

Federal Court



Cour fédérale

**Date: 20111102**

**Docket: IMM-4928-11**

**Citation: 2011 FC 1250**

**Ottawa, Ontario, November 2, 2011**

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

**BETWEEN:**

**LILLIAN TWEBAZE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] By motion made in writing, the applicant asks this Court, pursuant to Rule 397(1) of the *Federal Courts Rules*, SOR/98-106, to reconsider the Order made on September 29, 2011, dismissing her application for leave to review a decision of the Refugee Protection Division of the Immigration and Refugee Board dated May 11, 2011, denying her claim for protection. The

applicant also seeks an order extending the time for filing her application record on the leave application.

[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 dated September 29, 2011, accords with the reasons given for it. No application record had been filed and that fact is not disputed by the applicant. Rather, she

asserts that she failed to file it due to a depression she suffered at the relevant time. Rule 397(1)(a) does not apply.

[5] Further, there was nothing on September 29, 2011, that was overlooked or accidentally omitted. As noted, the application for leave was dismissed for failure to file an application record within the time provided by the Rules. It is not suggested by the applicant that, for example, it had been filed but did not find its way to the applications judge. Rather, she is seeking relief in the nature of an appeal from the Order made, which relief is not available to her and is contrary to the provisions of the *Immigration and Refugee Protection Act*, SC 2001, c 27, s 72(2)(e) and the jurisprudence of this Court. Rule 397(1)(b) does not apply.

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

**ORDER**

**THIS COURT ORDERS** that the motion to set aside the Order dated September 29, 2011, dismissing the applicant's Application for Leave and for Judicial Review due to the failure of the applicant to file an applicant's record and for an order extending the time to serve and file the applicant's record, is dismissed without costs.

"Russel W. Zinn"

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Judge

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

**DOCKET:** IMM-4928-11

**STYLE OF CAUSE:** LILLIAN TWEBAZE v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

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

**REASONS AND ORDER OF  
THE HONOURABLE:** ZINN J.

**DATED:** November 2, 2011

**WRITTEN REPRESENTATIONS BY:**

Lillian Twebaze

APPLICANT –  
ON HER OWN BEHALF

Sybil Thompson

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

N/A

SELF-REPRESENTED  
APPLICANT

MYLES J. KIRVAN  
Deputy Attorney General of Canada  
Toronto, Ontario

FOR THE RESPONDENT