

Federal Court



Cour fédérale

**Date: 20131008**

**Docket: IMM-3554-13**

**Citation: 2013 FC 1013**

**Ottawa, Ontario, October 8, 2013**

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

**BETWEEN:**

**GODWIN C. OGBUOKIRI**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] By motion made in writing, the Applicant asks, pursuant to Rule 397(1) of the *Federal Courts Rules*, SOR/98-106, that I reconsider the Order made on August 13, 2013, dismissing his Application for Leave and Judicial Review on the basis that it was an abuse of process because:

1. The Applicant's application seeks leave to judicially review the decision of the Immigration and Refugee Board, Immigration Appeal Division, dated January 30, 2003;

2. This Application has been commenced outside the time limits prescribed by paragraph 72(2)(b) of the *Immigration and Refugee Protection Act* and is therefore badly constituted; and

3. The Applicant attempted to judicially review the same IAD decision TA1-24743, dated January 30, 2003, and this Honourable Court dismissed leave on July 3, 2003.

[2] Rule 397(1) 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.

397. (1) Dans les 10 jours après qu'une ordonnance a été rendue ou dans tout autre délai accordé par la Cour, une partie peut signifier et déposer un avis de requête demandant à la Cour qui a rendu l'ordonnance, telle qu'elle était constituée à ce moment, d'en examiner de nouveau les termes, mais seulement pour l'une ou l'autre des raisons suivantes :

a) l'ordonnance ne concorde pas avec les motifs qui, le cas échéant, ont été donnés pour la justifier;

b) une question qui aurait dû être traitée a été oubliée ou omise involontairement.

[3] Rule 397(1) is a technical provision permitting the Court to address situations where there is a clear error in the formal order issued when one examines the reasons given for it or where some matter should have been addressed by the Court but was overlooked or accidentally omitted. It is meant to provide fairness only in those very limited circumstances.

[4] The Order of the Court dated August 13, 2013, accords with the reasons given for it.

[5] There was nothing that was overlooked or accidentally omitted. It appears from the correspondence from the Applicant that he is seeking relief in the nature of an appeal from the Order I made, which relief is not available to him. In short, Rule 397(1)(b) does not apply and this motion must be dismissed, with costs, which I fix at \$150.00.

**ORDER**

**THIS COURT ORDERS that** this motion to reconsider the Order of the Court dated August 13, 2013, is dismissed with costs payable by the Applicant to the Respondent, fixed at \$150.00.

“Russel W. Zinn”

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Judge

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

**DOCKET:** IMM-3554-13

**STYLE OF CAUSE:** GODWIN C. OGBUOKIRI v THE ATTORNEY  
GENERAL OF CANADA

**MOTION DEALT WITH IN WRITING WITHOUT THE APPEARANCE OF PARTIES.**

**REASONS FOR ORDER AND ORDER OF THE HONOURABLE MR. JUSTICE ZINN**

**DATED:** OCTOBER 8, 2013

**WRITTEN REPRESENTATIONS BY:**

Godwin Chijoke Ogbuokiri

APPLICANT /  
ON HIS OWN BEHALF

Gregory George

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

N/A

SELF-REPRESENTED  
APPLICANT

WILLIAM F. PENTNEY  
Deputy Attorney General of Canada  
Toronto, Ontario

FOR THE RESPONDENT