiency was not sufficient to enable her to become economically established in Canada.

[4] Accordingly, on December 23, 2015, the Applicant was sent a procedural fairness letter. This indicated, notwithstanding the Applicant’s nomination by the province of Saskatchewan, that the Officer was not satisfied that the information provided with her permanent residence application established that she had the ability to become economically established in Canada or that she otherwise met the definition of a provincial nominee pursuant to s 87 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (“IRPA”). As to her English language proficiency, her IELTS scores had an overall band of 4.0 which was described by IELTS as “Limited user: basic competence is limited to familiar situations. Has frequent problems in understanding and expression. Is not able to use complex language”. Her individual band scores were: listening 4.0,

writing 4.5, speaking 4.5, which were also in the limited user range. Her reading score of 3.5 was described by IELTS as “Extremely limited user: conveys and understands only general meaning in very familiar situations. Frequent breakdowns in communication occur”. The letter stated that the ability to effectively communicate in one of Canada’s official languages is recognized as a vitally important factor in becoming economically established. Further, that the Saskatchewan government website confirmed that English is spoken everywhere in that province and that an immigrant’s chances of success improve greatly if they can understand and speak English and, to do most jobs well, a minimum of Canadian Language Benchmark (“CLB”) 4 was recommended. The Officer noted that this equates to an IELTS score of listening 4.5, reading 3.5, writing 4.0, and speaking 4.0 and would be considered the most basic level of English language proficiency. While the Applicant’s test scores were at or a little above the minimum recommended level in 3 out of 4 test areas, her score in listening was below the recommended minimum level.

[5] The Officer also stated that the SINP has stated that nominees must have the English language ability either to do the job they have been offered or to get a job in their field of training or education. While the Applicant’s representative indicated that she may have a job offer from a Saskatchewan employer, no evidence of this had been provided. The Applicant had been nominated in the occupation of office administration, which was the occupation she indicated that she intended to pursue in Canada. She had also indicated previous employment experience as a teacher. The Officer stated that the Employment and Social Development Canada (“ESDC”) Job Bank site identified oral communication, reading, document use, and writing as essential skills to perform work as office clerks and teachers. ESDC described the

level of complexity for these tasks to range from 1 (basic) to 5 (advanced) and for office clerks, tasks range from level 1 to 3 and even 4 in some instances. While ESDC had not developed essential skills profiles for office administrators, the Officer assessed the complexity of tasks by comparison with office clerks. The Officer concluded that while ESDC essential skills profiles complexity levels do not correlate precisely to specific IELTS scores, it appeared reasonable to expect that to be able to perform the tasks typical of work as an office clerk or office administrator would require at least a moderate to high level of English language proficiency. Further, to perform the tasks of a teacher would require high English language proficiency.

[6] The Officer stated that he or she was not satisfied that the Applicant would be able to perform the tasks of her intended occupation as an office administrator or as a teacher or that she would be able to become employed in Canada or, if she found employment, that it would be of a sufficient level for her to become economically established. And while her nomination indicated that she might have the support of family members in Saskatchewan, support and reliance on other people would not be considered economic establishment and would not be sufficient to outweigh the concerns about her low level of English language ability and her lack of recognized qualifications as a teacher.

[7] The Applicant made extensive submissions in response to the procedural fairness letter. These included updated IELTS test results as well as a job offer as an administrative officer with Entech Plus Ltd and a support statement from that prospective employer, a job offer as a cashier with Farah Enterprises also with a support statement from that prospective employer, financial documents, and other supporting letters from family. The more recent IELTS scores achieved an

overall band score of 5.0, with listening 6.5, reading 5.0, writing 4.0, and speaking 4.0. These scores showed an increase in listening and reading, but decreases in writing and speaking, with an overall score to increase of 1 point.

[8] The province also responded to the procedural fairness letter and continued to support the Applicant's nomination.

**Decision Under Review**

[9] The Officer stated that he or she had completed assessing the Applicant's application for a permanent residence visa as a member of the provincial nominee class and determined that the Applicant did not meet the requirements for immigration to Canada in that class.

