Federal Court  Cour fédérale

Date: 20250903

Docket: IMM-11042-23

Citation: 2025 FC 1454

Ottawa, Ontario, September 3, 2025

PRESENT: Justice Andrew D. Little

BETWEEN:

YAN ZHU

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER AND REASONS

[1] The applicant filed a motion under Rule 397 of the *Federal Courts Rules*, SOR/98-106, asking the Court to reconsider its decision on an application for judicial review: see Judgment and Reasons dated April 30, 2025, in *Zhu v. Canada (Citizenship and Immigration)*, 2025 FC 661.

[2] The applicant seeks an order that the Court "reconsider its terms to dismiss" the application for judicial review and reconsider its decision not to certify the applicant's first

question for appeal on the grounds that a “matter that should have been dealt with has been overlooked or accidentally omitted” under Rule 397(1)(b).

[3] A motion under Rule 397 must be served and filed within 10 days of the making of the order. In this case, the applicant attempted to file the motion around May 8, 2025, but her materials were not accepted by the Registry. Eventually, on June 19, 2025, the applicant successfully filed the motion materials and requested an extension of time. On June 23, 2025, the respondent filed a responding record on this motion.

[4] Also on June 23, 2025, the applicant filed a motion to stay her removal from Canada, pending the disposition of this motion. On June 27, 2025, Justice Ngo dismissed the stay motion: *Zhu v. Canada (Public Safety and Emergency Preparedness),* 2025 CanLII 63345 (FC).

[5] By order dated July 29, 2025, Associate Judge Ring granted the applicant’s motion for an extension of time to file the present motion. It was then sent to me.

[6] The legal principles that apply to this motion are not in dispute. When the Federal Court renders a decision, it is *functus officio*, meaning that it does not have jurisdiction to revisit its decisions outside the narrow circumstances of Rule 397: *Haynes v. Canada (Attorney General),* 2023 FCA 244, at para 6 (citing two previous appeal cases).

[7] Rule 397(1)(b) applies when the Court makes an omission or slip. The rule is “much narrower than it sounds. Under this rule, the Court cannot rethink the matter and reverse itself”:

Canada v. MacDonald, 2021 FCA 6, at para 17. It is not meant to be an appeal in disguise, allowing a litigant to re-argue an issue a second time, in the hope that the Court will change its mind: *Sharma v. Canada (Revenue Agency)*, 2020 FCA 203, at para 3; *Yeager v. Day*, 2013 FCA 258, at para 9. In her reply, the applicant agreed that a motion under Rule 397 is not meant to be an appeal in disguise.

[8] I conclude that the applicant's motion for reconsideration must be dismissed. As will become apparent, the applicant's submissions are an attempt to re-argue issues that the Court addressed in the Reasons and on which she did not succeed.

[9] In the decision under review, the Immigration Division (the "ID") determined that the applicant was inadmissible to Canada under paragraph 37(1)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 (the *"IRPA"*). It concluded that there were reasonable grounds to believe that the applicant was a member of an organization that engaged in activity that was part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of an offence punishable under the *Criminal Code*, RSC 1985, c. C-46.

[10] The applicant made complex legal arguments to the ID about the words and phrases in paragraph 37(1)(a) to support her position that she was not inadmissible to Canada. On her application to the Court for judicial review of the ID's decision, she also made arguments on the language in that paragraph, to support her position that the ID's decision was unreasonable.

[11] The Reasons described the applicant's position on the judicial review application (paragraphs 41-43 and 45-46). The applicant did not directly challenge those descriptions, including the fact that she altered and expanded her position at the hearing (paragraph 41). I did not agree with her position and explained in paragraphs 48-54 why the applicant had not shown that the ID made a reviewable error.

[12] The Reasons described the ID's findings (paragraph 48). The Reasons assessed whether there was a reviewable error in the ID's decision based on the legal issues raised at the ID and to the Court (paragraphs 49-52), and whether the ID had made a decision on the issue raised by the applicant in the Court. The Reasons stated:

> [49] The ID did not analyze the legal argument now raised by the applicant on the interpretation of paragraph 37(1)(a). In my view, that is because the applicant's argument on this application is materially different from the argument she made to the ID and indeed reverses the position she took at the ID.
>
> [50] At the ID, the applicant did not contend that the organization had to have been convicted of the crime or be charged with an offence. Rather, the applicant expressly acknowledged that neither was necessary. The applicant's argument was that the organization had to be involved in prior or subsequent "criminal" offences and the applicant in this case was found culpable of a "provincial regulatory offence".

[13] The Reasons quoted two passages from the applicant's written submissions to the ID (at paragraph 51) to support the point that the applicant had "twice addressed whether paragraph 37(1)(a) and this Court's case law required a conviction, as she now argues". The Reasons found that "the question now raised by the applicant goes to a proper interpretation of paragraph 37(1)(*a*). Because it was not put to the ID and the ID did not decide the point, this Court should presumptively not entertain the argument for the first time on judicial review… The applicant's

detailed written submissions to the Court concerning the case law show that her arguments are fresh on judicial review."

[14] In addition, in any event of the legal issues, the Reasons analyzed whether there was a reviewable error in the ID's decision. The Reasons concluded that even if the applicant's legal arguments were considered, they could not succeed in the present case because of the ID's factual findings and the absence of cases constraining its decision (paragraph 53; see also paragraphs 35-37).

[15] On this motion, the applicant argued that the Reasons overlooked or omitted to properly understand her legal argument on the judicial review application and at the ID. She submitted that paragraph 48 of the Reasons erroneously found that the ID did not analyze the legal argument she raised to the Court on the interpretation of paragraph 37(1)(a). She also submitted that, contrary to paragraph 49 of the Reasons, her argument to the Court on judicial review was not "materially different" from the argument she made to the ID and she did not reverse the position she took at the ID. She also contended that she put the proper interpretation of paragraph 37(1)(a) to the ID. The applicant's submissions on this motion acknowledged that she took a "different approach" at the Court by treating two aspects of paragraph 37(1)(a) as one element, which she characterized as a minor re-organization of the presentation of her argument that was not materially different from the argument she made to the ID.

[16] The applicant contended that she did argue to the ID that the organization had to have been convicted or charged with an offence. She denied acknowledging that neither a conviction

nor a charge was necessary and sought to explain one of the ID submissions quoted at paragraph 51 of the Reasons.

[17] The applicant also asked the Court to reconsider its decision not to certify her first question proposed for appeal. The applicant's initial submissions on this motion did not provide a separate reason to reconsider this conclusion, apart from the reasons for the disagreeing with the Reasons. In reply, she argued that the Court overlooked the "actual" arguments in specific paragraphs of her written submissions to the ID (i.e., paragraphs other than those quoted in paragraph 51 of the Reasons).

[18] The respondent's position was that the applicant's motion was an attempt to re-argue the application for judicial review.

[19] The respondent referred to paragraph 48 of the Reasons, emphasizing that the ID found that it was not determinative that the applicant was not charged or convicted of a *Criminal Code* offence, owing to the different requirements of the *Code* and the *IRPA*.

[20] The respondent also referred to paragraph 53 of the Reasons, which found that even if the applicant's legal arguments were considered, they could not succeed because it was apparent from the ID's decision that, in the applicant's words, it was "factually established" that the organization engaged in activity that was part of a pattern of criminal activity. In addition, the applicant had "cited no cases showing that the ID erred in law or was otherwise constrained to require criminal charges, a conviction or a criminal process against an organization". The

applicant's submissions to the ID appeared to acknowledge the cases relied upon by the respondent.

[21] The respondent's position on the question not certified for appeal supported the analysis in the Reasons (at paragraph 68-75) and referred to other paragraphs supporting them elsewhere in the Reasons.

[22] In my view, it is evident that the applicant's arguments on this motion do not constitute a matter that may be remedied under Rule 397(1)(b). The applicant's position is, in substance, that the Reasons misunderstood her legal arguments to the Court on the application for judicial review, erred in the characterization of her submissions to the Immigration Division that led to the decision under review, and therefore erred in reaching its decision on the judicial review application and its decision not to certify a question for appeal. Her motion is an attempt to re-argue legal issues raised on the application, on which she did not succeed, akin to an appeal.

[23] The applicant has not identified anything material that the Reasons overlooked, nor any matter that should have been dealt with and was overlooked that might serve as a basis for an order under Rule 397(1)(b).

[24] As the Court is *functus*, I will not add any substantive analysis about the applicant's submissions on this motion. The Reasons must speak for themselves on whether the applicant's position on this motion has any merit.

[25] The motion is dismissed. The respondent did not seek costs.

ORDER in IMM-11042-23

THIS COURT ORDERS that:

1. The applicant’s motion under Rule 397 for reconsideration of the Judgment dated April 30, 3035, is dismissed.

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-11042-23
STYLE OF CAUSE:	YAN ZHU v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	OTTAWA, CONTARIO
DATE OF HEARING:	IN WRITING
REASONS FOR JUDGMENT AND JUDGMENT:	A.D. LITTLE J.
DATED:	SEPTEMBER 3, 2025

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Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT