Federal Court  Cour fédérale

Date: 20250617

Docket: IMM-8769-24

Citation: 2025 FC 1087

Ottawa, Ontario, June 17, 2025

PRESENT: The Honourable Justice Darren R. Thorne

BETWEEN:

ANTONIO MIGUEL NERI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Antonio Miguel Neri, seeks judicial review of a decision [the Decision] made by an Immigration, Refugees and Citizenship Canada officer on May 3, 2024, that denied his application for permanent residence as a member of the start-up business class [SUBC] under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. In particular, the officer found that pursuant to subsection 89(b) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*], he was satisfied that the primary purpose of the Applicant's start-up business venture had been to acquire residency status under the *IRPA*, rather than to legitimately

engage in the business activity. Per that section of the regulations, such an ‘artificial transaction’ prevents the Applicant from meeting the applicable requirements to qualify as a member of the start-up business class.

[2] For the reasons that follow, this application is dismissed. I find the Applicant has not established that the Decision is either unreasonable or procedurally unfair.

II. Background

[3] The Applicant, a citizen of the Philippines, currently resides in Canada, with his family. He holds a high school diploma from the Philippines, and states that in his past work experience in that country he acted as a horse-racing consultant and horse-racing analyst television panelist. The Applicant also owned a racing horse, and states that these experiences led him to the idea that the horse-racing industry would benefit from the development of a “jockey cam,” which would provide live camera feeds from the perspective of jockeys during races. Accordingly, the Applicant became the founder and Chief Executive Officer of 168 Enterprises Ltd [168 Enterprises], a business focused on the development of such a product. In relation to this, he entered into a commitment with Empowered Startups Ltd [Empowered], a business incubator, to facilitate the development of his company. In December 2020, with the support of Empowered, the Applicant applied for Canadian permanent residence [PR] as a member of the start-up business class. The Applicant relocated to Canada with his family in June 2021. He incorporated 168 Enterprises later that month.

[4] The Applicant completed Global Start-up Accelerator [GSA] training through Empowered, and began to conduct field research in 2021, which revealed that a number of racecourses were already using such jockey cam technology. In June 2023, the Applicant entered

into a memorandum of agreement with HAPI Jockey Club Inc. [HAPI] in the Philippines, for the potential purchase of jockey cams, once their racecourse, which was slated for construction, was eventually completed.

[5] The Applicant's permanent residence application was assessed by two officers. In the initial eligibility screening, the officer assigned noted that the Applicant "brings the relevant experience/expertise to fulfill his role in the proposed business," and recommended further review of the matter. This subsequent review was conducted by a second Officer, number TS11988, [Officer], who requested additional and updated information from the Applicant in June and August 2023. The Applicant provided the requested documentation.

[6] This Officer subsequently sent the Applicant a procedural fairness letter [PFL] on December 1, 2023. This letter identified concerns about the Applicant's primary purpose with respect to his start up business venture, and particularly whether it had been launched merely to secure him permanent residence in Canada. In particular, the Officer noted concerns related to the Applicant's educational background, professional and work history, the intellectual property [IP] arising from 168 Enterprises, and the overall viability of the business. The Applicant responded to the PFL on January 12, 2024.

[7] On May 3, 2024, the Officer refused the Applicant's PR application on the basis of ss. 89(b) of the *IRPR.* This Decision letter stated: "I am satisfied on a balance of probabilities that your primary purpose for entering into the commitment with the [designated entity], Empowered Startups Ltd., is for the purpose of acquiring a status or privilege under the Act, as described under ss. 89(b) of IRPR."

[8] The Officer's Global Case Management System notes revealed three key concerns with the Applicant's PR application that ultimately informed the Decision. First, the Officer identified concerns with the Applicant's lack of relevant education and experience in relation to the development of the technologies required for the jockey cam. The Officer noted that the Applicant's submissions:

> […] suggest Mr. Neri, with his company 168 Enterprises Ltd., will himself, or through the employment of others, develop a custom camera for sale within the horse racing/competitive racing industries. However, Mr. Neri's educational background and work history, as presented by both his Schedule A, and CV suggests he himself does not have the accreditation or experience for such a venture. Mr. Neri's Schedule A does not show any work experience researching and developing, operating systems or software.

