

**Date: 20080204**

**Dossier: IMM-3352-07**

**Citation: 2008 FC 141**

**Ottawa, Ontario, February 4, 2008**

**Present: The Honourable Mr. Justice Blais**

**BETWEEN:**

**DUNIA RIVERA MORA**

**Applicant**

**and**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] This is a motion to reconsider an order made on December 21, 2007, dismissing the application for leave and for judicial review.

**RELEVANT FACTS**

[2] The applicant was born on November 19, 1978. She arrived in Canada on December 16, 2002. In 2005, she began a relationship with a Canadian citizen.

[3] On December 29, 2006, when the applicant was pregnant, she applied for permanent residence based on humanitarian and compassionate considerations.

[4] On May 25, 2007, she gave birth to Charles Antoine Roberge in Canada. The father is a Canadian citizen and had been in a relationship with the mother since 2005.

[5] On August 16, 2007, the applicant filed an application for leave and for judicial review of the decision by immigration officer Jérôme Lapierre on July 18, 2007, refusing to grant an exemption to the applicant and her child based on humanitarian and compassionate considerations.

[6] On December 21, 2007, the application for leave and judicial review was dismissed.

[7] On January 16, 2008, the applicant filed a motion to reconsider the order dated December 21, 2007.

[8] Rule 397 of the *Federal Courts Rules* states:

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.

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.

[9] Did the Court fail to take into account a relevant document or evidence in making its order?

[10] As I already pointed out in *Nkangura Twagirayezu v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1384, at paragraph 15, “section 397 may not be used to indirectly appeal a decision that is not itself subject to appeal.”

[11] The respondent properly alleges that even though the decision to dismiss the application for leave does not include reasons, the entire application record bears on the best interests of the child. It is therefore impossible that the child’s interests were not examined.

[12] As for the documentary evidence, there was only an affidavit signed by the applicant. It goes without saying that it was considered.

[13] The Federal Court summarily decided the applications for leave and for judicial review.

[14] As a motion to reconsider is not an appeal, I believe that I have assessed all of the evidence in the record as presented during the application for leave and this will be sufficient to dismiss this motion.

**ORDER**

**THE COURT ORDERS** that the motion be dismissed.

“Pierre Blais”

Judge

Certified true translation

Kelley A. Harvey, BCL, LLB

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

**DOCKET:** IMM-3352-07

**STYLE OF CAUSE:** Dunia Rivera Mora and Minister of Citizenship  
and Immigration

**PLACE OF HEARING:** Motion in writing

**DATE OF HEARING:** n/a

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

**DATE OF REASONS:** February 4, 2008

**APPEARANCES:**

n/a FOR THE APPLICANT

n/a FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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