Federal Court  Cour fédérale

Date: 20180501

Docket: IMM-4095-17

Citation: 2018 FC 469

Ottawa, Ontario, May 1, 2018

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

ABIDA NISREEN
IFTIKHAR AHMAD BHATTI
MUHAMMAD SAFFI ULLAH NAWAZ
NIRMAL ZAHRA
FOUZ ROOMAN ZAHRA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] This is an application under s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act], for judicial review of the decision of a visa officer [Officer] in the High Commission of Canada, dated August 17, 2017 [Decision], which refused Ms. Abida Nisreen's

[Principal Applicant] application for permanent residence as a member of the provincial nominee class.

II. BACKGROUND

[2] The Principal Applicant is a citizen of Pakistan who was nominated for permanent residence as a member of the provincial nominee class by the Province of Saskatchewan [Saskatchewan]. The other Applicants are her husband and three children.

[3] Based on Saskatchewan's nomination, the Principal Applicant applied to Immigration, Refugees and Citizenship Canada [IRCC] for permanent residence. In the nomination letter from Saskatchewan, the Principal Applicant was nominated under occupational code 4142 (Elementary School and Kindergarten Teachers) in the National Occupation Classification [NOC]. In her application, the Principal Applicant listed her intended occupation as "Any entry level job (Teaching/Sewing/Beautician)" but only listed experience as a school assistant administrative officer and teacher. Also included in the application were the Principal Applicant's International English Language Testing System [IELTS] results. Her overall score was 4.5 and her lowest score was 3.5 in reading.

[4] To address concerns that the Principal Applicant's English language ability would not allow her to perform the occupation she was nominated for, the Officer sent the Principal Applicant a fairness letter by email. The letter explained that while her IELTS scores "were at or a little above the minimum recommended level" they could still be described as basic. The Officer reasoned that, based on the information on Employment and Social

Development Canada's Job Bank, it would be reasonable to expect that a high level of English language proficiency would be required as a teacher. He also noted that the Principal Applicant did not appear to have the language proficiency necessary to obtain teaching certification in Saskatchewan or to successfully complete additional training. The Officer also thought that it would be reasonable to expect that work as an administrative assistant, beauty treatment operator or sewing machine operator would require a moderate level of English proficiency.

[5] In addition to language concerns, the Officer's letter also informed the Principal Applicant that she had not provided evidence of a job offer in Saskatchewan or specified the occupation she intended to pursue in Canada. Since the Principal Applicant only listed experience as an assistant administrative officer and a teacher, the Officer was not satisfied that the Principal Applicant had the standard of skill in either sewing or beauty treatments that Canadian employers would require. The Officer also expressed a concern that, even if the Principal Applicant were to find employment, it would not be sufficient to allow her to become economically established.

[6] The Principal Applicant responded to the Officer's letter in three sets of submissions over the course of approximately nine and a half months. Her final submission provided a copy of a letter offering her employment as a cleaner in Saskatoon along with a letter from the proposed employer confirming that he had spoken with the Principal Applicant and was satisfied with her English skills. The Principal Applicant had previously indicated that she could establish herself as a self-employed sewing machine operator, a beautician or an early childhood educator [ECE] assistant, but her final submission to the Officer suggested that the job offer provided further

evidence of her ability to find work in Saskatchewan. Her responses to the fairness letter also included letters from family she had in Saskatchewan explaining how they would support the Principal Applicant's family in becoming established, as well as evidence of assets the family would be bringing to Canada.

III. DECISION UNDER REVIEW

[7] The Officer reviewed the Principal Applicant's responses to the fairness letter but determined that she did not meet the requirements of the provincial nominee class.

[8] The letter informing the Principal Applicant of the Decision states that Saskatchewan's nomination is not a sufficient indicator that she is likely to become economically established in Canada because the Officer was not satisfied that the Principal Applicant has satisfactory language skills. In addition to noting that he consulted with the government of Saskatchewan, the letter also states that the Principal Applicant's responses to the fairness letter did not satisfy him that she was likely to become economically established.

[9] Notes from the Global Case Management System [GCMS] provide further insight into the Officer's reasoning. After reviewing the Principal Applicant's submissions on how her IELTS scores correspond with Canadian Language Benchmarks [CLB] scores, the Officer accepts that the Principal Applicant's English language proficiency "may appear sufficient for performing some of the tasks of some lower-skilled [occupations] (relative to that in which she was nominated), including sewing-machine operator, early childhood educator assistant, & esthetician." But the Officer remains concerned that performing these tasks in English in Canada

will require a higher level of proficiency than the Principal Applicant demonstrated because they could no longer "be described as 'familiar' or 'non-demanding' or 'common and predictable contexts.'" The Officer also notes that while the Principal Applicant's language skills may be satisfactory to perform the duties of a sewing machine operator, ECE assistant or esthetician, her proposed employment at that point was as a self-employed tailor or seamstress. The Officer finds that it would be reasonable to expect that operating a small business in Canada requires higher language proficiency than the Principal Applicant demonstrated.

[10] The Officer also rejects the Principal Applicant's arguments that it is reasonable to expect that she will quickly improve her listening ability and that she already comes close to meeting the language requirements for the federal skilled trades class. The Officer notes that provincial nominees are expected to become established quickly upon arriving in Canada and should already have the skills that will enable them to do so. Likewise, being close to meeting the requirements of another class does not address the Principal Applicant's failure to meet the requirements of the provincial nominee class.

[11] The Officer accepts that, under the *Canada-Saskatchewan Immigration Agreement, 2005*, the Principal Applicant's nomination is an initial indicator of her ability to become economically established but notes that Canada is still responsible for final selection. Since the Officer is not satisfied that Saskatchewan's nomination is sufficient, he rejects the Principal Applicant's argument that he should place significant weight on the view of provincial officials. Saskatchewan did continue to support the application and highlighted the province's low unemployment rate and large number of available jobs. Saskatchewan reiterated that the

Principal Applicant met the minimum language requirements and that her language ability and work experience would allow her to perform the duties of an ECE assistant. The Officer finds, however, that the availability of jobs in Saskatchewan does not speak to the Principal Applicant's own ability to become economically established. The Officer also notes that ECE assistant positions in Saskatchewan require certification and that "enrollment to [the] ECE certification program at Sask Polytechnic requires minimum overall IELTS Academic score of 6.5 [with] no individual scores below 5.0." The Officer accepts that ECE assistants do not require certification but reasons that the language requirement for certification likely reflects the language ability expected in Saskatchewan's childcare sector.

[12] The Officer also notes the extensive support that the Principal Applicant will receive from family to help with settlement. But the Officer points out that settlement cannot be equated with economic establishment. The provincial nominee class is an economic class and settlement assistance from family members does not indicate that the Principal Applicant has the ability to become economically established. Similarly, the Principal Applicant's assets would be relevant to meeting financial admissibility criteria but do not show an ability to become economically established. The Officer is also unconvinced that the promises of business from potential clients of the Principal Applicant's proposed seamstress business would provide sufficient gross income to support the Principal Applicant and her family, even while relying on their financial resources during a transitional phase.

[13] Reviewing the Principal Applicant's submissions about the job offer she received, the Officer finds that the job "would pay an annual pre-deduction salary of $24,960, which does not

appear sufficient for the economic establishment of [the Principal Applicant] & her four dependents, particularly considering that the LICO [Low Income Cut-off] for a family of five in 2017 is $51,846." This validates the Officer's concern that any job the Principal Applicant will be able to find will not be sufficient for her to become economically established.

