Federal Court Cour fédérale

Date: 20211008

Docket: IMM-2143-20

Citation: 2021 FC 1054

Ottawa, Ontario, October 8, 2021

PRESENT: Mr. Justice Diner

BETWEEN:

HONG NHAN TRAN

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The Applicant seeks judicial review of a decision by a federal visa officer ("Officer"), refusing his permanent residency ("PR") application on the basis that he found it unlikely that the Applicant would reside in New Brunswick. The Applicant challenges the reasonability of this decision primarily on the basis of statutory interpretation. As I find both the Officer's

interpretation and application of the statute to be reasonable, there are no grounds for this Court to intervene.

II. BACKGROUND AND DECISION UNDER REVIEW

[1] The Applicant is a 43-year-old citizen of Vietnam. He is married, with two children aged 10 and 7. He has worked as a project manager and group manager for various engineering firms, having completed a bachelor's degree in Industrial Electrical Engineering in 2001.

[2] In March of 2018, the New Brunswick Provincial Nominee Program ("PNP") approved his application under the Entrepreneurship Stream. As the procedure requires, he then sent his application for final approvals by the visa office. He was convoked for an interview.

[3] The interview and correspondence that followed are described in the Officer's Global Case Management System ("GCMS") notes.

[4] During the interview, the Officer expressed concern that nothing in the Applicant's background suggested that he possessed the experience, skills or interest to open an organic farm in Canada. The Applicant responded that he and his wife's parents were farmers and explained that he had worked on projects involving agricultural technology products. The Officer also questioned how the Applicant's work on large-scale engineering projects would prepare him to operate an organic farm, whether he had visited any potential farms to buy while in New Brunswick, and whether he had arranged for or conducted any soil testing.

[5] The Applicant responded that the couple had visited New Brunswick once for a week the previous year, but that they did not visit any farms. When questioned why they never returned, the Applicant stated they had intended to, but circumstances, including advice from their lawyer not to submit a temporary application while awaiting their permanent visa application, had prevented their return. The Applicant produced photos from a grocery store in New Brunswick as proof he had completed market research on beef prices in Canada and the prices of organic products. The Applicant also stated that soil testing could not be done before they obtained a visa.

[6] The Officer indicated that they did not find the Applicant's explanations credible, noting that their application had been in progress for over two years, and that nothing prevented the Applicant from visiting again, stating that it appeared they did not visit because they did not really intend to live in New Brunswick. The Officer also indicated that the Applicant fell short on his market research and technical knowledge (regarding soil testing).

[7] Ultimately, the Officer remained unconvinced about the Applicant's stated intention to follow through on his plan to open an organic farm in New Brunswick or live in the province, as reflected in the GCMS notes:

> "I would like to let you know that this program you have applied under has a lot of fraud in it – where people claim they will open a business in the province nominating them as a means of getting status in Cda but then don't follow through with opening that business or even living in that province. Your application, when I look at it, seems to fit a pattern of fraud where applicants claim they will open a business that is loosely related to their current work or loosely related to something in their background so that they can claim to have a connection and an interest in it. Right now, I have difficulty believing – based on your background, your

> education, your work experience and your social status here in Vietnam, the way you spoke about your plans today, and the efforts you have made to carry out your plans – that you intend to follow through on this plan to open an organic farm in NB. Would you like to respond before we stop?" (CTR, 12).

[8] In response, the Applicant reaffirmed his intent to open a farm in New Brunswick, reiterated he and his wife's family history in farming, noted that his experience in project management involved not only engineering but also selling and marketing products, and, explained that some of the projects had involved agricultural technology, and that he hoped to apply new technology to farming in New Brunswick.

[9] The Officer remained unconvinced, sending a pre-refusal letter to New Brunswick immigration authorities, informing them of his potential refusal of a visa for the Applicant on the basis that he was not satisfied the Applicant intended to reside in New Brunswick, explaining his concerns in detail including the above exchanges during the interview, concluding:

> Overall, based on the applicants' backgrounds, education, work experience, social status in Vietnam, statements at interview, and efforts and preparations made to date, I find that I cannot be satisfied that they actually intend to follow through with the stated plan to open an organic farm in New Brunswick. Therefore, I cannot be satisfied that they intend to reside in NB at all.
> (CTR, 5)

[10] In response, the New Brunswick PNP authorities wrote that they agreed:

> Thank you for the detailed email regarding this candidate. Historically, we have seen entrepreneurs with different backgrounds establish a business in New Brunswick that was not related to their previous experience. We have some individuals working in the seafood industry and recently I had worked with an applicant who is working at establishing a farm. This farmer applicant did have a lot of knowledge regarding soil testing and

> was proactive in providing those results. However, I have also interviewed individuals that did not appear to have done proper market research and seemed to be "adjusting" their answers as the interview progressed. Based on the information outlined in your email, I support the decision to refuse this applicant.
> (CTR, 3)

[11] The Officer refused the application, being unsatisfied that the Applicant intended to reside in the nominating province pursuant to subsection 87(2)(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*].

