Federal Court  Cour fédérale

Date: 20210707

Docket: IMM-2167-20

Citation: 2021 FC 721

Ottawa, Ontario, July 7, 2021

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

LY THI CHUC TRAN

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ms. Ly Thi Chuc Tran, seeks judicial review of a decision of a visa officer (the "Officer") of Immigration, Refugees, and Citizenship Canada ("IRCC"), refusing the Applicant's permanent residence application under the Provincial Nominee Program ("PNP"). The Officer found the Applicant did not intend to reside in New Brunswick, the province that

nominated her under the PNP, as required under subsection 87(2)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 ("*IRPR*").

[2] The Applicant submits the Officer committed two reviewable errors. First, the Applicant asserts the Officer failed to rebut the presumption arising from the Applicant's provincial nomination under the PNP that she intended to reside in New Brunswick. Second, the Applicant asserts the Officer failed to obtain a concurring opinion from a second officer before refusing her application pursuant to subsections 87(3) and 87(4) of the *IRPR*.

[3] In addition, the Applicant submits the Officer breached their duty of fairness by not providing the Applicant with an opportunity to respond to their credibility concerns.

[4] In my view, the Officer's decision is reasonable. The Officer provided justified, transparent, and intelligible reasons for determining the Applicant was unlikely to reside in New Brunswick. The Applicant essentially asks the Court to reweigh the evidence before the Officer and reach a different outcome, which this Court must refrain from doing. I further find it was reasonable for the Officer not to obtain a concurring opinion pursuant to subsection 87(4) of the *IRPR*, as that provision only applies to a determination that a foreign national is unlikely to become economically established in Canada.

[5] Finally, I find the Officer did not breach their duty of fairness, as the Officer provided the Applicant with sufficient opportunities to respond to their credibility concerns during the interview. I therefore dismiss this application for judicial review.

II. Facts

A. *The Applicant*

[6] The Applicant is a 43-year-old Vietnamese national. She is the owner of a successful company in Vietnam that provides security equipment for marine vessels.

[7] On June 25, 2018, the Applicant, along with her spouse and four children (born 2005, 2009, 2010, and 2017), applied for permanent residency as a member of the provincial nominee class under section 87 of the *IRPR*. In support of her application, the Applicant attached a certificate from New Brunswick, nominating her for the PNP under the entrepreneurial stream pursuant to subsection 87(2)(a) of the *IRPR*. The Applicant claimed she intended to start a business in Saint John, New Brunswick that trades marine security products.

B. *Decision Under Review*

[8] On January 17, 2020, the Officer interviewed the Applicant to assess her intent to start a business and reside in New Brunswick. The interview and subsequent correspondence are described in the Officer's Global Case Management System ("GCMS") notes, which form part of the reasons for the Officer's decision (*Torres v Canada (Citizenship and Immigration)*, 2019 FC 150 at para 19).

[9] Over the course of the January 17, 2020 interview, the Officer raised several concerns regarding the Applicant's credibility, including:

(a) The Applicant asserted in her permanent residence application, subsequent forms, and at the interview that no one in her family had been previously refused a Canadian visa, but she later acknowledged that her children had been previously refused visitor visas.

(b) The Applicant asserted in her permanent residence application that her youngest child was born in Vietnam, but she later acknowledged her youngest child was born in Canada in 2017.

(c) The Applicant asserted she intended to start a business in New Brunswick, but her only business plan was the template form that New Brunswick required her to complete for her PNP application. The Applicant's business plan did not demonstrate market research, marketing strategies, and revenue projections, and the Applicant did not complete the section of the form asking about industry regulations, permits, and licences.

[10] In an email dated January 30, 2020 to a New Brunswick official, the Officer explained they were not satisfied the Applicant intended to reside in New Brunswick because:

(a) The Applicant's credibility was impugned by her inconsistent statements regarding past visa refusals and her youngest child's country of birth.

(b) The Applicant travelled to Canada when she was 28 weeks pregnant and remained in Canada to give birth. While the Applicant asserted she remained in Canada due

to complications with her pregnancy, the Officer concluded it was likely for the purposes of obtaining citizenship for her child (*i.e.*, "birth tourism").