[14] The Officer was therefore not satisfied that the Principal Applicant meets the requirements of the provincial nominee class and referred the application to a second officer for review and concurrence. The second officer found that, based on the available information and the Officer's review, it appears reasonable to have concerns about whether the Principal Applicant will become economically established. The second officer therefore concurred with the Officer's substitution of evaluation as allowed by s 87(3) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*].

IV. ISSUES

[15] The Applicants submit that the following issues arise in this application:

1. Did the Officer breach the duty of fairness by not allowing the Principal Applicant an opportunity to respond to his concerns about her inability to meet the LICO for Saskatchewan?
2. Is the Officer's determination that the Principal Applicant cannot become economically established in Canada unreasonable?

V. STANDARD OF REVIEW

[16] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*], held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[17] The standard of review for issues of procedural fairness is correctness. See *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 43 [*Khosa*], and *Mission Institution v Khela*, 2014 SCC 24 at para 79.

[18] The Officer's determination that the Applicants are unlikely to become economically established is reviewable under a reasonableness standard. See *Singh v Canada (Citizenship and Immigration)*, 2017 FC 808 at para 10 [*Singh* 2017], citing *Parveen v Canada (Citizenship and Immigration)*, 2015 FC 473 at para 13.

[19] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the

decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at para 47, and *Khosa*, above, at para 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

VI. STATUTORY PROVISIONS

[20] The following provisions of the Act are relevant in this application:

Economic immigration	**Immigration économique**
12 (2) A foreign national may be selected as a member of the economic class on the basis of their ability to become economically established in Canada.	12 (2) La sélection des étrangers de la catégorie « immigration économique » se fait en fonction de leur capacité à réussir leur établissement économique au Canada.

[21] The following provisions of the *IRPR* are relevant in this application:

Class	**Catégorie**
87 (1) For the purposes of subsection 12(2) of the Act, the provincial nominee 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.	87 (1) Pour l'application du paragraphe 12(2) de la Loi, la catégorie des candidats des provinces est une catégorie réglementaire de personnes qui peuvent devenir résidents permanents du fait de leur capacité à réussir leur établissement économique au Canada.
Member of the class	**Qualité**
(2) A foreign national is a	(2) Fait partie de la catégorie

member of the provincial nominee class if

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.

Substitution of evaluation

(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.

Substitution d’appréciation

(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).

Concurrence

(4) An evaluation made under subsection (3) requires the concurrence of a second officer.

Confirmation

(4) Toute décision de l’agent au titre du paragraphe (3) doit être confirmée par un autre agent.

VII. ARGUMENT

A. *Applicants*

(1) Procedural Fairness

[22] The Applicants submit that the Officer breached the duty of fairness by failing to disclose his concern that the Principal Applicant's job offer would not meet the LICO. They say that the duty of fairness is elevated when a visa officer substitutes his evaluation under s 87(3) of the *IRPR*. In *Sadeghi v Canada (Minister of Citizenship & Immigration)*, [2000] 4 FCR 337 (CA) [*Sadeghi*], the Federal Court of Appeal considered substituted evaluation in the independent category, a precursor to the federal skilled worker class. Justice Evans held that the discretion granted to ignore statutorily prescribed selection criteria was an extraordinary power and that "[d]ecisions removing a person's legitimate expectation of receiving a benefit typically attract greater procedural protection than those where the discretion is at large": *Sadeghi*, above, at para 15. The Applicants submit that these comments also apply to substituted evaluations in the provincial nominee context because the substitution similarly removes an applicant's legitimate expectation that they meet the requirements of the class.

[23] The Applicants say that disclosure of the intent to rely on LICO was required because the Officer's concerns did not directly arise from the requirements of the Act or its regulations. See *Hassani v Canada (Citizenship and Immigration)*, 2006 FC 1283 at para 24 [*Hassani*]. They say that the Officer's general statement in the fairness letter about his concern that employment the Principal Applicant might find would not "be of a sufficient level for you to become

economically established" did not provide notice that the Officer would be relying on the LICO. The Applicants say they had no reason to anticipate that the LICO would be used in this way. They also note that the test from *Hassani* is cited with approval in *Mohammed v Canada (Citizenship and Immigration)*, 2017 FC 992 at para 8 [*Mohammed*], a case relied on by the Respondent, and submit that, following *Sadeghi*, these concerns are elevated in the case of a substituted evaluation.

[24] The Applicants note that the provincial nominee class has no prescribed minimum income requirement and that where the LICO is referred to in the *IRPR* it is not used with respect to the income requirement of a potential immigrant to Canada. The LICO is relied on in the definition of "minimum necessary income" contained in s 2 of the *IRPR*. Applicants in the federal skilled worker class and federal skilled trades class must have available funds equal to one half of the minimum necessary income to show that they will become economically established. See *IRPR*, ss 76(1)(b)(i) and 87.2(5). And sponsors must demonstrate that they have the required level of income with reference to the minimum necessary income in order to be eligible to sponsor a family member for permanent residence. See *IRPR*, s 133(1)(j)(i). The Applicants submit that these are the only ways that the LICO is used in federal immigration law and that the Officer's importation of the LICO into the provincial nominee class could not have been anticipated.

[25] The Applicants also submit that the Officer's LICO concerns unfairly rely on extrinsic evidence. When relying on extrinsic evidence, a visa officer must disclose that evidence to the applicant so that the applicant can respond to it. See *Kniazeva v Canada (Minister of Citizenship*

and Immigration), 2006 FC 268 at para 21. The failure to disclose extrinsic evidence can breach the duty of fairness. See e.g. *Dasent v Canada (Minister of Citizenship & Immigration)* (1994), [1995] 1 FCR 720 (TD). Considerations relevant to determining whether a failure to disclose extrinsic evidence breached the duty of fairness include the following:

a) Whether the evidence impacted the decision's outcome (see *Yang v Canada (Citizenship and Immigration)*, 2013 FC 20 at paras 17 and 29);

b) Whether the evidence was not easily accessible or could not have been anticipated (see *Majdalani v Canada (Citizenship and Immigration)*, 2015 FC 294 at para 34 [*Majdalani*]);

c) Whether disclosure was required to allow the applicant meaningful participation in the decision (see *Haghighi v Canada (Minister of Citizenship & Immigration)*, [2000] 4 FCR 407 at para 26 (CA) [*Haghighi*]); and

d) Whether disclosure reduces the risk of error or aides in resolving the dispute (*Haghighi*, above, at para 28).

[26] The Applicants submit that, in the present case, the Officer relies entirely on a LICO-based assessment to find that the job offer the Principal Applicant received did not demonstrate that she could become economically established and that use of the LICO therefore affected the Decision. They say that *Rani v Canada (Citizenship and Immigration)*, 2015 FC 1414 at para 24, shows that a valid job offer could be sufficient to demonstrate economic establishment. They also say that, even though the document setting out the LICO is publicly available, reliance on the LICO could not have been reasonably anticipated "in light of the nature of the submissions made": *De Vazquez v Canada (Citizenship and Immigration)*, 2014 FC 530 at para 28 [*De Vazquez*]. They reiterate that there is no minimum income threshold in the statutory requirements of the provincial nominee class and point out that the LICO is a family-based statistic. The failure to inform the Principal Applicant that LICO would be relied on denied her meaningful participation in the decision-making process because she was not provided with an

opportunity to respond to the Officer's concern. Had the Principal Applicant been provided with this opportunity, the Applicants say that she could have argued that the Officer should also consider her husband's potential income or she could have raised the issue with her prospective employer.

[27] The Applicants also submit that the Officer relies on extrinsic evidence when finding that the Principal Applicant's English is insufficient to enroll in the ECE certification program at Sask Polytechnic. As with use of the LICO, no notice or opportunity to respond was provided to the Principal Applicant.

