

**Date: 20080526**

**Docket: IMM-5156-07**

**Citation: 2008 FC 665**

**Toronto, Ontario, May 26, 2008**

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

**BETWEEN:**

**ROBERT SHAMETI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] The present Application concerns a citizen of Albania who claims refugee protection on the basis of his sexual orientation as a homosexual.

[2] The following excerpts from the Refugee Protection Division's [RPD] decision expose two fundamental errors:

The onus is on the claimant to satisfy the panel that he has and was following his desires in that type of lifestyle [i.e. as a homosexual].

[...]

The panel finds that the claim is not based on sexual orientation and in this case, the integral issue is whether the claimant has met his onus in establishing his identity and persecution suffered due to that in his country and has acted accordingly to fulfill those desires in an open society in Canada.

[Decision, p.2]

[3] It appears from the words written that the RPD member believes that, in order for a person to prove his or her homosexuality as the basis for a claim of protection, it is necessary for that person to have engaged in homosexual conduct. It also appears from the words written that the RPD member believes that, for a person to be successful in a claim for protection, it is necessary for that person to have suffered persecution in the country from which they have taken flight. I find that both beliefs are erroneous.

[4] As a result, I find that the decision under review, which is based on the erroneous beliefs identified, is made in reviewable error.

**ORDER**

**ACCORDINGLY**, I set aside the RPD's decision and refer the matter back for redetermination by a differently constituted panel.

"Douglas R. Campbell"

Judge

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

**DOCKET:** IMM-5156-07

**STYLE OF CAUSE:** ROBERT SHAMETI v. THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** May 26, 2008

**REASONS FOR ORDER  
AND ORDER:** Campbell J.

**DATED:** May 26, 2008

**APPEARANCES:**

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