(c) The Applicant's close relatives in Ontario and British Columbia created a "pull" factor to live in those provinces rather than New Brunswick.

(d) The Applicant had visited Canada twice but she had only visited New Brunswick once for a week. The Applicant acknowledged this visit was insufficient to know if she wanted her family to live in New Brunswick permanently.

(e) The Applicant's focus seemed to be on obtaining status for her children and enabling them to study in Canada.

(f) The Applicant's business plan was lacking in the detail reasonably expected of a new business.

[11] In an email dated January 30, 2020, the New Brunswick official concurred with the Officer's preliminary assessment that the Applicant likely misrepresented herself in her application and may not have a genuine interest to reside in New Brunswick.

[12] In a decision dated January 31, 2020, the Officer refused the Applicant's permanent residence application. In particular, the Officer stated:

> Following a full review it has been determined that you are unlikely to reside in the nominating province if and when a

> permanent resident visa is issued to you. The factors leading to this determination were outlined to you at an interview held in Ho Chi Minh City on January 17, 2020. Your responses to these concerns were considered in full, but the conclusion is that they do not offset the factors weighing against you.
>
> It is therefore determined that you do not meet the requirements of subsection 87(2) of the *IRPR* and are not considered a member of the provincial nominee class. As a result, your application has been refused.

[13] The Officer did not consult with a second officer to obtain a concurring opinion pursuant to subsection 87(4) of the *IRPR* before rendering their decision.

III. Issues and Standard of Review

[14] This application for judicial review raises the following issues:

A. *Did the Officer err by not rebutting the presumption created by the Canada–New Brunswick Agreement?*

B. *Did the Officer err by not obtaining a concurring opinion from a second officer?*

C. *Did the Officer breach their duty of fairness?*

[15] It is common ground between the parties that the first and second issues are reviewed upon the reasonableness standard, whereas the third issue is reviewed upon the correctness standard.

[16] I agree. Issues pertaining to a visa officer's decision on a permanent residence application under the PNP are reviewed upon the reasonableness standard (*Bano v Canada (Citizenship and Immigration)*, 2020 FC 568 ("*Bano*") at paras 13-14, citing *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 ("*Vavilov*")), whereas issues of procedural fairness are reviewed upon what is best reflected in the correctness standard (*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35).

[17] I note, however, a small disagreement on this matter. The Applicant asserts the Officer's decision not to consult with a second officer pursuant to subsection 87(4) of the *IRPR* constitutes a breach of procedural fairness and is therefore reviewed on a correctness standard.

[18] I disagree. A decision-maker's interpretation of their home statute attracts a presumption of reasonableness (*Vavilov* at para 25). This aspect of the Officer's decision involves the interpretation and application of the *IRPR* and no grounds for rebutting the presumption of reasonableness apply (*Vavilov* at para 17; see also *Nwachukwu v Canada (Citizenship and Immigration)*, 2020 FC 122 at para 9). Further, the Applicant has not established that consulting with a second officer is a right guaranteed to her under the principles of procedural fairness, rather than under the *IRPR*.

[19] Reasonableness is a deferential, but robust, standard of review (*Vavilov* at paras 12-13). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable

decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (*Vavilov* at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences (*Vavilov* at paras 88-90, 94, 133-135).

[20] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (*Vavilov* at para 100). A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent exceptional circumstances (*Vavilov* at para 125).

[21] Correctness, in contrast, is a non-deferential standard of review. The central question for issues of procedural fairness is whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 21-28 (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

IV. Analysis

A. *Did the Officer err by not rebutting the presumption created by the Canada–New Brunswick Agreement?*

[22] The PNP grants a certain degree of autonomy to provinces and territories to select foreign nationals that meet their jurisdiction's particular needs, provided the chosen candidates can

become “economically established” in Canada (*Bano* at para 18). This requirement is reflected under subsection 87(1) of the *IRPR*:

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.

[23] Under subsection 87(2) of the *IRPR*, a foreign national must be nominated by a provincial government and intend to reside in that province to become a permanent resident under the PNP:

Member of the class	**Qualité**
87 (2) A foreign national is a member of the provincial nominee class if	87 (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.