(2) Economic Establishment

[28] The Applicants submit, in the alternative should it be found that the Officer did not breach the duty of fairness, that the Officer's finding that the Principal Applicant could not become economically established is unreasonable because it disregards the evidence she provided. The purpose of reasons is to "allow the reviewing court to understand why the tribunal made its decision and permit [the reviewing court] to determine whether the conclusion is within the range of acceptable outcomes": *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16. Since a decision-maker must consider the important points in issue, "its reasons must reflect consideration of the main relevant factors": *Turner v Canada (Attorney General)*, 2012 FCA 159 at para 41 [*Turner*], citing *Via Rail Canada Inc v Canada (National Transportation Agency)* (2000), [2001] 2 FCR 25 at para 22 (CA). Thus, a decision may be unreasonable when the reasons do not allow the reviewing court to understand why an important and relevant point has been disregarded. See *Turner*,

above, at para 42. The Applicants submit that the Federal Court of Appeal has also suggested that the question of whether reasons are too sparse to be intelligible and transparent also requires consideration of the subjective sophistication of the individual affected by the decision. See *D'Errico v Canada (Attorney General)*, 2014 FCA 95 at paras 12-13; see also *Sidhu v Canada (Citizenship and Immigration)*, 2014 FC 176 at paras 20-21.

(a) *Income*

[29] The Applicants say that the Officer's refusal to place any weight on the evidence about the Principal Applicant's personal finances, the employability of her husband, and her family support in Canada as indications of her ability to become economically established is unreasonable. The Decision notes this evidence but finds that family assistance does not demonstrate the Principal Applicant's own ability to become economically established and finds that her finances are only relevant to whether she is inadmissible for financial reasons. The Applicants say that the Officer's finding about the Principal Applicant's family's irrelevance ignores how their assistance can facilitate her integration into the Saskatchewan workforce. And the Officer's finding about the Principal Applicant's financial resources suggests that he perceives the resources as only a threshold admissibility issue. The Applicants submit that in the context of whether to substitute an evaluation in the federal skilled worker class, this Court has held that it is an error for a visa officer to not consider an applicant's available settlement funds when determining the applicant's likelihood of becoming economically established. See *Choi v Canada (Citizenship and Immigration)*, 2008 FC 577 at paras 21-22; *Abro v Canada (Citizenship and Immigration)*, 2009 FC 1258 at para 15. They say that the similar language for substituted

evaluations in s 76(3) of the *IRPR* implies that similar considerations should apply to substituted evaluations in the provincial nominee context under s 87(3).

[30] The Applicants also submit that the Principal Applicant provided evidence about her husband's employability that was not considered by the Officer. While this Court has held that reliance on part time and casual work is a reasonable basis for finding that an applicant has not proven that they can become economically established, it has also implicitly held that a spouse's employment can be a relevant factor in the determination. See *Noreen v Canada (Citizenship and Immigration)*, 2013 FC 1169 at para 8; see also *Zahid v Canada (Citizenship and Immigration)*, 2015 FC 1263 at paras 15-17, quoting *Singh Sran v Canada (Citizenship and Immigration)*, 2012 FC 791 at paras 18-19.

[31] The Applicants also say that the Officer's reliance on the LICO to evaluate whether their income is sufficient to become economically established is unreasonable because the LICO is not a measure of whether a family will be able to support themselves. Instead, the LICO measures whether they will spend more of their income on necessities than most Canadian families. The Officer does not explain why the LICO is relevant to whether a family can support themselves, but their financial assets and a spouse's ability to contribute income to the household is not. They say that the case relied on by the Respondent for the principle that an officer may reasonably rely on the LICO level is distinguishable because the "brief notation in the GCMS entries does not suggest that [the LICO] was the basis for [the] decision": *Singh* 2017, above, at para 21.

(b) *Language Skills*

[32] The Applicants also submit that the Officer's finding that the Principal Applicant's language skills will prevent her economic establishment is unreasonable as it contradicts IRCC's own requirements and fails to account for the Principal Applicant's ability to familiarize herself with the Canadian workplace. The Applicants note that the Officer finds that the Principal Applicant's English language proficiency "may appear sufficient for performing some of the tasks of some lower-skilled [occupations]" compared to those in which she was nominated. But the Officer goes on to state that in "the context of performing the tasks of these or other occupations in Canada… [the situation] may not be described as 'familiar' or 'non-demanding' or 'common and predictable contexts.'" The use of "familiar," "non-demanding" and "common and predictable contexts" is a reference to the description of Stage I – Basic Language Ability (Benchmarks 1-4) in the CLB. But the Applicants note that the word "familiar" is also used in the description of Stage II – Intermediate Language Ability (Benchmarks 5-8). They say that the effect of the Officer's reasoning is to effectively decide that anyone immigrating to Canada without existing work experience in Canada would need at least CLB 5 to work in Canada because of the unfamiliarity of the environment. It is only at Stage III – Advanced Language Ability (Benchmarks 9 -12) that language competency is described as fully encompassing "unfamiliar" contexts. This suggests that it is possible that even applicants in Stage II of the CLB may not satisfy the Officer's concern if they have no Canadian work experience.

[33] The Applicants submit that imposing such a language threshold is unreasonable as it exceeds the language requirements in the federal skilled worker program, Canadian experience class, and federal skilled trades program set by the Minister under s 74(1) of the *IRPR*. Even though both the federal skilled worker and federal skilled trades programs have no requirement of Canadian work experience, the programs have prescribed CLB thresholds of 7 and 4 (in reading and writing), respectively. The Applicants say that if the Minister has decided that a CLB of 4 is sufficient to work in Canada with no Canadian experience, then it is unreasonable for the Officer to effectively impose a standard of CLB 5, or possibly CLB 9 if the Officer's concerns extend to Stage II CLB scores.

B. *Respondent*

(1) Procedural Fairness

[34] The Respondent submits that the Officer did not breach the duty of fairness by consulting the LICO level for Saskatchewan because there was no duty to put concerns with respect to LICO to the Applicants. In *Grewal v Canada (Citizenship and Immigration)*, 2017 FC 955 at para 17, a judicial review of the refusal of an application for a permanent resident visa submitted under the Manitoba Provincial Nominee Program, Justice Kane reviewed Justice Bédard's summary of the principles relevant to the refusal of an applicant's application for a permanent resident visa in *Hamza v Canada (Citizenship and Immigration)*, 2013 FC 264 at paras 21-24, and noted the following:

> the duty of procedural fairness owed by visa officers is at the low end of the spectrum; there is no obligation on a visa officer to notify the applicant of the deficiencies in the application or the supporting documents; and, there is no obligation on the visa

> officer to provide the applicant with an opportunity to address any concerns of the officer when the supporting documents are incomplete, unclear or insufficient to satisfy the officer that the applicant meets the requirements.

[35] The Respondent also notes that the onus is on applicants to provide sufficient information to support their permanent resident application. See *Singh v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 84 at para 35. Applicants must also "put together applications that are convincing, and that anticipate adverse inferences contained in the evidence and address them": *Penez v Canada (Citizenship and Immigration)*, 2017 FC 1001 at para 35. The Respondent says that it is reasonable for a visa officer to consider LICO levels when assessing whether a job offer will allow an applicant to become economically established. See *Singh* 2017, above, at para 21. Since the LICO issue arose after the Applicant's response to the fairness letter and the Officer was under no duty to request further submissions to overcome weaknesses in the Principal Applicant's submissions, the Respondent submits that there was no requirement to put concerns about the LICO levels to the Principal Applicant.

