Federal Court Cour fédérale

Date: 20250318

Docket: IMM-9504-23
IMM-9295-23
IMM-9145-23
IMM-9293-23

Citation: 2025 FC 499

Ottawa, Ontario, March 18, 2025

PRESENT: The Honourable Madam Justice Strickland

CONSOLIDATED MATTERS

BETWEEN:

THI THU HIEN LE
HONG NHUNG LY
SUJINI PONNUSAMY
RAAJES PAREKH VALLABH DOS

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is the judicial review of a visa officer [Officer]'s decision refusing the applications of Thi Thu Hien Le, Hong Nhung Ly, Sujini Ponnusamy, and Raajes Parekh Vallabh Dos, the Applicants, seeking permanent residence under the Start-Up Visa Program.

[2] The Applicants are foreign nationals, being citizens of India and Vietnam, respectively. On June 1, 2020, they applied for permanent residence status as members of the Start-Up Business Class. The Applicants proposed to develop a start-up company in Canada to develop and market a software product to be used by oncologists in diagnosing and treating cancers. Specifically, the start-up intends to develop software referred to as OAISIS (Omics and AI-based Smart Information System) which will be comprised of six modules, one of which is the Virtual Molecular Tumour Board [VMTB]. The VMTB will enable specialists to meet virtually and discuss treatment options for cancer patients. As described in the OAISIS Business Plan [Business Plan] submitted by the Applicants, the module would help oncologists access patient data and specialists, seamlessly plan VMTB meetings with minimal set-up time, and quickly identify the optimal treatment required for that particular patient, thus increasing the efficiency of the Molecular Tumour Board.

[3] The Applicants would all occupy management roles in the start-up business. Mr. Vallabh Dos would serve as founder and chairman; Ms. Ponnusamy would serve as founder and Chief Executive Officer; Ms. Le would serve as Chief Marketing Officer; and Dr. Ly would serve as Chief Medical Officer. A designated entity (that is, a Minister-approved angel investor group

empowered to assess foreign entrepreneurs' business proposals to identify innovative ventures: *Serimbetov v Canada (Immigration, Refugees and Citizenship)*, 2022 FC 1130 at para 15 [*Serimbetov*]; ss 98.02–98.05, *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRP Regulations*]), Canadian International Angel Investors Ltd. [Angel Investors],, issued a certificate of commitment [Commitment Certificate] to Immigration, Refugees and Citizenship Canada [IRCC].

[4] During the course of assessing the applications, IRCC wrote to the Applicants (specifically, to Ms. Ponnusamy) on August 24, 2022, seeking further information. A response was provided by letter dated August 29, 2022, from Venture Development Institute [VDI], in which it describes itself as providing specialized and innovative incubation and entrepreneurship support programs. IRCC sent a second letter to the Applicants,via Ms. Ponnusamy, seeking further information on December 5, 2022. The Applicants responded, via Ms. Ponnusamy, by letter dated December 12, 2022.

[5] On January 12, 2023, IRCC sent the Applicants, via Ms. Ponnusamy, a Procedural Fairness Letter [PFL] describing IRCC's concerns with the application. A response to the PFL [PFL Response] was submitted by Mr. Chris Somers, President, New Island Opportunities Inc., EVP Immigration, Canadian International Capital Inc. on February 10, 2023. This response was comprised of a letter dated January 23, 2023, from Ms. Ponnusamy responding to the PFL [Applicants' PFL Response], a copy of the Business Plan, a letter dated February 8, 2023, from Mr. Glen Dexter, President, Angel Investors [Angel PFL Response], copies of a VDI Due

Diligence Report and VDI Feasibility Report for OASIS, both dated March 2020, and related documents.

[6] On May 21, 2023, the Applicants each received a refusal letter, all with identical reasons.

[7] The judicial reviews filed by each of the Applicants with respect to the refusal letters (Court File Nos. IMM-9295-23, IMM-9145-23, IMM-9293-23 and IMM-9504-23) were consolidated, and were continued and heard together under IMM-9504-23.

Relevant Legislation

[8] The relevant provisions of the *IRP Regulations* are as follows:

> **Artificial transactions**
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> **89** For the purposes of this Division, an applicant in the self-employed persons class or an applicant in the start-up business class is not considered to have met the applicable requirements of this Division if the fulfillment of those requirements is based on one or more transactions that were entered into primarily for the purpose of acquiring a status or privilege under the Act rather than
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> > **(a)** in the case of an applicant in the self-employed class, for the purpose of self-employment; and
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> > **(b)** in the case of an applicant in the start-up business class, for the purpose of engaging in the business activity for which a commitment referred to in paragraph 98.01(2)(a) was intended.
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> **Member of class**
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> **98.01 (2)** A foreign national is a member of the start-up business class if
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> > **(a)** they have obtained a commitment that is made by one or more entities designated under subsection 98.03(1), that

> is less than six months old on the date on which their application for a permanent resident visa is made and that meets the requirements of section 98.04;
>
> **(b)** they have submitted the results of a language test that is approved under subsection 102.3(4), which results must be provided by an organization or institution that is designated under that subsection, be less than two years old on the date on which their application for a permanent resident visa is made and indicate that the foreign national has met at least benchmark level 5 in either official language for all four language skill areas, as set out in the *Canadian Language Benchmarks* or the *Niveaux de compétence linguistique canadiens*, as applicable;
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> **(c)** they have, excluding any investment made by a designated entity into their business, transferable and available funds unencumbered by debts or other obligations of an amount that is equal to one half of the amount identified, in the most recent edition of the publication concerning low income cut-offs published annually by Statistics Canada under the *Statistics Act*, for urban areas of residence of 500,000 persons or more, as the minimum amount of before-tax annual income that is necessary to support a group of persons equal in number to the total number of the applicant and their family members; and
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> **(d)** they have started a qualifying business within the meaning of section 98.06.

