

Federal Court



Cour fédérale

**Date: 20140926**

**Docket: IMM-1482-14**

**Citation: 2014 FC 920**

**Ottawa, Ontario, September 26, 2014**

**PRESENT: The Honourable Mr. Justice Russell**

**BETWEEN:**

**UZMA IJAZ**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. INTRODUCTION**

[1] This is an application under s. 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 for judicial review of the decision of a visa officer [Officer], dated January 10, 2014 [Decision], which refused the Applicant's application for permanent residence in Canada under the provincial nominee class.

## II. BACKGROUND

[2] The Applicant is a 43-year-old citizen of Pakistan. She has been employed as a teacher in Pakistan since 1999. She applied to the Saskatchewan Immigrant Nominee Program [SINP], through the Family Member Category and was approved by the province of Saskatchewan in June 2012.

[3] While the province of Saskatchewan selects successful applicants under the SINP, Citizenship and Immigration Canada [CIC] makes the final decision on their admission to Canada. The Applicant submitted an application for permanent residence through the Canadian High Commission in London, U.K. The application included the Applicant's International English Language Testing System [IELTS] and indicated her intended occupation as teacher and her nominated occupation as cashier.

[4] In an e-mail sent March 28, 2013 [Procedural Fairness Letter], the Officer advised the Applicant that he was not satisfied that she could become economically established in Canada. He specifically addressed her IELTS results in relation to both her intended and nominated occupations. The Officer acknowledged the Applicant's submissions regarding her family support in Saskatchewan but said that this support could not overcome his concerns regarding her English language proficiency and her ability to become economically established.

[5] The e-mail concluded with an explanation that a copy of the letter would be sent to the province of Saskatchewan who would have 90 days to raise concerns or seek clarification.

[6] In response, the Applicant submitted improved IELTS results in which she met or exceeded the minimum benchmark for each tested skill. She said that she had selected her intended occupation as teacher in error and that she intended to work as a cashier. She also noted that she had submitted a cashier job offer with her SINP application and that it remained valid.

### III. DECISION UNDER REVIEW

[7] In a letter dated January 10, 2014, the Officer denied the Applicant's application for a permanent resident visa as a member of the provincial nominee class. The Decision began by outlining the requirements of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations] relating to the provincial nominee class (Applicant's Record at 4):

Subsection 87(3) of the Immigration and Refugee Protection Regulations states that 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.

[8] The Officer wrote that he was not satisfied the Applicant had the language skills to become economically established in Canada and that the Applicant's response to the Procedural Fairness Letter had not alleviated these concerns. The Officer noted that he had consulted with the province of Saskatchewan and that a second officer had concurred with his substituted evaluation of the Applicant's ability to become economically established in Canada.

[9] Further explanation of the Officer's reasons for the Decision can be found in the Procedural Fairness Letter and the Global Case Management System [GCMS] notes.

[10] The Procedural Fairness Letter explained the Officer's concerns regarding the Applicant's IELTS results and their application to her nominated and intended occupations, the lack of job offer in her application, and her family support (Applicant's Record at 106):

The ability to communicate effectively in one of Canada's official languages is recognized as a vitally important factor in becoming economically established. Information on the official website of Saskatchewan Immigration confirms that new immigrants would "need to understand and speak English to do most things in Saskatchewan" and, relating specifically to employment, that "To do most jobs well, a minimum of a [Canadian Language] benchmark 4 is recommended." A Canadian Language Benchmark of 4 would equate to an IELTS score of at least Listening 4.5, Reading 3.5, Writing 4.0, and Speaking 4.0. The Saskatchewan Immigrant Nominee Program (SINP) requires nominees to prove their English language ability and, if an IELTS test is submitted as proof, a score of "a minimum of equivalent of CLB 4 [is required] in all categories." Although your individual scores for Speaking, Writing, and Reading were at or above the minimum recommended level, you scored below the minimum recommended level in Listening.

