Federal Court  Cour fédérale

**Date: 20240510**

**Docket: IMM-11139-22**

**Citation: 2024 FC 727**

**Ottawa, Ontario, May 10, 2024**

**PRESENT: Madam Justice McDonald**

**BETWEEN:**

**AHMED TWFIK MOHAMED MOHAMED ELFAKHARANY**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

[1] This judicial review application was scheduled for a hearing on April 4, 2024.

[2] On that date, the Applicant nor his legal counsel, Raj Napal of NLC Lawyers, appeared at the hearing. The Court Registry had not been advised in advance that the Applicant did not intend to appear at the hearing.

[3] Rule 38 of the *Federal Court Rules*, SOR/98-106 [Rules] provides:

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| Where a party fails to appear at a hearing, the Court may proceed in the absence of the party if the Court is satisfied that notice of the hearing was given to that party in accordance with these Rules. | Lorsqu'une partie ne comparaît pas à une audience, la Cour peut procéder en son absence si elle est convaincue qu'un avis de l'audience lui a été donné en conformité avec les présentes règles. |

[4] I am satisfied that the Applicant received notice of the hearing in accordance with the Rules; therefore, the hearing proceeded based on the Applicant's written submissions and Respondent's written and oral submissions.

## I. Background

[5] The Applicant seeks judicial review of the Officer's decision refusing his permanent residence visa application under the Saskatchewan Immigrant Nominee Program (SINP). The Officer was not satisfied that the Applicant intended to reside in Saskatchewan.

[6] The Applicant is a citizen of Egypt and a resident of Saudi Arabia. His wife and two children accompanied him to Canada.

[7] In August 2018, the Applicant received Confirmation of the SINP Nomination in the "International Skilled Worker – Occupations in Demand" category as an architect.

[8] In August 2019, the Applicant and his family arrived in Regina, Saskatchewan. The Applicant rented a house in Oakville, Ontario to allow his spouse to complete a laser-training course and to allow his daughter to complete an international course.

[9] After arriving in Canada, the Applicant received a Labour Market Impact Assessment supported work permit to work for Cube Consultancy. He rented a room in Regina for $375 per month.

[10] In March 2022, the Applicant received procedural fairness letter (PF letter) from an Officer expressing concerns about the Applicant's intention to reside in Saskatchewan. The Applicant responded to the PF letter on May 29, 2022 and provided supporting documentation.

[11] On October 7, 2022, the Officer sent the Applicant a written decision denying his permanent resident application based on provincial nominee class membership.

## II. Issues

[12] This matter raises the following issues:

A. Is the Officer's decision reasonable?

B. Was the Officer required to consult with the nominating province?

[13] The Officer's decision is subject to a reasonableness standard of review. The Court will assess if the decision bears the hallmarks of reasonableness—justification, transparency, and intelligibility—and if the decision is justified in relation to the relevant factual and legal constraints that bear on it (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99 [*Vavilov*]).

## III. Analysis

### A. *Is the Officer's decision reasonable?*

[14] In his written submissions, the Applicant argues that the Officer's consideration of his response to the PF letter was "cursory and full of unfounded speculation which fell foul of the engagement and comprehensive analysis that [Vavilov] demands."

[15] The Applicant argues that the Officer failed to consider the following factors: their stay in Ontario was temporary; they were attempting to establish their businesses prior to permanent relocation to Saskatchewan; they had discussions with a realtor about purchasing property in Regina; the Applicant was negotiating consulting contracts with companies in Saskatchewan; and the effect of the pandemic on his business and his wife's business.

[16] The intention to reside in a chosen province is a subjective assessment and this Court has held that the assessment can take into account "all indicia, including past conduct, present circumstances, and future plans, as best as can be ascertained from the available evidence and

context" (*Rabbani v Canada (Citizenship and Immigration)*, 2020 FC 257 at para 43 quoting *Dhaliwal v Canada (Citizenship and Immigration)*, 2016 FC 131).

[17] The Officer here provided detailed reasons for the decision in the Global Case Management System (GCMS) notes and assessed all of the factors outlined above. The Applicant has not pointed to any information or evidence that was not considered by the Officer or that was inconsistent with the Officer's conclusion. Overall, it was reasonable for the Officer to find that the Applicant did not have sufficient evidence of residing in Saskatchewan or that there were barriers that prevented him from residing in that province.

[18] Further, although the Officer was satisfied that the Applicant and his family would be able to economically establish themselves, the Officer was not satisfied that the Applicant met the requirement of paragraph 87(2)(b) of the *Immigration and Refugee Protection Act Regulations*, SOR/2002-227 [IRPR]. Thus the Applicant's submissions that Officer should only refuse the Applicant if they have a "strong reason to believe that the applicant is very unlikely to become economically established" does not have merit (*Singh Sran v Canada (Citizenship and Immigration)*, 2012 FC 791 at para 18). The Officer was clear that the refusal was based upon the intention to reside in the nominating province requirement.

[19] Further, as noted in *Kikeshian v Canada (Citizenship and Immigration)*, 2011 FC 658, the ability to establish economically in the nominating province is "not equivalent" to affirming one's intent to reside in that province (*Kikeshian* at para 17).

[20] The Applicant has not established that the Officer failed to consider any factors or evidence. Thus the Officer's finding is reasonable.

B. *Was the Officer required to consult with the nominating province?*

[21] The Applicant argues that the Officer failed to consult the Province of Saskatchewan on his nomination.

[22] The Department's Operational Manual [Manual] recognizes that a provincial nomination creates presumption that the applicant will be able to become economically established. The Manual instructs an officer to consult with provincial authorities if reasons exist to believe that a visa applicant does not intend to live in the nominating province or that the applicant is unlikely to be able to become economically established in Canada (*Kikeshian* at para 14).

[23] Subsections 87(3) and (4) of the IRPR require the officer to consult and concur with the nominating province. However paragraph 87(2)(b) of the IRPR, being the provision under which this decision was made, does not require such consultation or concurrence (*Ransanz v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 1109 at para 25).

[24] In any event, the GCMS notes demonstrate that the Officer did consult with the government of Saskatchewan. The record includes an email from the Government of Saskatchewan indicating they continue to support the Applicant's nomination. However, an email to the Applicant from the Government of Saskatchewan notes: "[t]he decision to support your nomination has been communicated to IRCC where your application for permanent

residence is assessed. Please be advised that the final authority to approve your permanent residence lies with IRCC " [emphasis added].

[25] There is no merit to the Applicant's submission that the Officer did not consult with the nominating province. The evidence demonstrates that, although the Officer was not required to consult, that consultation did happen.

## IV. Conclusion

[26] Overall, the Officer considered the Applicant's evidence and weighed it according to the discretion owed to the Officer and made a reasonable decision.

[27] For the reasons above, this judicial review application is dismissed.

**JUDGMENT IN IMM-11139-22**

**THIS COURT'S JUDGMENT is that** this judicial review application is dismissed.

"Ann Marie McDonald"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **:** | IMM-11139-22 |
| **STYLE OF CAUSE:** | ELFAKHARANY V THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | APRIL 4, 2024 |
| **JUDGMENT AND REASONS:** | MCDONALD J. |
| **DATED:** | MAY 10, 2024 |

**APPEARANCES:**

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| N/A | FOR THE APPLICANT |
| Jennifer Luu | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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| NLC Lawyers<br>Brampton, ON | FOR THE APPLICANT |
| Attorney General of Canada<br>Toronto, Ontario | FOR THE RESPONDENT |