

Federal Court



Cour fédérale

**Date: 20120202**

**Docket: IMM-967-12**

**Citation: 2012 FC 139**

**Ottawa, Ontario, February 2, 2012**

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

**BETWEEN:**

**ANGELITO TAYAG  
PERCIDITA VISPERAS  
KRISTOFFER FRANCIS TAYAG**

**Applicants**

**and**

**THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The human condition is the very substance of the narrative of each court decision. The unfortunate circumstances of this matter stem from a narrative of a couple and their son. The family came to Canada on visitors' visas four and a half years ago; and attempted to remain in Canada by initiating different procedures, on several occasions, that would allow a regularization of status, although a legal foundation for a regularization of status was ruled not to exist in any proceeding which the family had, thus far, undertaken.

[2] As unfortunate as the situation appears, the matter, assessed on its own merits for the purpose of a stay of removal, lacks legal foundation.

[3] If the Applicants' application for a stay of removal of the Enforcement Officer's decision would be granted, the matter, bearing no exceptional circumstances as interpreted per the jurisprudence in such circumstances, would simply serve as a potential precedent for individuals who come to Canada as visitors without application from abroad for permanent residence status.

[4] This matter, in actual fact, bears no exceptional circumstances, other than that of lives (with acknowledged, recognized and understood travails and successes) becoming accustomed to life in Canada with all it holds (potential employment based on a successful work history, for one member of the couple health services, continued education for the son of the couple and a desire for a continuation of family, social and communal ties, established through the passage of time); and, thus, expectation of entitlement to permanent establishment sets itself up for a fall; in that, from a legal perspective, permanent establishment cannot be expected to gain legitimacy, when it has none.

[5] Thus, the conjunctive tripartite *Toth* decision (*Toth v. Canada (Minister of Employment and Immigration)* (FCA), [1988] 86 NR 302) test criteria have not been met for this family from the Philippines.

[6] Neither the positive employment potential nor the family, communal and social ties, in addition to the need for health services and continued education for the son of the couple, can change the overall legal perspective to satisfy the *Toth* decision criteria.

[7] It is not for a Court that must interpret legislation and apply pertinent jurisprudence to grant a stay of removal when judicially the narrative of the matter does not allow for such judicial interpretation (two deferrals of removal had been previously granted to assist the family in its transitional changes by the relevant enforcement authorities). Only executive ministerial discretion can grant such an exemption from application from abroad for permanent residence.

[8] In conclusion, the application for a stay of removal is denied.

**ORDER**

**THEREFORE, THE COURT ORDERS that** the application for a stay of removal be denied. No question of general importance is certified.

“Michel M.J. Shore”

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Judge

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

**DOCKET:** IMM-967-12

**STYLE OF CAUSE:** ANGELITO TAYAG  
PERCIDITA VISPERAS  
KRISTOFFER FRANCIS TAYAG

and

THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS

**PLACE OF HEARING:** Ottawa, Ontario  
(by tele-conference)

**DATE OF HEARING:** February 2, 2012

**REASONS FOR ORDER  
AND ORDER:** Shore J.

**DATED:** February 2, 2012

**APPEARANCES:**

Mr. Joel Etienne FOR THE APPLICANTS

Mr. David Duggins FOR THE RESPONDENT

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