As well, the SINP has stated that nominees also must have "the English language ability either to do the job you have been offered by a Saskatchewan employer or to get a job in your field of education or training." You have not indicated having been offered a job by a Saskatchewan employer. The occupation in which you have been nominated is cashier. The occupation in which you indicate having experience and which you also indicate you intend to pursue in Canada is teaching. I am not satisfied you have the language skills to be able to perform the duties required of either occupation. Work as a cashier typically requires interaction with the public and understanding of specific service requirements and information. Human Resources and Skills Development Canada (HRSDC) identifies Oral Communication as one of the most important essential skills to perform work as a cashier and the level of language ability to perform the tasks typically required of a cashier would need to be more than basic or moderate. HRSDC identifies Oral Communication, Reading Text, Document Use, and Writing as among the essential skills to perform work as a teacher, with Oral Communication identified as one of the most important. In order to be a teacher in Saskatchewan, one must also obtain teacher certification for which fluency in English or French would be a requirement. It does not appear that you have the English language proficiency to obtain teacher certification in

Saskatchewan or to successfully complete additional training which you may need in order to be eligible for certification. With the level of English language ability you have demonstrated, I am not satisfied that you would be able to perform the tasks of your intended occupation or that for which you have been nominated. I am therefore not satisfied you would be able to become employed in Canada or, if you did find employment, that it would be of a sufficient level for you to become economically established. I have also noted that you have indicated having support of a family member residing in Saskatchewan, but support by a family member would not be considered economic establishment and would not be sufficient to outweigh the concerns over your low level of English language ability.

[11] The GCMS notes, dated November 28, 2013, provide the Officer's evaluation of the Applicant's response to this letter (Certified Tribunal Record [CTR] at 3):

Apart fr submitting another IELTS result, PA has not addressed the concerns outlined in the P/F ltr. Although pointing out that new IELTS is above the minimum CLB 4 recommended by SK, PA has not explained how she might become economically established w/ the English lang proficiency she has demonstrated having. PA concedes she wld require "intense training including the English language" in order to work as a teacher but says that her having indicated teaching as her intended occ was an error, & that intended occ is cashier. PA says she was offered a job as cashier, but provides no evidence or details of this or any other job offer. The results of the 2nd IELTS test show PA's overall band score to have improved slightly from 4.5 to 5.0, putting her English proficiency in the range of a "Modest User" which IELTS describes as having "partial command of the language, coping with overall meaning in most situations, though is likely to make many mistakes. Should be able to handle basic communication in own field." Note that PA's field is indicated as teaching, not working as cashier. PA's individual scores on the 2nd IELTS test for Listening, Writing, & for Speaking were 5.0 or 5.5, but her individual score for Reading is 4.0 ("Limited User"). PA's English lang proficiency according to 2nd IELTS test is now at CLB 5 which is still basic proficiency. Although cashier is considered a lower-skilled occ, it appears reasonable to expect that the full range of tasks typical of work as a cashier -- particularly those involving direct interaction & communication with customer -- wld require English lang capabilities greater than basic. No comment about pre-refusal P/F has been rec'd fr the nominating province.

For reasons detailed above & in earlier notes, PA does not appear to satisfy the definition of a Provincial Nominee as per R87. Although named in a certificate of nomination by a province, PA does not appear to have the language skills to enable her to become economically established. I am not satisfied PA meets the requirements of the economic class in which she has applied.

[12] A second officer's concurrence with the Officer's substituted evaluation appears in the GCMS notes, dated December 27, 2013 (CTR at 3):

Application referred to me – for concurrence under R87(4) of Substitution of evaluation made by the officer under R87(3)...Information available (among others): PA indicates that she has been working as teacher since 1999. Funds available are very low. Did not see evidence of available funds. IELTS test result: overall 5.0 Subject has indicated that she has a job offer as cashier. I have not seen that job offer. Unclear as well if the job offer still stand and if the company is profitable etc...It is as well strange for subject, based on her work experience and education, to be nominated as cashier without evidence of experience as a cashier. Intended job does not appear to fit well with her work experience and education. A procedural fairness letter was sent by the reviewing officer since he has concerns that the applicant would not become economically established. Response was reviewed and noted. Based on available information and based on the evaluation of the reviewing officer, it appears reasonable to have concerns that the foreign national, ie the principal applicant, would become economically established. As such, I concur with the use of the Substitution of Evaluation as set out in Section R87(3).