[36] The Respondent also says that the LICO levels are not extrinsic evidence as they are publicly available and the Principal Applicant could have anticipated the Officer relying on them. In the circumstances, the Applicants were not taken by surprise by this information. See *Mohammed*, above, at para 10. Similarly, certification requirements for ECE assistants are also publicly available and directly relevant to one of the Principal Applicant's proposed fields of employment. The Officer's reliance on this information could not have taken the Principal Applicant by surprise and is therefore also not extrinsic evidence.

(2) Economic Establishment

[37] The Respondent submits that the Officer's conclusion that the Principal Applicant was not likely to become economically established is reasonable because the Principal Applicant's language level is insufficient for employment as a small business owner and because the salary of the job offer she later submitted is below Saskatchewan's LICO levels.

[38] The Respondent emphasizes that it is important to consider the Applicants' application for permanent residence in context. The Principal Applicant was initially nominated as a provincial nominee under the NOC for elementary school and kindergarten teachers and proposed to enter that job market or "any entry level job (teaching/sewing/beautician)." The Officer's fairness letter was prompted by concerns that the Principal Applicant's English language proficiency would not allow her to obtain teacher certification or to complete additional training and concerns that she did not have the skill level expected by employers in the sewing or beauty treatment industries. In the Principal Applicant's response, she instead proposed that she could establish her own small business as a sewing machine operator and she later submitted a job offer as a cleaner, a job significantly removed from the one proposed in her original application. The Respondent says that the Officer's consideration of the Principal Applicant's language skills and the LICO levels for Saskatchewan must be viewed as part of the assessment of the application as a whole.

[39] The Respondent submits that the Principal Applicant's language skills are insufficient for her intended employment as a small business owner. When assessing visa applications, a visa

officer is entitled to use their general experience and knowledge of local conditions to evaluate the evidence submitted in support of the application. See *Mohammed*, above, at para 7, and *Bahr v Canada (Citizenship and Immigration)*, 2012 FC 527 at para 42 [*Bahr*]. The Principal Applicant's language scores, which are at or slightly above the minimum level, were weighed against the requirements of her preferred professions and proposal to operate a small business. The Respondent says that the Officer's finding that the Principal Applicant's language skills are insufficient for employment as an ECE assistant or to run her own business is reasonable, and that it is common sense that operating a business requires stronger language skills than performing specific tasks. The Principal Applicant failed to satisfy the Officer that her language skills are sufficient to enable her to become economically established.

[40] The Respondent also notes that the annual income for the Principal Applicant's job offer was less than half the 2017 LICO level for Saskatchewan.

[41] The Respondent submits that the Officer's conclusions are reasonable because they are based on a reasonable weighing of the Applicants' evidence. The Principal Applicant's language skills are below the requirements of the professions she proposed to pursue, her job offer's income is well below the LICO level, and there was insufficient evidence about her husband's employment plan. The Respondent also says that the settlement assistance the Principal Applicant's family could provide and their financial resources do not answer the question of whether the Applicants could become economically established in Canada as "settlement" and "economic establishment" are distinct concepts.

[42] The Respondent also says that the Officer's reasons are sufficient to allow the Court to understand the Decision and to determine whether it is within the range of reasonable outcomes. See *Cayanga v Canada (Citizenship and Immigration)*, 2017 FC 1046 at para 14. In the context of the volume of applications visa officers consider and the interests at stake, "the duty to provide reasons is 'at the lower end of detail and formality'": *Mohammed*, above, at para 5, quoting *Wang v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1298 at para 20. The Respondent also notes that the Officer's reasons for the Decision include the GCMS notes prepared throughout the application process.

VIII. ANALYSIS

[43] The Officer found that the Principal Applicant had not demonstrated that, in accordance with s 87(1) of the *IRPR* and governing jurisprudence, she could become "economically established in Canada" within a reasonable period of time. The Applicants have made a significant effort to challenge this finding and I will deal with each of their grounds for reviewable error in turn.

A. *Legitimate Expectation*

[44] Relying upon the reasoning of Justice Evans in *Sadeghi*, above, at paras 14-17, the Applicants' position on this issue is summarized in their written representations as follows:

> 20. Justice Evan's comments in *Sadeghi* underline the role of immigration law in grounding a potential immigrant's expectation in predictable metrics. As indicated in s. 87(l) of *IRPR*, those nominated by the province are, *prima facie*, eligible for permanent residence. When substituting such an evaluation, a visa officer is removing an applicant's legitimate expectation. In such cases,

> "accurate decision-making is particularly important" and such an evaluation will attract "a higher degree of procedural fairness".

[45] It is important to keep in mind that, in *Sadeghi*, Justice Evans was addressing s 11(3)(b) of the *Immigration Regulations, 1978*, SOR/78-172, made under the now repealed *Immigration Act*, RSC 1985, c I-2, in the context of the precursor to the federal skilled workers class. The question was whether that particular subsection provided visa officers "with a general discretion to revisit their assessment under the specific selection criteria or to support a view that the applicant does not… 'measure up.'" In *Sadeghi*, Justice Evans founds that:

> 14 It is important to emphasize the particular context in which this question of procedural fairness arises. Paragraph 11(3)(b) is an extraordinary power intended for exceptional cases, and does not provide visa officers with a general discretion to revisit their assessment under the specific selection criteria or to support a view that the applicant does not in some way quite "measure up": see *Chen*, *supra*, [1991] 1 F.C. 350 (T.D.), at page 363. The important statutory purpose served by the requirement that independent applicants for permanent residence visas be assessed in accordance with the prescribed statutory selection criteria is to ensure a certain objectivity and uniformity in decision-making by visa officers.
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> …
>
> 16 In this context I note that, in this case, the officer's observation in her CAIPS notes that she may have been too generous in her assessment of Dr. Sadeghi's proficiency in the English language may indicate that she fell into the error of thinking that she could use paragraph 11(3)(b) to revise her evaluation when it became apparent that he had more than 70 points.
>
> 17 In order to ensure that visa officers base their opinion that there are good reasons for thinking that the points evaluation does not adequately reflect an applicant's chances of becoming successfully established in Canada, it is important that they raise their concerns with the individual in a way that enables her or him to respond, at least when they are of the kind on which the applicant may be able to shed some useful light. Accurate decision-making is particularly important when an adverse

> decision may deprive a person of her legal rights or, as here, a legitimate expectation of receiving a statutory benefit.

[46] In *Sadeghi*, the officer fell into error because she thought "she could use paragraph 11(3)(b) to revise" her previous evaluation. This was obviously procedurally unfair in the circumstances because the applicant was provided with no opportunity to respond to such a re-evaluation. There is nothing of this kind in the present case. Here, the Principal Applicant was sent a fairness letter informing her of the Officer's intention to exercise Canada's final selection authority and substitute his negative evaluation of her ability to become economically established. The fairness letter also provided his detailed reasons for doing so and invited the Principal Applicant to provide further information for the Officer to consider. To the extent that *Sadeghi* stands for the principle that any substituted evaluation, even one clearly contemplated by the statutory scheme, always attracts a higher degree of procedural fairness, the requirements of *Sadeghi* have been met on the facts of this case.

[47] In coming to his conclusions, Justice Evans was careful to point out that it is "important to emphasize the particular context in which this question of procedural fairness arises" (para 14). In the present context, the Decision is a substituted evaluation under ss 87(3) and (4) of the *IRPR*:

87 […]	87 […]
(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	(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 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.	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 concurrence of a second officer.	(4) Toute décision de l'agent au titre du paragraphe (3) doit être confirmée par un autre agent.