[9] The Officer also noted that while the Applicant was asked to provide contact details of individuals whom he had hired or with whom he proposed to work to realize his business, the contact details then provided by the Applicant were either not in service, did not connect to the individuals in question, or were inoperative website links.

[10] Second, the Officer raised concerns about the legitimacy of the Applicant's business. The Officer particularly noted that the HAPI racecourse had not yet been constructed, in contrast to the Applicant's PFL response submissions, which had asserted that "groundbreaking has been done and construction is well underway." The Officer also noted that even were this inaccuracy to be put aside, the proposed arrangement with HAPI was the only prospective sale of the cameras, and that the memorandum of agreement with this group had only contemplated the sale of a comparatively small number of jockey cam units. To the Officer, this brought into question the Applicant's ability to become economically established in Canada, through the business. The

Officer further noted that contrary to the submissions on the technology that the Applicant provided as part of his PR application, what was submitted "does not appear [to] be a 'customed designed camera' Mr. Neri and his Company 168 Enterprises Ltd., developed, but rather pre-existing technology from another company, which can be ordered and assembled." In the Officer's view, this demonstrated that the Applicant had only an idea, not a viable business.

[11] Third, the Officer was not satisfied that the Applicant controlled the intellectual property arising from his business. They noted that in response to their queries about this in the PFL, the Applicant had flatly refused to provide any information on the status of the IP, and had instead simply declared that his technology was a trade secret that he would not discuss. The Officer noted that this does not comply with the requirements for trade secret protection in Canada. They also noted that no IP assets connected with the Applicant or his company were listed in either Canadian Intellectual Property Office, or World Intellectual Property Organization, databases.

III. Issues

[12] This matter raises the following issues:

1. Was the Decision Reasonable?
2. Was the Decision Procedurally Fair?

IV. Analysis

A. *Relevant Statutory Provisions*

[13] Subsection 12(2) of the *IRPA* provides that a foreign national may qualify for permanent residency in Canada by being selected as a member of an economic class. The start up business class is one such class.

[14] The requirements for the SUBC are defined under section 98.01 of the *IRPR*. Per subsection 98.01(2) of the *IRPR*, a foreign national qualifies as a member of the SUBC if they: (a) have obtained a commitment, that is less than six months old at the time of the PR application, from a designated business incubator entity; (b) have submitted the results of an approved language test indicative of a certain level of language proficiency; (c) have transferable and available funds sufficient to support the applicant and their family members; and (d) have started a qualifying business within the meaning of the *IRPR*.

[15] Subsection 89(b) of the *IRPR* provides that an applicant in the SUBC is not considered to have met the requirements for the class where doing so is based on one or more 'artificial transactions' that were entered into primarily for the purpose of acquiring a status or privilege under the *IRPA*, rather than for the purpose of engaging in the business activity for which the commitment referred to in paragraph 98.01(2)(a) was intended.

B. *Standard of Review*

[16] The standard of review of the merits of a decision is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2018 SCC 65 at paras 10, 25 [*Vavilov*]. In undertaking reasonableness review, the Court must assess whether the decision bears the hallmarks of reasonableness, namely justification, transparency and intelligibility: *Vavilov* at para 99. Further, an applicant bears the onus of demonstrating that the decision was unreasonable: *Vavilov* at para 100.

[17] However, with respect to procedural fairness, it is a correctness-like standard that applies. The Court's focus in this assessment is on whether the procedure allowed an applicant to know

the case to be met and to have a full and fair opportunity to respond: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54–56 [*CPR*]. In short, a reviewing court must determine whether, given the particular context and circumstances of the case, the process followed by the administrative decision-maker was fair, in that it gave the party the right to be heard, as well as a full and fair opportunity to be informed of the evidence to be rebutted: *CPR* at para 56.