#### IV. ISSUES

[13] The Applicant raises the following issues in this proceeding:

1. Did the Officer breach the duty of procedural fairness by failing to fulfill the regulatory duty to consult with the nominating province of Saskatchewan before rendering a negative substituted evaluation?
2. Did the Officer err in the interpretation of s. 87 of the Regulations?

3. Was the Officer's Decision unreasonable by failing to consider all evidence before rendering the negative substituted evaluation?

V. STANDARD OF REVIEW

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

[15] The first issue is a matter of procedural fairness, and there is no dispute it should be reviewed on a standard of correctness: *C.U.P.E. v Ontario (Minister of Labour)*, 2003 SCC 29 at para 100; *Sketchley v Canada (Attorney General)*, 2005 FCA 404 at para 53.

[16] The Applicant argues that the second and third issues should be reviewed at different standards. She submits that an immigration officer's interpretation of the Regulations should be reviewed at a standard of correctness: *Hilewitz v Canada (Minister of Citizenship and Immigration)*; *De Jong v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 57. She says that a visa officer's decision regarding permanent residence visas should be reviewed at a

standard of reasonableness: *Singh Tathgur v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1293.

[17] The Respondent submits that this decision should be reviewed at a standard of reasonableness. Whether or not an applicant is likely to become economically established in Canada is a fact-driven exercise in which immigration officers have significant experience and expertise: *Debnath v Canada (Minister of Citizenship and Immigration)*, 2010 FC 904 at para 8; *Roohi v Canada (Minister of Citizenship and Immigration)*, 2008 FC 1048 at para 26 [*Roohi*].

[18] This Court's jurisprudence has established that the reasonableness standard applies to a visa officer's decision to substitute their evaluation for a provincial nomination certificate: *Wai v Canada (Minister of Citizenship and Immigration)*, 2009 FC 780 at para 18 [*Wai*]; *Singh Sran v Canada (Minister of Citizenship and Immigration)*, 2012 FC 791 at para 9 [*Sran*]; *Noreen v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1169 at para 11 [*Noreen*].

[19] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": see *Dunsmuir*, above, at para 47; *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."



## VI. STATUTORY PROVISIONS

[20] The following provisions of the Regulations are applicable in this proceeding:

<b>Provincial Nominee Class</b>	<b>Candidats des provinces</b>
<b>Class</b>	<b>Catégorie</b>
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.
<b>Member of the class</b>	<b>Qualité</b>
(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.
<b>Substitution of evaluation</b>	<b>Substitution d'appréciation</b>
(3) If the fact that the foreign national is named in a certificate referred to in	(3) Si le fait que l'étranger est visé par le certificat de désignation mentionné à

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.

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).

[21] The following provisions of the *Canada-Saskatchewan Immigration Agreement, 2005* [Agreement] are applicable in this proceeding:

**Purpose, Objectives, and Definitions**

**1.2 The objectives of this Agreement are:**

[...]

b. to establish processes for Canada and Saskatchewan to consult and cooperate on the development and implementation of policies, programs, and mechanisms to influence the levels and composition of immigrants to Saskatchewan and to Canada, including those to support and assist the development of minority official language communities in Saskatchewan.

**But, objectifs et définitions**

**1.2 Les objectifs de l'Accord sont les suivants :**

[...]

b. établir des processus pour que le Canada et la Saskatchewan puissent se consulter et collaborer en vue de l'élaboration et de la mise en oeuvre de politiques, de programmes et de mécanismes destinés à influencer l'ampleur et la composition du mouvement d'immigration en Saskatchewan et au Canada, notamment en ce qui touche les immigrants sélectionnés en vue d'appuyer le développement des collectivités de langues officielles minoritaires en Saskatchewan;

[...]

### **Annex A – Provincial Nominees**

4.9 Canada shall consider a nomination certificate issued by Saskatchewan as initial evidence that admission is of significant benefit to the economic development of Saskatchewan and that the nominee has the ability to become economically established in Canada.

4.10: When a refusal of a nominee is likely, Canada will notify and advise Saskatchewan of the reasons for possible refusal prior to the refusal notice being issued to the provincial nominee. Saskatchewan may raise concerns with, or seek clarification from, the assessing officer at the relevant mission or the appropriate manager, when a Provincial Nominee is likely to be refused. Where the refusal is for reasons other than health, security, or criminality concerns, Saskatchewan will have 90 days to raise concerns and seek clarification before notification is given to the provincial nominee by the immigration officer.

[...]

### **Annexe A – Candidats de la province**

4.9 Le Canada considère le certificat de désignation délivré par la Saskatchewan comme une première preuve que l'admission favorise le développement économique de la Saskatchewan de façon notable, et que le candidat a la capacité de réussir son établissement économique au Canada.

4.10 Lorsqu'un refus est probable, le Canada avise la Saskatchewan avant que l'avis de refus final ne soit délivré au candidat. La Saskatchewan peut faire valoir ses préoccupations ou obtenir des éclaircissements auprès de l'agent d'appréciation à la mission concernée, ou du gestionnaire concerné. En cas de refus pour des raisons autres que la santé, la sécurité ou la criminalité, la Saskatchewan a 60 jours pour faire valoir ses préoccupations ou obtenir des éclaircissements avant que le candidat de la province soit avisé par l'agent d'immigration.

VII. ARGUMENT

A. *Applicant*

(1) Procedural fairness

[22] The Applicant says the Officer breached the duty of procedural fairness by failing to consult with the province of Saskatchewan before refusing her application.

[23] The Regulations and the Agreement create an obligation on an officer to consult with the province of Saskatchewan before substituting their evaluation for whether an applicant will become economically established in the province. The Applicant relies on *Kikeshian v Canada (Minister of Citizenship and Immigration)*, 2011 FC 658 at paras 11, 15 as establishing three principles regarding this duty:

- The duty operates to increase the level of procedural fairness owed to provincial nominee applicants;
- It is a statutory obligation under which the Officer is afforded no discretion;
- Any breach of the duty is a breach of the duty of fairness.

[24] The Applicant says the duty to consult requires the Officer to inform the province of his/her position and enter into a bilateral communication: *Lakeland College Faculty Association v Lakeland College*, 1998 ABCA 221 at para 38. She argues the “cc” noted on the e-mail that she received from the Officer is insufficient evidence that the province of Saskatchewan was even notified of the Officer’s intention to refuse her application.

(2) Interpretation of economic establishment

[25] The Applicant says the Officer erred by interpreting the Regulations to require that she show an immediate ability to become economically established in Canada.

[26] The Applicant says the Act and Regulations do not require a provincial nominee to demonstrate immediate self-sufficiency: *Margarosyan v Canada (Minister of Citizenship and Immigration)* (1996), 123 FTR 196 at para 7; *Rezaeiazar v Canada (Minister of Citizenship and Immigration)*, 2013 FC 761 at para 85. She says this is also established in CIC's Overseas Processing Manual OP 7b – Provincial Nominees which provides (at 7-8):

There is no definition in the legislation of “become economically established,” leaving the term open to interpretation. There is also no indication of the exact moment when an applicant must become economically established: immediately upon landing or after an initial period of adjustment...[An officer] should refuse if they have strong reason to believe that the applicant is very unlikely to become economically established, even in the medium term and with the assistance of their other family members. On the other hand, it is consistent with the legislation to approve cases where there is some likelihood of successful settlement within a reasonable time.

[27] The Applicant argues the improved IELTS results that she submitted demonstrate that she has the ability to become economically established in Canada within a reasonable period of time. This addressed the Officer's concerns that her English language proficiency was insufficient for economic establishment, and he should only have refused her application if he had strong reasons to believe she would not become economically established in the medium term and with the assistance of family members.

(3) Failure to consider all evidence

[28] The Applicant says the Officer failed to consider all of the evidence before substituting his evaluation of her ability to become economically established in Canada for the provincial nomination certificate.

[29] The Applicant says the two-step test established in *Roohi*, above, for an officer's substituted evaluation of whether a skilled worker applicant may become economically established should be applied to the provincial nominee class due to the similarities in the language of the Regulations. She submits that, for provincial nominees, the test requires that the visa officer first decide whether the nomination certificate is an insufficient indicator of whether the applicant may become economically established in Canada. The visa officer should then evaluate the likelihood of the ability of the applicant to become economically established in Canada by conducting an assessment on proper grounds. The Applicant says *Wai*, above, established the factors to be considered in determining the likelihood of economic establishment, which include (at para 44): "age, education, qualification, past employment experience, the province's views, as well as motivation and initiative as revealed by what the Applicant has been doing with his time in Canada."