[24] The Applicant submits that when a foreign national is nominated by New Brunswick under the PNP, there is a presumption that individual has the ability to become economically established in Canada. The Applicant asserts such a presumption is created under Annex A of the *Canada–New Brunswick Immigration Agreement* (the "*Canada–New Brunswick Agreement*"), which states:

4.1 New Brunswick has the sole and non-transferable responsibility to assess and nominate candidates who, in New Brunswick's determination:	4.1 Le Nouveau-Brunswick a la responsabilité exclusive et non transférable d'évaluer et de désigner des candidats qui, à son avis :
4.1.1 Will be of benefit to the economic development of New Brunswick; and	4.1.1 Contribueront au développement économique du Nouveau-Brunswick; et
4.1.2 Have the ability and intention to economically establish and permanently settle in New Brunswick subject to sections 4.2 through 4.8.	4.1.2 Ont la capacité et l'intention de réussir leur établissement économique et de s'installer en permanence dans la province, sous réserve des clauses 4.2 à 4.8 de la présente annexe.
4.14 Canada shall consider New Brunswick's nomination as evidence that New Brunswick has carried out its due diligence determining that an applicant will be of economic benefit to New Brunswick and has met the requirements of New	4.14 Le Canada doit considérer la désignation faite par le Nouveau-Brunswick comme la preuve que la province a exercé sa diligence raisonnable pour s'assurer que le candidat apportera un avantage économique au Nouveau-Brunswick et répond aux critères du Programme des

Brunswick's Provincial Nominee Program.	candidats des provinces du Nouveau-Brunswick.

[25] The Applicant notes the presumption under the *Canada–New Brunswick Agreement* is reflected within IRCC's own policy. In particular, section 5 of IRCC's *OP 7-B Provincial Nominees* ("*OP 7-B*") states: "[i]mmigration officers can assume that a candidate nominated by a province does, in the view of the provincial officials, intend to reside in the nominating province and has a strong likelihood of becoming economically established in Canada" [emphasis added].

[26] According to the Applicant, the Officer's determination that the Applicant does not intend to reside in New Brunswick is unreasonable in light of the contrary presumption created under the *Canada–New Brunswick Agreement* and *OP 7-B.*

[27] In my view, a plain reading of the *Canada–New Brunswick Agreement* and *OP 7-B* does not give rise to the presumption asserted by the Applicant. While both instruments affirm that a nomination under the PNP is evidence that New Brunswick believes a foreign national intends to reside in the province, I find they do not affirm that such a presumption extends to IRCC.

[28] In arguing to the contrary, the Applicant relies upon two cases: *Hassan v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 1096 ("*Hassan*") and *Begum v Canada (Citizenship and Immigration)*, 2020 FC 162 ("*Begum*").

[29] I find *Hassan* and *Begum* are distinguishable from the case at hand. Those cases stand for the authority that if a foreign national is nominated by a province under the PNP, that foreign

national is presumed to be able to become economically established in Canada (*Hassan* at paras 20-24; *Begum* at paras 26-28; see also *Bano* at para 19). In this case, the Officer does not dispute the Applicant is able to become economically established in Canada, but rather finds the Applicant does not intend to reside in New Brunswick. As discussed in detail below, I am not convinced by the Applicant's argument that these determinations are mutually inclusive.

[30] In addition, I find the Officer's decision is reasonable in light of the protocol outlined in the *Canada–New Brunswick Agreement*. Sections 4.18 and 4.20 of the *Canada–New Brunswick Agreement* required the Officer to consult with New Brunswick prior to refusing the Applicant's permanent residence application, but allowed the Officer to make their decision without notifying New Brunswick:

