

Date: 20090921

Docket: IMM-3006-08

Citation: 2009 FC 923

Ottawa, Ontario, September 21, 2009

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

VIDYABAI CHURAKKUZY RAGHAVAN

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act) of a decision of a visa officer (the Officer), dated May 30, 2008 in which it was found that the Applicant does not qualify as a skilled worker as she does not have the settlement funds required.

Issues

[2] The following question is relevant to the determination of this judicial review:

- (a) Was there a breach of procedural fairness in this situation?

[3] For the reasons that follow, the application for judicial review shall be allowed.

Factual Background

[4] The Applicant is a citizen of India who is currently living in the United States. In August 2007, she applied for permanent residence in Canada in the category of federal skilled work.

[5] Included in the documentation accompanying the application was a copy of a cheque to “Self” in the amount of \$14,000 drawn from the Applicant’s American bank account as proof of settlement funds. Four salary slips were also included as part of the work experience documentation.

[6] A “stop letter” was sent to the Applicant on February 22, 2008, requesting additional evidence of settlement funds to be provided within 60 days of the date of the letter. The letter was addressed in the care of the Applicant’s immigration consultant in Mumbai, India.

[7] Both the Applicant and her immigration consultant deny having received the letter.

[8] On May 30, 2008, the Applicant’s application for permanent residence was refused. A letter was sent on the same day indicating that the Applicant had failed to respond to the stop letter and the information on file was not sufficient to prove that she possessed the prescribed settlement funds.

[9] That letter was returned for insufficient postage and was resent on June 12, 2008.

Impugned Decision

[10] The application for permanent residence was first reviewed in February 2008. The Officer noted a lack of evidence regarding settlement funds and expressed concern that the Applicant did not have sufficient settlement funds. This is shown in the Officer's Computer Assisted Immigration Processing System (CAIPS) entry.

[11] The Officer's CAIPS notes entry of May 22, 2008, indicates that no evidence of settlement funds has been received and that the Officer is not satisfied the Applicant has the required settlement funds. The Officer recommends refusal of the application.

[12] In a final review, on May 30, 2008, the Officer notes that the only evidence on file is the cheque from the Applicant made out to herself and there is no evidence that the cheque is certified or that the funds are actually available. He also notes that the stop letter was sent and that nothing has been received. He concludes that he is not satisfied the Applicant has the settlement funds required to qualify as a skilled worker and the application is refused.

Relevant Legislation

[13] *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

12. (2) A foreign national may be selected as a member of the economic class on the basis of their ability to become

12. (2) La sélection des étrangers de la catégorie « immigration économique » se fait en fonction de leur capacité

economically established in Canada.

à réussir leur établissement économique au Canada.

[14] *Immigration and Refugee Protection Regulations, SOR/2002-227.*

76. (1) For the purpose of determining whether a skilled worker, as a member of the federal skilled worker class, will be able to become economically established in Canada, they must be assessed on the basis of the following criteria:

...

(b) the skilled worker must

(i) have in the form of transferable and available funds, unencumbered by debts or other obligations, an amount equal to half the minimum necessary income applicable in respect of the group of persons consisting of the skilled worker and their family members, or

76. (1) Les critères ci-après indiquent que le travailleur qualifié peut réussir son établissement économique au Canada à titre de membre de la catégorie des travailleurs qualifiés (fédéral) :

...

b) le travailleur qualifié :

(i) soit dispose de fonds transférables — non grevés de dettes ou d'autres obligations financières — d'un montant égal à la moitié du revenu vital minimum qui lui permettrait de subvenir à ses propres besoins et à ceux des membres de sa famille,

Analysis

[15] In support of this judicial review, the Applicant has filed many documents as evidence that she has sufficient settlement funds including a copy of a demand draft in the amount of \$13,000 US that she sent after receiving the refusal letter and an affidavit signed by her immigration consultant.

In fact, the Applicant received the refusal letter on June 23, 2008 (Applicant's record, page 34).

[16] The next day, she sent an e-mail to the Officer informing him that she or her consultant never received the “stop” letter dated February 22, 2008. She also added that contrary to the refusal letter, she never had an interview with the Officer.

[17] At the hearing, the Applicant filed an e-mail dated June 24, 2008, received from the Officer (without any objection from the Respondent) in which he admits that the mention in the refusal letter that an interview had occurred, was an error.

[18] Also, at the hearing, the Respondent admitted that neither the Applicant nor her immigration consultant have ever received the “stop” letter of February 2008.

[19] The Respondent relies on *Yang v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 124, [2008] F.C.J. No. 158 (QL) at paragraphs 6 to 9 and 14 for the proposition that its burden has been met because the “stop” letter has been sent. I understand clearly and I agree with Justice Snider at paragraph 14 of the *Yang* case that :

... Ensuring that each notice was received would impose an impossible burden on CIC and would, without doubt, impact negatively on the ability of CIC to deal expeditiously with applications.

[20] In the case at bar, I have an admission by the Respondent that the “stop” letter has never been received by the Applicant or her consultant.

[21] The refusal letter is based primarily on the fact that the Applicant had not responded to the “stop” letter of February 22, 2008. How could she respond to a letter she never received?

[22] The Court is of the opinion that the matter should be remitted to another Officer for redetermination.

[23] The parties do not propose question for certification and none arise.

JUDGMENT

THIS COURT ORDERS that the application for judicial review is allowed. The matter is remitted to a different Officer for redetermination. No question is certified.

“Michel Beaudry”

Judge

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-3006-08

STYLE OF CAUSE: **VIDYABAI CHURAKKUZY RAGHAVAN
and
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: September 9, 2009

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

DATED: September 21, 2009

APPEARANCES:

Vidyabai Churakkuzhy Raghavan
(self-represented)

FOR APPLICANT

Edward Burnet

FOR RESPONDENT

SOLICITORS OF RECORD:

Not applicable

FOR APPLICANT

John H. Sims, Q.C.
Deputy Attorney General of Canada
Vancouver, British Columbia

FOR RESPONDENT