[10] Pursuant to s 87(3) of the IRP Regulations, where the fact that a foreign national is named in a certificate as a provincial nominee is not a sufficient indicator of their ability to become economically established in Canada, and where the officer has consulted the government that issued the certificate, the officer may evaluate the likelihood of an applicant's ability to become economically established and substitute his or her own evaluation.

[11] The Officer found the certificate issued by the province of Saskatchewan was not a sufficient indicator of the Applicant becoming economically established because she did not have the language skills to do so. Further, the Applicant's submissions in response to the procedural fairness letter had not overcome the concerns that the Officer had identified regarding her likelihood of becoming economically established in Canada. The Officer added that the

Saskatchewan government had been consulted and that a second officer had concurred in the evaluation.

**Issues and Standard of review**

[12] The issues raised by the Applicant can be framed as follows:

1. Did the Officer breach the duty of procedural fairness by failing to put his or her concerns regarding Low Income Cut-Offs ("LICO") to the Applicant and providing her with an opportunity to respond?
2. Was the Officer's assessment of the Applicant's ability to become economically established in Canada reasonable?

[13] The standard of review of correctness governs procedural fairness issues (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43; *Begum v Canada (Citizenship and Immigration)*, 2013 FC 824 at paras 19-20; *Noh v Canada (Citizenship and Immigration)*, 2012 FC 529 at para 20) while the reasonableness standard governs the Officer's decision relating to permanent residence under the provincial nominee program (*Chaudhry v Canada (Citizenship and Immigration)*, 2015 FC 1072 at para 14 ("*Chaudhry*"); *Sran v Canada (Citizenship and Immigration)*, 2012 FC 791 at para 9 ("*Sran*"); *Shaukat v Canada (Citizenship and Immigration)*, 2015 FC 1120 at para 11).

**IRP Regulations**

[14] Section 87 of the IRP Regulations reads as follows:

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| 87 (1) For the purposes of subsection 12(2) of the Act, the provincial nominee class is | 87 (1) Pour l'application du paragraphe 12(2) de la Loi, la catégorie des candidats des |

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| hereby prescribed as a class of persons who may become permanent residents on the basis of their ability to become economically established in Canada. | provinces est une catégorie réglementaire de personnes qui peuvent devenir résidents permanents du fait de leur capacité à réussir leur établissement économique au Canada. |
| (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. |
| (3) If the fact that the foreign national is named in a certificate referred to in paragraph (2)(a) is not a sufficient indicator of whether they may become economically established in Canada and an officer has consulted the government that issued the certificate, the officer may substitute for the criteria set out in subsection (2) their evaluation of the likelihood of the ability of the foreign national to become economically established in Canada. | (3) Si le fait que l'étranger est visé par le certificat de désignation mentionné à l'alinéa (2)a) n'est pas un indicateur suffisant de l'aptitude à réussir son établissement économique au Canada, l'agent peut, après consultation auprès du gouvernement qui a délivré le certificat, substituer son appréciation aux critères prévus au paragraphe (2). |
| (4) An evaluation made under subsection (3) requires the | (4) Toute décision de l'agent au titre du paragraphe (3) doit |

| concurrence of a second officer. | être confirmée par un autre agent. |
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**Issue 1: Did the Officer breach the duty of procedural fairness by failing to put his or her concerns regarding LICO to the Applicant and providing her with an opportunity to respond?**

*Applicant's Position*

[15] The Applicant points out that the Global Case Management System notes ("GCMS Notes") include that the job offered to the Applicant by her nephew would pay her an annual salary of $45,600, which may be considered insufficient for support of a family of five people, considering that Statistics Canada indicates the LICO for a family of five in 2016 would be $51,272. The annual salary for her other job offer as a cashier was only $24,440. The Officer stated that even if the Applicant could perform it, low skilled employment did not appear to be a viable path to economic establishment. The Applicant submits that the Officer breached the duty of fairness by failing to give the Applicant notice that the Officer was relying on the LICO to determine that the jobs offered to her were not a viable path to economic establishment and allowing her a meaningful opportunity to respond. Notice was required as the concern did not arise directly from the requirements of the legislation, the IRPA or IRP Regulations as pertaining to provincial nominees (*Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283 ("*Hassani*")). Nor did the Officer identify the LICO as a concern in the procedural fairness letter. According to the Applicant, the Officer refused her application based on his or her finding that economic establishment requires that an applicant establish that they will earn an income in Canada equivalent to the LICO.