4.18 Should Canada determine that an individual nominated by New Brunswick is likely to be refused a Permanent Resident visa based on the applicant's inability to meet the requirements of the New Brunswick Provincial Nominee Program and the requirements of membership in the Provincial Nominee class as per the IRPR and this Agreement, New Brunswick will be notified as soon as possible, taking into consideration local operating environments, and New Brunswick will be consulted regarding the reasons for possible refusal.	4.18 Si le Canada juge que la demande de visa de résident permanent d'un candidat désigné par le Nouveau-Brunswick sera vraisemblablement refusée du fait que le demandeur ne peut respecter les conditions du Programme des candidats des provinces du Nouveau-Brunswick ou les conditions d'appartenance à la catégorie des candidats des provinces aux termes du RIPR et du présent accord, il en avisera sur le champ le Nouveau-Brunswick, en tenant compte du contexte opérationnel local, et la consultera au sujet des motifs d'un éventuel refus.
4.20 In all cases where Canada determines that an individual	4.20 Dans tous les cas où le Canada établit qu'une personne

nominated by New Brunswick does not meet the admissibility requirements of the IRPA, Canada will refuse without notifying New Brunswick before the final decision. […]	désignée par le Nouveau-Brunswick ne remplit pas les conditions d'admissibilité prévues dans la LIPR, il refusera la demande sans aviser le Nouveau-Brunswick avant de prendre la décision définitive. […]
[emphasis added]	[emphase ajoutée]

[31] The Officer followed the protocol under the *Canada–New Brunswick Agreement* in rendering their decision. After interviewing the Applicant, the Officer consulted with a New Brunswick official and outlined their credibility concerns regarding the Applicant's intent to reside in New Brunswick. The New Brunswick official responded and agreed with the Officer's concerns, stating the Applicant likely misrepresented herself in her application and may not have a genuine interest to reside in New Brunswick.

[32] Finally, the Officer's determination that the Applicant was not credible with respect to her intent to reside in New Brunswick is justified, transparent, and intelligible (*Vavilov* at para 99).

[33] Intention to reside in a chosen province is a highly subjective criterion, and the assessment of said criterion may take into account all indicia, including past conduct, present circumstances, and future plans (*Rabbani v Canada (Citizenship and Immigration)*, 2020 FC 257 at para 43). In finding the Applicant was not credible, the Officer weighed the Applicant's family ties and history of travel to Ontario and British Columbia; the Applicant's acknowledgement that she had not spent sufficient time in New Brunswick to know if she

wanted to reside there permanently; the incomplete state of the Applicant's business plan; and the Applicant's acknowledgement that her primary motivation for applying for the PNP was to allow her to live with her children while they pursued studies in Canada.

[34] The Applicant argues this conclusion is unreasonable because the Officer was preoccupied with the Applicant's desire for her children to successfully integrate in Canada. This argument, however, does not identify a reviewable error within the Officer's decision. Rather, it merely asks this Court to reweigh the evidence before the Officer and reach a different outcome, which is not the purpose of judicial review (*Dhesi v Canada (Attorney General)*, 2018 FC 283 at para 24, citing *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 61).

[35] As stated by my colleague Justice McHaffie, the Officer's credibility determination is part of the fact-finding process and therefore provided significant deference upon review (*Azenabor v Canada (Citizenship and Immigration)*, 2020 FC 1160 at para 6). Credibility determinations lie within "the heartland of the discretion of triers of fact […] and cannot be overturned unless they are perverse, capricious or made without regard to the evidence" (*Yan v Canada (Citizenship and Immigration)*, 2017 FC 146 at para 18). In this case, the Applicant has established no such grounds to overturn the Officer's decision.

B. *Did the Officer err by not obtaining a concurring opinion from a second officer?*

[36] Subsections 87(3) and 87(4) of the *IRPR* set out two procedural safeguards that encourage deliberation when a visa officer diverges from a provincial nomination and finds a

foreign national is unlikely to become economically established in Canada (*Bano* at para 20). Specifically, subsection 87(3) requires a visa officer to consult with the issuing provincial government if the officer seeks to substitute a provincial determination of economic establishment with their own evaluation, and subsection 87(4) requires the concurrence of a second officer for an officer's substituted determination under subsection 87(3):

Substitution of evaluation	**Substitution d'appréciation**
(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).
Concurrence	**Confirmation**
(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.

[37] The Applicant submits it was unreasonable for the Officer to determine that the Applicant did not intend to reside in New Brunswick without obtaining the concurrence of a second officer in accordance with subsections 87(3) and 87(4) of the *IRPR*.

