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Docket: IMM-3364-07

Citation: 2008 FC 553

Ottawa, Ontario, April 29, 2008

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

SHAROVA NADEZHDA

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. INTRODUCTION

[1] The Applicant is one of three Russian business partners who were refused visas because they did not qualify under the “entrepreneur” class, more fully defined in the *Immigration and Refugee Protection Regulations* (Regulations). The judicial review application of one of the

partners, Dmitry Denisov, has been heard by Justice Gibson. It is the Court's understanding that the third partner's visa application is still pending.

[2] The Applicant, in this judicial review, has raised arguments as to the reasonableness of the decision and as to the procedural fairness of the decision process. Although the Applicant did not raise the issue of whether the Visa Officer erred in law in failing to aggregate the relevant businesses, the Court invited the parties to make submissions as to the applicability to this case of the decision in *Thomas v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 334.

[3] The provisions of s. 88(1) of the Regulations are attached as Annex 1. The key provisions for the purposes of this judicial review are:

"business experience" , in respect of	«expérience dans l'exploitation d'une entreprise» :
(a) an investor, ... means a minimum of two years of experience consisting of	a) S'agissant d'un investisseur, ... s'entend de l'expérience d'une durée d'au moins deux ans composée :
(i) two one-year periods of experience in the management of a qualifying business ...	(i) soit de deux périodes d'un an d'expérience dans la gestion d'une entreprise admissible ...
(ii) ... the management of at least five full-time job equivalents per year in a business ...	(ii) ... la direction de personnes exécutant au moins cinq équivalents d'emploi à temps plein par an dans une entreprise ...

(iii) a combination of a one-year period of experience described in subparagraph (i) and a one-year period of experience described in subparagraph (ii);

(iii) soit d'un an d'expérience au titre du sous-alinéa (i) et d'un an d'expérience au titre du sous-alinéa (ii);

(b) an entrepreneur, ... means a minimum of two years of experience ... in the management of a qualifying business and the control of a percentage of equity of the qualifying business ...

b) s'agissant d'un entrepreneur, ... s'entend de l'expérience d'une durée d'au moins deux ans ... dans la gestion d'une entreprise admissible et le contrôle d'un pourcentage des capitaux propres de celle-ci ...

"entrepreneur" means a foreign national who

«entrepreneur» Étranger qui, à la fois :

(a) has business experience;

a) a de l'expérience dans l'exploitation d'une entreprise;

(b) has a legally obtained minimum net worth; and

b) a l'avoir net minimal et l'a obtenu licitement;

(c) provides a written statement to an officer that they intend and will be able to meet the conditions referred to in subsections 98(1) to (5).

c) fournit à un agent une déclaration écrite portant qu'il a l'intention et est en mesure de remplir les conditions visées aux paragraphes 98(1) à (5).

II. FACTUAL BACKGROUND

[4] The three party visa applications were made in conjunction with the Applicant's brother and the other shareholder/partner in the businesses Centrpolytech and Kratos USA which were said to be owned and operated by them. The applications were filed at the Canadian Embassy in Moscow.

[5] Following the filing of various business records, the Applicant was interviewed, separately from her partners, with the use of the same interpreter in each case. Despite the Applicant's claimed and apparent knowledge of English, she did not raise any issues of interpretation at the interview or at any time prior to these proceedings. There is some dispute in the record on this point. The Applicant says that during the interview she pointed out errors in the interpretation of technical terms. The Visa Officer says that no issues of interpretation were raised at the interview. There was no cross-examination of either witness.

[6] During the interview, the Applicant stated that Centrpolytech produced a type of construction material. There is some dispute as to whether the material was "gas beton" or "aerate concrete".

[7] The Visa Officer informed the Applicant that her answer was at odds with information from her other business partners who had said the company was involved in the rental of real estate.

[8] The Applicant was given 60 days to provide additional proof of the existence and nature of Centrpolytech's business. Those documents, subsequently provided, did not allay the Visa Officer's concerns about the nature of the business and the Applicant's role in it.

[9] As a result, the Visa Officer concluded that the Applicant did not come within the meaning of "entrepreneur" because she lacked the requisite business experience in that she did not manage a qualifying business.

[10] More specifically, the CAIPS notes indicate that the Officer considered and cross-referenced the three applications, one with the others, and believed that the Applicant and her other partner were "riding along" on such experience and expertise as her brother possessed. The Visa Officer concluded that the Applicant had not satisfied him as to her business experience and that, even if she had, neither of the two businesses was a qualifying business for any two of the five years prior to the application. In this regard, the Officer did not aggregate the two businesses for the purposes of determining whether there was a "qualifying business".

III. ANALYSIS

A. *Standard of Review*

[11] The Supreme Court of Canada has clarified in *Dunsmuir v. New Brunswick*, 2008 SCC 9, that there are only two standards of review – correctness and reasonableness. On issues of procedural fairness, the standard of review is correctness.

[12] On the issue of the Officer's decision itself, reasonableness must be weighed against a number of factors. In this case, the Visa Officer has some experience with both the subject matter and the country involved. The Officer also had the benefit of interviewing the Applicant and the other partners. The Officer's conclusions are primarily fact driven, although the issue of "qualifying business" is one of mixed law and fact. Given these factors, the Court should accord considerable deference to the Officer's assessment, particularly as regards "business experience".

B. *Procedural Fairness*

[13] The Applicant raised the issue of procedural fairness, firstly in respect of translation problems and secondly in respect of cross-referencing the Applicant's file with that of her partners, in assessing the existence and nature of the business and her business experience.

[14] It is well established law that where there are translation problems, the complainant must raise the problem at the first reasonable opportunity (*Rafipoor v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 615).

[15] In this case, the Applicant, who was well versed in English, had that opportunity right at the interview itself and then subsequently through the visa application process. The evidence on whether the issue was raised at the interview is equivocal. The Visa Officer denies that any complaint was made. Neither the Applicant nor the Visa Officer was cross-examined. The Court is

left with directly conflicting evidence. Therefore, since the burden rests with the Applicant and she cannot counter the equivalent evidence of the Respondent, she has not met the burden of proof.

[16] On the issue of cross-referencing the files of the other applicants, it would border on failure to carry out his duty had the Visa Officer ignored those other files. The duty of the Visa Officer was to assess the Applicant's experience with businesses in which she was involved. It would have been impossible to assess the Applicant's role adequately without giving attention to the role of her partners in those businesses.

[17] As to the conflict concerning the nature of the businesses, the Visa Officer could not ignore the vastly different businesses Centrpolytech was alleged to conduct. The Applicant was fully informed of the Officer's concerns and the source of those concerns, and was given 60 days to produce evidence to overcome those concerns. She therefore had all the procedural protection necessary for her to address the issue.

[18] Therefore, I conclude on both matters that procedural fairness was observed.

C. *Visa Officer's Decision*

[19] The Applicant must satisfy at least two criteria to qualify under the Regulations – (1) the Applicant must have management experience (and equity) in the business; and (2) the business must be a “qualifying business” in that it meets certain sales, income and asset benchmarks.

[20] The Visa Officer's analysis of the "qualifying business" factor is at best confusing and potentially flawed. The Officer had concluded that Kratos USA was a qualifying business for at least one year out of the qualifying two years within the previous five years.

[21] In the course of these proceedings, the Officer conceded that Centrpolytech also was a qualifying business in one out of two of the years relevant to its status of "qualifying business".

[22] Further, the Officer did not address whether the businesses at issue should have been aggregated for purposes of determining if the combined business units met the financial benchmarks.

[23] In *Thomas*, I held that aggregating business is consistent with the purposes of the legislative provisions in that it focuses consideration of the entrepreneur on the overall results of the business activities managed by him/her. It leads to a result in keeping with the very aim of the statutory provision and the Regulations. In my view, the term "qualifying business" is not restricted to each legal entity conducting the non-investment income activity. It is more consistent with the purposes of the *Immigration and Refugee Protection Act* and the Regulations to include the financial results of the total of the entrepreneur's non-investment income activities. Therefore, the results of the business units should be aggregated for a determination of whether an applicant met any two of the conditions contained in the term "qualifying business".

[24] However, the Visa Officer's concerns were not as particularly focused on the financial benchmarks as they were on the nature of the business and the specific management experience of the Applicant. The Officer was more concerned with the absence of business management experience than whether the business was a "qualifying business".

[25] It is evident that the Officer did not believe that the Applicant had business experience and in this judicial review application, scant attention was paid to evidence (if any) that the Applicant had that type of experience.

[26] Given the record in this case, including but not limited to the contradiction between the three visa applicants as to whether Centrpolytech was a construction materials business or a real estate rental business, it was open to the Officer to disbelieve the Applicant.

