

Federal Court



Cour fédérale

Date: 20240409

Docket: IMM-2752-22

Citation: 2024 FC 553

Ottawa, Ontario, April 9, 2024

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

JOSE MIGUEL TOSCANO ROSALES

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Mr. Jose Miguel Toscano Rosales [Mr. Toscano], seeks judicial review of the March 10, 2022 decision of the Refugee Protection Division [RPD] that found he is neither a Convention refugee nor a person in need of protection under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act] respectively.

[2] Mr. Toscano alleges that the RPD made several errors, including that: the RPD failed to assess his section 96 claim; ignored evidence; made unreasonable credibility findings; and, erred in finding that he did not have a well-founded fear of persecution or harm based on the conduct of his family, who remained in Guatemala, or the conduct of his father, who fled to Canada and obtained refugee protection but did not seek to sponsor his family to join him in Canada.

[3] For the reasons that follow, the Application is granted. The RPD erred by failing to assess Mr. Toscano's section 96 claim and failing to provide any justification for finding that Mr. Toscano had no nexus to a Convention ground. The RPD must redetermine Mr. Toscano's claim pursuant to both section 96 and subsection 97(1).

I. Background

[4] Mr. Toscano arrived in Canada in 2018 after spending over six years in the United States [US] awaiting the determination of his refugee protection claim, which was ultimately refused. Mr. Toscano's Basis of Claim [BOC] is linked to the persecution of his father, who fled Guatemala in 2008, leaving his wife and five children behind. Mr. Toscano also recounts his own experiences in Guatemala, both before and after his father fled.

[5] Mr. Toscano's father, Mr. Apolonio Domingo Toscano Sic [Mr. Sic], is an evangelical Christian who was the co-pastor of an evangelical church in Guatemala. In 1999, Mr. Sic was appointed sheriff in the Totonicapán region and was responsible for implementing strategies to combat violence and crime. This included liaising with vulnerable youths in an effort to prevent them from joining Mara Salvatrucha 13 [MS-13], a notoriously violent gang.

[6] Mr. Toscano recounts that members of MS-13 targeted his family due to his father's social activism. Members of MS-13 murdered his sister (by poisoning her) on June 2, 2003. MS-13 also decapitated and defiled the family's farm animals and dog, openly claiming responsibility. Following these events, Mr. Sic resigned from his position as sheriff. MS-13 began extorting the family for money. Mr. Sic sought protection from the police unsuccessfully.

[7] In September 2008, Mr. Sic was kidnapped and tortured by MS-13. Upon release, Mr. Sic fled to Canada in 2008 and was granted refugee status in 2010.

[8] Mr. Toscano claims that after his father fled Guatemala, MS-13 targeted him as he was Ms. Sic's eldest son, demanding that he pay the debts of his father. Mr. Toscano claims that in November 2010, he was branded, kidnapped, and tortured by MS-13. He provided photos of the scars on his body to the RPD.

[9] Mr. Toscano recounts that MS-13 demanded that he pay a monthly fee of 1000 Quetzales after he began working at a Medical Center in Canton Paxtoca in 2011. The amount demanded increased after several months and he was threatened with death if he did not pay.

[10] Mr. Toscano claims that MS-13 killed local residents in Paxtoca, which the police failed to investigate. Mr. Toscano recounts that in September 2012, he was chased by MS-13, causing him to crash his car. Mr. Toscano tried again to file police reports after other incidents of threats and assaults, but the police did not pursue an investigation. Mr. Toscano attributes the police

inaction, in part, to his Indigenous identity. Mr. Toscano is a member of the K'ich'e Maya First Nation in Guatemala.

[11] Mr. