

Federal Court



Cour fédérale

**Date: 20191113**

**Docket: IMM-933-19**

**Citation: 2019 FC 1419**

**Winnipeg, Manitoba, November 13, 2019**

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

**BETWEEN:**

**SYED MAZHAR ABBAS BOKHARI  
SYEDA MAZHAR BOKHARI  
SYED MUHAMMAD ABBAS BOKHARI  
SYEDA MALIKA ZAHRA BOKHARI  
SYED IMAN ZAHRA BOKHARI  
SYEDA BATOOL ZAHRA**

**Applicants**

**and**

**THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The principal Applicant, Syed Mazahar Abbas Bokhari, and five other members of his family seek judicial review of a decision of an immigration officer at the High Commission of

Canada to the United Kingdom [the Officer], dated January 18, 2019, denying Mr. Bokhari's application for permanent residence as a member of the provincial nominee class.

[2] For the reasons that follow, the application for judicial review is dismissed.

## II. Facts

[3] Mr. Bokhari is a citizen of Pakistan. He is married and has four children.

[4] On February 3, 2017, Mr. Bokhari's application under the Saskatchewan Immigrant Nominee Program [SINP] was approved, and a Certificate of Nomination was issued in his name for occupation code 6221- Technical Sales Specialists – Wholesale Trade.

[5] Mr. Bokhari applied to Immigration, Refugees and Citizenship Canada for permanent residence on the basis of his provincial nomination. His application was subsequently forwarded to the High Commission of Canada in London, United Kingdom for further processing.

[6] On July 6, 2017, the Officer e-mailed a procedural fairness letter to Mr. Bokhari, copied to the Province of Saskatchewan, advising Mr. Bokhari that it appeared he did not meet the requirements for immigration to Canada. The Officer explained that he was not satisfied that the information provided with the application established that Mr. Bokhari had the ability to become economically established in Canada or that he otherwise met the definition of a provincial nominee.

[7] The Officer expressed particular concern that Mr. Bokhari did not have the necessary language skills to work as a technical sales specialist. While acknowledging that in Saskatchewan the Canadian Language Benchmark [CLB] 4 is recommended as a minimum when assessing language skill sets, and that Mr. Bokhari's language skill sets were assessed above that minimum (CLB 6 in writing, reading, and speaking and CLB 7 in listening), he observed that the performance of individual occupations may require higher levels of English language proficiency. The Officer noted that this was the case for Mr. Bokhari's proposed occupation.

I am not satisfied you have the language skills to be able to perform the duties required of a technical sales specialist or related occupations in Canada. Technical sales specialists need to be able to identify and solicit potential clients and assess their needs, as well as to prepare and administer sales contracts, resolve clients' problems and provide ongoing support. It appears reasonable to expect that to carry out duties which require close contact with clients and a thorough understanding of their needs would require a greater than moderate (CLB 6-7) level of English language proficiency.

[8] The Officer accepted that Mr. Bokhari had experience as a manager, but because managers in Canada require high levels of English proficiency (CLB 8 and above), the Officer was not satisfied Mr. Bokhari would be able to pursue that occupation. The Officer was also not satisfied that Mr. Bokhari would be able to become employed in Canada, or if he did find employment, that it would allow him to become economically established.

[9] Counsel for Mr. Bokhari responded to the fairness letter in October 2017, and submitted for consideration a new job offer as a retail sales supervisor (a gas station shift supervisor). Counsel objected to the use of the "low-moderate-high" terminology adopted by the Officer, as no basis was given for that terminology, or why CLB 6-7 was "moderate" while CLB 8 was

“high”. Counsel maintained that Mr. Bokhari’s language skills would be sufficient to perform the duties of a technical sales specialist or retail sales supervisor.

A. *Officer’s Decision*

[10] Pursuant to subsection 87(3) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [IRPR], the Officer made a substituted evaluation after consulting a second immigration officer. The Officer was not satisfied that the fact Mr. Bokhari was named in a certificate issued by Saskatchewan is a sufficient indicator that he is likely to become economically established in Canada. The Officer reached this conclusion because he was not satisfied Mr. Bokhari has the language skills necessary to become economically established in Canada within a reasonable period of time. The October 2017 response to the Officer's e-mail did not alleviate the concerns raised.

[11] The Officer determined:

[...] a job offer in itself does not necessarily demonstrate that an applicant has the ability to become economically established. The risks to a prospective employer if a potential employee doesn’t work out appear to be relatively low, compared with the risk of granting PR status to an applicant who has not demonstrated clearly that he has the ability to become economically established in Canada within a reasonable period of time.

[12] The second immigration officer concurred with this evaluation.

III. Issue

[13] The issue to be determined is whether the Officer's determination that Mr. Bokhari is unlikely to become economically established in Canada is unreasonable.

IV. Standard of Review

[14] The parties agree, and I accept, that the reasonableness standard applies to the Officer's decision denying the Applicants' permanent residence under the provincial nominee program: *Haider v Canada (Minister of Citizenship and Immigration)*, 2018 FC 686 at para 12; *Singh v Canada (Minister of Citizenship and Immigration)*, 2017 FC 808 at para 10. Reasonableness is a deferential standard and a reasonable decision is one that "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47-48.