[27] Under these circumstances it did not matter whether the businesses "qualified", the Applicant fails because she did not have the required business experience. This was a reasonable conclusion.

IV. CONCLUSION

[28] For these reasons, this judicial review will be dismissed.

[29] The parties made submissions as to a certified question. However, this case turns on the facts particular to this case. The issue of aggregating businesses is not dispositive of this judicial review. The other legal issues are well-settled law. Therefore, there is no question for certification.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review will be dismissed.

“Michael L. Phelan”

Judge

ANNEX 1*Immigration and Refugee Protection Regulations, SOR/2002-227*

88. (1) The definitions in this subsection apply in this Division.	88. (1) Les définitions qui suivent s'appliquent à la présente section.
"agent" means, in respect of a fund, the Minister acting as an agent on behalf of a fund that has been approved by a province. (<i>mandataire</i>)	«actif net» S'agissant d'une entreprise admissible ou d'une entreprise canadienne admissible, s'entend de l'excédent de l'actif de celle-ci sur son passif, augmenté des prêts octroyés à l'entreprise par l'étranger qui demande ou a demandé un visa de résident permanent et son époux ou conjoint de fait. (<i>net assets</i>)
"allocation period" means, in respect of the provincial allocation of an investor, the period of five years beginning on the first day of the second month after the month in which the agent receives the investment. (<i>période de placement</i>)	«activités économiques déterminées»
"approved fund" means a fund that is approved by the Minister under section 91. (<i>fonds agréé</i>)	a) S'agissant d'un travailleur autonome, autre qu'un travailleur autonome sélectionné par une province, s'entend, d'une part, des activités culturelles et sportives et, d'autre part, de l'achat et de la gestion d'une ferme;
"business experience" , in respect of (a) an investor, other than an investor selected by a province, means a minimum of two years of experience consisting of (i) two one-year periods of experience in the management of a qualifying business and	b) s'agissant d'un travailleur autonome sélectionné par une province, s'entend au sens du droit provincial. (<i>specified economic activities</i>)

<p>the control of a percentage of equity of the qualifying business during the period beginning five years before the date of application for a permanent resident visa and ending on the day a determination is made in respect of the application,</p>	<p>«ancien règlement» S'entend au sens du paragraphe 316(1). (<i>former Regulations</i>)</p>
<p>(ii) two one-year periods of experience in the management of at least five full-time job equivalents per year in a business during the period beginning five years before the date of application for a permanent resident visa and ending on the day a determination is made in respect of the application, or</p>	<p>«avoir net»</p> <p><i>a)</i> S'agissant d'un investisseur, autre qu'un investisseur sélectionné par une province, s'entend de la juste valeur marchande de tous les éléments d'actif de l'investisseur et de son époux ou conjoint de fait, diminuée de la juste valeur marchande de tous leurs éléments de passif;</p> <p><i>b)</i> s'agissant d'un entrepreneur, autre qu'un entrepreneur sélectionné par une province, s'entend de la juste valeur marchande de tous les éléments d'actif de l'entrepreneur et de son époux ou conjoint de fait, diminuée de la juste valeur marchande de tous leurs éléments de passif;</p>
<p>(iii) a combination of a one-year period of experience described in subparagraph (i) and a one-year period of experience described in subparagraph (ii);</p>	<p><i>c)</i> s'agissant d'un investisseur ou d'un entrepreneur sélectionné par une province, s'entend au sens du droit provincial et est calculé conformément à celui-ci. (<i>net worth</i>)</p>
<p>(<i>b</i>) an entrepreneur, other than an entrepreneur selected by a province, means a minimum of two years of experience consisting of two one-year periods of experience in the management of a</p>	<p>«avoir net minimal» :</p> <p><i>a)</i> S'agissant d'un entrepreneur autre qu'un</p>

qualifying business and the control of a percentage of equity of the qualifying business during the period beginning five years before the date of application for a permanent resident visa and ending on the day a determination is made in respect of the application; and

(c) an investor selected by a province or an entrepreneur selected by a province, has the meaning provided by the laws of the province and is calculated in accordance with the laws of the province.