III. ISSUES AND ANALYSIS

[12] Although earlier issues were raised in the initial arguments, the Applicant focused his submissions on whether the refusal, based on intention to reside, was reasonable. He challenged the statutory interpretation of subsection 87(2)(b) of the *Regulations*, positing that there is only one reasonable interpretation of the procedural requirements under this provision, which required the Officer to obtain a second opinion.

[13] More specifically, the Applicant argues that the Officer's failure to obtain a concurring opinion that the Applicant did not intend to reside in New Brunswick renders the decision unreasonable. In support of this, he makes statutory interpretation arguments regarding the "prescribed statutory procedure" of subsections 87(3) and 87(4) of the *Regulations*, which the Applicant in turn submits the Officer erroneously ignored or failed to follow.

[14] Second, the Applicant argues the Officer’s decision was unreasonable because the Officer disregarded the presumption found at section 4.14 of Annex A to the *Canada New Brunswick Immigration Agreement* [*Agreement*], whereby provincial authorities are owed deference on their determinations that an applicant will be of economic benefit to New Brunswick and has met the requirements of the PNP program.

A. ***Standard of Review***

[15] The parties agree that reasonableness is the standard of review that applies to a visa officer’s decision on a permanent residency application under a provincial nominee program. *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] provides no reason to depart from the reasonableness standard followed in previous case law: *Tran v Canada (Citizenship and Immigration)*, 2021 FC 721 [*Tran*] at paras 16, 18; *Bano v Canada (Citizenship and Immigration)*, 2020 FC 568 [*Bano*] at para 13.

[16] A court conducting reasonableness review scrutinizes the decision maker’s decision in search of the hallmarks of reasonableness – justification, transparency and intelligibility – to determine whether it is justified in relation to the relevant factual and legal constraints that brought the decision to bear: *Vavilov* at para 99. Both the outcome and the reasoning process must be reasonable: *Vavilov*, at para 83.

[17] In the present context, the Applicant focuses on statutory interpretation arguments in support of his position. Reviewing courts are accustomed to performing independent analyses and reaching their own conclusions on questions of statutory interpretation.

[18] Nevertheless, questions of statutory interpretation are treated differently in a reasonableness review; reviewing courts are not to undertake an independent analysis of what the correct decision ought to have been. Instead, reasonableness review examines the administrative decision as a whole, including the reasons provided and the outcome, and, where legal interpretation is involved, assumes the decision maker will do so in a manner consistent with the "modern principle" of statutory interpretation: *Vavilov* at paras 115-118; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 [*Rizzo*] at para 21.

[19] While administrative decision makers are not required to engage in a formalistic interpretive exercise, their task when interpreting a contested provision is to do so in a manner consistent with its text, context and purpose. Where relevant case law exists for the provision in question, this acts as a constraint on what the decision maker can reasonably decide, and divergence from binding precedent needs to be explained: *Vavilov* at paras 112, 119-121.

B. ***Relevant Statutory and Regulatory Provisions***

[20] See Annex "A" below for relevant statutory and regulatory provisions.

C. **Analysis**

(1) Statutory Interpretation

[21] The Applicant argues that by failing to seek the concurrence of a second officer after concluding the Applicant did not intend to reside in New Brunswick, the Officer unreasonably

failed to follow "prescribed" statutory procedure and ignored an oversight mechanism within the home statute.

[22] In support of his argument, the Applicant proposes his own statutory interpretation of section 87 of the *Regulations*. According to the Applicant, there is only one clear interpretation of section 87: an officer's substituted decision on economic establishment, which requires consultation with the province and the concurrence of a second officer, per 87(3) and 87(4) of the *Regulations*, includes the officer's assessment of whether the foreign national intends to reside in the nominating province, under subsection 87(2)(b).

[23] The Applicant arrives at this conclusion by essentially considering the intention (to reside) as a composite element of economic establishment under subsection 87(1), such that failing to satisfy the reviewing officer of his intention to reside triggers the subsection 87(4) concurrence requirement in the *Regulations*. Otherwise stated, the Applicant's proposed interpretation, based on both a textual and contextual analysis, concludes that a determination of a person's ability to become economically established is inclusive of non-economic factors, which includes the residence intent.

