



B E T W E E N:

SULTAN MEHMOOD

Applicant

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR ORDER AND ORDER

GILES, A.S.P.:

At the end of the hearing which resulted in the impugned decision counsel for the applicant forwarded to the Tribunal a document which it is alleged indicated the possibility that the applicant could have been involved in the charitable and educational activities, and not the violent activities which were in effect crimes against humanity of an organization of which he was a member.

It now appears while the document was deemed to have been received, it was in fact never received. There can then be no question that the Tribunal did not consider this evidence. Whether or not the failure to consider a document deemed to have been received will result in a decision being set aside is at least a nice point of law. The motion before me seeks to require the reception of an affidavit intended to prove that the document was in fact mailed to the Tribunal and may provide the only direct evidence of the submission of the document. It is my view that the whole matter of the submission of this document and the

effect of its deemed receipt should be available for consideration by the Judge determining the matter of leave.

There have been occasions when affidavits have been permitted in reply. Alternatively, I have myself indicated that an amendment to the Applicant's Record should be sought. I am reluctant to re-open the whole matter at this stage but the applicant did not have an opportunity when filing his Record to deal with the matter of deemed receipt. Also, the respondent has not had an opportunity to deal with the deemed receipt or the effect of failure to deal with the evidence if deemed receipt is maintained.

In the circumstances, I feel it would be unjust to allow this affidavit in Reply because of the lack of opportunity to respond to it. I will therefore extend the time to file the Applicant's Record by filing a Supplemental Record to 4:00 p.m. on August 21st, and will extend the time for the respondent to make submissions by a Supplemental Response to 14 days after the filing of the Supplemental Record, and will extend the time for a Reply until the 10th day after the time limited for the filing of a Supplemental Response.

ORDER

The applicant may file the proposed affidavit by filing a Supplemental Record on or before August 21st at 4:00 p.m.. The respondent may have until September 5th to file any Supplemental Reasons and the applicant may have until September 15th to file any Additional Reply.

"P.A.K. Giles"
A.S.P.

Toronto, Ontario
August 8, 1997

FEDERAL COURT OF CANADA

Names of Counsel and Solicitors of Record

COURT NO: IMM-1734-97

STYLE OF CAUSE: SULTAN MEHMOOD

- and -

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

CONSIDERED AT TORONTO, ONTARIO UNDER THE PROVISION OF
RULE 324.

REASONS FOR ORDER
AND ORDER BY: GILES, A.S.P.

DATED: AUGUST 8, 1997

SOLICITORS OF RECORD:

Mr. Douglas Barker
RAYMOND & HONSBERGER
Barristers and Solicitors
65 Queen Street West
17th Floor
Toronto, Ontario
M5H 2M5

For the Applicant

George Thomson
Deputy Attorney General
of Canada

For the Respondent

Handwritten signature or initials, possibly 'MP' or similar, in black ink.