[48] There is nothing in the context or the specific wording of s 87 of the *IRPR* to suggest that an applicant is either "*prima facie* eligible for permanent residence" or that a substitute evaluation removes a "legitimate expectation." The *IRPR* are clear that no rights or expectations accrue to any applicant until such time as the application process – which includes the possibility of substituted evaluation if the officer concludes that the provincial certificate "is not a sufficient indicator" and consults the provincial government concerned – has run its course and a final decision has been rendered. Every applicant who applies under the scheme must be taken to understand that a provincial certificate issued under s 87(2)(a) may not be regarded as a "sufficient indicator" when the application is reviewed under s 87(3) of the *IRPR*.

[49] The Officer makes all of this clear in his reasons:

> Rep also notes nominating prov's support of PA & submits that "the SINP's decision to nominate and continue to support Ms. Nisreen for permanent residence should be given significant weight in reaching your determination." Rep argues that "CIC's own materials" indicate that the nominating province is best placed to determine who is likely to become economically established & quotes fr OP7b, that "Immigration officers can assume that a

> candidate nominated by a province does, in the view of the provincial officials… [have] a strong likelihood of becoming economically established in Canada." As per the terms of the Canada-Saskatchewan Immigration Agreement, Canada (thru IRCC) has accepted that the province's nomination of PA is an initial indicator of her ability to become economically established. However, also as per the Canada-Saskatchewan Immigration Agreement, Canada, notwithstanding the province's nomination authority, is responsible for exercising final selection authority. Where the fact that a foreign national is named in a nomination certificate is not a sufficient indicator of whether they may become economically established, an officer may substitute for the criteria set out in Immigration regulations their evaluation of the likelihood of the ability of the foreign national to become economically established in Canada. The officer in this case was not satisfied that PA's nomination by SK was a sufficient indicator of her ability to become economically established and presented the reasons why to both PA and the nominating province, providing them the opportunity to respond to the concerns…

[50] I can find no reviewable error on this ground.

B. *Breach of Procedural Fairness*

[51] The Applicants have made detailed submissions on this point:

> 22. The visa officer breached procedural fairness by not disclosing to Ms. Nisreen that he was relying on LICO to determine whether her prospective income would be sufficient to allow her to become economically established.
>
> 23. While the visa officer claims that his concern that employment would not be "sufficient…to become economically established", this general statement cannot be said to have provided notice that the visa officer was intending to rely on LICO, which has no clear or direct relevance to determining the sufficiency of economic establishment. It is telling that the visa officer apparently harboured a bright line requirement regarding a minimum prospective income, but declined to notify Ms. Nisreen of this requirement in the fairness letter.

24. The LICO requirement imported by the visa officer cannot be said to arise directly from the requirements of the legislation or related regulations. There is no minimum income requirement for provincial nominees, much less any reference to LICO being the threshold for a minimum income requirement.

25. There is also no reason for the Applicant or her counsel to have anticipated that the visa office would rely on LICO in this way.

26. LICO is a metric put out by Statistics Canada, which describes LICO as follows:

> The low income cut-offs (LICOs) are income thresholds below which a family will likely devote a larger share of its income on the necessities of food, shelter and clothing than the average family. The approach is essentially to estimate an income threshold at which families are expected to spend 20 percentage points more than the average family on food, shelter and clothing.

…

28. There is no requirement under immigration statute or regulations that provincial nominees meet a particular prospective income level to demonstrate that they are economically established. Moreover, the pre-refusal letter sent to Ms. Nisreen, does not specify that the visa officer defined economic establishment as such.

29. For all of these reasons, Ms. Nisreen could not have anticipated needing to demonstrate that her prospective income reached a particular level, much less that it meets LICO, which is not used as a requirement for prospective income in the immigration context. The issue of a LICO threshold, imported by the visa office[r], does not have any statutory basis.

30. As a result, the visa office[r] breached Ms. Nisreen's right to procedural fairness. He refused her application based on his finding that economic establishment requires that an Applicant for permanent residence establish that they will earn an income in Canada equivalent at least to LICO, but without first providing her notice of this in order to allow her a meaningful opportunity to respond.

…

33. The visa officer relies on LICO to find that Ms. Nisreen would not be able to support her family:

> The job offer provided would pay an annual pre-deduction salary of $24,960, which does not appear sufficient for the economic establishment of PA & her four dependants, particularly considering that the LICO for a family of five in 2017 is $51,846.

34. The above evidence was not put to Ms. Nisreen. She states in her affidavit:

> After receiving the reasons why the visa officer refused my application, I was very surprised to learn that the visa officer believed that the job offer I had received would allow me to be become economically established because it did not meet "the LICO for a family of five in 2015 [*sic*]". After discussing the reasons with my lawyer, I realized that "LICO" is an acronym for "Low Income Cut-Off". The visa office[r] had never previously informed me, my lawyer, or my relatives that there was a minimum income requirement that I, personally, had to meet to demonstrate that I could become economically established. The visa office[r] also never informed me that [he] believed [that] an annual income that fell below LICO would be considered insufficient to become economically established. I was not aware of these concerns until I received the reasons refusing my application for permanent residence.
>
> I feel that it was unfair that the visa office[r] believed I had to find a job that exceeded LICO, but didn't tell me about this concern. If the visa office[r] had notified me of this concern and allowed me to respond, I could have spoken with my lawyer and prepared submissions to address these concerns. Instead, the visa officer just refused my application without letting me know about his concerns and allowing me to respond to them. I feel that this was unfair, because I was never given a chance to respond to these concerns and to try to convince the visa officer that my prospective income would allow me to become economically established in spite of those concerns.

> …
>
> 37. Ms. Nisreen did not have an opportunity to participate in a meaningful manner in the decision-making process. Not only could Ms. Nisreen not have anticipated the use of LICO as a minimum income threshold, which has no statutory basis, but the visa officer did not notify Ms. Nisreen that they would be relying on LICO.
>
> …
>
> 39. By failing to disclose that he was using LICO as a test for economic establishment, the visa officer breached the duty of procedural fairness. This error is sufficient to set aside the decision.
>
> [Footnotes omitted.]

[52] Nowhere in the Decision does the Officer say, either directly or implicitly, that the Principal Applicant was required to satisfy a LICO requirement, or that she had to meet "a particular prospective income level" to demonstrate that she would be economically established. The Officer's reference to LICO in the Decision is as follows:

> Although it may have been a requirement to be nominated under Saskatchewan's now-discontinued family stream, the fact of having relatives in the province does not demonstrate that the PA has the ability to become economically established. The job offer provided would pay an annual pre-deduction salary of $24,960, which does not appear sufficient for the economic establishment of PA & her four dependants, particularly considering that the LICO for a family of five in 2017 is $51,846. It was noted in the P/F that, even if PA were able to obtain employment, it would not be sufficient for her to become economically established, but PA has not addressed this concern. The job offered to PA now is noted & thoroughly considered, but I am not satisfied that it is sufficient evidence of the PA's ability to become economically established. All of the PA's & rep's comments & information provided in response to the P/F have been thoroughly reviewed and considered, but I am not satisfied that the submissions remove the concerns outlined in the P/F.