Decision Under Review

[9] The refusal letter set out ss 98.01(2) and 89(b) of the *IRP Regulations* and referenced the PFL. The Officer states that they had reviewed and considered the information and documentation submitted in response to the PFL. However, that it was not sufficient to alleviate their concerns. The Officer concludes that the Applicants' primary purpose in entering the commitment with the designated entity, Angel Investors, is for the purpose of acquiring a status or privilege under the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] and as

described under s 89(b) of the *IRP Regulations*. Therefore, the Applicants are not members of the Start-up Business Class as described under s 98.01(2)(a) of the *IRP Regulations*. The applications were accordingly refused.

[10] The Global Case Management System [GCMS] notes form part of the Officer's reasons for the decision. Like the refusal letters, the GCMS notes were identical amongst the four Applicants and will be addressed collectively in these reasons. The Officer set out s 89(b) of the *IRP Regulations* and states:

> After reviewing the answer to my procedural fairness letter, applicant did not alleviate my concerns listed in the letter.
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> The business is developing a VMTB (Virtual Molecular Tumor Board) to add to Oasis Software Suite of Oncologist Support Tools. Category is Life sciences.
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> All team members from the business own 10% of shares, the designated entity owns 11% and hartsbridge techonologies inc owns 49%. Hartsbridge techonologies inc is the tech company that have access to IP and concept development. The majority of the shares are owned by other investor than the members themselves despite the fact that the founders are the owner of the parent company. He stated that the parent company is incorporated in United States, however, has never carried out any business activities. It is abnormal why this company is owning a good amount of shares if it is not contributing. It is also unclear how an inactive company has the equity to fund the new business. They also have mentioned they have a huge focus on global market with communication with professional outside Canada. Moreover, they have not entered in contact with any Canadian health professionals for an approval or participating in their program. Therefore, I am not satisfied for their intention to establish their headquarter in Canada.
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> The fact every member is currently hired hired or working separately in their business and career: PONNUSAMY, Sujini as chief of scientific officer and product development at Optimal oncology Pvt LTD with member Vallabh Dos, Raajes Parekh as company CEO. Le, Thi Thu Hien is a business owner of a retail store selling health and hygiene international brand product. Ly,

> Hong Nhung is hired as medical affairs manager for Novartis Vietnam company ltd. In the answer of my procedural fairness, the responsibilities of each member are repeated as their commitment certificate. However, they did not demonstrate their involvement in their role. Given the minimal growth of the start-up business over the long period since the application. Moreover, in their business plan, the company's reasoning for their value proposition was not compelling and lacked validation. For instance, all projection and numbers in financial statements are doubtful and are not supported by logical reasoning or proof. Upon reviewing the document received on January 04th, 2023, many attendances to designated entity events and researches are done but no changes into business status. I am not satisfied that the members are contributing significantly in their new business in Canada.
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> ***FINAL DECISION***
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> Consequently, I remain concerned by what appears to be a lack of seriousness on the part of the essential applicants. I am therefore satisfied, on the balance of probabilities, that the primary purpose of the essential applicants in entering the commitment with the designated entity Empowered startups ltd is for the purpose of acquiring a status or privilege under the Act and described under R89(b) of IRPR. Therefore, applicant is not a member of the Start-up Business Class as per R98.01(2)(a).

Issues and Standard of Review

[11] The sole issue arising in this matter is whether the Officer’s decision was reasonable.

[12] The parties submit and I agree that the standard of review is reasonableness. This is a deferential and robust standard of review (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 12–13 [*Vavilov*]). On judicial review, the Court “must develop an understanding of the decision maker’s reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether the decision bears the hallmarks of reasonableness — justification, transparency and

intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (see *Vavilov*, at paras 23, 25, 85 99 and 100).

[13] To the extent that the Applicants argued, when appearing before me, that visa officers' decisions with respect to permanent residence under the Start-Up Business Class are to be afforded a higher standard of review, I disagree. Reasonableness is one standard; it is not a sliding scale. Moreover, the jurisprudence of this Court with respect to permanent residence applications brought under the Start-up Business Class have applied the *Vavilov* reasonableness standard, not some form of "higher standard" (see, for example, *Phan v Canada (Citizenship and Immigration)*, 2022 FC 916 at paras 37–39; *Orouji v Canada (Citizenship and Immigration)*, 2024 FC 1736 at para 9; *Tan v Canada (Citizenship and Immigration)*, 2024 FC 1986 at para 13).

Was the Decision Reasonable?

Applicants' position

[14] The Applicants submit that they appropriately addressed each of the Officer's concerns identified in the PFL and that the Officer's reasons for refusal bear no rational connection to the Officer's stated conclusion. In that regard, there is no rational connection between Canada's low cancer incidence rates and the Officer's finding that the Applicant had not established their intention to establish headquarters in Canada. As such, it is unclear why the Officer's concerns were not allayed by the Angel PFL Response explaining that cancer is a serious problem in Canada. Additionally, the Applicants were in compliance with the holding requirements of s

98.06(3) of the *IRP Regulations*, which set out the ownership structure of a qualifying business for the purposes of the Start-Up Business Class. Therefore, the Officer's concerns in that regard were unfounded.