C. *The Decision was Reasonable*

(1) *Analysis*

[18] The Applicant primarily argues that the Decision was unreasonable because they state that the Officer improperly required new and additional thresholds to be satisfied, even though the Applicant had met the requirements for the SUBC under s. 98.01(2) of the *IRPR*. In essence, the Applicant contends that in considering the Applicant's educational and work experience background, the Officer had improperly imposed a new benchmark education threshold requirement that went beyond the requirements of the statutory scheme. The Applicant asserts that membership in the SUBC does not impose a specific educational or work experience requirement that an applicant must meet in order to qualify to be a member of that class. Thus, the Applicant argues that in the Decision, the Officer's reliance on the fact that the Applicant does not have an educational background relevant to his proposed business unfairly imposed a new educational threshold. According to the Applicant, this rendered the decision unreasonable. The Applicant further argues that with respect to his education and background, the Officer failed to take into account the Applicant's GSA training and "extensive volunteer and work experience in relation to the horseracing industry." The Applicant also highlighted the

contrasting findings of the two officers who reviewed the PR application, stressing that the first officer who performed the preliminary eligibility review found that the Applicant brought "relevant experience/expertise," but that the deciding Officer held that the Applicant did "not have the accreditation or experience for such a venture."

[19] Second, the Applicant similarly submits that the Decision is unreasonable because in considering the sales prospects of the business, and its lack of potential customers beyond that identified in the HAPI memorandum of understanding, in the Applicant's view the Officer also imposed a threshold requirement that the Applicant's business be successful. The Applicant again states that this is not a requirement under the SUBC, and its imposition was unreasonable. The Applicant states that if the Officer had concerns about the viability of the business venture, or Empowered's due diligence by extension, the Officer should have requested a peer review under s. 98.09 of the *IRPR*. The Applicant relies on *Serimbetov v Canada (Immigration, Refugees and Citizenship)*, 2022 FC 1130 at paras 45–47 [*Serimbetov*] to support this assertion.

[20] Third, the Applicant also similarly contends that in inquiring about the intellectual property ownership of any jockey cam that might be developed, the Officer was likewise imposing a threshold requirement for a certain level of IP ownership. The Applicant asserts that the interest of the Officer in the Applicant's IP ownership again imposed a legal requirement that is not present in the requirements for SUBC, and that this also rendered the Decision unreasonable as a result.

[21] Lastly, the Applicant argues that the Officer's failure to ask to see a prototype of the jockey cam in their assessment of the viability of 168 Enterprises further rendered the Decision

unreasonable. In the Decision, the Officer determined that the Applicant had not created a "custom-designed camera" but, on the material provided to them, rather had intended to merely gather and use pre-existing technology from other companies, to construct the camera. The Applicant states that this conclusion was unreasonable because the Officer had failed to request to view a prototype.

[22] I do not find these arguments persuasive. In essence, the Applicant argues that in considering the overall situation and surveying a series of contextual factors (such as the Applicant's lack of educational or professional background that would be helpful in developing the product or business in question; or indications that the Applicant owned IP in relation to the technology he wished to develop; or considering his proposed sales forecasts with HAPI, a potential buyer in the Philippines) the Officer was impermissibly imposing new threshold legal requirements for him to qualify as a member of the SUBC.

[23] I do not find that the Officer imposed any such novel requirements in this matter. Upon review of the record, it is clear that the Officer was rather simply taking a holistic view of the circumstances and considering the overall situation, which the Officer stated collectively led them to conclude that the business was not legitimate, but rather simply a vehicle to secure immigration status for the Applicant. There is no indication in the record that the Officer had adopted an absolute standard or requirement with respect to any of the level of education, professional background, possession of IP or overall viability of the business that they were requiring the Applicant to satisfy. I note that, upon questioning at the hearing, counsel for the Applicant also could not point to any indicia of such new standards, or further explain how one could conclude that the Applicant was somehow being held to novel standards. When directly

asked why the Court should find this was the case, or what indicia indicated that this had been done, counsel stated only that the Officer's decision had made mention of the Applicant's education, lack of technical background and experience, lack of any evidence of IP ownership, and the minimal projected sales numbers for the product (were it created).