[30] The Applicant says that at the first stage of his analysis, the Officer decided that the certificate was insufficient evidence of her ability to become economically established in Canada by focusing on her English language proficiency. Instead of considering the above factors at the second stage, the Officer again relied heavily on her IELTS results. She says the Officer failed to

consider her age, her bachelor's degree, her experience working as a high school teacher, her husband's bachelor's degree and his experience working in construction, her job offer in Saskatoon, her family support in Canada and the province of Saskatchewan's support.

[31] The Applicant also says the Officer erred by focusing on her nominated and intended occupations to assess her ability to become economically established in Canada: *Sran*, above, at para 24. As a provincial nominee, she is not limited to becoming economically established in her nominated or intended occupation upon arrival in Canada: *Noreen*, above, at para 7.

[32] The Applicant also argues the Officer was not in a position to assess her qualifications and conclude that she would not be employable as a teacher in Canada: *Dogra v Canada (Minister of Citizenship and Immigration)* (1999), 166 FTR 264 at paras 27-30. The Officer wrote:

In order to be a teacher in Saskatchewan, one must obtain teacher certification for which fluency in English or French would be a requirement. It does not appear that you have the English language proficiency to obtain teacher certification in Saskatchewan or to successfully complete additional training which you may need in order to be eligible for certification.

(Applicant's Record at 106)

[33] The Applicant argues the Officer has no evidence to support his finding that she would not be employable or able to become economically established. She says her IELTS results show that she passed the SINP threshold. She also says she had a valid job offer and was ready and able to join the labour market in Canada.

[34] The Applicant asks the Court to quash the Decision and remit the matter for reconsideration.

B. *Respondent*

(1) Procedural Fairness

[35] The Respondent says the Officer complied with the Regulations by consulting with the province of Saskatchewan before making his substituted evaluation.

[36] The Respondent agrees that the Officer's duty to consult with the nominating province, and its content, are established by the Regulations and the Agreement.

[37] The GCMS notes show that a copy of the Procedural Fairness Letter was sent to the province on March 28, 2013. On November 28, 2013, the GCMS notes indicate that no response had been received from the province. The Respondent submits there is no evidence that the province did not receive a copy of the Procedural Fairness Letter.

(2) Interpretation of economic establishment

[38] The Respondent argues the Officer's evaluation of the Applicant's ability to become economically established in Canada was reasonable. Whether an applicant is likely to become economically established is an area of significant expertise and experience for immigration officers, and the Court should not substitute its decision for that of the decision-maker so long as



it falls within the required range: *Kousar v Canada (Minister of Citizenship and Immigration)*, 2014 FC 12 at para 12 [*Kousar*]; *Noreen*, above, at para 11; *Wai*, above, at paras 46-50.

[39] The Respondent argues that language proficiency is a vitally important factor in becoming economically established, and the Officer was not bound by the minimum language requirements or recommendations in determining economic establishment: *Kousar*, above, at para 9; *Noreen*, above, at para 10; *Sran*, above, at para 13.

(3) No failure to consider all evidence

[40] The Respondent submits that the Officer's determination that the Applicant would not be able to find suitable employment is supported by the record. The ability to become economically established is a legislative requirement, and the onus was on the Applicant to submit sufficient evidence to satisfy the Officer that she would become economically established. The Officer was under no obligation to inform the Applicant about any concerns arising from this requirement: *Zulhaz Uddin v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1005 at para 38. Despite not being obliged, the Officer did alert the Applicant to his concerns and the Applicant was provided an opportunity to respond. Her response did not change the Officer's assessment or alleviate his concerns regarding her language abilities.

[41] The Respondent says the Officer's GCMS notes dated November 28, 2013, show he considered her response to his letter, including her new IELTS results. The notes show that he considered that cashier was a lower-skilled occupation but concluded that the full range of tasks required of a cashier necessitated more than basic English abilities. The Respondent agrees that

an applicant need not become economically established in his/her nominated occupation but says he/she must still show how he/she will become economically established within a reasonable time: *Noreen*, above, at paras 7-8. Scoring in excess of the minimum IELTS requirement does not establish how or when an applicant will become economically established: *Noreen*, above.