[15] As to the Officer's concerns about the parent company and its contributions to the start-up, the Applicants submit that the assessment of the "intricacies of the business" is solely at the discretion of the designated entity (here, Angel Investors) and is outside the Officer's discretion. The Officer is only permitted to assess the business on the basis of factors enumerated in the *IRP Regulations*. Therefore, assessing the contribution of the parent company was impermissible, fettered the Officer's discretion and was outside their decision-making authority. Further, there is no regulatory requirement that the proposed product must have existing customers. The Applicants assert that they have proven the viability of the product to the designated entity, which is the applicable threshold to be met. The Officer unreasonably stepped into that role.

[16] The Applicants also assert that in the Applicants' PFL Response, they fully addressed the Officer's concerns relating to their contribution to the start-up, which concerns arose from what the Officer described as the minimal growth of the start-up since the application was submitted. The Angel PFL Response described why the Applicants continued to be elsewhere employed as well as the efforts made during the subject period of time. Further, and contrary to the Officer's conclusion, the listed job opportunities in the Applicants' PFL Response accurately reflect the Applicants' significant involvement in the business and they explained that their efforts have been focused on conducting research and attending incubation programming in order to stay current, ensure their technology meets regulatory requirements and building on their foundation

of Canadian business practices. In any event, s 98.06(2) of the *IRP Regulations* states that a business is still a qualifying business if the applicants intend to meet certain requirements after being issued a visa.

[17] Additionally, the Officer's finding with respect to the start-up business's financials unreasonably found that their value proposition was not compelling. Further, that this analysis exceeded the scope of the Officer, which should be left to the designated entity as the Officer "is in no position" to do so. And, that the Officer overlooked aspects of the business plan in reaching their conclusion. The Applicants further argue that the Officer was of the view that the Applicants' attendance at designated entity events should have led to a change in business status, but that the fact that there was no change led the Officer to the conclusion that the Applicants were not significantly contributing to the start-up. However, the Officer's chain of reasoning on this point does not reflect the "realities of business operations". Specifically, the Officer failed to link their expectation that the attendance at designated entity events should change the business status with their conclusion that the Applicants are contributing to the business.

[18] Lastly, the Applicants submit that the Officer erroneously concluded that the Applicants displayed a lack of seriousness. The Officer failed to address why the evidence provided – including their Business Plan and PFL Response – was insufficient to demonstrate the Applicants' lack of seriousness and intention.

Respondent's position

[19] The Respondent submits that the Officer's decision is based on substantively the same concerns expressed in the PFL. In particular, the Officer noted that the company holding the intellectual property for the start-up was incorporated in the United States [US], had not carried on business here, and did not appear to be pursuing any contact with Canadian health care professionals or institutions, nor pursing approval of their technology. The Officer was further concerned that while the applications were in process for a considerable length of time, there was no development in the status of the technology or the business during that period. Moreover, much of the work in support of the start-up business has no connection to Canada and is intended to occur outside the country, for example, software and web development will take place in India and scientific research in Europe. There was no evidence that these aspects advanced while the application has been in progress or that the Applicants have made any contribution to them. The Applicants have simply continued in their former careers. The Officer also remained concerned that the Applicants' decision to establish their headquarters in Canada did not appear reasonable in the context of the start-up business or the market it intends to serve, which led to concerns that Canada was selected primarily because this would open immigration options to the Applicants. Overall, the Officer's concern with the genuineness of the Applicants' business intent is reasonable and expressed in the Officer's reasons.

Analysis

[20] The Applicants argue that in submitting a Commitment Certificate, the designated entity (here, Angel Investors) confirms that that entity has performed a due diligence assessment of the

applicant and the start-up business (*Serimbetov*, at para 15). Therefore, the contribution of the parent company to the start-up falls within the designated entity's discretion as opposed to that of the Officer's. And, if the Officer had concerns about the validity of the Commitment Certificate, then the Officer ought to have required an independent peer review of the Certificate under s 98.09(1) of the *IRP Regulations*.

[21] First, in my view, the Commitment Certificate argument is a red herring. The reasons do not suggest that the Officer remained concerned with the issuance of the Commitment Certificate, or with the idea that the start-up business was evaluated in a way that was inconsistent with industry standards, such that a peer review was warranted. Indeed, when appearing before me, the Respondent submitted that the formalities of class membership was not at issue. The requirements of the class under s 98.01(2) – including the obtaining of a commitment letter – had been met. What was at issue was s 89(b): whether the Applicants' transactions were entered into primarily for the purpose of acquiring status or privilege under the *IRPA*. That is, whether the transactions were artificial.

[22] In that regard, the Officer was concerned with the basis for the Applicants' stated intention to establish their headquarters in Canada. Or, put differently, the genuineness of the purpose of establishing the start-up in Canada. As seen from the GCMS notes, this concern was with the unclear role of Hartsbridge Technologies Inc, US [Hartsbridge US] with respect to the Canadian start-up a given that, Hartsbridge US: (i) owns 49% of the start-up's shares; (ii) was incorporated in the US but has never carried out any business activities; and (iii) had not contributed to or engaged in the start-up's business activities, despite having access to certain

intellectual property and concept development for the start-up. Further, with the lack of contact by the Applicants with Canadian entities in relation to the start-up's intended operations.