(*expérience dans l'exploitation d'une entreprise*)

"debt obligation" has the same meaning as in subsection 2(1) of the *Canada Business Corporations Act*. (*titre de créance*)

"entrepreneur" means a foreign national who

(a) has business experience;

(b) has a legally obtained minimum net worth; and

(c) provides a written statement to an officer that they intend and will be able to meet the conditions referred to in subsections

entrepreneur sélectionné par une province, correspond à la somme de 300 000 \$;

b) s'agissant d'un entrepreneur sélectionné par une province, correspond à l'avoir net minimal exigé par le droit provincial. (*minimum net worth*)

«entrepreneur» Étranger qui, à la fois :

a) a de l'expérience dans l'exploitation d'une entreprise;

b) a l'avoir net minimal et l'a obtenu licitement;

c) fournit à un agent une déclaration écrite portant qu'il a l'intention et est en mesure de remplir les conditions visées aux paragraphes 98(1) à (5). (*entrepreneur*)

«entrepreneur sélectionné par une province» Entrepreneur qui, à la fois :

a) cherche à s'établir dans une province ayant conclu avec le ministre, en vertu du paragraphe 8(1) de la Loi, un accord visé au paragraphe 9(1) de la Loi selon lequel elle assume la responsabilité exclusive de la sélection des

98(1) to (5). (<i>entrepreneur</i>)	entrepreneurs;
"entrepreneur selected by a province" means an entrepreneur who	<i>b)</i> est visé par un certificat de sélection délivré par cette province. (<i>entrepreneur selected by a province</i>)
<i>(a)</i> intends to reside in a province the government of which has, under subsection 8(1) of the Act, entered into an agreement referred to in subsection 9(1) of the Act with the Minister whereby the province has sole responsibility for the selection of entrepreneurs; and	«entreprise admissible» Toute entreprise — autre qu'une entreprise exploitée principalement dans le but de retirer un revenu de placement, tels des intérêts, des dividendes ou des gains en capitaux — à l'égard de laquelle il existe une preuve documentaire établissant que, au cours de l'année en cause, elle satisfaisait à deux des critères suivants :
<i>(b)</i> is named in a selection certificate issued to them by that province. (<i>entrepreneur sélectionné par une province</i>)	<i>a)</i> le pourcentage des capitaux propres, multiplié par le nombre d'équivalents d'emploi à temps plein, est égal ou supérieur à deux équivalents d'emploi à temps plein par an;
"former Regulations" has the same meaning as in subsection 316(1). (<i>ancien règlement</i>)	<i>b)</i> le pourcentage des capitaux propres, multiplié par le chiffre d'affaires annuel, est égal ou supérieur à 500 000 \$;
"full-time job equivalent" means 1,950 hours of paid employment. (<i>équivalent d'emploi à temps plein</i>)	<i>c)</i> le pourcentage des capitaux propres, multiplié par le revenu net annuel, est égal ou supérieur à 50 000 \$;
"fund" means a corporation that is controlled by the government of a province and is authorized to create or continue employment in Canada in order to foster the development of a strong and viable economy. (<i>fonds</i>)	<i>d)</i> le pourcentage des

"investment" means, in respect of an investor, a sum of \$400,000 that

(a) in the case of an investor other than an investor selected by a province, is paid by the investor to the agent for allocation to all approved funds in existence as of the date the allocation period begins and that is not refundable during the period beginning on the day a permanent resident visa is issued to the investor and ending at the end of the allocation period; and

(b) in the case of an investor selected by a province, is invested by the investor in accordance with an investment proposal within the meaning of the laws of the province and is not refundable for a period of at least five years, as calculated in accordance with the laws of the province. (*placement*)

"investor" means a foreign national who

(a) has business experience;

(b) has a legally obtained net worth of at least \$800,000; and

capitaux propres, multiplié par l'actif net à la fin de l'année, est égal ou supérieur à 125 000 \$.
(*qualifying business*)

«entreprise canadienne admissible» Entreprise — autre qu'une entreprise exploitée principalement dans le but de retirer un revenu de placement, tels des intérêts, des dividendes ou des gains en capitaux — , exploitée au Canada par un entrepreneur, à l'égard de laquelle il existe une preuve documentaire établissant que, au cours d'une année quelconque pendant la période de trois ans suivant la date où l'entrepreneur est devenu résident permanent, elle satisfaisait à deux des critères suivants :

a) le pourcentage des capitaux propres, multiplié par le nombre d'équivalents d'emploi à temps plein, est égal ou supérieur à deux équivalents d'emploi à temps plein par an;

b) le pourcentage des capitaux propres, multiplié par le chiffre d'affaires annuel, est égal ou supérieur à 250 000 \$;

c) le pourcentage des capitaux propres, multiplié par le revenu net annuel,

(c) indicates in writing to an officer that they intend to make or have made an investment. (*investisseur*)

"investor selected by a province" means an investor who.