[38] The Applicant asserts that both criteria under subsection 87(2) of the *IRPR* — being nominated by a province, and having the intent to reside in that nominating province — are integral and mutually inclusive to becoming economically established in Canada under subsection 87(1). Therefore, according to the Applicant, if an officer determines a foreign national does not intend to reside in the province that nominated them under subsection 87(2)(b), this determination constitutes a substituted evaluation of the foreign national's ability to become economically established in Canada under subsection 87(3), thus triggering the requirement to obtain the concurrence of a second officer under subsection 87(4).

[39] The Applicant submits the above interpretation is clear when section 87 of the *IRPR* is read "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament" (*Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27 at para 21). In particular, the Applicant notes that under subsection 87(3), an "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." This language, the Applicant highlights, is not narrowed to include only the criterion under subsection 87(2)(a) (*i.e.*, a provincial nomination) and therefore also includes the criterion under subsection 87(2)(b) (*i.e.*, an intent to reside in the nominating province). If Parliament intended otherwise, the Applicant asserts the language used in subsection 87(3) would be restricted solely to a re-evaluation of the criterion under subsection 87(2)(a).

[40] Despite the Applicant's submissions, I find the Officer's interpretation and application of section 87 of the *IRPR* are internally coherent and justified in relation to the relevant law

(*Vavilov* at para 85). The Officer reasonably concluded they were not required to obtain a second officer's concurring opinion before determining the Applicant did not intend to reside in New Brunswick.

[41] The jurisprudence supports the Officer's conclusion. In *Kikeshian v Canada (Citizenship and Immigration)*, 2011 FC 658 ("*Kikeshian*") at para 17, Justice Barnes affirmed that a foreign national's intent to reside in a nominating province and their ability to become economically established in Canada are "not equivalent."

[42] Following *Kikeshian*, Justice Martineau confirmed in *Ransanz v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 1109 ("*Ransanz*"), that the determination of a foreign national's intention to reside in the province that nominated them does not trigger the requirements of consultation and concurrence under subsections 87(3) and 87(4) of the *IRPR*:

> [25] Subsection 87(3) of the Regulations specifically grants federal officials the discretion to substitute their evaluation of an applicant's ability to become economically established in Canada, provided that they consult with the province that has nominated the individual, and that they have obtained the concurrence of a second officer (subsections 87(3) and 87(4)). Crucially, however, these requirements for consultation and concurrence apply specifically to the first condition under subsection 87(2) only – namely, to considerations relating to the likelihood of the applicant's ability to become established in Canada, as per the criteria of the provincial nomination certificate at subsection 87(2)(a). <u>An applicant's intention to reside in the province that has nominated him or her (subsection 87(2)(b)) is a separate requirement – one that is not subject to the requirements for consultation and concurrence, and which is additional to the issuance of a certificate of selection or a provincial nomination.</u>
>
> [emphasis added]

[43] The Officer's interpretation is also internally coherent. It is self-evident that one could have the means and ability to become economically established in Canada but not intend to reside in the province that nominated them. One's ability to become economically established in the entire country is not determinative of one's intent to live in a particular province, or *vice-versa*.

[44] Further, the Officer's interpretation is justified in light of the wording of section 87(3) of the *IRPR*. I repeat the provision here for clarity:

Substitution of evaluation	**Substitution d'appréciation**
(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).

[45] Under subsection 87(3), a visa officer's authority to substitute their evaluation for the criteria under subsection 87(2) is triggered by the fact that a foreign national <u>being named in a provincial nomination certificate</u> is not a sufficient indicator of whether they may become economically established in Canada.

[46] It is true the language of subsection 87(3) pertains to the "criteria set out in subsection (2)" and thus at first glance captures both criteria under that provision. However, I find this broad language is limited by the fact that subsection 87(3) solely contemplates the issuing of a provincial nomination certificate under subsection 87(2)(a), not one's intent to reside in the nominating province under subsection 87(2)(b). I therefore find it was reasonable for the Officer to conclude that their determination under subsection 87(2)(b) did not constitute a substituted evaluation under subsection 87(3), and thus did not trigger the need for a concurring opinion under subsection 87(4).