[23] With respect to the role of the "parent company", in its August 24, 2022, letter to the Applicants, IRCC requested information, including a description of the business activity of the proposed start-up and business registration records. With respect to the latter, in its August 29, 2022, response, VDI provided a Certificate of Registration and Certificate of Incorporation, both dated October 6, 2021, for a numbered Nova Scotia company, as well as a Certificate of Name Change, dated December 29, 2021, changing the name of the numbered company to Suravi Technologies LLC Inc. [Suravi]. It also provided the OASIS Business Plan. While the VDI letter states that Suravi was formerly named OAISIS, the record contains no evidence to support this.

[24] The Business Plan states that OAISIS is a clinical decision support system designed to assist oncologists in making rapid and accurate treatment decisions. Further, that "[t]his is being developed by Hartsbridge Technologies Inc., USA, and its subsidiaries in different parts of the world. OAISIS will support oncologists in their ability to provide care. The Virtual Molecular Tumour Board (VMIB) is one of the six modules to be developed by Hartsbridge Technologies Canada Inc, a subsidiary of the parent company Hartsbridge Technologies Inc, USA".

[25] IRCC followed up its initial request for information with its December 5, 2022 letter to the Applicants. One of the enquiries listed in that letter was: "You are partnered with Hartsbridge technologies Canada Inc. Can you provide the contract and the information about this

incorporation such as the number of employee hired, CEO, etc? Why did you choose Hartsbridge technologies Canada Inc.?"

[26] In the Applicants' December 12, 2022 response, they state that Hartsbridge Technologies Canada Inc. was the initial proposed name for the start-up at the time the business plan was created in 2019. At that time, the "founders" (presumably the Applicants) had an existing company, Hartsbridge US, which was incorporated in the US. The flagship product of that company was called OAISIS, which had a VMTB as one of its main features. The response states that as "As Hartsbridge Technologies Inc, USA is no longer an active company, the team had decided to change their name to Suravi Technologies, which they are now incorporated under. Hartsbridge Technologies Canada Inc was never incorporated." When appearing before me, counsel for the Applicants confirmed that Hartsbridge Technologies Canada Inc. does not exist.

[27] The Officer states that each of the Applicants own 10% of the start-up shares, the designated entity owns 11%, and Hartsbridge US holds 49%. Further, that the majority of the shares are owned by investors other than the members (Applicants) themselves, despite the fact that they are the owner "of the parent company" which is a US entity, but it has never carried out any business activities. The Officer finds it to be unusual that Hartsbridge US would own 49% of the shares "if it is not contributing" and that it is unclear how an inactive company has the equity to fund the new business. The Officer does not suggest that the 49% share holding is not permissible under the start-up regulatory requirements.

[28] Based on the record, it appears that some time between when Hartsbridge US was incorporated in August 2019 and when the start-up, Suravi, was structured in 2021, it was decided that the former would not be an active entity. Given this, as the Officer points out, it is unclear why it would hold 49% of the start-up shares, particularly as the Applicants indicated that they are also the "founders" of Hartsbridge US.

[29] The record before the Officer also demonstrates that the start-up has capital in the amount of $215,000, most of which is held by Angel Investors pending visa determinations. The Business Plan describes this $215,000 in terms of "shareholder's equity". However, the plan does not indicate the source of this equity. That is, whether it was a cash infusion by the Applicants, was raised by the sale of shares, or otherwise. Thus, it is unclear how Hartsbridge US as an inactive company would be able to purchase shares or, as the Officer points out, would have the equity to contribute to the start-up capital. Indeed, Hartsbridge US's role is unclear. The Officer refers to it as the parent company and, based on the record, it would appear that this was the Applicants' initial intent. However, Hartsbridge US never got off the ground and Hartsbridge Canada was never incorporated. It may be that Hartsbridge US is no longer intended to hold the role of the "parent company" but nor does the record explain what entity will now be developing, or has developed, the other OASIS modules which, together with the VMTB module, are described in the Oasis Business Plan as comprising the OAISIS' "software suite" which was to have been developed by Hartsbridge Canada Inc., as a subsidiary of the "parent company" Hartsbridge US.

[30] This concern is also connected to the start-up's financial information, as will be discussed below.

[31] As to the start-up's intellectual property (or IP), the IRCC December 5, 2022 letter asked for proof of intellectual property, if any. The Applicants' response to this was that the start-up had raised $215,000 that would be used to "advance our IP in Canada," including the implementation of an in-house development team comprised of junior and senior software developers and a project manager. The letter states that once the product is market ready, the Applicants would be "looking into protecting our intellectual property". Given this, it is unclear why the Officer states that Hartsbridge US is the company that "has access to IP and concept development", although this appears to have been the original concept. However, nor do the Applicants explain what the IP connection will be with the start-up given that they advised the Officer that they have signed an agreement with a company in India to assist with the initial development of the AI and voice analytics technology underlying the VMTB concept.

[32] The same letter asks why the Applicants chose Canada as the headquarters for their company. Their response was: access to a large and diverse market for healthcare products and services, as Canada has a population of over 37 million people, which could provide the Applicants with a strong foundation to build their business and expand into other markets; a favourable business environment for start-ups given Canada's stable and well-developed economy, high standard of living and a strong education system, which could attract top tech talent to the start-up; and, a strong healthcare system, given Canada's publicly funded healthcare

system that is known for its high quality and accessibility. This could provide a supportive environment for health care start-ups looking to develop and test new products and services.

[33] In the subsequent PFL, one of the concerns identified by the Officer was with the Applicants' intention to establish headquarters in Canada. Specifically, the Officer wrote "Concern #1: I doubt your intention of establishing headquarter in Canada. In your business plan, you have mentioned in appendix the cancer incidence and Canada shows has one of the lowest target for your business compare to other countries/continent."

