

CANADA / JUDGMENT

Nwachukwu v. Canada (Citizenship and Immigration)

2020 FC 354

COURT

Federal Court

DECIDED

10 March 2020

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Nwachukwu v. Canada (Citizenship and Immigration) Court (s) Database Federal Court Decisions
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20200310 Docket: IMM-2754-19 Citation: 2020 FC 354 Ottawa, Ontario, March 10, 2020 PRESENT:
The Honourable Madam Justice Heneghan BETWEEN: UGOCHUKWU ONYENATURUCHI
NWACHUKWU Applicant and THE MINISTER OF CITIZENSHIP AND IMMIGRATION Respondent
ORDER AND REASONS

- [1] By a Notice of Application for Leave and Judicial review filed on April 29, 2019, Mr. Ugochukwu Onyenaturuchi Nwachukwu (the “Applicant”) sought to challenge the decision of a Visa Officer, denying his application for permanent residence as member of the Federal Skilled Workers Class made pursuant to subsections 75(2) and (3) of the Immigration and Refugee Protection Regulations, SOR 2002-227(the “Regulations”).
- [2] By Order dated September 17, 2019, leave to commence an application for judicial review was granted. The application was heard in Calgary on January 16, 2020. By Judgment and Reasons issued on January 24, 2020 (the “Judgment”), the Application for Judicial Review was dismissed and no question was certified, within the scope of subsection 72 (d) of the Immigration and Refugee Protection Act, S.C. 2001, c. 27 (the “Act”).
- [3] By Notice of Motion filed pursuant to Rules 359, 369 and 397 of the Federal Courts Rules, SOR/98-106 (the “Rules”), the Applicant sought reconsideration of the Judgment.
- [4] In support of his Motion, the Applicant filed the affidavit of Mr. Uwabor Omorotionmwan, sworn on January 31, 2020.
- [5] Mr. Omorotionmwan is an Immigration Consultant at EO Law, the law firm of the counsel of record. Attached to his affidavit were a copy of the Judgment and excerpts from the Immigration, Refugees and Citizenship Canada (“IRCC”) “Operational Manual: Overseas Processing 7-B, Provincial Nominees,” the IRCC’s “Evaluation of the Provincial Nominee Program,” and the Canada-Saskatchewan Immigration Agreement, 2005.

- [6] The Applicant relies on Rule 397 that authorizes the Court to reconsider an Order or Judgment. Rule 397 provides as follows: Motion to reconsider Réexamen 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 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) the order does not accord with any reasons given for it; or
 - a) l'ordonnance ne concorde pas avec les motifs qui, le cas échéant, ont été donnés pour la justifier;
 - (b) a matter that should have been dealt with has been overlooked or accidentally omitted.
 - b) une question qui aurait dû être traitée a été oubliée ou omise involontairement. Mistakes Erreurs
- (2) Clerical mistakes, errors or omissions in an order may at any time be corrected by the Court.
- (2) Les fautes de transcription, les erreurs et les omissions contenues dans les ordonnances peuvent être corrigées à tout moment par la Cour
- [7] The Applicant submits that the Court overlooked the fact that the federal and provincial governments share jurisdiction over immigration. He also argues that the Court erred in its interpretation of section 4.10 of the Canada-Saskatchewan Agreement, 2005 and in its consideration of the authorities he relied upon in his Application for Judicial Review.
- [8] The Minister of Citizenship and Immigration (the "Respondent") opposes the Applicant's Motion. He argues that nothing was overlooked in the Judgment and that Rule 397 does not allow a party to "appeal" a judgment or order.
- [9] I agree with the submissions of the Respondent.
- [10] Rule 397(1) allows the Court to reconsider a Judgment or Order in two circumstances: when the Judgment does not agree with the Reasons or where a matter that should have been addressed was overlooked or accidentally omitted.
- [11] Neither applies in this case.
- [12] It appears that the Applicant is seeking a reconsideration of the Judgment on its merits. That is not permitted under Rule 397.

[13] The Motion will be dismissed, no Order as to costs. ORDER in IMM-2754-19 THIS COURT ORDERS that: The Motion is dismissed. There is no Order as to costs. "E. Heneghan" Judge
FEDERAL COURT SOLICITORS OF RECORD DOCKET: IMM-2754-19 STYLE OF CAUSE:
UGOCHUKWU ONYENATURUCHI NWACHUKWU v. THE MINISTER OF CITIZENSHIP AND
IMMIGRATION PLACE OF HEARING: CALGARY, ALBERTA DATE OF HEARING: JANUARY 16,
2020 ORDER AND REASONS: HENEGHAN J. DATED: March 10, 2020 APPEARANCES:
Edomwonyi Omorotionmwan For The Applicant Meenu Ahluwalia For The Respondent
SOLICITORS OF RECORD: EO Law Barrister and Solicitor Calgary, Alberta For The Applicant
Attorney General of Canada Calgary, Alberta For The Respondent

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