[16] Further, the Officer's substitution of his or her evaluation under s 87 attracts a higher degree of procedural fairness (*Sadeghi v Canada (Citizenship and Immigration)*, [2000] FCJ No 675 (FCA) ("*Sadeghi*")). And, because the Officer relied on extrinsic evidence, the LICO, procedural fairness also required the Officer to disclose that evidence prior to making the decision.

*Respondent's Position*

[17] The Respondent submits that a review of the Officer's reasons demonstrates that the Officer did not rely on the LICO as a threshold the Applicant had to meet in order to show she could become economically established. Rather, the LICO merely provided context for the Officer's consideration of the Applicant's prospective income in Canada and whether this income would permit her to become economically established given her family's size. As such, the LICO reference did not require notice to the Applicant. Further, the determination of economic establishment is within the Officer's expertise. Therefore, it was reasonable for the Officer to consider the Applicant's evidence concerning her potential future income when considering whether she would likely be able to support her family in Canada. In any event, the determinative factor in the Officer's decision is the Applicant's language ability, not prospective income. The refusal letter and GCMS Notes clearly demonstrate that the Officer refused the application because the Applicant had failed to satisfy the Officer that she had sufficient language skills to become economically established in Canada.

*Analysis*

[18] I would first note that while the Applicant relies on *Sadeghi* to suggest that a decision made pursuant to s 87 of the IRP Regulations attracts a high level of procedural fairness, more recent case law has made it clear that the duty of procedural fairness owed by a visa officer to persons applying for permeant residence is at the lower end of the spectrum (*Asl v Canada (Citizenship and Immigration),* 2016 FC 1006 at para 23, citing *Hamza v Canada (Citizenship and Immigration),* 2013 FC 264 at para 23; *Farooq v Canada (Citizenship and Immigration)*, 2013 FC 164 at para 10, citing *Canada (Minister of Citizenship and Immigration) v Khan,* 2001 FCA 345 at paras 30-32; *Rani v Canada (Citizenship and Immigration)*, 2015 FC 1414 at para 18).

[19] Nor do I agree with the Applicant that the Officer breached the duty of procedural fairness. It is apparent from the GCMS Notes, the procedural fairness letter and the refusal letter that the Officer's main concern, and the determinative factor in his or her decision, was whether the Applicant's English language proficiency was sufficient to allow her to become economically established in Canada. The GCMS Notes indicate this as a concern in the initial assessment of her application. This resulted in the issuance of the procedural fairness letter which clearly indicated the concern with her English language proficiency and provided the Applicant with an opportunity to respond to it, which she did. The subsequent GCMS Notes address her submissions in response to the procedural fairness letter, they are lengthy and primarily concerned with her English language capacity. Of this, three sentences, described above, pertain to the LICO. This is framed as a comment additional to the language concerns and concludes

that even if the Applicant were capable of performing the low-skill cashier position, given that it paid only $24,440 annually and the Applicant was supporting a family of five, it was not a viable path to economic establishment. The notes then resume with the Officer's further assessment.

[20] As the Applicant submits, the LICO is not a mandated criteria pertaining to the provincial nominee class. However, in my view, the Officer did not reference it as a minimum requirement or income threshold that the Applicant was required to meet and, as noted above, the brief reference to it does not suggest that the Officer relied on the LICO as the basis of his or her decision (*Singh v Canada (Citizenship and Immigration)*, 2017 FC 808 at para 21). I agree with the Respondent that this was a contextual reference regarding the Applicant's potential income in Canada and whether this would allow her to become economically established. In my view, the Officer's use of the LICO speaks to the reasonableness of the decision, rather than to procedural fairness. The Officer did not rely on the LICO, as extrinsic evidence or otherwise, in reaching his or her decision.