[24] In support of this interpretation, the Applicant canvasses the objectives and related provisions of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 ["*Act*"], the *Agreement,* excerpts of Immigration, Refugees and Citizenship Canada's *Operating Manual Overseas Processing 7-B - Provincial Nominees* (OP-7), as well as the Regulatory Impact Analysis Statement (*Canada Gazette*, SOR/2002-227, Part II, Extra Vol. 136, No. 9, at 234-236)

issued with the *Regulations*. All of these, he submits, indicate Canada's supporting role in the PNP and the need for deference to New Brunswick's principal role. The Applicant invites this Court to adopt his interpretation and in so doing, to find the Officer's interpretation erroneous.

[25] There are two problems with the interpretation approach proposed, both of which run afoul of the guidance provided by the Supreme Court in *Vavilov*. First, and as I have noted above, it is not for this Court to conduct its own *de novo* statutory interpretation exercise and then weigh the Officer's decision against the result, since to do so would simply be a disguised means of holding the Officer to a standard of correctness: *Canada (Citizenship and Immigration) v Mason*, 2021 FCA 156 at para 12; *Delios v Canada (Attorney General)*, 2015 FCA 117 at para 28.

[26] Instead, and contrary to the approach proposed by the Applicant, the analysis must examine the administrative decision as a whole, and in doing so, it must assume that the Officer interpreting the law did so in a manner consistent with the modern principle of interpretation: *Vavilov* at paras 116-118. Driedger's modern principle of statutory interpretation states:

> "[W]ords of an Act are to be 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* at para 21

[27] Thus, the Officer's task was to interpret the contested provision in a manner consistent with the text, context and purpose of the *Regulations*, and to discern meaning and legislative intent. The Officer is not required to engage in a formalistic exercise, and his written reasons are not required to resemble those of a Court: *Vavilov* at paras 119-121.

[28] A holistic review of the Officer's decision including the lengthy and detailed GCMS notes reveal the Officer did not found the decision on whether the Applicant possessed the requisite ability to become economically established in Canada. Rather, the Officer remained unsatisfied of his stated intent to reside in New Brunswick. It is clear from both the Refusal Letter and the transcript of the interview that the Officer remained unpersuaded that the Applicant intended to follow through on his plans to reside in the province - the sole criteria contemplated by subsection 87(2)(b).

[29] I come to the same conclusion in reviewing the support of the province. The Officer's note to the province clearly explained the concern regarding intent, referencing subsection 87(2)(b). Their written response, after considering the explanation provided by the Officer, clearly reflected the basis for their altered opinion of the Applicant's intent to reside in New Brunswick - and not his ability to establish himself economically.

[30] Given the clear reasons and rationale, I therefore cannot agree that the Officer conflated residency intention in subsection 87(2) with economic establishment in subsections 87(1), (3) and (4). Had that been the case, then that may have constituted a reviewable error, as it has in other circumstances (see recently, for instance, *Thuy v Canada (Citizenship and Immigration)*, 2021 FC 522 [*Thuy*]).

[31] Rather, given that the Officer confined his findings to the criteria contained in subsection 87(2), his interpretation was entirely justifiable under the law, in not needing a second opinion

from another visa officer. I find this to be a reasonable and internally coherent interpretation of the wording of the legislation.

[32] Not only does the Officer's interpretation of the *Regulations* appear to me to be reasonable - and here lies the second problem with the interpretation proposed by the Applicant – that interpretation of section 87 has been recently considered and thrice endorsed by this Court, including twice within the last three months: *Ngo v Canada (Citizenship and Immigration),* 2021 FC 665 [*Ngo*] at paras 40-50; *Tran* at paras 36-49; see also *Ransanz v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 1109 [*Ransanz*] at para 25.

[33] In *Tran*, Justice Ahmed considered a remarkably similar application, both factually and substantively: that of a Vietnamese national nominated under New Brunswick's PNP who saw their permanent residency application denied on the basis that the decision maker was not satisfied they intended to settle in that nominating province. As here, the Officer in *Tran* did not consult with a second officer prior to rendering their decision, which the Applicant similarly contested under subsection 87(4) of the *Regulations*.