V. Analysis

[15] The parties agree that deference is owed to a province's assessment as to whether an applicant has the ability to become economically established in that province: *Sran v Canada (Minister of Citizenship and Immigration)*, 2012 FC 791 at para 13. They also agree that while a provincial nomination should be accorded deference, it is not binding and immigration officers are not obliged to consider the same criteria as the province: *Chaudhry v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1072 at para 28). Given that Mr. Bokhari's language proficiency had not been addressed by the Province of Saskatchewan and the Province took no

issue with the Officer's e-mail, I am satisfied that adequate deference has been shown by the Officer.

[16] The Officer considered the level of language proficiency Mr. Bokhari's test scores indicated. The Officer found that his scores indicated that his English language ability would not enable him to perform the range of tasks of a technical sales specialist, the occupation for which he was nominated, or as a retail sales supervisor, an occupation for which he had received a job offer.

[17] The Applicants submit that the Officer failed to justify why his findings were at odds with other economic immigration classes. They claim that the criteria of other Federal economic classes are relevant because the Provincial Nominee Program [PNP] specifically contemplates bringing "about the immigration of [candidates] who might not meet federal immigration criteria but who have attributes of particular value to the nomination province and its specific economic development objectives." The Applicants submit that as the purpose of the PNP is to relax requirements of other immigration requirements, the Officer had a duty to explain why he was imposing language requirements that significantly exceed those of other immigration classes.

[18] A careful review of the Officer's decision reveals that he did not impose a set language threshold for members of the provincial nominee class. Moreover, the Officer was not required to consider the minimum language thresholds established for applicants seeking permanent residence in Canada through different immigration streams with different underlying policy purposes: *Yasmin v. Canada (Minister of Citizenship and Immigration)*, 2018 FC 383 at para 42.

[19] In this case, it was for the Officer to determine if Mr. Bokhari could become economically established in a reasonable period of time. The Officer was necessarily required to consider Mr. Bokhari's language abilities in making that determination.

[20] Mr. Bokhari was advised of the Officer's concerns with his ability to become economically established in Canada. He was provided with an opportunity to respond to these concerns but his subsequent submissions failed to satisfy the Officer that he was likely to become economically established in Canada. In my view, it was reasonably open to the Officer to reach this conclusion based on the record before him.

[21] I agree with Mr. Bokhari that the Officer was required to consider the intent of the SINP and to explain why he adopted a higher language requirement than Saskatchewan's CLB 4 language minimum. In my view, he did so with thorough and intelligible reasons.

[22] The Officer stated as follows in his notes:

PA's representative says that a "task-based comparison analysis demonstrates that Mr. Bokhari "can perform the duties of a technical sales specialist or a retail sales supervisor" but does not offer such an analysis to support this claim.

[...] I am not satisfied that the representative's interpretation is sufficient to demonstrate that PA's English language ability would enable the PA to perform the range of tasks it would appear reasonable to expect of a technical sales specialist or retail sales supervisor in Canada such that he could become economically established within a reasonable period of time.

[...] All of PA's representative's submissions have been thoroughly considered, but I am not satisfied they are sufficient to remove the concerns outlined in the P/F.

[23] The Officer determined Mr. Bokhari did not have the language skills to be a technical sales specialist or related occupations. The decision that those jobs required language skills above a CLB 6-7 is in the range of reasonable outcomes.

[24] Mr. Bokhari provided no clear explanation as to how he was able to submit a new job for the Officer to consider, despite the fact that it was not related to the job in the Certificate of Nomination, or on what basis the Officer's consideration of the new job related to the intent of the SINP. In any event, the Officer did address Mr. Bokhari's retail sales supervisor job offer.

[25] While the Officer did not canvass Mr. Bokhari's languages skills to be a retail sales supervisor in detail in his analysis, he concluded that even if Mr. Bokhari could find work in a "lower-skilled occupation", he would not likely have sufficient income to support himself and his family. In the procedural fairness letter, the Officer had noted the relevant Low-Income Cut-Offs, which convey the annual income at which a family may be in strained circumstances (spending a greater portion of their income on food, clothing and shelter). Statistics Canada projected the low threshold as \$58,473 for a family of six (in 2017), and the Officer considered that a useful indicator of the income required not to fall below the poverty line. When reviewing the salary of the retail sales supervisor, the Officer noted the projected annual income of \$37,752 "still appears low for the support of a family of six." The applicant has failed to establish that this finding is unreasonable.



VI. Conclusion

[26] For the above reasons, I see no reason to intervene in this matter. The application is accordingly dismissed.

[27] There are no questions for certification.

**JUDGMENT IN IMM-933-19**

**THIS COURT'S JUDGMENT is that:**

This application for judicial review is dismissed.

"Roger R. Lafrenière"

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Judge

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

**DOCKET:** IMM-933-19

**STYLE OF CAUSE:** SYED MAZAHAR ABGBAS BOKHARI, SYEDA MAZAHAR BOKHARI, SYED MUHAMMAD ABBAS BOKHARI, SYEDA MALIKA ZAHRA BOKHARI, SYED IMAN ZAHRA BOKHARI, SYEDA BATOOL ZAHRA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** NOVEMBER 4, 2019

**JUDGMENT AND REASONS:** LAFRENIÈRE J.

**DATED:** NOVEMBER 13, 2019

**APPEARANCES:**

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