[42] The Respondent argues that the Applicant has not pointed to any relevant considerations that the Officer overlooked or irrelevant factors that the Officer considered. The weight to be given to relevant considerations by the Officer should be given deference because it is within his knowledge and expertise. The Officer was correct in using his discretion to give significant weight to the fact that the Applicant's language skills were insufficient to obtain her intended occupation.

## VIII. ANALYSIS

[43] The Applicant raises three issues for review.

### A. *Procedural Fairness*

[44] The Applicant argues that the Officer breached the duty of procedural fairness by failing to fulfill the regulatory duty to consult with the nominating province of Saskatchewan before rendering a negative evaluation.

[45] The Applicant goes to considerable length to discuss ss. 87(1) and (2) of the Regulations, but most of the Applicant's assertions are not at issue or disputed in this case. The only real issue

on the facts of this case is whether the duty to consult was discharged by the Officer copying the Procedural Fairness Letter to the province and giving the province time to respond to the concerns raised.

[46] The Applicant argues that this was not a proper discharge of the duty to consult with the province, but she neglects to address the cases of this Court when it has been held to be sufficient. In *Hui v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1098 [*Hui*], Justice Barnes held (at para 12):

Mr. Hui also contends that the Visa Officer breached the duty of fairness by failing to consult with officials from Saskatchewan before his claim was rejected. This argument has no merit. Article 4.10 of the Canada-Saskatchewan Immigration Agreement requires Canada to notify Saskatchewan of the reasons for a possible refusal of a provincial nominee. Here that was done when Canada copied Saskatchewan with the Visa Officer's fairness letter and Saskatchewan declined to intervene. Canada met its contractual obligations and no further duty was owed to Mr. Hui.

I followed and confirmed Justice Barnes' approach in *Bharma v Canada (Minister of Citizenship and Immigration)*, 2014 FC 239 [*Bharma*].

[47] Judicial comity requires that I follow these precedents so long as I am satisfied that the decisions are not wrong: see *Allergen v Canada (Minister of Health)*, 2012 FCA 308 at paras 43, 46-48. There is nothing in the facts of the present case to distinguish it from *Hui* and *Bharma* on this issue. It follows that there was no breach of any duty of procedural fairness provided that communication with the province actually occurred.

[48] In this regard, the Applicant says that there is no evidence that a copy of the Procedural Fairness Letter was ever sent to the province. The Respondent concedes there is no conclusive evidence the letter was received by the province but says there is evidence that it was sent in the form of the “cc” in the letter itself and a notation in the GCMS notes (Applicant’s Record at 63, Note 11). The Applicant acknowledges the note and the “cc” but says there is nothing to show that this actually occurred.

[49] The Applicant also says that, knowing this was an issue, the Officer failed to address it in his affidavit filed with this application. In effect, the Applicant is asking the Court to draw a negative inference based upon the absence of this issue in the Officer’s affidavit. This would require the Court to assume that the Officer knew at the time of the Decision that the letter was not sent to the province, or that he became aware of this before he swore the affidavit, and deliberately chose not to reveal this crucial issue. I think this would imply a level of dishonesty and unprofessional conduct for which there is no evidence in this case. The Applicant could have cross-examined the Officer on his affidavit and explored this issue but chose not to. It is difficult to conceive that the Officer would conceal knowledge that the letter was not sent to the province in a situation where he could be cross-examined on this very point. I cannot assume the Officer would take such a risk. I decline to draw any inference based upon any information not addressed in the affidavit.

[50] This means that there is no evidence to suggest the letter was not sent to the province, or was not received by the province, and the evidence we do have suggests the letter was sent. In my view, then, the Applicant has not demonstrated procedural unfairness on this ground.

B. *Interpretation of s. 87 of the Regulations*

[51] The Applicant says that the Officer erred when he required the Applicant to show that she would become economically established immediately upon arrival in Canada rather than within a reasonable period of time.

