

Federal Court



Cour fédérale

Date: 20201110

Docket: IMM-4518-19

Citation: 2020 FC 1045

Ottawa, Ontario, November 10, 2020

PRESENT: The Honourable Mr. Justice Pamel

AND BETWEEN:

DEMAR LYNFORD DWYER

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] On September 22, 2020, I dismissed the Applicant's, Mr. Demar Lynford Dwyer's, application for judicial review of a decision dated May 30, 2019 of the Immigration Appeal Board [IAD] denying his second attempt to reopen the appeal of his removal order on the grounds of *res judicata*. Mr. Dwyer's initial appeal of his removal order was determined on November 2, 2015 to be abandoned, and his first attempt at reopening his appeal was dismissed by the IAD on December 6, 2016.

[2] This matter was heard in conjunction with the matter in IMM-2028-19 wherein Mr. Dwyer was seeking judicial review of a decision dated April 4, 2019 of the Canada Border Services Agency [CBSA] denying his request for a deferral of his removal from Canada. That application was also dismissed on September 22, 2020.

[3] On September 29, 2020, Mr. Dwyer filed a motion in writing for reconsideration of my September 22, 2020 decision in this matter pursuant to Rules 369 and 397 of the *Federal Courts Rules*, SOR/98-106 [FCR]. I dismissed that motion on November 4, 2020.

[4] However, Mr. Dwyer also filed with this Court on October 29, 2020 a further motion under Rule 399 of the FCR for setting aside my decision of September 22, 2020 in this matter. The material filed and arguments raised by Mr. Dwyer are just about identical to those in his earlier motion under Rule 397 of the FCR. It is as if Mr. Dwyer simply amended some of the references to Rule 397 of the FCR in his material, replaced them with a reference to Rule 399 of the FCR, and added documents relating to his criminal proceedings in Canada which were, in any event, already part of the Certified Tribunal Record for the judicial review proceedings.

[5] As a self-represented litigant, I appreciate that Mr. Dwyer is not as familiar with the Rules of this Court. Rule 399 of the FCR is meant to capture situations where a decision is rendered *ex parte*, or where a party failed to appear at the hearing. Mr. Dwyer was very much present at the hearing regarding his application in this matter.

[6] Under the circumstances, I must dismiss Mr. Dwyer's present motion, without costs.

JUDGMENT in IMM-4518-19

THIS COURT'S JUDGMENT is that:

1. The Applicant's motion to set aside an order pursuant to Rule 399 of the *Federal Courts Rules*, SOR/98-106 is dismissed.
2. No costs will be awarded.

"Peter G. Pamel"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

AND DOCKET: IMM-4518-19

STYLE OF CAUSE: DEMAR LYNFORD DWYER v MINISTER OF
CITIZENSHIP AND IMMIGRATION

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO
RULE 369 OF THE *FEDERAL COURTS RULES***

JUDGMENT AND REASONS: PAMEL J.

DATED: NOVEMBER 10, 2020

APPEARANCES:

Demar Lynford Dwyer

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Nicole Rahaman

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT