

Federal Court



Cour fédérale

Date: 20130417

Docket: IMM-10442-12

Citation: 2013 FC 395

Vancouver, British Columbia, April 17, 2013

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

**OMER HASFEB KHAN
(a.k.a. Omer Haseeb Khan)**

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR ORDER AND ORDER

[1] By motion made in writing, Mr. Khan asks this Court, pursuant to Rule 397(1) of the *Federal Courts Rules*, SOR/98-106, to reconsider the Order made on March 13, 2013, dismissing his application for leave to review a decision of the Immigration Appeal Division of the Immigration and Refugee Board dated September 21, 2012 bearing file number TBI-12172 dismissing his appeal of a visa officer's refusal to grant him a travel visa to return to Canada because he had not complied with his residency obligations as required by subsection 28(2) of the *Immigration and Refugee Protection Act*.

[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 and Mr. Khan has not established that either applies in this case. Specifically, Rule 397(1) is not an avenue of appeal when an applicant disagrees with a judge's disposition of a leave application. That, I suspect, is the situation here.

[4] For these reasons, the motion must be dismissed.

ORDER

THIS COURT ORDERS that the motion to reconsider the Order made on March 13, 2013, dismissing the Applicant's application for leave to review a decision of the Immigration Appeal Division of the Immigration and Refugee Board dated September 21, 2012 bearing file number TBI-12172 dismissing his appeal of a visa officer's refusal to grant him a travel visa to return to Canada because he had not complied with his residency obligations as required by subsection 28(2) of the *Immigration and Refugee Protection Act* is dismissed.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-10442-12

STYLE OF CAUSE: OMER HASFEB KHAN (a.k.a. Omer Haseeb Khan) v
THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

**MOTION IN WRITING CONSIDERED AT VANCOUVER, BRITISH COLUMBIA,
PURSUANT TO RULE 369**

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

DATED: April 17, 2013

WRITTEN REPRESENTATIONS BY:

Omer Hasfeb Khan

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Nur Muhammed-Ally

FOR THE RESPONDENT

SOLICITORS OF RECORD:

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FOR THE APPLICANT
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FOR THE RESPONDENT