

Federal Court



Cour fédérale

**Date: 20210216**

**Docket: IMM-4888-19**

**Citation: 2021 FC 152**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, February 16, 2021**

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

**BETWEEN:**

**PEFRO JERONIMO GALAN**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review of a decision of the Refugee Protection Division (RPD), dated June 21, 2019, in which the RPD rejected the applicant's claim for refugee protection, as he is neither a Convention refugee nor a person in need of protection under the *Immigration and Refugee Protection Act*, SC 2001, c 27, ss 96–97(1) [IRPA].

[2] The applicant is a citizen of El Salvador and is claiming refugee protection status for fear of retribution for refusing to bow to extortion by the Mara MS-13 gang. The applicant left the country in February 2018 for the United States and arrived in Canada the following month.

[3] The RPD rejected the applicant's claim for refugee protection on the basis that the alleged fear was not based on one of the five grounds set out in the definition of a refugee, and that he lacked credibility as to whether he was a person in need of protection, under subsection 97(1) of the IRPA (see page 3 and following of the RPD's decision). The Refugee Appeal Division dismissed the appeal for lack of jurisdiction.

[4] This judicial review concerns the reasonableness of the RAD's conclusions, particularly with respect to assessing and ignoring the evidence. A "reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]).

[5] To begin with, the respondent submits that the style of cause should be *Pedro Jeronimo Galan v The Minister of Citizenship and Immigration*.

[6] In addition, the applicant's affidavit contains argumentative statements, which is contrary to the *Federal Courts Rules*, SOR/98-106, s 81(1), and the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, s 12(1). In this case, paragraphs 37 to 52 should be struck out.

[7] While it is usual to strike out non-compliant sections of an affidavit, if it is in the interests of justice (*Canada (Board of Internal Economy) v Canada (Attorney General)*, 2017 FCA 43), the Court has the discretion to give no weight to this evidence (*Abi-Mansour v Canada (Attorney General)*, 2015 FC 882).

[8] The affidavit in this case goes beyond the facts and verges on argumentative by delving into the deficiencies of the impugned decision before this Court and by redefining the evidence on the record. The identified section echoes, to some extent, the content of the submissions and is therefore unnecessary. For this reason, the Court will ignore it.

[9] The applicant argues that the RPD erred in its assessment of his testimony; failed to take into consideration all the documentary evidence, particularly the port of entry interview; arbitrarily rejected the reasonable explanations for shortcomings in the evidence; preferentially and subjectively plumbed an official document; and ignored the facts stemming from the testimony, and the law.

[10] At first glance, inconsistencies concerning major events raised to explain the alleged fear can seriously taint credibility and can in and of themselves be sufficient to justify rejecting a claim for refugee protection (*Chen v Canada (Minister of Citizenship and Immigration)*, 2005 FC 767 at paras 23–27).

[11] Indeed, credibility findings can taint all the evidence, including documentary evidence, leading to the rejection of a claim. It is not sufficient to identify different conclusions based on

the evidence in order to intervene; rather, the applicant has the onus to demonstrate that the findings are perverse or capricious or were made without regard for the evidence (*Zhu v Canada (Citizenship and Immigration)*, 2013 FC 1139).

[12] In this case, the RPD identified significant contradictions with respect to the applicant's occupation in fall 2017, namely, whether he owned a business, was unemployed or was a salaried employee. However, it is the business in San Salvador that is at the root of all his alleged fear, that is, where and when Mara MS-13 allegedly began extorting him, and following the closing of his business, he purportedly received death threats that prompted him to leave the country.

[13] In its analysis, the RPD considered the applicant's explanations to the effect that he failed to mention his business in his Basis of Claim Form because it was an [TRANSLATION] "informal" business and found them to be unsatisfactory. The form indicates, rather, that he was unemployed. In addition, while the applicant stated at the port of entry that he operated a business, it would have been reasonable to expect said form to attest to that fact. The RPD also recognized other contradictions in reviewing the application for a Canadian visa in which the applicant indicated that he was employed elsewhere.

[14] Considering the aforementioned contradictions, the RPD did not give any probative value to the receipts filed in evidence, which in any case do not provide any information on the business or the applicant that would corroborate the operation of a business during the relevant period.

[15] The RPD also found other credibility problems with respect to his explanation that he had to delay leaving his country because he needed to relocate his parents for their safety. First, this explanation was not on file; and second, according to the evidence, the applicant's parents and sisters are still in San Salvador.

[16] The credibility findings are reasonable; they are meaningful and supported by the reasons for the decision (see the principles relevant to analyzing credibility in *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at paras 20–26). The RPD is also presumed to have considered the full evidentiary record (*Basanti v Canada (Citizenship and Immigration)*, 2019 FC 1068 at para 24). Ultimately, the Court is being asked to reweigh the evidence, which it cannot do on judicial review (*Vavilov*, above, at para 83).

[17] For the above reasons, the Court dismisses the application for judicial review.

**JUDGMENT in IMM-4888-19**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

There is no question of importance to be certified. The name of the respondent is amended to

The Minister of Citizenship and Immigration.

“Michel M.J. Shore”

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Judge

Certified true translation  
Michael Palles, Reviser

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

**DOCKET:** IMM-4888-19

**STYLE OF CAUSE:** PEFRO JERONIMO GALAN v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MATTER HEARD BY VIDEOCONFERENCE IN  
MONTRÉAL, QUEBEC

**DATE OF HEARING:** JANUARY 27, 2021

**JUDGMENT AND REASONS:** SHORE J.

**DATED:** FEBRUARY 16, 2021

**APPEARANCES:**

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