[21] Given this, notice to the Applicant of the Officer's reference to the LICO was not required. And, in any event, as to the Applicant's reliance on *Hassani*, that decision held that where a concern arises directly from the requirements of the legislation or related regulations a visa officer will not be under a duty to provide an opportunity for the applicant to address his or her concerns. However, where the issue is not one that arises in that context, such a duty may arise when the "credibility, accuracy or genuine nature of the information submitted by the applicant" is the basis for the officer's concern (*Hassani* at para 24; see also *Kong v Canada (Citizenship and Immigration)*, 2017 FC 1183 at paras 24-25). In other words, the duty of

fairness triggers when the officer questions the veracity or accuracy of the applicant's submitted materials. This is not such a circumstance.

**Issue 2: Was the Officer's assessment of the Applicant's ability to become economically established in Canada reasonable?**

*Applicant's Position*

[22] The Applicant submits that the Officer's decision was made without regard to the evidence and is unreasonable. Specifically, the Officer dismissed all the evidence she provided concerning her ability to become economically established as irrelevant, including her personal savings, her husband's ability to gain prospective employment, the province's assessment of her ability to become established, and her prospective employer's assessment of whether her language skills are sufficient to perform the duties of the job offered to her. Instead, the Officer unreasonably found that the Applicant cannot become economically established because her application did not disclose a viable path to economic establishment and because her language skills are insufficient to perform the duties of the jobs offered to her.

[23] Regarding the finding on lack of viable path to economic establishment, the Applicant submits that the Officer erred by refusing to give any weight to the Applicant's evidence of how her family and finances will assist her in becoming economically established on the basis that this evidence is irrelevant. While the prime focus is on the Applicant, other matters should be taken into account to demonstrate economic establishment, including the accompanying spouse and dependent children. It was also an error to fail to consider the Applicant's settlement funds when determining whether she can become economically established. The Officer's ignoring of

this information is particularly egregious as the Applicant's prospective income, along with her husband's prospective job offer, would exceed the LICO threshold the Officer relied upon. The Officer erred by failing to give any weight to the Applicant's evidence or to explain why he or she refused to do so. Moreover, using the LICO to measure a viable path to economic establishment lacks transparency as this is not a measurement of whether a family will be able to support itself.

[24] The Officer's finding that the Applicant lacks the language skills to work in the jobs offered is also unreasonable. The Officer acknowledged that the Applicant may be able to perform some of the tasks of the jobs, but then appears to find that she could not perform either job because a Canadian workplace would not be "familiar" to her. The Officer does not say where in the CLB the words "familiar", "non-demanding", or "common and predictable contexts" appear, but these terms are found in the CLB's description of the first two of the three stages into which the benchmarks are divided. The Officer is effectively saying that anyone immigrating to Canada without prior work experience in Canada would need at least a CLB 5 to work in Canada. While the Officer notes that those with a Stage I ability will be unable to work in unfamiliar environments, the practical effect of this reasoning is that Stage I and II (benchmarks 5-8) users will also be unable to work in Canada. Only under Stage III (benchmarks 9-12) does the user's competency fully encompass unfamiliar contexts, the result being the only way an applicant without Canadian work experience can be sure to satisfy the Officer's language test is by obtaining a CLB 9 and up. This language threshold is unreasonable as it is out of keeping with other thresholds set by the IRP Regulations for other economic classes. The Officer's reasoning "directly says" a CLB 5 will be necessary for those without

Canadian work experience to work in the jobs offered to the Applicant or other occupations in Canada.

[25] Further, the justification provided by the Officer for finding the Applicant's English skills insufficient was without basis.

