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

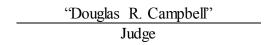
The RAD finds that a central question in this claim is whether the Appellant has established his identity as a Sufi Muslim. The RAD notes that the RPD has found that the Appellant is a Sufi Muslim; however, the RAD finds that deference is not owed to this finding of the RPD and that the RAD must make 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 CC	OURT'S	JUDGMENT i	s that	the	decision	under	review	is	set	aside	and	the
matter	is referred	back for	redetermination	by a	diffe	erently c	onstitu	ted pa	nel.				

There is no question to certify.



### **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**:

Eve Sehatzadeh FOR THE APPLICANT

Christopher Crighton FOR THE RESPONDENT

**SOLICITORS OF RECORD:** 

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