[34] Justice Ahmed found the Officer's conclusion constituted a justified interpretation of section 87 of the *Regulations*, supported by jurisprudence, which holds that a foreign national's intent to reside in a nominating province is not equivalent to their ability to become economically established: *Tran* at paras 40-41; *Kikeshian v Canada (Citizenship and Immigration)*, 2011 FC 658 [*Kikeshian*] at para 17.

[35] Justice Ahmed also cited *Ransanz*, in which Justice Martineau considered subsections 87(3) and 87(4) to be analogous to the provisions at issue in that case, and opined that requirements for consultation and concurrence did not apply to consideration of intent to reside in the nominating province under subsection 87(2)(b), which was a separate requirement from the criteria of the provincial nomination certificate under subsection 87(2)(a). Justice Ahmed cited at paragraph 42 of *Tran*, the relevant part of *Ransanz*:

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

[36] Justice Ahmed went on to consider the wording of subsection 87(3) and acknowledged that while its broad language could at first glance appear to capture both criteria in subsection 87(2), just as counsel argued before this Court, it is limited by the fact that it solely contemplates the issuing of a provincial nomination certificate under 87(2)(a): *Tran* at para 46.

[37] I subscribe to Justice Ahmed's reasons at paragraphs 36 to 49 of *Tran*. I find that while a different interpretation of section 87 of the *Regulations* could be reasonable, that possibility does

not render the interpretation reached by the Officer in this particular case unreasonable, particularly in light of its support in the jurisprudence. The Applicant has not met his burden.

[38] The Applicant argues that the cases of *Bano, Sran v Canada (Citizenship and Immigration),* 2012 FC 791, *Begum v Canada (Citizenship and Immigration)*, 2020 FC 162 [*Begum*] and *Wai v Canada (Citizenship and Immigration),* 2009 FC 780 support his interpretation of section 87.

[39] I do not agree. None of these four cases squarely addresses the question of whether intent to reside under subsection 87(2)(b) is a separate criteria from provincial assessments of ability to economically establish under subsection 87(2)(a). Absent that analysis, the cited cases only stand for the proposition that economic establishment is based on both economic and non-economic factors, and that a decision diverging from provincial nomination certificates on that criteria require concurrence, which no one contests here. The four cases cited neither address nor support the argument that a determination on intention to reside under subsection 87(2)(b) ought to require concurrence of a second officer when federal officials are reviewing a permanent residence application.

(2) The Officer did not disregard a presumption of deference to provincial authorities

[40] The Applicant also argues that the Officer's decision was unreasonable because it disregarded a presumption found at section 4.14 of Annex A to the *Agreement*, which reads:

4.14 Canada shall consider New Brunswick's nomination as evidence that New	**4.14** Le Canada doit considérer la désignation faite par le Nouveau-Brunswick

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 Brunswick's Provincial Nominee Program. [Emphasis added]	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 candidats des provinces du Nouveau-Brunswick.

[41] The Applicant argues that by virtue of the legal framework, including the provision above, provincial authorities are owed deference in their determinations that an applicant will be of economic benefit to New Brunswick and have met the requirements of the PNP. By overlooking the legal framework, the Officer committed an unreasonable error.

[42] In support, the Applicant relies on *Hassan v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 1096 [*Hassan*] and *Begum*. In both cases, federal immigration officials refused foreign nationals' permanent residence applications because they did not possess the English skills required to become economically established. In both cases, the foreign nationals had been nominated by the provinces as part of their respective PNPs.

[43] The Applicant argues that similar to those cases, by disregarding New Brunswick's assessment of the Applicant's eligibility, the Officer contravened a presumption of deference owed to the province in its determinations as to eligibility and nomination.

[44] I am not persuaded that the officer so erred: the Officer did not challenge New Brunswick's assessment of the Applicant's eligibility in the PNP. Rather, the Officer concluded

the Applicant did not intend to follow through and reside in the province. Again, the Officer explained this to the province. The province agreed with the opinion given the evidence-based and logical explanation, on that alternate ground of residency, and reversed its original position.

[45] The Applicant's argument fails because it is rooted in the same interpretation of section 87 of the *Regulations* on which they rely above, whereby intention to reside is not a separate criteria from, but rather a component criteria of the ability of a foreign national to become economically established. I have already confirmed that the officer reasonably interpreted the concepts of economic establishment and residency intention separately, rather than taking a composite approach as the Applicant urges. Justice Ahmed considered the very same argument regarding deference to the provincial decision taken by New Brunswick in *Tran* (at para 29):

> [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.