(a) intends to reside in a province the government of which has, under subsection 8(1) of the Act, entered into an agreement referred to in subsection 9(1) of the Act with the Minister whereby the province has sole responsibility for the selection of investors; and

(b) is named in a selection certificate issued to them by that province. (*investisseur sélectionné par une province*)

"minimum net worth" means

(a) in respect of an entrepreneur, other than an entrepreneur selected by a province, \$300,000; and

(b) in respect of an entrepreneur selected by a province, the minimum net worth required by the laws of the province. (*avoir net minimal*)

"net assets" , in respect of a qualifying business or a qualifying Canadian

est égal ou supérieur à 25 000 \$;

d) le pourcentage des capitaux propres, multiplié par l'actif net à la fin de l'année, est égal ou supérieur à 125 000 \$. (*qualifying Canadian business*)

«équivalent d'emploi à temps plein» Correspond à 1 950 heures d'emploi rémunéré. (*full-time job equivalent*)

«expérience dans l'exploitation d'une entreprise» :

a) S'agissant d'un investisseur, autre qu'un investisseur sélectionné par une province, s'entend de l'expérience d'une durée d'au moins deux ans composée :

(i) soit de deux périodes d'un an d'expérience dans la gestion d'une entreprise admissible et le contrôle d'un pourcentage des capitaux propres de celle-ci au cours de la période commençant cinq ans avant la date où la demande de visa de résident permanent est faite et prenant fin à la date où il est statué sur celle-ci,

business, means the assets of the business, minus the liabilities of the business, plus shareholder loans made to the business by the foreign national who is making or has made an application for a permanent resident visa and their spouse or common-law partner. (*actif net*)

"net income" , in respect of a qualifying business or a qualifying Canadian business, means the after tax profit or loss of the business plus remuneration by the business to the foreign national who is making or has made an application for a permanent resident visa and their spouse or common-law partner. (*revenu net*)

"net worth" , in respect of

(a) an investor, other than an investor selected by a province, means the fair market value of all of the assets of the investor and their spouse or common-law partner minus the fair market value of all of their liabilities;

(b) an entrepreneur, other than an entrepreneur selected by a province, means the fair market value of all of the assets of the entrepreneur and their spouse or common-law partner minus the fair

(ii) soit de deux périodes d'un an d'expérience dans la direction de personnes exécutant au moins cinq équivalents d'emploi à temps plein par an dans une entreprise au cours de la période commençant cinq ans avant la date où la demande de visa de résident permanent est faite et prenant fin à la date où il est statué sur celle-ci,

(iii) soit d'un an d'expérience au titre du sous-alinéa (i) et d'un an d'expérience au titre du sous-alinéa (ii);

b) s'agissant d'un entrepreneur, autre qu'un entrepreneur sélectionné par une province, s'entend de l'expérience d'une durée d'au moins deux ans composée de deux périodes d'un an d'expérience dans la gestion d'une entreprise admissible et le contrôle d'un pourcentage des capitaux propres de celle-ci au cours de la période commençant cinq ans avant la date où la demande de visa de résident permanent est faite et prenant fin à la date où il est statué sur celle-ci;

c) s'agissant d'un

market value of all of their liabilities; and

(c) an investor selected by a province or an entrepreneur selected by a province, has the meaning provided by the laws of the province and is calculated in accordance with the laws of the province. (*avoir net*)

"percentage of equity" means

(a) in respect of a sole proprietorship, 100 per cent of the equity of the sole proprietorship controlled by a foreign national or their spouse or common-law partner;

(b) in respect of a corporation, the percentage of the issued and outstanding voting shares of the capital stock of the corporation controlled by a foreign national or their spouse or common-law partner; and

(c) in respect of a partnership or joint venture, the percentage of the profit or loss of the partnership or joint venture to which a foreign national or their spouse or common-law partner is entitled. (*pourcentage des capitaux propres*)

"provincial allocation" means

investisseur sélectionné par une province ou d'un entrepreneur sélectionné par une province, s'entend de l'expérience évaluée conformément au droit provincial. (*business experience*)