[24] I do not agree that in merely mentioning any of these factors, the Officer can reasonably be taken as somehow imposing a new absolute standard in relation to them. While a combination of all of these factors obviously did come into play in leading to the Officer's ultimate finding, there is no indication that any of them imposed some new absolute benchmark. In other words, as was pithily described by counsel for the Respondent, all of these considerations were to some degree material, but there is no evidence that any of them were mandatory. The Officer did not impose additional thresholds; rather, the Officer properly assessed the evidence and various elements of the PR application to inform the overall Decision.

[25] I also note that it is not sufficient for an Applicant to blithely seize on any mention of the sort of contextual factors mentioned by the Officer and then assert that this indicated that a new requirement or absolute threshold was being imposed, without some indicia in the record which would support the conclusion that this was the case. There were no such indicia in this matter. Indeed, the evidence on the record seemed to indicate the opposite. For example, the assertion that some sort of educational threshold was imposed, wherein the Applicant's educational background disqualified him from being seen as being able to create the business, is undermined by the Officer's inquiries about whether he had hired others to supply necessary expertise. Given this, it is clear that education was merely one factor under consideration, and one that could be mitigated by other considerations in the Officer's assessment. Similarly, the notion that the

Officer was imposing an arbitrary requirement that the business be, on its face, obviously successful to qualify the Applicant under the SUBC is contradicted by the Officer having rather inquired about the progress that was being made as to the viability of the business – this indicates that such considerations were not hard benchmarks, but again were rather merely factors being considered contextually.

[26] I further note that were I to accept the Applicant's position that any mention of factors, such as education, by an Officer should be taken as proof that the Officer was imposing new threshold requirements, it would be difficult to imagine how an officer would then be able to consider such contextual factors, in any way, in their evaluation.

[27] In my view, the Officer's essential assertion – that the overall circumstances or factual matrix of the PR application led to the conclusion that the business was merely a vehicle to claim status under the *IRPA*, in the way ss. 89(b) seeks to prevent – supports the conclusion that the Decision is justified, intelligible, and transparent. The factors considered reasonably included the Applicant's work experience and education, the projected sales of the company, the design progress, the comparative lack of investors in the scheme, and the absence of any indication of IP ownership – all considerations that one might examine and reasonably expect in the development of a technical product. I agree with the Respondent that in identifying these issues, the Officer was simply noting evident relevant constraints on the Applicant's ability to develop the jockey cam, and, by extension, on his ability to run the business.

[28] In short, I am not of the opinion that the Applicant identified any gap in intelligibility, justification, and/or transparency, sufficient to show that the Decision was unreasonable. In my

view, the Officer was holistic in their assessment of the PR application and followed through with logical inquiries before arriving at the Decision. For example, as noted, the Officer did not simply stop at the finding that the Applicant did not have the educational background to pursue the business. Rather, they then further sought to determine whether the Applicant had employed, or was in contact with, anyone who did have the requisite educational background to assist in the development of the jockey cam.

[29] I also do not find it unreasonable that the Officer did not specifically include a request to see a prototype of the product, amongst its various requests of the Applicant in its extensive fairness letter. Beyond a conceptual sketch, and vague images of a collection of electronic parts – seemingly from a catalogue – with no explanation as to their use, there was little evidence of the existence of any such prototype. Further, there appears to be no jurisprudence requiring that an officer must seek and consider a prototype in their assessment of the viability of a business under the SUBC.

