

Federal Court



Cour fédérale

Date: 20120704

Docket: IMM-9675-11

Citation: 2012 FC 847

Calgary, Alberta, July 4, 2012

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

TONY VAVACHAN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Regrettably for Mr. Vavachan, the failure to inform Citizenship and Immigration Canada (CIC) that the \$300.00 processing fee transmitted by him and his friend was intended to be applied to both their applications, resulted in the second application to be reviewed, Mr. Vavachan's, being rejected for failure to pay the required fee. By the time he was informed of this failure and its consequences, it was too late for him to apply for restoration of his temporary resident status and work permit.

[2] Mr. Vavachan is a citizen of India. He came to Canada on August 28, 2010, with the authority to remain until July 30, 2011. He was enrolled in a one-year study program and received his transcript attesting that he completed all the courses required on June 17, 2011.

[3] On June 19, 2011, he and his similarly situated friend, Mr. Patel, applied for a work visa. Instead of each paying CIC the \$150.00 registration fee separately, they paid \$300.00, effectively covering both of their fees. While this procedure is permissible, they failed to indicate that this was intended to cover both and when Mr. Patel's application was processed the overpayment was returned to him.

[4] Mr. Vavachan's first work permit application was rejected on September 8, 2011, because it was missing the \$150.00 fee – Mr. Patel's overpayment had been refunded the week prior.

[5] On October 26, 2011, Mr. Vavachan submitted a second application. Although this application was complete and included the required fee, it was refused because it was mailed after the 90 day period prescribed at section 182 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227. The Regulations require that the application be made within 90 days of the applicant being notified that he or she has successfully completed the requirements for their course of study. Mr. Vavachan received the transcript of his marks on June 17, 2011; accordingly his application was out of time.

[6] I am unable to agree with applicant's submission that the officer failed to assess his situation or that the cause of his misfortune was CIC's delay in processing his first application. Those who

send payment to the government with no indication as to how or to whom that payment is to be credited are the authors of their own misfortune if the payment is not credited as they wish. That is what occurred here.

[7] Although the Court agrees with Mr. Vavachan that he might have had time within the 90 day period to resubmit the application had the initial application been processed more quickly, there is no evidence that the processing was done in other than the usual manner or that the respondent can be faulted for the time taken.

[8] In the circumstances before the Court, the officer's decision was not only reasonable, it was correct.

[9] For these reasons this application must be dismissed. Neither party proposed a question for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed and no question is certified.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9675-11

STYLE OF CAUSE: TONY VAVACHAN v. THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: July 3, 2012

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

DATED: July 4, 2012

APPEARANCES:

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Camille N. Audain FOR THE RESPONDENT

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