[47] In arguing to the contrary, the Applicant asserts that section 7.8 of *OP 7-B* affirms the need for an officer to seek a concurring opinion if they refuse a PNP application based on the determination that a foreign national does not intend to reside in the province that nominated them:

> **7.8 Refusing the application**
>
> There are three bases upon which a provincial nominee who meets all statutory admissibility requirements can be refused a visa:
>
> - The officer has reason to believe that the applicant does not intend to live in the province that has nominated them;
> - The officer has reason to believe that the applicant is unlikely to be able to successfully establish economically in Canada; and
>
> […]
>
> In each case, the officer must have some evidence to support this belief and overcome the presumptions implied by the provincial nomination. Every provincial nominee agreement

> obliges the immigration officer to consult with an official of the nominating province regarding the intention to refuse before the refusal is actually made.
>
> If the officer, after consulting with the province, still intends to refuse, R87(4) requires that a second officer concur with the decision to refuse, before it can be made official.

[48] I note that section 7.8 of *OP 7-B* does not specify which grounds of refusal require a concurring opinion under subsection 87(4) of the *IRPR*. Even accepting the Applicant's argument that section 7.8 applies to all grounds of refusal, including the determination that a foreign national does not intend to reside in the nominating province, I am not persuaded the Officer's decision is unreasonable.

[49] While the broad language of section 7.8 of *OP 7-B* may permit an interpretation of section 87 of the *IRPR* that is different than the one reached by the Officer, I find the Officer's decision is nonetheless justified in light of this possibility. Departmental policy documents, including *OP 7-B*, can assist the Court in determining the reasonableness of the Officer's decision, but they are not law and the Minister is not bound by them (*Sran v Canada (Citizenship and Immigration)*, 2012 FC 791 at para 17; *Vavilov* at para 94). Given the broad language of section 7.8 of *OP 7-B*, and that the Officer adopted an internally coherent interpretation of section 87 of the *IRPR* that is justified in relation to the jurisprudence, I find the Officer's decision is nonetheless justified, transparent, and intelligible in light of the interpretation of *OP 7-B* proposed by the Applicant (*Vavilov* at para 99).

C. *Did the Officer breach their duty of fairness?*

[50] The Applicant submits the Officer breached their duty of fairness by not providing the Applicant with written notice of the concerns respecting the Applicant's intention to reside in New Brunswick before refusing the Applicant's permanent residence application.

[51] The duty of fairness requires administrative decision-makers to provide an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered (*Baker* at para 22). As affirmed in *Vavilov* at paragraph 77, the content of the duty of fairness in a particular case depends on the circumstances and is assessed by considering the following factors:

(a) the nature of the decision being made and the process followed in making it;

(b) the nature of the statutory scheme;

(c) the importance of the decision to the individual or individuals affected;

(d) the legitimate expectations of the person challenging the decision; and

(e) the choices of procedure made by the administrative decision maker itself.

[52] Applying the above factors, I find the duty of fairness owed by the Officer to the Applicant falls at the lower end of the spectrum (*Yasmin v Canada (Citizenship and Immigration)*, 2018 FC 383 at para 18).

[53] With that relatively low threshold in mind, I find the Officer did not breach their duty of fairness to the Applicant. The Officer's duty of fairness required the Officer to provide the Applicant with opportunities to respond to credibility concerns during the interview; the Officer was not required to provide the Applicant with written notice of those concerns prior to rendering their decision (*Ali v Canada (Citizenship and Immigration)*, 2011 FC 1247 at paras 91-93; *De Azeem v Canada (Citizenship and Immigration)*, 2015 FC 1043 at para 37; *Khwaja v Canada (Citizenship and Immigration)*, 2006 FC 522 at paras 17-21). The Officer fulfilled this duty by providing the Applicant with meaningful opportunities to respond to their concerns during the interview.

[54] In arguing the Officer did not provide the Applicant with a sufficient opportunity to respond, the Applicant relies upon *Gedara v Canada (Citizenship and Immigration)*, 2016 FC 209 ("*Gedara*") and *Bideh v PNB*, 2016 NBQB 192 ("*Bideh*").

[55] I find both *Gedara* and *Bideh* are distinguishable from the case at hand.

[56] In *Gedara*, Justice Manson held a visa officer breached their duty of fairness because the GCMS notes did not display whether "the concern regarding the Applicant's ability to become economically established was specifically put to him, in the interview or otherwise, such that he was given an opportunity to respond" (*Gedara* at para 35) [emphasis added]. Unlike the foreign national in *Gedera*, the Applicant in this case was provided an opportunity to respond to the Officer's concerns at the interview.

[57] Similarly, the foreign national in *Bideh* was not informed of the specific concerns that resulted in the determination that he did not intend to reside in New Brunswick, only that the provincial authority was not convinced of his "commitment to New Brunswick" (*Bideh* at paras 36-37). In this case, the Officer clearly explained their concerns to the Applicant and provided the Applicant with opportunities to address those concerns, as exemplified by the Officer's statements during the January 17, 2020 interview:

> I notice that you seem to have a pre-occupation with your children living and studying in Cda. It seems to be your chief focus, moreso than the business you are proposing. All of this reflects on your credibility and makes me think perhaps you are using this PNP program [*sic*] simply as a means of getting status in Cda and makes me think that perhaps you intend to reside somewhere in Cda other than NB. Would you like to respond to that concern?
>
> […]
>
> You failed to disclose the previous visa refusals and you failed to disclose the correct country of birth for your youngest child. I think it's quite possible that you did these things deliberately in order to try and deceive us… I also notice that you have relatives living in other parts of Cda, so that is a pull factor for you to go those [*sic*] parts of Cda instead of NB. Would you like to respond?
>
> […]
>
> You are proposing to live in another country and invest a lot of money. Why would you not draw up a proper business plan on paper?
>
> [emphasis added]

[58] I find the Applicant knew the Officer's credibility concerns and had a meaningful opportunity to respond to those concerns. The Applicant provided responses to each of the Officer's questions; she did not request the opportunity to provide further evidence or

submissions; and she affirmed it was her responsibility to clarify if she did not understand the interpreter or a question, but requested no such clarifications.

V. Certified Question

[59] The Applicant proposes the following question for certification to permit an appeal under subsection 74(d) of the *IRPA*:

> Does a federal immigration official's decision to deny permanent residency on the basis of paragraph 87(2)(b) of the *IRPR* trigger the subsection 87(4) concurrence requirement?

[60] The Respondent asserts this question does not satisfy the test for certification, as the question is not "a serious question that is dispositive of the appeal, transcends the interests of the parties and raises an issue of broad significance or general importance" (*Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at para 46).

[61] A question cannot raise an issue of broad significance or general importance if the law on that question is well settled (*Mudrak v Canada (Citizenship and Immigration)*, 2016 FCA 178 at para 36). As discussed in paragraphs 41-42 of this judgment, the jurisprudence is clear that the concurrence requirement under subsection 87(4) of the *IRPR* is not triggered by a determination under subsection 87(2)(b) that a foreign national does not have an intent to reside in the province that nominated them (*Kikeshian* at para 17; *Ransanz* at para 25). I find my colleagues' decisions are highly persuasive, and the Applicant has not presented any jurisprudence that casts doubt upon them. As such, I decline to certify the Applicant's proposed question.

VI. Conclusion

[62] I find the Officer's decision was reasonable and made in accordance with the principles of procedural fairness. I therefore dismiss this application for judicial review.

[63] Lastly, I dismiss the Applicant's request to certify a question for appeal, as the question proposed is not a serious question of general importance within the meaning of subsection 74(d) of the *IRPA*.

JUDGMENT IN IMM-2167-20

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. No question is certified.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2167-20
STYLE OF CAUSE:	LY THI CHUC TRAN v MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDECONFERENCE BETWEEN CHARLOTTETOWN, PRINCE EDWARD ISLAND, HALIFAX, NOVA SCOTIA AND OTTAWA, ONTARIO
DATE OF HEARING:	MAY 13, 2021
JUDGMENT AND REASONS:	AHMED J.
DATED:	JULY 7, 2021

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