[34] The Applicants PFL Response included that:

> While Canada has one of the lower cancer incidence rates from the list we shared, our focus is on providing cutting-edge technology to assist oncologists in making rapid and accurate treatment decisions, regardless of the specific cancer incidence rates of any particular location. Our software VMTB will provide oncologists with the ability to collaborate virtually with specialists and access patient data seamlessly. The VMTB will help increase the efficiency of the molecular tumour hoard process, which is critical in the treatment planning for advanced cancers.
>
> We believe that Canada is an ideal location for our headquarters due to its strong focus on healthcare innovation, high-quality medical facilities, and highly educated and experienced workforce. Additionally, our target customers include oncologists, cancer clinics, multi-specialty hospitals, and patients, who are all present in Canada. Our go-to-market strategy includes participating in oncology-focused medical forums, meetings with large multi-specialty hospitals, and showcasing our product to health departments, among other initiatives which we have determined we would be able to conduct within the country.

[35] They also reference an excerpt from the Business Plan showing increased healthcare expenditures in Canada and state that they provided global cancer statistics to show the necessity

"for our solution" not only within Canada but internationally and that there is demand and ability for the start-up to scale globally.

[36] The Angel PFL Response asserts that cancer is a leading cause of death in Canada, it is a very real health concern, that research is conducted and funded here and that Canada is an excellent country with tremendous supports in place for establishing a company that will work in the cancer field to try to build technology to help improved treatments and outcomes. Further, that the Officer offered "no evidence" to support their concerns. Angel Investors describes its role, stating that it maintains control of the capital for start-up companies that it supports. After landing in Canada, the capital is released based on quarterly reports. Angel Investors states that a substantial amount of Suravi's $215,000 capital (less $28,000 already released), in the range of at least 40-50%, will be dedicated to the development in Canada by Canadians of its technology and that the headquarters for that activity will be in Canada. Nor, in Angel Investor's view, is it a risk or negative factor if the start-up's technology can be sold in other countries.

[37] It is true, as the Applicants submit, that the Officer did not refer to this response in the GCMS notes, stating only that the PFL response did not alleviate their concerns. However, in my view, the Applicants' explanation does not overcome the Officer's core concern – being that Canada's population and cancer rates are much lower than other places such as the US, Europe, India and China – and that the Applicants have not satisfactorily explained why Canada would, therefore, be the place selected to establish their headquarters rather than any of those other countries. Further, the Response provides only generic reasoning that would be equally applicable in other countries. That is, the Applicants would likely have larger and more diverse

markets than Canada, those markets may also have favourable business environments and a high standard of living and a strong education system (I note that although the Applicants submit that this could attract top talent to the start-up in Canada, this appears to disregard that the start-up is intended to employ Canadians), and a strong healthcare system, whether public or private.

[38] More significant, however, are the Officer's concerns with the Applicants' focus on a global market and their communications, in that regard, with professionals outside Canada but a lack of contact with professionals in Canada with respect to participation in or approval of the product.

[39] On that point, IRCC's December 5, 2022, letter asked if there were proposals between the start-up business and any local Canadian company or their target group such as clinicians, clinics, hospitals, second opinions and remote consultations. The December 12, 2022, response was that the Applicants were currently in the process of exploring synergies with their target market. They attended workshops on the topic of sales and marketing with industry experts and used this to outline their target market in Canada and go-to-market strategy. The target group was identified as oncologists/clinicians, cancer clinics, multi-speciality hospitals having oncology departments and medical institutions and patients seeking additional opinions. The "go-to-market strategy" was identified as: "participation in healthcare-focused medical forums, conferences, exhibitions, continuing medical education meetings, etc.; meeting the management of large organisations, multi-specialty hospitals and medical institutions for validation and scientific collaboration; meeting the health department and showcasing our product; advertising focused on the medical and healthcare communities using offline and online channels;

community building through social media platforms; onboarding of a key opinion leader as ambassador; and, creating and deploying email campaigns".

[40] The response stated that the Applicants have also compiled a list of potential clients in Canada from nine different provinces and have plans to reach out to these parties "once our solution has been developed"; they have had several discussions with Professor Nuno Jorge Carvalho Sousa, M.D., Ph.D. Director of Medicine at the University of Minho, Portugal, their Scientific Advisor; and, that members of the team travelled to Braga, Portugal and visited the University research centre. They report that Professor Sousa emphasized the need for "our solution and expressed interest in our product. We intend to work with the university for development and validation of the product."

[41] In short, this response did not identify any contact, communication or liaison with any physicians, hospitals, universities or any other entities or "targets" in Canada.

[42] Similarly, the IRCC December 5, 2022, letter also asked that the Applicants demonstrate what had been achieved and the work that had been accomplished thus far in their business and what has been established in Canada such as location, employees, storage or other. The December 12, 2022 response to this enquiry was that a detailed plan outlining the business model, target history and financial projections had been developed; the incorporation of Suravi was complete; a target market had been identified and a list of potential clients developed; discussions had been held with the Institute Paoli-Calmettes, in France, and the University of Minho, in Portugal, the latter of which the Applicants had visited and begun exploratory talks

regarding partnerships; and, that the Applicants planned "on continuing this outreach strategy with leading Canadian healthcare research facilities, hospitals, and institutions". They also underwent extensive human resources training and have familiarized themselves with labour and human rights legislation and used this to write a job description for a new analyst hire and, once their platform has been created, they would look at publishing this description. The response states that the Applicants continue to research and evaluate the Canadian healthcare landscape "to identify problems that our team can provide solutions for" and have signed an agreement with Stratforge India Private Limited, an AI and Voice analytics expert for developing the technology.