*Respondent's Position*

[26] The Respondent submits the Officer reasonably concluded the Applicant's language proficiency was not sufficient to become economically established given her IELTS scores. The Officer found these scores indicated her language ability would be inadequate to perform the tasks of an administrative officer or a cashier. In particular, the Officer noted the difficulty the Applicant would face in performing the duties associated with being a secretary, which is analogous to an administrative officer, with the ability to write at only the basic level. Moreover, the Applicant's job offer was not sufficient to demonstrate she could become economically established in Canada, the Applicant must be able to demonstrate she is capable of performing the job offered and in this case she failed to do so given her language skills.

[27] The Respondent submits that the Officer did not impose a language requirement on the Applicant that is consistent with a CLB 9. A fair reading of the decision as a whole shows that the Officer simply found the Applicant's IELTS score was not sufficient to carry out the tasks required for the jobs offered. The Officer considered at length the Applicant's language ability in terms of the CLB description of her abilities based on the her IELTS scores. Further, the Officer reasonably found a CLB 4, or basic ability, in speaking and writing was not indicative of

an ability to successfully carry out the tasks involved in the jobs of an administrative officer or cashier. Moreover, it was reasonable for the Officer to use the language in the CLB description for stages I to IV when providing reasons as to why the Applicant's language skills were insufficient. The Officer's use of this language simply indicates he or she found the Applicant's prospective employment to be beyond that of Stage 1 Basic ability in speaking and writing as set out in the CLB.

[28] Nor did the Officer fail to consider submissions from the Applicant's prospective employers regarding accommodating her language ability. Rather, the Officer simply did not find this evidence to be sufficient to show the Applicant would likely become economically established given her modest language skills. It was open to the Officer to weigh the results of her language testing against the submissions of prospective employers. Further, the Officer did consider the Applicant's evidence of her finances, her spouse's employability, and family support in Canada. Her submissions on this point amount to a complaint about how the Officer weighed the evidence.

*Analysis*

[29] The Applicant relies on *Choi v Canada (Citizenship and Immigration)*, 2008 FC 577 ("*Choi*"), to support the argument that the Officer erred in failing to consider her settlement funds when considering her ability to become economically established in Canada. *Choi* considered whether the officer in that case erred in concluding that the points awarded pursuant to s 76 of the IRP Regulations were a sufficient indicator of the applicant's ability to become economically established in Canada. The Court held that it was unreasonable, in refusing to

exercise the officer's discretion to substitute his evaluation for the points assessment, not to give a letter from the applicant's proposed employer, confirming that the applicant would be able to fulfil the requirements of the job offered to her and that her English ability would soon rise to the requirements of the job, some weight as a sufficient indicator of the applicant's ability to perform the job. It was also unreasonable to fail to consider the applicant's settlement funds.

[30] That decision pertained to s 76(3) of a prior version of the IRP Regulations which addresses the selection criteria for the skilled worker class. This stated that:

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| 76 (1) For the purpose of determining whether a skilled worker, as a member of the federal skilled worker class, will be able to become economically established in Canada, they must be assessed on the basis of the following criteria: | 76 (1) Les critères ci-après indiquent que le travailleur qualifié peut réussir son établissement économique au Canada à titre de membre de la catégorie des travailleurs qualifiés (fédéral) : |
| (a) the skilled worker must be awarded not less than the minimum number of required points referred to in subsection (2) on the basis of the following factors, namely, | a) le travailleur qualifié accumule le nombre minimum de points visé au paragraphe (2), au titre des facteurs suivants : |
| (i) education, in accordance with section 78, | (i) les études, aux termes de l'article 78, |
| (ii) proficiency in the official languages of Canada, in accordance with section 79, | (ii) la compétence dans les langues officielles du Canada, aux termes de l'article 79, |
| (iii) experience, in accordance with section 80, | (iii) l'expérience, aux termes de l'article 80, |
| (iv) age, in accordance with section 81, | (iv) l'âge, aux termes de l'article 81, |
| (v) arranged employment, in | (v) l'exercice d'un emploi réservé, aux termes de l'article |

accordance with section 82, and

(vi) adaptability, in accordance with section 83; and

(b) the skilled worker must

(i) have in the form of transferable and available funds, unencumbered by debts or other obligations, an amount equal to half the minimum necessary income applicable in respect of the group of persons consisting of the skilled worker and their family members, or

(ii) be awarded the number of points referred to in subsection 82(2) for arranged employment in Canada within the meaning of subsection 82(1).