[52] The short answer to this allegation is that a full reading of the Decision reveals it to be entirely inaccurate. The Officer does not insist upon immediate economic establishment but attempts to find out how the Applicant might ever “become economically established” over time; not whether she will be economically established upon arrival: “I am therefore not satisfied you would be able to become employed in Canada or, if you did find employment, that it would be of a sufficient level for you to become economically established” (Applicant’s Record at 106). The word “become” obviously indicates that economic establishment need not occur immediately but can take place over time.

C. *Unreasonableness – Failure to Consider all the Evidence*

[53] In my view, the Applicant’s assertion that the Officer failed to consider all of the evidence is the Applicant’s only substantial argument. There is a considerable amount of repetition in her submissions, but the principal assertions appear to be:

- a) The Officer must evaluate the likelihood of the ability of the foreign national to become economically established in Canada by conducting an adequate substitute assessment on proper grounds;

- b) In conducting this evaluation, the Officer is obliged to take into account such matters as age, education, qualifications, past employment experience, the province's views, and motivation and initiative;
- c) In the present case, the Officer did not properly consider the Applicant's age, education, qualifications, past employment experience, job offer approved by the province, the Applicant's husband's skills and work experience, and the province's views in evaluating the likelihood of the Applicant's likelihood of her ability to become economically established in Canada;
- d) The Officer also failed to consider the husband's age, education, qualifications, past employment experience, and the fact that the husband has been working as a construction worker since 2002 (an occupation that is in high demand in Saskatchewan); and
- e) The Officer relied solely on the Applicant's IELTS examination results to conclude that the nomination certificate by the province was not a sufficient indicator of whether she may become economically established in Canada.

[54] The reasons for the Decision are scattered throughout the GCMS notes, the Procedural Fairness Letter of March 28, 2013, and the refusal letter of January 10, 2014.

[55] The Procedural Fairness Letter sets out the framework and scope of the Officer's considerations (Applicant's Record at 105):

The provincial nominee class is an economic immigrant category. Economic immigrants are defined on Citizenship and Immigration's official website ([www.cic.gc.ca](http://www.cic.gc.ca)) as being "selected

for their skills and ability to contribute to the Canadian economy.” Subsection 87 of Canada’s Immigration and Refugee Protection Regulations (IRPR) describes the provincial nominee class as “a class of persons who may become permanent residents on the basis of their ability to become economically established in Canada” and who “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... intend to reside in the province that has nominated them.” The definition of provincial nominee is further explained on [www.cic.gc.ca](http://www.cic.gc.ca) as “Economic immigrants selected by a province or territory for specific skills that will contribute to the local economy to meet specific labour market needs.” In order for applicants to become economically established it is therefore expected that they will be able to obtain employment in Canada. Nominations issued by provinces are considered as initial evidence that nominees have the ability to become economically established in Canada and will be of economic benefit to the province and have met the requirements of the province’s Provincial Nominee Program. Canada is responsible for exercising the final selection authority and ensuring that applicants admitted under the program have met the requirements for membership in the economic class.

Notwithstanding your nomination by a province or territory, I am not satisfied that the information provided with your permanent residence application indicates you have the ability to become economically established in Canada or that you otherwise meet the definition of a provincial nominee as per Subsection 87 of the IRPR.

[56] The focus of the Officer’s concerns are found in the final three paragraphs of that letter

(Applicant’s Record at 106):

The ability to communicate effectively in one of Canada’s official languages is recognized as a vitally important factor in becoming economically established. Information on the official website of Saskatchewan Immigration confirms that new immigrants would “need to understand and speak English to do most things in Saskatchewan” and, relating specifically to employment, that “To do most jobs well, a minimum of a [Canadian Language] benchmark 4 is recommended.” A Canadian Language Benchmark of 4 would equate to an IELTS score of at least Listening 4.5, Reading 3.5, Writing 4.0, and Speaking 4.0. The Saskatchewan Immigrant Nominee Program (SINP) requires nominees to prove their English language ability and, if an IELTS test is submitted as

proof, a score of “a minimum of equivalent of CLB 4 [is required] in all categories.” Although your individual scores for Speaking, Writing, and Reading were at or above the minimum recommended level, you scored below the minimum recommended level in Listening.