[53] The comparison of the job offer income of $24,960 with the 2017 LICO figure of $51,846 clearly does not import a requirement that the Principal Applicant must meet the LICO figure – or anything near it – to establish economic establishment in Canada. The Officer is concerned about how the Principal Applicant can support a family of 5 on an income of $24,960 and makes a passing reference to the LICO figure for a family of 5. The Officer's finding is that the Principal Applicant has not discharged the onus upon her to explain how the type of employment she is likely to find will allow her to become economically established, given that she has a family of 5 members. The reference to the LICO figure is not to posit an income that she would need to satisfy the Officer; it is to point out the level of economic establishment that a different and higher level of income will support. The Officer, in the fairness letter, put his economic concerns to the Principal Applicant and she had every opportunity to allay those concerns. Had she wanted to, she could have referred to the LICO figures herself because they are public knowledge and were available to the Principal Applicant and her representatives. The Officer's finding is that the Principal Applicant has failed to allay the economic concern he raised with her, not that she has not met the LICO requirement.

[54] At the hearing of this application on April 4, 2018, Applicants' counsel did not assert that the Officer used LICO as a threshold requirement but argued that LICO was the only justification for his conclusion and he should have given the Principal Applicant an opportunity to respond. The Officer's justification is not LICO *per se*; it is his general experience – which he is entitled to rely upon. See *Bahr*, above, at para 42. Although this principle arose in the context of applications for study permits, it has also been applied to an application for permanent residence as a skilled worker. See *Asl v Canada (Citizenship and Immigration)*, 2016 FC 1006. I

see no reason that the principle should not apply to an application for permanent residence as a member of the provincial nominee class. The Principal Applicant provided nothing in her response to the fairness letter to support the adequacy of her job offer salary. The Principal Applicant has no experience in Canada and the onus is upon her to provide evidence and reasons to deal with the concerns raised in the fairness letter where the Officer said: "I am not satisfied that you would be able to become employed in Canada or, if you did find employment, that it would be of a sufficient level for you to become economically established." The Principal Applicant's response to this concern was to suggest alternative lines of employment and to eventually produce the job offer, but she did not demonstrate why $24,960 per annum would allow her, together with other factors, to become economically established other than to suggest that the job would allow her to integrate into the workforce immediately.

C. *Extrinsic Evidence*

[55] In related arguments, the Applicants say that, in referring to the LICO figure, the Officer relies upon extrinsic evidence that was not put to the Principal Applicant:

> 31. The visa officer's error in failing to provide notice of [his] LICO-related concerns is also an issue of unfairly relying on extrinsic evidence. Whether an officer unfairly relied on extrinsic evidence is a question of procedural fairness which is reviewable on a standard of correctness.
>
> 32. Where a visa officer seeks [to rely] on extrinsic evidence, the visa officer must disclose the evidence prior to making the decision. Failing to do so can amount to a breach of procedural fairness. Whether or not a breach of procedural fairness has occurred is a contextual inquiry that considers such factors as:
>
> a) Whether the evidence actually impacted the outcome of the decision;

> b) Whether the evidence was not easily accessible or could not have been anticipated.
>
> c) Whether the applicant was able to participate in a meaningful manner in the decision-making process.
>
> d) The result of relying on extrinsic evidence with the aim of "avoiding the risk of error in making the decision or in resolving the particular issue in dispute."
>
> …
>
> 35. The extrinsic evidence relied upon impacted the outcome of the visa officer's decision. A valid job offer is sufficient to demonstrate that an applicant could become economically established. The visa officer found that… the job offer did not demonstrate economic establishment because the job would not provide her with sufficient income. The dismissal of the job offer relies entirely on his LICO-based assessment.
>
> 36. The extrinsic evidence could not have been reasonably anticipated. While the document is clearly publicly available, it would not contain information known to the applicant "in light of the nature of the submissions made". As explained above, there is no minimum income threshold found within the legislative requirements for provincial nominee[s]. It is a metric put out by Statistics Canada and simply describes a threshold "below which a family will likely devote a larger share of its income on the necessities of food, shelter, and clothing than the average family". There is nothing in this statistic that would suggest that the Applicants would have to meet LICO in order to demonstrate that they could support themselves.
>
> [Footnotes omitted.]

[56] The LICO figures were public and available to the Principal Applicant. She could have looked at them and used them if she thought they supported her case. But, more importantly, her application is refused, not because she does not meet the LICO requirement, but because she failed to convince the Officer that the income from the job offer, together with other factors, would allow her to become economically established. By pointing to the LICO figures, the

Officer was simply making the point that an income of $24,960 is not very much for a family of 5 and does not amount, in itself, to economic establishment.

[57] In their written submissions, the Applicants also say that the Officer relied upon extrinsic evidence for his finding that the Principal Applicant's English language skills were not adequate, although the Applicants appear to have relinquished this point at the oral hearing. Out of an abundance of caution, I will deal with it briefly. They submitted the following in writing:

> 40. Please note that the visa officer also relies on extrinsic evidence in asserting Ms. Nisreen's English is insufficient. The visa officer claims that the language minimum for "enrolment to ECE certification program at Sask Polytechnic" is an "indicator of the level of English lang ability generally expected of the childcare sector in SK.["] The visa officer provides no notice of his concern related to this extrinsic evidence to Ms. Nisreen. Had the visa officer done so, Ms. Nisreen could have tried to address these concerns, including by seeing if she could provide evidence that jobs were available for non-certified English Early Childhood Education Assistants.

[58] The Officer's reasoning and conclusions on language concerns are dealt with as follows:

> PA's demonstrated level of English lang proficiency may appear sufficient for performing some of the tasks of some lower-skilled occs (relative to that in which she was nominated), including sewing-machine operator, early childhood educator assistant, & esthetician. 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 than 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 her intended employment. Furthermore, although PA's rep argues that PA's English is sufficient "to perform the duties" of a sewing machine operator, an ECE asst, & an esthetician, the primary economic activity proposed by PA & rep is actually that of a self-employed tailor/seamstress. As a small business owner-operator, it appears reasonable that PA wld require a higher level of English

> lang proficiency than she has demonstrated in order to be able to successfully perform the tasks it would appear reasonable to expect of a small business owner-operator in Canada. Rep's assessment of PA's English lang skills is noted. While rep has presented an alternative interpretation which is to her client's advantage, the rep's interpretation does not demonstrate that the VO's interpretation is in error. Rep also states that it is "worth noting" PA "comes close to meeting the language requirements" for the federal skilled trades class, falling short only in her listening, but that "it is reasonable to anticipate that Ms. Nisreen's listening skills will quickly improve upon arriving in Canada and being immersed in an English language environment." Rep also suggests that since the federal skilled trades class includes "supervisors and technical occupations in natural resources, agriculture and related production" that "it would lead to illogical and inconsistent results if a person with slightly better listening skills than Ms. Nisreen meets the requirements to work as a supervisor in natural resources or agriculture, whereas Ms. Nisreen is found not to have sufficient language skills to work as a sewing machine operator." Allowing for an initial period of adjustment, PNs are expected to become established relatively quickly after arrival in Cda & to already have the skills & abilities & qualifications which will enable them to do so. A new immigrant's English may well improve after her arrival in Cda, or equally it may not, but it shld already be sufficient for her to begin contributing to the Cdn economy soon after her arrival in Cda. Coming close to meeting the lang rqts of another immigrant class is another way of saying that PA does not meet the rqts of that class & the requirements of other immigration classes have no bearing on an assessment of whether PA meets the rqts of the PN class, the class in which she has applied.

[59] Once again, the evidence referred to by the Applicants was public information that was easily available to the Principal Applicant and her representatives and which, given her mention of a possible career in the ECE sector, she could be reasonably expected to consult. See *Majdalani*, above, at paras 53-54 and *De Vazquez*, above, at para 28.

D. *Unreasonable Decision*

[60] The Applicants argue that the Officer's decision that the Principal Applicant cannot become economically established in Canada is unreasonable for a variety of reasons:

(1) Insufficient Reasons

[61] The Applicants say that the Officer's reasons are not sufficiently clear, precise and intelligible to allow this Court and the Applicants to understand the underlying rationale for the Decision. The Applicants provide no details as to why the Decision is not transparent or intelligible. They point to issues upon which they feel the Officer made unreasonable findings but, in my view, the Officer's reasons are clear and intelligible. The fact that the Applicants have been able to raise so many objections to the Officer's findings is clear evidence that they fully understand the basis of the Decision and are able to identify what they regard as reviewable errors. By unintelligible, the Applicants seem to be saying no more than that they disagree with the Decision and think that the Officer should have found in the Principal Applicant's favour.

(2) Insufficient Income Finding

[62] The Applicants' complaint in this regard is as follows:

> 44. The visa officer errs by dismissing as irrelevant and consequently refusing to give any weight to Ms. Nisreen's evidence concerning her personal finances, the employability of her husband, and family support in Canada as being further indications of [her] ability to become economically established in Canada. The visa officer's reliance on her prospective salary not meeting LICO was also unreasonable.

[63] I have already found that the Officer does not reject the application because the Principal Applicant's salary does not meet the LICO requirement.

[64] As regards the other factors that the Applicants say are dismissed as irrelevant and not given any weight, the Officer had the following to say:

> (a) *Personal Finances*
>
> PA's financial assets are also noted, but while finances may be a relevant consideration in determining whether an applicant may or may not be inadmissible for financial reasons, they do not demonstrate an ability to become economically established. As well, the P/F also expressed concern that even if PA found empl it wld not be of a sufficient level for her to become economically established. The business venture proposed by PA is dependent on revenue fr clients. PA has provided written promises fr five prospective clients including the annual amount they may expect to spend on services offered by PA but, even if their statements were to result in the amounts indicated actually being paid to PA, it would provide her with a gross annual income of only $7500, which does not appear sufficient to support PA as well as her four dependants, even with the financial resources she may have to "ease her transition."

[65] The Officer specifically says that the Principal Applicant's finances are "noted" and agrees they "may be a relevant consideration in determining whether an applicant may or may not be inadmissible for financial reasons…" but concludes that "they do not demonstrate an ability to become economically established."

[66] The Officer then goes on to explain why, given the Principal Applicant's proposed business venture, economic establishment is not demonstrated "even with the financial resources she may have to 'ease her transition.'"

[67] It is possible to disagree with this conclusion, but I don't think it is possible to say that the Principal Applicant's resources were dismissed as irrelevant and were not given any weight. On the contrary, the Decision is clear that the Principal Applicant's financial resources were noted, considered, taken into account and weighed against the likely income from her proposed business venture.

(b) *Employability of Husband*

[68] In her response to the fairness letter, the Principal Applicant says that she provided "evidence that her husband will also be seeking employment and will be supporting their family in Saskatchewan." The Applicants point to a letter of support from the Principal Applicant's sister, Ms. Masooda Bibi, who resided in Regina at the time and expected to assist the Applicants with settlement. In her letter, Ms. Bibi noted that the Principal Applicant's husband "will start a job search" and suggested that he has extended family in Canada who will be able to provide references and referrals. In the Principal Applicant's own settlement letter, also provided to the Officer in response to his fairness letter, she described her husband as well educated and experienced in the administrative work of running the family's academy. The Principal Applicant suggested that her husband's skills could assist in their long term goal of setting up a child care centre and that both she and her husband intended to take English classes. The letter, however, is notably silent on the husband's current language ability despite mentioning that his father "can speak English to a high degree of effectiveness."

[69] In the Decision the Officer acknowledges that "PA also says spouse will look for a job but that PA's 'work alone will be enough as it can provide me enough income as I have stable funds that can last me at least a year.'"

[70] Given the evidence and submission on the spouse's employment opportunities, it is clear why, although this factor is noted, the Officer does not feel it will solve the economic establishment criteria given the other factors at play. There was simply no concrete plan for the husband. Based on the submissions, it was reasonable for the Officer to have doubts about plans for the husband's employment.

(c) *Assistance of Other Relatives*

[71] On this issue, the Applicants submit as follows:

> 48. The visa officer's holding that the assistance offered by Ms. Nisreen'[s] relatives in Saskatchewan is irrelevant is similarly without basis. The assistance offered by her relatives is the assistance to become integrated into the Saskatchewan workforce, bolstered by evidence of their own successful integration. Factors that weigh favourably towards Ms. Nisreen finding employment cannot be considered irrelevant to economic establishment.

[72] The Officer, in fact, pays close attention to the submissions made regarding this proposed contribution of the Principal Applicant's relatives to her economic establishment:

> PA says her sister, Masooda Bibi, has started her own home-based sewing business & PA wld plan to do the same. PA also indicates that her sister will assist her w/ accommodation, familiarization w/ local services, enrolment of children in school, etc.
>
> …

> PA's sister, Masooda Bibi, identifies herself as PA's supporting family member & relates how she started her own home sewing business & states that PA will be able to do the same. PA's sister also says there are many other job opportunities in Regina for PA & spouse. PA's sister also pledges she will provide settlement assistance to PA.
>
> …
>
> The extensive support indicated to be offered to PA by her relatives in Cda is noted but, although the potential capacity of her relatives to support PA may demonstrate some of the relatives' capabilities & be a factor in the PA's potential settlement, it does not demonstrate PA has the ability to become economically established. Note that "settlement" & "economic establishment" are not interchangeable terms; an immigrant, such as in the family class, & w/ the kind of support indicated to be available to PA fr her relatives, may settle successfully in Cda w/o becoming economically established.

[73] Once again, I think it is possible to disagree with these conclusions, but I don't think it is possible to say that the support of relatives was left out of account, or that the Officer did not provide reasons as to why, in this case, it did not allay his concerns about the Principal Applicant's ability to become economically established.

(3) Insufficient Language Skills

[74] The Applicants make the strong assertion that:

> 53. The visa officer's finding that Ms. Nisreen lacks the language skills to work in the areas of employment she intends to pursue is not intelligible, justified, or transparent. It relies on an assessment that is at odds with IRCC's own requirements and fails to consider whether Ms. Nisreen will become familiar with the work environment within a reasonable length of time.
>
> 54. The visa officer concedes that Ms. Nisreen may be able to perform some of the tasks of the job, but then appears to find that

she could not perform either job because a Canadian workplace could not be described as "familiar" to her:

> PA's demonstrated level of English lang proficiency may appear sufficient for performing some of the tasks of some lower-skilled occs (relative to that in which she was nominated), including sewing-machine operator, early childhood educator assistant, & esthetician. 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 than 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 her intended employment.

…

56. The visa officer's reasoning appears to be that a language user is limited to the domain of competency described in the stage that corresponds with the language user's CLB benchmark. The visa 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. Although the visa officer says that those with Stage I ability will be unable to work in "unfamiliar" (Canadian) environments, the practical effect of this reasoning is that Stage I and Stage II language users will be unable to work in Canada. The description of Stage II (Benchmarks 5-8) also describes the domain of competency in terms of being familiar: "it is the range of abilities required to function independently in most familiar situations of daily social, educational and work-related life experience, and in some less predictable contexts." It is only when in Stage III (Benchmarks 9-12) that the domain of competency fully encompasses "unfamiliar" contexts. The result is that the only way an applicant without Canadian work experience can be sure to satisfy the visa officer's language test for any occupation is by obtaining a CLB 9 and up.