(2) The Minister shall fix and make available to the public the minimum number of points required of a skilled worker, on the basis of

(a) the number of applications by skilled workers as members of the federal skilled worker class currently being processed;

(b) the number of skilled workers projected to become permanent residents according to the report to Parliament referred to in section 94 of the Act; and

(c) the potential, taking into account economic and other relevant factors, for the

82,

(vi) la capacité d’adaptation, aux termes de l’article 83;

b) le travailleur qualifié :

(i) soit dispose de fonds transférables — non grevés de dettes ou d’autres obligations financières — d’un montant égal à la moitié du revenu vital minimum qui lui permettrait de subvenir à ses propres besoins et à ceux des membres de sa famille,

(ii) soit s’est vu attribuer le nombre de points prévu au paragraphe 82(2) pour un emploi réservé au Canada au sens du paragraphe 82(1).

(2) Le ministre établit le nombre minimum de points que doit obtenir le travailleur qualifié en se fondant sur les éléments ci-après et en informe le public :

a) le nombre de demandes, au titre de la catégorie des travailleurs qualifiés (fédéral), déjà en cours de traitement;

b) le nombre de travailleurs qualifiés qui devraient devenir résidents permanents selon le rapport présenté au Parlement conformément à l’article 94 de la Loi;

c) les perspectives d’établissement des travailleurs qualifiés au Canada, compte

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| establishment of skilled workers in Canada. | tenu des facteurs économiques et autres facteurs pertinents. |
| (3) Whether or not the skilled worker has been awarded the minimum number of required points referred to in subsection (2), an officer may substitute for the criteria set out in paragraph (1)(a) their evaluation of the likelihood of the ability of the skilled worker to become economically established in Canada if the number of points awarded is not a sufficient indicator of whether the skilled worker may become economically established in Canada. | (3) Si le nombre de points obtenu par un travailleur qualifié — que celui-ci obtienne ou non le nombre minimum de points visé au paragraphe (2) — ne reflète pas l'aptitude de ce travailleur qualifié à réussir son établissement économique au Canada, l'agent peut substituer son appréciation aux critères prévus à l'alinéa (1)a). |
| (4) An evaluation made under subsection (3) requires the concurrence of a second officer. | (4) Toute décision de l'agent au titre du paragraphe (3) doit être confirmée par un autre agent. |

[31] This Court held that the intent of s 76 is to allow the officer to substitute his or her evaluation taking into account a number of factors, not just those listed in s 76(1)(a), and that any consideration under s 76(3) should not be limited to the assessment of points but should be open to all of the factors identified in s 76(1), including settlement funds. However, that there was no evidence that the visa officer considered those funds in refusing to exercise his discretion to substitute his evaluation.

[32] The Applicant also relies on *Abro v Canada (Citizenship and Immigration)*, 2009 FC 1258 ("*Abro*"). This again concerned s 76(3) of the IRP Regulations and whether the officer failed to consider a number of factors in deciding against substituting her evaluation for the

points assessed. The Court found the refusal to be unreasonable because the officer had evidence of an approved positive arranged employment opinion and that the applicant had $450,000 to bring to Canada to become established by selling her home, but the Officer made no reference to this.

[33] Section 87 of the IRP Regulations, the provincial nominee class, does not set out criteria as does s 76(1)(a). Rather, a foreign national is a member of the provincial nominee class when 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, they intend to reside in the province that has nominated them. However, if the fact that the foreign national is named in a certificate is not a sufficient indicator of whether they may become economically established in Canada, and an officer has consulted the government that issued the certificate, the officer may substitute for the criteria (certificate of nomination and intent to reside in the subject province) their evaluation of the likelihood of the ability of the foreign national to become economically established in Canada.