[43] The Officer was not satisfied with this response, as indicted in the PFL:

> Concern #2: Your app and website will be in charge by a company in India and your scientific researches are done in Europe (Portugal and France). You have mentioned your intention to contact Canadian clients once the solution is developed, however, it is not convincing the reason for building headquarter in Canada

[44] The Applicants' PFL Response to this concern was that they have a designated Canadian website being used to create awareness of the product and to engage with potential Canadian customers. They do not further describe this website or any engagements with potential customers arising from it. More significantly, however, they fail to identify any potential Canadian customers, universities, research institutions or any other entities in Canada with whom they have actually engaged, which engagement would have grounded the genuineness of their purpose of establishing their headquarters for the start-up in Canada.

[45] They state that, given their strong focus on global operations, they have chosen to work with a technology partner in India, Stratforge India Private Limited, to assist with building the basic functionality of their Al and voice analytics technology. “This ensures that we have the technical expertise and capacity to meet the demands of a growing customer base while keeping our operations cost-effective. Our strategy is to then develop the software design and architecture in Canada, with personnel being hired locally”. The Applicants’ PFL Response also provides an excerpt of the Business Plan as to the target market. As to their scientific research, the Response states that that “we have established partnerships with leading institutions in Europe, specifically in Portugal and France, as they have strong expertise in the relevant areas of our research. This collaboration allows us to leverage their cutting-edge knowledge and resources to drive the development of our solutions.” The Applicants state that establishing a physical presence in Canada will allow them to effectively build relationships and engage with Canadian clients. However, they do not identify any potential or existing partnerships or collaborations in Canada with respect to technology or research. They do not suggest in their responses to the Officer that Canadian institutions lack the required expertise.

[46] In sum, given the record before the Officer, they were reasonably concerned with the role and connection of the start-up to Hartsbridge US. It was also reasonable for the Officer to find that the Applicants have not been in contact with any Canadian health professionals or other entities to participate in their program or to approve the intended program. I would add that nor did the Applicants demonstrate any liaison with any potential research partners in Canada although such connections had apparently been made elsewhere. The Applicants do not point to any evidence that supports these sorts of connection in Canada. This brought into question the

purpose of the intended start-up. That is, whether they sought to establish its headquarters in Canada in support of a genuine business proposal or as an artificial transaction intended to provide the Applicants with immigration status.

[47] This ties into the Officer's concern with the Applicants' level of engagement with the start-up. That is, that the Applicants were not contributing significantly to their new business and that the growth of the start-up had been minimal since the commencement of their application nearly 3 years ago.

[48] The Applicants argue that they have repeatedly explained that the healthcare industry is a highly regulated and complex field, and the development of new technology often requires extensive research and development. Further, that the Officer's reasoning does not reflect the realities of business operations, as it would be extremely unlikely to reap the benefits of research and development in the form of tangible results within months.

[49] The Officer raised this concern in the PFL:

> Concern #3: All business partner are currently hired or working separately in their business. The minimal growth of the start-up business even if a long period has passed since the application. Upon reviewing the document received on January 04th, 2023, many attendances to designated entity events and researches are done but no changes into business status. I have concerns that the members are contributing significantly in the new business.

[50] The Angel PFL Response takes issue with this concern including that:

> [The Applicants] did what was legal and prudent. They did what they could from a planning perspective by meeting regularly while they waited for IRCC to process their files. They also gathered

> background information and advice on how to do business in Canada so they would be better prepared when they arrive in Canada. And, in a limited way, they took some of the money they had put in place and released it to do some preliminary work to advance the business plan. They did this knowing that if the application failed, that money would likely be a full writeoff as they would still not be allowed to come to Canada to work in the Canadian Company.

[51] The Angel PFL Response letter also states that "[w]ith the current processing times now expanding beyond 30 months there is a natural balancing of the desire to fully engage in the business plan, the restrictions on applicants abilities to legally undertake that work prior to PR and the risk associated with deploying working capital when PR issuance is both delayed and uncertain". Angel Investors adds that it authorized the expenditure of $28,000 of the capital funds, which was used to fund work done during the prolonged processing time.

[52] The Applicants' PFL Response includes the statement that the Applicants' efforts have been "focused on conducting research and attending incubation programming in order to stay current with the latest advancements and ensure that our technology meets the necessary regulatory requirements, and continue to build on our foundation of Canadian business practices. While progress may not be immediately visible, these efforts are essential for the long-term success of our business." And, due to pandemic-related delays in permanent resident approval times, many team members had to find supplementary employment to continue to provide for their families. Not being able to "generate traction through face-to face interactions and conference networking" has impacted the pace of development, but virtual meetings are held to discuss its progress and how to speed this up. The team also invested approximately $30,000 to learn about the Canadian start-up culture to assist the growth of the business in Canada and

allocated $100,000 to develop the product further once their headquarters are established in Canada. A potential client list of 32 leading healthcare and oncology centers across the country, detailing their contact information and locations, has been generated that will be a starting point once in Canada.