57. This language threshold imposed by the visa officer is unreasonable as it is out of keeping with the IRCC's own language requirements. S. 74(l) of the *Immigration and Refugee Protection Regulations* states that the Minister shall fix minimum language proficiency thresholds for economic immigration classes: the

> Federal Skilled Worker Program (FSWP), Canadian Experience Class (CEC), and Federal Skilled Trades Program (FSTP). While the CEC requires at least one year of work experience in Canada, there is no requirement of Canadian Work experience for the FSWP or FSTP. The Minister has set the language threshold for the FSWP at a CLB of 7 for all four language abilities (reading, writing, listening, and speaking). The language threshold for the FSTP is a CLB of 4… in reading and writing and a CLB of 5 in speaking and listening.
>
> [Footnotes omitted.]

[75] The Principal Applicant's English language skills play a significant role in the Officer's overall assessment:

> Rep has also included details fr CLB info corresponding to PA's demonstrated levels of English lang proficiency in speaking, listening, reading, & writing, to support statements that PA has sufficient English skills. PA's lang test results were in CLB 4 for reading & listening, & CLB 5 for speaking & writing. The overall description of benchmarks 1-4 (Stage I Basic) includes "abilities that are required to communicate in common and predictable contexts about basic needs, common everyday activities and familiar topics of immediate personal relevance." The profile of ability for CLB 4 listening states that "The listener can: Understand, with considerable effort, simple formal and informal communication on topics of personal relevance. When the communication is: • Spoken clearly at a slow to normal rate • Sometimes supported by visual or contextual clues • Face-to-face or via digital media (usually one-on-one or in small groups) • Related to topics of personal relevance • Relatively short • In non-demanding contexts." The profile of ability for CLB 4 reading states that "The reader can: Understand and get most information from short, simple texts related to familiar, routine everyday topics of personal relevance. When the text is: • Limited to common and mostly factual, concrete vocabulary • Clearly organized and easy to read with simple layout • Sometimes supported by graphics, charts or diagrams • Short • In non-demanding contexts." The overall description of benchmarks 5-8 (Stage II Intermediate) for speaking includes "the range of abilities required to communicate with increasing effectiveness and confidence in a broadening range of situations that may be less familiar and predictable." The profile of ability for CLB 5 speaking states that "The speaker can: Communicate with some effort in short, routine social situations,

and present concrete information about needs and familiar topics of personal relevance. When the communication is: • Face-to-face, on the phone, or via digital media • Informal to somewhat formal • In familiar small groups • In moderately demanding contexts." The overall description of benchmarks 5-8 (Stage II Intermediate) for writing includes "the range of abilities required to function independently in most familiar situations of daily social, educational, and work-related life experience, and in some less predictable contexts." The profile of ability for CLB 5 writing states that "The writer can: Write short, simple to moderately complex descriptions, narrations, and communications about familiar, concrete topics related to daily life and experience. When the communication is: • On a familiar and personally relevant topic • Intended for a familiar audience • Relatively short • In moderately demanding contexts." PA's demonstrated level of English lang proficiency may appear sufficient for performing some of the tasks of some lower-skilled occs (relative to that in which she was nominated), including sewing-machine operator, early childhood educator assistant, & esthetician. 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 than 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 her intended employment. Furthermore, although PA's rep argues that PA's English is sufficient "to perform the duties" of a sewing machine operator, an ECE asst, & an esthetician, the primary economic activity proposed by PA & rep is actually that of a self-employed tailor/seamstress. As a small business owner-operator, it appears reasonable that PA wld require a higher level of English lang proficiency than she has demonstrated in order to be able to successfully perform the tasks it would appear reasonable to expect of a small business owner-operator in Canada. Rep's assessment of PA's English lang skills is noted. While rep has presented an alternative interpretation which is to her client's advantage, the rep's interpretation does not demonstrate that the VO's interpretation is in error. Rep also states that it is "worth noting" PA "comes close to meeting the language requirements" for the federal skilled trades class, falling short only in her listening, but that "it is reasonable to anticipate that Ms. Nisreen's listening skills will quickly improve upon arriving in Canada and being immersed in an English language environment." Rep also suggests that since the federal skilled trades class includes "supervisors and technical occupations in natural resources, agriculture and related

> production" that "it would lead to illogical and inconsistent results if a person with slightly better listening skills than Ms. Nisreen meets the requirements to work as a supervisor in natural resources or agriculture, whereas Ms. Nisreen is found not to have sufficient language skills to work as a sewing machine operator." Allowing for an initial period of adjustment, PNs are expected to become established relatively quickly after arrival in Cda & to already have the skills & abilities & qualifications which will enable them to do so. A new immigrant's English may well improve after her arrival in Cda, or equally it may not, but it shld already be sufficient for her to begin contributing to the Cdn economy soon after her arrival in Cda. Coming close to meeting the lang rqts of another immigrant class is another way of saying that PA does not meet the rqts of that class & the requirements of other immigration classes have no bearing on an assessment of whether PA meets the rqts of the PN class, the class in which she has applied.

[76] First of all, I don't think it can be said that this assessment is "not intelligible, justified, or transparent," or that it "fails to consider whether [the Principal Applicant] will become familiar with the work environment within a reasonable length of time." Nor do I think it can be said that it is unreasonable because it is "contradicted by the Minister's own thresholds…."

[77] In my view, the Applicants are raising the same arguments before me on this issue that the Principal Applicant raised (through her representative) before the Officer and are inviting me to come to a conclusion that favours them. This is not the role of the Court. I can agree with the Applicants that there is room for disagreement as to whether the Principal Applicant's English language skills are adequate to allow her to achieve economic establishment in Canada within a reasonable period of time, but I cannot say that the Officer's analysis of this issue is not intelligible, justified or transparent, or is at odds with IRCC's own requirements, or fails to consider whether the Principal Applicant will become familiar with the work environment within a reasonable length of time.

[78] The Officer acknowledges that the Principal Applicant's language skills would be sufficient in some contexts – a sewing machine operator – but not for what the Principal Applicant says she wants to do in Canada in order to become economically established. The Officer does not simply rely upon the CLB scores in isolation, but in the context of the Principal Applicant's skills, experience and what she wants to do in Canada.

IX. Conclusion

[79] I have considered the Applicants' grounds for review carefully against the record and, although I understand why they were disappointed by this Decision, I cannot find a reviewable error that would justify returning it for reconsideration.

X. Certification

[80] The Applicants have submitted the following question for certification:

> How does the unique statutory context of a substituted evaluation under s. 87(3) of the *Immigration and Refugee Protection Regulations*, affect the content of procedural fairness when determining whether a visa application which otherwise meets the statutory selection should be refused?

[81] As I have pointed out, the Applicants' reliance upon *Sadeghi*, above, is misplaced. The factors that gave rise to procedural fairness concerns in that case are less pronounced in the context of ss 87(3) and (4) of the *IRPR*. And on the facts of this case, any elevated duty of fairness that *Sadeghi* requires was met by the Officer sending the fairness letter, allowing the Principal Applicant an opportunity to respond, and then considering her submissions. The Applicants are attempting to shoehorn the Principal Applicant's case into *Sadeghi*, but it just

doesn’t fit: she was provided the meaningful participation that the applicant in *Sadeghi* was denied. There is nothing in the wording of s 87 of the *IRPR* and its application to this case that raises an issue of broad significance or general importance because the concerns in *Sadeghi* do not arise on the facts of this case.

JUDGMENT IN IMM-4095-17

THIS COURT'S JUDGMENT is that

1. The application is dismissed.

2. There is no question for certification.

"James Russell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4095-17
STYLE OF CAUSE:	ABIDA NISREEN, IFTIKHAR AHMAD BHATTI, MUHAMMAD SAFFI ULLAH NAWAZ, NIRMAL ZAHRA, FOUZ ROOMAN ZAHRA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
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