As well, the SINP has stated that nominees also must have “the English language ability either to do the job you have been offered by a Saskatchewan employer or to get a job in your field of education or training.” You have not indicated having been offered a job by a Saskatchewan employer. The occupation in which you have been nominated is cashier. The occupation in which you indicate having experience and which you also indicate you intend to pursue in Canada is teaching. I am not satisfied you have the language skills to be able to perform the duties required of either occupation. Work as a cashier typically requires interaction with the public and understanding of specific service requirements and information. Human Resources and Skills Development Canada (HRSDC) identifies Oral Communication as one of the most important essential skills to perform work as a cashier and the level of language ability to perform the tasks typically required of a cashier would need to be more than basic or moderate. HRSDC identifies Oral Communication, Reading Text, Document Use, and Writing as among the essential skills to perform work as a teacher, with Oral Communication identified as one of the most important. In order to be a teacher in Saskatchewan, one must also obtain teacher certification for which fluency in English or French would be a requirement. It does not appear that you have the English language proficiency to obtain teacher certification in Saskatchewan or to successfully complete additional training which you may need in order to be eligible for certification. With the level of English language ability you have demonstrated, I am not satisfied that you would be able to perform the tasks of your intended occupation or that for which you have been nominated. I am therefore not satisfied you would be able to become employed in Canada or, if you did find employment, that it would be of a sufficient level for you to become economically established. I have also noted that you have indicated having support of a family member residing in Saskatchewan, but support by a family member would not be considered economic establishment and would not be sufficient to outweigh the concerns over your low level of English language ability.

A copy of this letter is also being sent to the nominating province to advise of the possible refusal of your application and the reasons for it. The province has 90 days to raise concerns or seek clarification from the visa office regarding the assessment of your



application, after which the final decision will be made. If you have further information you wish to have considered, you must submit it within the same 90-day time period.

[57] My reading of the full record reveals that there is nothing to suggest that the Officer left out of account, or failed to consider, any of the factors put forward by the Applicant. The above quotation indicates that the family support was considered but it did not outweigh the concerns over the Applicant's low level of English language ability. The Officer fully explains his emphasis on this factor for the issue of economic establishment.

[58] The Officer also acknowledges that "[n]ominations issued by provinces are considered as initial evidence that nominees have the ability to become economically established in Canada and will be of economic benefit to the province and have met the requirements of the province's Provincial Nominee Program" (Applicant's Record at 105).

[59] The fact that one factor (language ability) is singled out for particular emphasis does not mean that all other material factors were not considered in the weighing process.

[60] As the Officer points out, irrespective of all other factors, the Applicant had to demonstrate that she would be able to find employment at a level that would provide the required support for the Applicant and her family and thus achieve economic establishment.

[61] As the Respondent points out, there is no evidence that the job offer was submitted to the Officer, and the GCMS notes make it clear that there was no evidence of a job offer before the Officer. This means that it was not unreasonable for the Officer to assess the situation himself

because he could not be sure that the Applicant had been assessed as qualified by a prospective employer.

[62] The new IELTS results left the Applicant in the “modest” category, which meant she had a partial command of the English language but is still likely to make mistakes. It was not unreasonable for the Officer to conclude that, as a cashier, she would need good language skills to communicate with customers.

[63] All in all, this meant that the Applicant had no plan to pursue a teaching career, she had not produced the job offer for a cashier position, and she had only modest language skills in English. It is not difficult to see why the Officer was concerned that the Applicant had not demonstrated how she would become economically established if she came to Canada.

[64] The Applicant has not convinced me that the Officer did not conduct a proper and reasonable substitute assessment. She is naturally disappointed and would like the Court to reweigh all of the factors and reach a conclusion that favours her. The Court cannot do this. I am satisfied that the Officer reasonably weighed the factors.

D. *Certification*

[65] Counsel agree there is no question for certification and the Court concurs.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that**

1. The application for judicial review is dismissed; and
2. There is no question for certification.

"James Russell"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1482-14

**STYLE OF CAUSE:** UZMA IJAZ v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** SASKATOON, SASKATCHEWAN

**DATE OF HEARING:** SEPTEMBER 4, 2014

**JUDGMENT AND REASONS:** RUSSELL J.

**DATED:** SEPTEMBER 26, 2014

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