[53] The response then goes on to describe the contribution of each of the team members. For example, that Dr. Ly Hong Nhung is responsible for, among other things, leading interactions with medical advisors and key thought leaders, ensuring domestic medical regulations and safety hazards are adhered to, attending conferences and workshops in Canada to stay up to date with medical technologies and working closely with the in-house development team to provide guidance on medical content development and platform functionality. Further, that Dr. Ly Hong Nhung played an important role in the start-up's development so far. She participated in creating the business strategy and planning documents, “helped position the company within the medical industry”, attended business development workshops and webinars to prepare for market entry, assessed the regulatory environment and potential barriers to entry in the target market, and remained knowledgeable about advancements in the medical field, particularly in relation to Medtech (presumably meaning medical technology).

[54] Given the significant processing times for start-up visa applications and the uncertainty of application approval, I appreciate that the Applicants may not be in a position to “quit their day job” and commit all of their available hours and resources to develop a start-up business in Canada that the Applicants may, or may not, be granted permanent residence visas to execute. Had the Officer relied solely on this to conclude that the Applicants contributions to the start-up

were minimal, then that may have been unreasonable. However, that finding was not determinative to the Officer's decision.

[55] Rather, based on Applicants' PFL Response regarding the Applicants' activities and responsibilities, it was reasonable for the Officer to conclude that the Applicants had not sufficiently demonstrated their involvement in their respective roles over the past three years and to find that the start-up had achieved only minimal growth.

[56] In that regard, the Officer found that the responsibilities of each Applicant are a repetition of the description found in the Commitment Certificate (possibly meaning the Business Plan) but did not demonstrate each Applicant's involvement in their respective role.

[57] In any event, aspects of the Applicants' PFL Response were not responsive to the inquiry, were vague and are not linked to further, tangible evidence. For example, when describing the role of Dr. Ly Hong Nhung, much of the information provided concerns her prior employment and experience and what she will do if the start-up is founded in Canada – rather than what she has done in her assigned start-up role since the application was submitted. That future role is described as including leading interactions with medical advisors, key thought providers and medical societies in Canada, attending conferences in Canada and working closing with the in-house development team (which does not yet exist). As to what she has done since the submission of the application, the Applicants did not, for example, elaborate on the ways in which Dr. Ly Hong Nhung "participated in creating our business strategy and planning documents", when this was done (pre or post application), or "helped position the company

within the medical industry". The lack of detail on this latter point is particularly significant because of the lack of evidence as to any contact by the start-up with the medical or technology entity in Canada, as discussed above. As to attendance at business development workshops and webinars to prepare for market entry (which is referenced with respect to the contributions of each of the Applicants), this is not further described in the Applicants' PFL Response. In their written submissions provided in the judicial review, the Applicants refer the Court to the VDI Concept Validation Report, dated April 13, 2020. This states that it confirms that the Applicants completed the VDI Pre-Expansion Incubation Program and in preparation for the business venture. It lists six briefing topics hosted by various speakers. The Applicants submit that their attendance at same should have led the Officer to find that a change in business status occurred.

[58] However, the application for the start-up was submitted in on April 1, 2020. The VDI letter does not state when the Pre-Expansion Incubation Program was completed but, given the date of the VDI letter, this must have been done before or very shortly after the application was submitted. The Applicants do not specify any further workshops or webinars that they participated in over the course of the next three years. Further, it is not apparent to me how attending the VDI Pre-Expansion Incubation Program demonstrates the growth or development of the actual business.

[59] Given the limited information provided in the Applicants' PFL Response, it was reasonable for the Officer to find that the Applicants had not established that they had been significantly engaged with their roles with the start-up and that the start-up had achieved only minimal growth over the significant length of time that had passed since the application had been

submitted. This is particularly so given the lack of evidence as to any contact made by the Applicants with any medial professionals, universities, researchers or any other entities in Canada over that period of time, and the lack if any detail as to research said to have been conducted. While the Applicants' PFL Response refers to the capital-intensive nature of the start-up and the lack of face-to-face interactions and lack of conference networking as impacting the pace of development, such interactions were pursued with entities outside of Canada and no explanation was offered as to why this was so.

[60] The Applicants also refer to s 98.06 of the *IRP Regulations* to submit that a business is still a "qualifying business" for the purposes of the start-up business class if the applicant *intends* to meet the requirements of s. 98.06(1) *after* they have been issued a permanent resident visa. As such, that the Applicants say that they "reserve the right" to act on aspects of their go-to-market plan once physically in Canada.

[61] Section 98.06 reads as follows:

> **Qualifying business**
>
> **98.06 (1)** For the purposes of paragraph 98.01(2)(d), a qualifying business with respect to an applicant is one
>
> > **(a)** in which the applicant provides active and ongoing management from within Canada;
> >
> > **(b)** for which an essential part of its operations is conducted in Canada;
> >
> > **(c)** that is incorporated in Canada; and
> >
> > **(d)** that has an ownership structure that complies with the percentages established under subsection (3).

> **Exception — intention**
>
> **(2)** A business that fails to meet one or more of the requirements of paragraphs (1)(a) to (c) is nevertheless a qualifying business if the applicant intends to have it meet those requirements after they have been issued a permanent resident visa.

[62] I agree that the provision contemplates that certain aspects of a start-up, such as its "active and ongoing management" from within Canada and conducting an "essential part" of the company's operations in Canada, can occur after an applicant has been issued a permanent resident visa. However, the Officer's concern in this matter was not whether or not the start-up was a "qualifying business". The concern, rather, was whether the start-up was an artificial transaction under s 89(b).

[63] In sum on this point, based on the record before them, the Officer reasonably concluded that the Applicants had not established that in their respective roles they were significantly contributing to the start-up, and that it had achieved more than minimal growth, over the three-year period since the application was submitted. This supported the Officer's finding that the Applicants were described under s 89(b) and, therefore, are not members of the Start-Up Business Class as described in s 98.01(2)(a).