«expérience utile»

a) S'agissant d'un travailleur autonome autre qu'un travailleur autonome sélectionné par une province, s'entend de l'expérience d'une durée d'au moins deux ans au cours de la période commençant cinq ans avant la date où la demande de visa de résident permanent est faite et prenant fin à la date où il est statué sur celle-ci, composée :

(i) relativement à des activités culturelles :

(A) soit de deux périodes d'un an d'expérience dans un travail autonome relatif à des activités culturelles,

(B) soit de deux périodes d'un an d'expérience dans la participation à des activités culturelles à l'échelle internationale,

the portion of an investor's investment in an approved fund calculated in accordance with subsection (2). (*quote-part provinciale*)

(C) soit d'un an d'expérience au titre de la division (A) et d'un an d'expérience au titre de la division (B),

"qualifying business" means a business — other than a business operated primarily for the purpose of deriving investment income such as interest, dividends or capital gains — for which, during the year under consideration, there is documentary evidence of any two of the following:

(ii) relativement à des activités sportives :

(a) the percentage of equity multiplied by the number of full time job equivalents is equal to or greater than two full-time job equivalents per year;

(A) soit de deux périodes d'un an d'expérience dans un travail autonome relatif à des activités sportives,

(b) the percentage of equity multiplied by the total annual sales is equal to or greater than \$500,000;

(B) soit de deux périodes d'un an d'expérience dans la participation à des activités sportives à l'échelle internationale,

(c) the percentage of equity multiplied by the net income in the year is equal to or greater than \$50,000; and

(C) soit d'un an d'expérience au titre de la division (A) et d'un an d'expérience au titre de la division (B),

(d) the percentage of equity multiplied by the net assets at the end of the year is equal to or greater than \$125,000. (*entreprise admissible*)

(iii) relativement à l'achat et à la gestion d'une ferme, de deux périodes d'un an d'expérience dans la gestion d'une ferme;

"qualifying Canadian

b) s'agissant d'un travailleur autonome sélectionné par une province, s'entend de l'expérience évaluée

business" means a business operated in Canada by an entrepreneur — other than a business operated primarily for the purpose of deriving investment income, such as interest, dividends or capital gains — for which there is in any year within the period of three years after the day the entrepreneur becomes a permanent resident documentary evidence of any two of the following:

(a) the percentage of equity multiplied by the number of full-time job equivalents is equal to or greater than two full-time job equivalents per year;

(b) the percentage of equity multiplied by the total annual sales is equal to or greater than \$250,000;

(c) the percentage of equity multiplied by the net income in the year is equal to or greater than \$25,000; and

(d) the percentage of equity multiplied by the net assets at the end of the year is equal to or greater than \$125,000. (*entreprise canadienne admissible*)

"relevant experience" , in respect of

(a) a self-employed person,

conformément au droit provincial. (*relevant experience*)

«fonds» Personne morale contrôlée par le gouvernement d'une province et autorisée à créer ou à conserver des emplois au Canada qui favorisent le développement d'une économie forte et viable. (*fund*)

«fonds agréé» Fonds agréé par le ministre en vertu de l'article 91. (*approved fund*)

«investisseur» Étranger qui, à la fois :

a) a de l'expérience dans l'exploitation d'une entreprise;

b) a un avoir net d'au moins 800 000 \$ qu'il a obtenu licitement;

c) a indiqué par écrit à l'agent qu'il a l'intention de faire ou a fait un placement. (*investor*)

«investisseur sélectionné par une province» Investisseur qui, à la fois :

a) cherche à s'établir dans une province ayant conclu avec le ministre, en vertu du paragraphe 8(1) de la Loi, un accord visé au paragraphe 9(1) de la Loi

other than a self-employed person selected by a province, means a minimum of two years of experience, during the period beginning five years before the date of application for a permanent resident visa and ending on the day a determination is made in respect of the application, consisting of

(i) in respect of cultural activities,

(A) two one-year periods of experience in self-employment in cultural activities,

(B) two one-year periods of experience in participation at a world class level in cultural activities, or

(C) a combination of a one-year period of experience described in clause (A) and a one-year period of experience described in clause (B),

(ii) in respect of athletics,

(A) two one-year periods of experience in self-

selon lequel elle assume la responsabilité exclusive de la sélection des investisseurs;

b) est visé par un certificat de sélection délivré par cette province. (*investor selected by a province*)

«mandataire» Le ministre, lorsqu'il agit à titre de mandataire pour un fonds qui a été agréé par une province. (*agent*)

