

Date: 20080509

Docket: IMM-2443-07

2008 FC 592

Vancouver, British Columbia, May 9, 2008

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

SZU MEI LEE

Applicant

and

**THE MINISTER OF
CITIZENSHIP AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] Ms. Szu Mei Lee (the “Applicant”) seeks reconsideration, pursuant to Rule 397 of the *Federal Courts Rules*, SOR/98-106 (the “Rules”), of the Order made in this matter on April 4, 2008. That Order dismissed the Applicant’s application for judicial review of the decision of an Immigration officer (the “Officer”) made on May 29, 2007, in which the Applicant was found not to be a member of the Spouse or Common Law Partner in Canada Class as described in section 124 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (the “IRPA Regulations”).

[2] The Applicant also requests that a question be certified, pursuant to the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”), if the motion is dismissed. Further, she seeks costs on this motion.

[3] The heart of the Applicant’s argument in this matter is that, in dismissing her application for judicial review, the Court failed to take into consideration her request to the Officer that her application for permanent residence in Canada include assessment of the best interests of her child and of humanitarian and compassionate grounds.

[4] The Minister of Citizenship and Immigration (the “Respondent”) opposes the Applicant’s motion and argues that there is no basis for reconsideration pursuant to Rule 397.

[5] Rule 397 provides:

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

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

overlooked or accidentally omitted.

Mistakes

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

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.

Erreurs

(2) Les fautes de transcription, les erreurs et les omissions contenues dans les ordonnances peuvent être corrigées à tout moment par la Cour.

[6] In my opinion, the Applicant has failed to show that there is any basis for reconsideration pursuant to Rule 397. The subject of the application for judicial review was a spousal sponsorship application, not a humanitarian and compassionate application. According to the decision of the Federal Court of Appeal in *South Yukon Forest Corp. v. Canada* (2006), 345 N.R. 310, Rule 397 cannot be invoked where there is no ambiguity or uncertainty as to what the original order meant or where there is nothing about the original order that is incomplete.

[7] Rule 397 cannot be used to reverse what has already been ordered.

[8] As for certification of a question, no question has been proposed. Subsection 74(d) of the Act provides that no appeal may be made when “in rendering judgment, the judge certifies that a serious question of general importance is involved and states the question.” In my view, no such question arises here.

[9] Finally, I see no grounds for an award of costs in relation to this matter. If the Applicant wishes to present an application pursuant to section 25 of the Act, that is a humanitarian and compassionate application, she is at liberty to do so.

[10] The motion is dismissed.

ORDER

THIS COURT ORDERS THAT the motion is dismissed.

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2443-07

STYLE OF CAUSE: SZU MEI LEE v. THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Motion in writing

DATE OF HEARING: Notice of Motion Dated April 14, 2008

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

DATED: May 9, 2008

APPEARANCES:

In writing - no appearances

SOLICITORS OF RECORD:

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