[34] Here, unlike *Choi* and *Abro*, the Officer did exercise his or her discretion in that regard and the Applicant does not challenge that aspect of the decision.

[35] Nor did the Officer ignore the Applicant’s evidence as to her financial resources as was the circumstance in those cases. The Applicant submitted documents which suggested she held property and jewelry valued at approximately $500,000. The Officer stated that her finances were noted but were relevant only to a determination of whether she may or may not be

admissible for financial reasons. They did not demonstrate that an applicant has the ability to become economically established. Similarly, while the pledges of settlement support offered to the Applicant by her family members in Canada, as well as the potential of her spouse to become employed may demonstrate some of the family members' capacities, it did not demonstrate that the Applicant has the ability to become economically established, which applied to the Applicant only, and not her dependants.

[36] The Officer distinguished between settlement and economic establishment, and found that these were not interchangeable terms. An immigrant, such as someone in the family class, with the sort of support indicated to be available to the Applicant's family, may settle successfully in Canada without becoming economically established. However, and as clearly stated in the procedural fairness letter, the provincial nominee class is an economic class. Settlement assistance which may be offered to the Applicant does not signify that she has the ability to become economically established.

[37] I note that it is clear from Operational Bulletin 499 that the ability to become economically established applies to the individual making the application for permanent residence in the provincial nominee class and that each such applicant must be assessed on the merits of their own ability to economically establish. The Bulletin states that an economic applicant relying exclusively on the financial guarantee of their relative residing in the province raises concerns that the applicant is not able to economically establish without such assistance. It goes on to note that in cases where the visa officer is not satisfied that the issuance of a nomination certificate is a sufficient indicator of an applicant's ability to become economically

established in Canada, the officer may wish to examine certain factors as part of the overall assessment in determining an applicant's ability to economically establish. These factors may include, but are not limited to, current job or job offer, language ability, work experience, education and training. The weight afforded to these indicia of the ability to economically establish may vary on a case by case basis.

[38] While I am not convinced as to the soundness of the Officer's view that financial resources can only be considered as relevant in the context of settlement and not as a favourable factor in assessing the ability to become economically established, ultimately the Officer concluded that the Applicant's response to the procedural fairness letter did not overcome his or her concerns set out therein, which pertain to her English language ability (see *Chaudhry* at para 38). Further, the Officer did consider and did not disregard as irrelevant the job offer from her nephew as an office administrator and her nephew's statement as to why his aunt was ideal for the job and that her English skills are strong and sufficient for the job; family letters of support; an alternate job offer as a cashier and a supporting statement from the potential employer that the Applicant was referred to him by her niece, a former employee, and that he was confident that the Applicant had all of the right skills to work as a retail clerk; and, the job offer to her spouse. The Officer weighed this against his or her finding that the Applicant did not establish that she had the English language ability sufficient to perform the tasks of the jobs she had been offered so as to become economically established (*Parveen v Canada (Citizenship and Immigration)*, 2015 FC 473 at para 27 ("*Parveen*")).

[39] As stated in *Yasmin v Canada (Citizenship and Immigration)*, 2015 FC 1346 at paras 22-26, it is reasonable to require that an applicant be able to demonstrate that she is capable of performing the job offered, which includes communication and related language skills to perform in the position. A potential employer's representation of the future successful outcome of someone in the position offered does not outweigh an objective reasonable conclusion that an applicant who cannot perform the tasks of the position offered is not able to participate sufficiently in the Canadian labour market to economically support herself. Further, the fact that one factor, such as language ability, is singled out for particular emphasis does not mean that all other material factors were not considered in the weighing process (*Ijaz v Canada (Citizenship and Immigration)*, 2014 FC 920 at para 59 ("*Ijaz*")), nor is it the role of this Court to reweigh the evidence (*Sran* at para 21).

[40] I also do not agree with the Applicant's submission that the Officer effectively raised the required language requirements or imposed a requirement of Canadian work experience. The Officer set out in the GCMS Notes the overall description of benchmarks 1-4 (Stage I Basic) and for benchmarks 5-8 (Stage II Intermediate). The Officer noted the Applicant's most recent scores were CLB 4 for speaking and writing, CLB 6 for reading and CLB 7 for listening. The Officer stated that the Applicant's demonstrated level of English language proficiency may appear sufficient for some of the tasks of her nominated occupation, administrative officer, as well as those of a secretary, the occupation her representative described as most closely matching the tasks required of the job offer as an officer administrator. Further, that the Applicant's English may also be sufficient to perform some of the tasks of a cashier, the other occupation for

which she had received a job offer. But the Officer had concerns about the practical application of the Applicant's language skills:

> However, the context of performing the tasks of these or other occupations in Canada, where it appears reasonable to assume that English is used more widely and at a higher level that PA wld have been accustomed to in Pakistan, may not be described as "familiar" or "non-demanding" or "common and predictable contexts" for PA such that her demonstrated level of English lang proficiency wld enable her to successfully carry out the tasks of the jobs she has been offered. Although PA's listening skills in English have been demonstrated to be moderate, her other English skills are considerably lower & it does not appear clear whether one could perform the work of a secretary in Cda w/the ability to write only at a basic level…notwithstanding the submissions of the prospective employers & PA's rep & family members, it remains unclear whether PA's English wld be sufficient to perform the tasks of the job she has been offered"

[41] The Officer's references to familiar or non-demanding or common and predictable contexts are found in the overall description of benchmarks 1-4 (Stage I Basic) which the Officer quoted as "spans the range of abilities required to communicate in common and predictable situations about basic needs, routine everyday activities, and familiar topics of immediate personal relevance (non-demanding contexts of language use)" and elsewhere in the quoted benchmark descriptions. I do not interpret the Officer's statement that, in the context of performing the occupational tasks in Canada where English is used more widely and at a higher level than the Applicant would have been accustomed to in Pakistan, as imposing a requirement of English language Canadian work experience. Rather, although perhaps poorly phrased, the Officer is indicating that the circumstances that the Applicant would be faced with in performing those tasks in those occupations in Canada would not be circumstances that would be familiar and predictable to her and, therefore, would exceed her language abilities.

[42] I also agree with the Respondent that the Officer did not impose a set language threshold for members of the provincial nominee class and that there was no obligation for the Officer to consider language thresholds for different immigration streams with different underlying policy purposes.

[43] While the Applicant's overall CLB exceeded the CLB 4 minimum requirement of Saskatchewan for provincial nominees, scoring in excess of the minimum does not, in and of itself, establish that an applicant will become economically established (*Noreen v Canada (Citizenship and Immigration)*, 2013 FC 1169 at para 10). Further, an officer is not bound by established minimum language requirements when determining potential economic establishment, meeting minimum language requirements is not determinative of economic establishment (*Parveen* at para 19). This Court has also held that it is also reasonable for officers to conclude that positions such as cashiers would require good language skills to communicate with customers (*Ijaz* at para 62).

[44] While I might have found differently, the Officer's reasons are sufficient to permit me to understand how he or she reached his or her conclusion which falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law.

**JUDGMENT IN IMM-4044-17**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is dismissed.

2. There shall be no order as to costs.

3. No question of general importance for certification was proposed or arises.

"Cecily Y. Strickland"

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-4044-17 |
| **STYLE OF CAUSE:** | TAHIRA YASMIN ET AL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | MARCH 27, 2018 |
| **JUDGMENT AND REASONS:** | STRICKLAND J. |
| **DATED:** | APRIL 9, 2018 |

**APPEARANCES:**

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|---|---|
| Aisling Bondy | FOR THE APPLICANTS |
| Amy King | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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| Attorney General of Canada<br>Toronto, Ontario | FOR THE RESPONDENT |