[64] As to the start-ups' financial information, I agree with the Applicants that the Officer's determination as to whether the company's value proposition was compelling, if taken in isolation, would lack intelligibility. However, this must be read with the Officer's other reasoning on this point, being that that the value proposition "lacked validation", and that "all

projection and numbers in financial statements are doubtful and not supported by logical reasoning or proof."

[65] The Applicants refer the Court to the synopsis of the Financial Plan as found in the Business Plan. This states that in year one of the start-up's operations there will be a "burn" (expenditure) of $124,000 US Dollars [USD] deployed in developing a minimum viable product and that one developer will be a resource to do this. There will be no revenue and target fundraising is $100,000 USD. In year two, there will be an expenditure of $775,000 USD, with the hope of having at least one validation exercise with a leading cancer institute and expanding the IT team to four resources. There will be no revenue, and target fundraising is $2,500,000 USD. The Applicants project revenue of $1,200,000 in the third or fourth quarter of their third year. In arriving at the $1,200,000 figure, the Business Plan states that "[t]he target group is the Metastatic cancer cases, and 0.25% of the total metastatic cases are used for calculating the sales revenue in year 3". It later refers to the Revenue Assumptions in % from the Target group" table found elsewhere in the business plan.

[66] The Applicants also refer to portions of the Business Plan that describe the intended operational rollout of the start-up business, however, this does not address the Officer's finding that the business's financials and projections lacked validation or proof.

[67] And, while it may be arguable that the Applicants used "logical reasoning" to arrive at the year three projection of $1,200,000, this, in my view, does not address the Officer's findings that the numbers lacked validation or proof. For example, and significantly, the financial plan is

entirely dependant upon the identified fundraising targets being met. However, there is no explanation as to what entities are the targets of the fundraising, and in what capacity or how they will make these significant contributions to the start-up. Nor do the Applicants explain how the 0.25% of the total metastatic cases used for calculating the sales revenue in year three was arrived at and why this is a valid assumption.

[68] In effect, the Applicants point to specific passages of their Business Plan and ask "why was this not sufficient?" (*Tehranimotamed v Canada (Citizenship and Immigration)*, 2024 FC 548 at para 16 [*Tehranimotamed*]). However, this Court has found that it would be inappropriate for the Court on judicial review to evaluate the sufficiency of an applicant's business plan, and the question instead is whether the officer's assessment of the evidence, including the business plan, was reasonable (see *Tehranimotamed*, at para 17; *Raouf v Canada (Citizenship and Immigration)*, 2024 FC 1726 at para 28 [*Raouf*]).

[69] Moreover, I do not agree with the Applicants' statement that the Officer is in no position to comment on the financial projections of a start-up business within the medical field. The jurisprudence is well-established that an Officer's discretion extends to evaluating a business's financial projections (see e.g., *Raouf*, at para 28; *Azimlou v Canada (Citizenship and Immigration)*, 2022 FC 259 at paras 22–24). This is equally applicable in the context of a start-up business in the medical technology field.

[70] Further, and contrary to the Applicants' suggestion, the Officer was not acting outside the scope of their authority in assessing Hartsbridge US's contribution to the start-up. The Officer

had clear regulatory authority to consider whether the Applicants engaged in an "artificial transaction" for the purposes of s 89(b) of the *IRP Regulations*, which necessarily includes having regard to the contributions of those involved in the start-up venture. It was reasonable for the Officer to note the long period of time since the application was filed and that there was no evidence, during that time, that Hartsbridge US, which owns 49% of the business's shares is otherwise active and contributing.

[71] Finally, the Officer was concerned with what appeared to be a lack of seriousness on the part of the Applicants. The Officer was not satisfied, on the balance of probabilities, that the primary purpose of the Applicants in entering into the commitment with the designated entity "Empowered startup ltd" (*sic*) is for the purpose of status or privilege under the *IRPA* and described under s 89(b) of the *IRP Regulations*. Therefore, the Applicants are not members of the Start-Up Business Class.

[72] First, the reference to "Empowered startup ltd" is clearly a typographic (cut and paste) error. It is apparent from the record that the Officer was aware that the designated entity in this case was Angel Investors. No reviewable error arises.

[73] Second, in my view, it was open to the Officer to find that the Applicants displayed a lack of seriousness in the start-up venture based on the Officer's prior conclusions that they were not satisfied that the Applicants were contributing significantly to the start-up; the minimal growth of the start-up over three years; the unvalidated financial projections; the unclear contributory role of Hartsbridge US and concept development; and, insufficient explanation for

why the Applicants sought to establish headquarters in Canada. Collectively, this led to the Officer's conclusion that the Applicants lacked seriousness, and that the start-up was entered into for the purpose of acquiring status or privilege as described in s 89(b) of the *IRP Regulations*.

[74] For all of this reasons I find that the Officer's decision was reasonable.

JUDGMENT IN IMM-9504-23

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed;
2. There shall be no order as to costs;
3. No question of general importance for certification was proposed or arises; and
4. A copy of these reasons will be placed in each of the Court files consolidated with the matter: IMM-9295-23, IMM-9145-23 and IMM-9293-23.

"Cecily Y. Strickland"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-9504-23, IMM-9295-23, IMM-9145-23, AND IMM-9293-23
STYLE OF CAUSE:	THI THU HIEN LE, HONG NHUNG LY, SUJINI PONNUSAMY, RAAJES PAREKH VALLABH DOS v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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