[30] The Applicant's argument that the Decision was unreasonable because the Officer did not request a peer review of the business is also not supported by the jurisprudence. In *Serimbetov*, Justice Diner makes clear that peer review by an independent panel, pursuant to s. 98.09 of the *IRPR*, is entirely within the discretion of the officer: at para 17. Further, the jurisprudence also supports the Respondent's argument that peer reviews are more properly triggered when the Officer has concerns about the commitment made by a designated entity partner supporting the SUBC venture. For example, in *Le v Canada (Citizenship and Immigration)*, 2025 FC 499, Justice Strickland found that the decision under review was reasonable, even though a peer review was not conducted. She concluded that the "formalities of class membership" –

particularly the commitment between the start-up business and the investor company – were not at issue, and thus a peer review was not required: at para 21. In this matter, the reasons do not suggest that the Officer was only concerned that the Applicant had not met the requirements for SUBC class membership. Rather, the concerns were broader, relating to whether the transactions were artificial, per *IRPR* ss. 89(b). I find the reasonableness of the Decision is not undermined by the fact that a peer review was not initiated.

[31] Finally, the fact that the initial officer who conducted the preliminary review of the PR application stated that the Applicant apparently "brings the relevant experience/expertise to fulfill his role in the proposed business," and that this contradicted the ultimate finding of the deciding Officer, does not raise doubts about the reasonableness of the Decision. This is because the two officers were reviewing the PR application at two different stages of the process. The Decision reflects a more granular assessment of the PR application than the initial eligibility review.

[32] In sum, I do not find that the Applicant has established that the Decision was unreasonable.

D. *The Decision was not procedurally unfair*

[33] The Applicant also argues that the Decision was procedurally unfair, asserting that the Officer imposed arbitrary standards without notice and without providing the opportunity to respond. Though it is not entirely clear from the Applicant's submissions, it appears that the Applicant is of the view that the Officer's supposed imposition of the new thresholds outlined

above – in relation to education, business success, and IP ownership – rendered the decision procedurally unfair, because the Applicant did not know the case to meet.

[34] The Respondent contends that the Decision was procedurally fair because the Applicant was provided with a lengthy procedural fairness letter. The Respondent notes this letter outlined each of the Officer's concerns and gave the Applicant an opportunity to respond to all of them. The Respondent further notes that the Officer did not make the Decision on the basis of any ground which was not directly outlined in the procedural fairness letter.

(1) *Analysis*

[35] I note that the procedural fairness owed by an officer to an applicant in SUBC matters has been recognized by the Court as being on the lower end of the spectrum: *Pham v Canada (Citizenship and Immigration)*, 2022 FC 793 at para 27 [*Pham*]; *Nguyen v Canada (Citizenship and Immigration)*, 2019 FC 439 at para 27.

[36] In *Pham*, Justice Little held that in this type of application, "a procedural fairness letter should identify the issues with sufficient clarity and particularity for an individual to have a meaningful opportunity to address them. In this way, the affected person can understand why the officer is inclined to deny the application" (at para 32). In *Pham*, the decision was set aside because the application was ultimately determined on an issue that was not raised in the procedural fairness letter.

[37] In this matter, the Officer made the Decision on the basis of concerns which were directly raised with the Applicant in the procedural fairness letter, as opposed to on other considerations

that the Applicant did not have notice of or had lacked an opportunity to respond to. To the contrary, it is evident the Officer clearly alerted the Applicant to his various concerns and provided the Applicant with an opportunity to respond. I find that in doing so, the Decision appears to have been made in a manner consistent with the lower procedural fairness owed to applicants in these matters.

[38] I do not find that the Applicant has established that the Decision was procedurally unfair.

V. Conclusions

[39] For these reasons, this application for judicial review is dismissed.

[40] The parties proposed no question for certification, and I agree that none arises.

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.
2. No question of general importance is certified.
3. No costs are awarded.

"Darren R. Thorne"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Alexandra Goncharova	FOR THE APPLICANT
Stephen Jarvis	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Bellissimo Law Group PC, Barristers and Solicitors Toronto, ON	FOR THE APPLICANT
Attorney General of Canada Toronto, ON	FOR THE RESPONDENT