

Federal Court



Cour fédérale

Date: 20110124

Docket: IMM-5716-10

Citation: 2011 FC 41

Ottawa, Ontario, January 24, 2011

PRESENT: The Honourable Mr. Justice Scott

BETWEEN:

XIPING JIN

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] By Notice of Motion dated December 8, 2010 (the “Notice”), Xiping Jin (the “Applicant”) seeks reconsideration of my Order issued November 26, 2010 (the “Order”), dismissing her Application for Leave and for Judicial Review (the “Application”) at the leave stage. The Applicant sought the judicial review of a decision of a Designated Immigration Officer (the “Officer”) of the Canadian Consulate in Buffalo, New York, U.S.A., dated September 16, 2010, wherein that Officer determined that the application for a permanent visa made by the Applicant was refused.

[2] The Application was disposed of without personal appearance pursuant to paragraph 72(2)(d) of the *Immigration and Refugee Protection Act* (the “Act”), SC 2001 c 27. As it is the usual practice of this Court, the Order determining the Application was issued without reasons. As provided for by paragraph 72(2)(e) of the Act, no appeal lies from a judgement on an application for judicial review.

[3] The Applicant is self-represented. The Applicant submitted the Notice for reconsideration pursuant to Rule 397 of the *Federal Courts Rules*, SOR/98-106, in writing and without personal appearance. The Applicant and the Respondent have filed written submissions.

[4] Rule 397 of the *Federal Courts Rules* provides as follows:

397(1) Within 10 days after the making of an order, or within such other time as the Court may allow, a party may serve and file a notice of motion to request that the Court, as constituted at the time the order was made, reconsider its terms on the ground that

(a) the order does not accord with any reasons given for it; or

(b) a matter that should have been dealt with has been overlooked or accidentally omitted.

Mistakes

(2) Clerical mistakes, errors or omissions in an order may at any time be corrected by the Court.

[5] In keeping with Rule 397(1)(a), as is the usual practice of this Court, the Order dismissing the Application was issued without reasons; therefore, Rule 397(1)(a) cannot apply.

[6] Also, in keeping with Rule 397(1)(b), the remaining issue for consideration would be whether I should reconsider the terms of my Order because a matter that should have been dealt with has been overlooked or accidentally omitted.

[7] In support of this motion, the Applicant has filed written representations, which representations I have carefully reviewed. These representations allege four different reasons why the Officer has, in the Applicant's view, acted unfairly and illegally. Unfortunately, I find that none of them to meet the criteria established by the jurisprudence of this Court as Rule 397(1)(b) is a technical rule meant to address situations where a matter that should have been addressed by the Court was overlooked or accidentally omitted (see *Lee v Canada (Minister of Citizenship and Immigration)* 2003 FC 867, 124 ACWS (3d) 758). In my opinion, this is not the case here.

[8] The Applicant is now using the Notice to appeal my Order on her Application, which is contrary to the jurisprudence of this Court (see *Kibale v Canada (Transport Canada)* (1989), 103 NR 387, 17 ACWS (3d) 444 (FCA)).

ORDER

THIS COURT ORDERS that :

1. The Notice of Motion dated December 8, 2010 is dismissed;
2. The Order rendered on November 26, 2010 stays; and
3. There is no issue as to costs.

"André F.J. Scott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5716-10

STYLE OF CAUSE: XIPING JIN
v.
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: In writing

DATE OF HEARING: December 8, 2010

REASONS FOR ORDER: SCOTT J.

DATED: January 24, 2011

APPEARANCES:

Xiping Jin

FOR THE APPLICANT

Michael Butterfield

FOR THE RESPONDENT

SOLICITORS OF RECORD:

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FOR THE DEFENDANT