[46] Indeed, the one concept may – but does not have to – require the other. While the legislation does not define the term "economic establishment", a person or entity can become economically established without the physical presence, such that someone might not intend to reside in the place where their business is located. Many individuals operate entities from a distance, often with the assistance of locally-based management and employees, and technology has made that separation far easier for many types of operations.

[47] Physical presence is an entirely different concept, and various laws define that requirement for their purposes (including immigration legislation), usually by a period of days spent within a jurisdiction.

[48] Thus, a person may have the ability to establish economically, but lack the desire to be physically present to do so. The concepts may be complementary or mutually inclusive for some, but certainly need not be for all.

[49] Intention to reside, after all, is a highly subjective concept, and the assessment of such intent may take all indications into account, including past conduct, present circumstances, and future plans: *Dhaliwal v Canada (Citizenship and Immigration)*, 2016 FC 131 at para 31; see also *Ngo* at paras 51-53; *Tran* at para 33.

[50] The Applicant posits that by treating subsections 87(2)(a) and 87(2)(b) separately, federal officers would have a loophole by which they could arbitrarily reject any application under the pretext of a lack of intent to reside.

[51] I disagree. Decisions must still bear the hallmarks of reasonableness to withstand judicial review. Where the concept of intent to reside is dressed up in the guise of economic establishment, the decision may well be returned for reconsideration.

[52] That is what occurred recently, for instance, in *Thuy*. There, the visa officer’s rationale for refusing a PNP permanent residency application, ostensibly on the basis of intent to reside,

was actually rooted entirely in a deficient assessment of the foreign national's ability to become economically established in Canada. That faulty rationale fatally flawed the decision, tainting it with circular reasoning and logical fallacies and, rendering it unreasonable.

[53] By contrast, the Officer's finding here is explicitly addressed and justified in his reasons, and takes into account the Applicants' "backgrounds, education, work experience, social status in Vietnam, statements at interview, and efforts and preparations made to date" (GCMS notes, CTR at 5). There was no conflation of reasons here, nor was the decision based on fundamental issues with economic establishment as it had been in other jurisprudence outlined above.

[54] I note in closing that the Applicant did not specifically challenge the reasonableness of the Officer's determination that the Applicant did not intend to reside in New Brunswick – but rather only the alleged procedural deficiency in failing to have sought the concurring opinion of another visa officer. In brief, I agree that there would be no merit to an argument attacking the substance of the Officer's conclusion, based on the justification provided, and transparency revealed when sharing the rationale with the nominating province, and indeed obtaining their concurrence.

IV. REQUEST TO CERTIFY A QUESTION

[55] At the hearing, the Applicants proposed certifying the same question raised in *Tran* (at para 59), namely "[d]oes 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?". The Respondent opposes certification on the basis that the question came late, and has already been rejected by this Court (in *Tran*).

[56] I agree that counsel should endeavour to submit all questions for certification in compliance with Court policy. That states, as set out in the Practice Guidelines of November 5, 2018 published on the Notices page of the Federal Court's website:

> Parties are expected to make submissions regarding paragraph 74(a) in their written submissions and/or orally at the hearing on the merits. Where a party intends to propose a certified question, opposing counsel shall be notified at least five [5] days prior to the hearing, with a view to reaching a consensus regarding the language of the proposed question.

[57] While counsel failed to submit the question prior to being asked if there were any certified questions at the hearing, which puts the other side in a difficult position, I will not reject the question on the basis of its lateness.

[58] Rather, I will reject the question on the basis that it does not meet the test for certification, for the reasons explained in *Tran*, where the Court arrived at the same conclusion (at paras 60-61).

V. CONCLUSION

[59] For all the reasons explained above, I find the Officer's decision was reasonable and will dismiss the application for judicial review.

JUDGMENT in IMM-2143-20

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. No certified question arises.
3. No costs will issue.

"Alan S. Diner"

Judge

Annex "A" – Relevant Statutory and Regulatory Provisions

***Immigration and Refugee Protection Act*, S.C. 2001, c. 27**

12(2) Economic immigration	**12(2) Immigration économique**
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	La sélection des étrangers de la catégorie « immigration économique » se fait en fonction de leur capacité à réussir leur établissement économique au Canada.

***Immigration and Refugee Protection Regulations*, SOR/2002-227**

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

(b) they intend to reside in the province that has nominated them.

b) il cherche à s'établir dans la province qui a délivré le certificat de désignation.

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.

Annex A to the *Canada New Brunswick Immigration Agreement*

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 Brunswick's Provincial Nominee Program.

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 candidats des provinces du Nouveau-Brunswick.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2143-20
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