

Federal Court



Cour fédérale

Date: 20170515

Docket: IMM-4721-16

Citation: 2017 FC 503

Toronto, Ontario, May 15, 2017

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

AHMED NOOR ALI ISMAIL

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The present Application challenges the October 19, 2016 decision of the RAD on a ground of denial of natural justice.

[2] The RPD decision under appeal to the RAD was a rejection of the Applicant's claim for protection on religious grounds as a Sufi Muslim. Nevertheless, the Applicant's claim was denied on other evidentiary grounds.

[3] On appeal to the RAD, in the argument presented by Counsel for the Applicant, the RPD's finding that the Applicant is a Sufi Muslim was noted, and, accordingly, the Applicant's argument addressed only the other evidentiary issues which resulted in the denial of the Applicant's claim.

[4] However, at paragraph 56 of the decision under review, the RAD decided to address the RPD's finding that the Applicant is a Sufi Muslim:

Appellant's Identity as a Sufi Muslim

The RAD finds that a central question in this claim is whether the Appellant has established his identity as a Sufi Muslim. The RAD notes that the RPD has found that the Appellant is a Sufi Muslim; however, the RAD finds that deference is not owed to this finding of the RPD and that the RAD must make its own determination of the Appellant's religious identity based on its own assessment of the evidence.

[5] As a result, the RAD found that the Applicant is not a Sufi Muslim (Decision, para. 61). Counsel for the Applicant argues that, for the RAD to have done so with respect to an unappealed finding without providing any notice to Counsel for the Applicant, was manifestly unfair. I agree.

[6] As a result, on a standard of correctness, I find that the decision under review was decided in breach of a duty of fairness owed to the Applicant.

JUDGMENT

THIS COURT'S JUDGMENT is that the decision under review is set aside and the matter is referred back for redetermination by a differently constituted panel.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4721-16

STYLE OF CAUSE: AHMED NOOR ALI ISMAIL v MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 10, 2017

JUDGMENT AND REASONS: CAMPBELL J.

DATED: MAY 15, 2017

APPEARANCES:

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