«période de placement» À l'égard de la quote-part provinciale d'un investisseur, la période de cinq ans débutant le premier jour du deuxième mois suivant le mois au cours duquel le mandataire a reçu le placement. (*allocation period*)

«placement» Somme de 400 000 \$:

a) qu'un investisseur autre qu'un investisseur sélectionné par une province verse au mandataire pour répartition entre les fonds agréés existant au début de la période de placement et qui n'est pas remboursable pendant la période commençant le jour où un visa de résident permanent est délivré à l'investisseur et se terminant à la fin de la

employment in athletics,	période de placement;
(B) two one-year periods of experience in participation at a world class level in athletics, or	b) qu'un investisseur sélectionné par une province investit aux termes d'un projet de placement au sens du droit provincial et qui n'est pas remboursable pendant une période minimale de cinq ans calculée en conformité avec ce droit provincial. (<i>investment</i>)
(C) a combination of a one-year period of experience described in clause (A) and a one-year period of experience described in clause (B), and	«pourcentage des capitaux propres»
(iii) in respect of the purchase and management of a farm, two one-year periods of experience in the management of a farm; and	a) Dans le cas d'une entreprise à propriétaire unique non dotée de la personnalité morale, la totalité des capitaux propres contrôlés par l'étranger ou son époux ou conjoint de fait;
(b) a self-employed person selected by a province, has the meaning provided by the laws of the province. (<i>expérience utile</i>)	b) dans le cas d'une société par actions, la part des actions du capital social avec droit de vote émises et en circulation que contrôle l'étranger ou son époux ou conjoint de fait;
"self-employed person" means a foreign national who has relevant experience and has the intention and ability to be self-employed in Canada and to make a significant contribution to specified economic activities in Canada. (<i>travailleur autonome</i>)	c) dans le cas d'une société de personnes ou d'une coentreprise, la part des bénéficiaires ou des pertes portée à l'actif ou au passif de l'étranger ou de son époux ou conjoint de fait. (<i>percentage of equity</i>)
	«quote-part provinciale» La

<p>"self-employed person selected by a province" means a self-employed person</p>	<p>partie du placement d'un investisseur dans un fonds agréé calculée conformément au paragraphe (2). (<i>provincial allocation</i>)</p>
<p>(a) who intends to reside in a province the government of which has, under subsection 8(1) of the Act, entered into an agreement referred to in subsection 9(1) of the Act with the Minister whereby the province has sole responsibility for the selection of self-employed persons; and</p>	<p>«revenu net» S'agissant d'une entreprise admissible ou d'une entreprise canadienne admissible, les bénéfices ou pertes de l'entreprise après impôts, compte tenu de la rémunération versée par l'entreprise à l'étranger qui demande ou a demandé un visa de résident permanent et à son époux ou conjoint de fait. (<i>net income</i>)</p>
<p>(b) is named in a selection certificate issued to them by that province. (<i>travailleur autonome sélectionné par une province</i>)</p>	<p>«titre de créance» S'entend au sens du paragraphe 2(1) de la <i>Loi canadienne sur les sociétés par actions</i>. (<i>debt obligation</i>)</p>
<p>"specified economic activities", in respect of</p>	<p>«travailleur autonome» Étranger qui a l'expérience utile et qui a l'intention et est en mesure de créer son propre emploi au Canada et de contribuer de manière importante à des activités économiques déterminées au Canada. (<i>self-employed person</i>)</p>
<p>(a) a self-employed person, other than a self-employed person selected by a province, means cultural activities, athletics or the purchase and management of a farm; and</p>	<p>«travailleur autonome sélectionné par une province» Travailleur autonome qui, à la fois :</p>
<p>(b) a self-employed person selected by a province, has the meaning provided by the laws of the province. (<i>activités économiques déterminées</i>)</p>	<p>a) cherche à s'établir dans une province ayant conclu avec le ministre, en vertu</p>

du paragraphe 8(1) de la Loi, un accord visé au paragraphe 9(1) de la Loi selon lequel elle assume la responsabilité exclusive de la sélection des travailleurs autonomes;

b) est visé par un certificat de sélection délivré par cette province. (self-employed person selected by a province)

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3364-07

STYLE OF CAUSE: SHAROVA NADEZHDA

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: April 3, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** Phelan J.

DATED: April 29, 2008

APPEARANCES:

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Mr. Nikolay Chsherbinin (student-at-law)

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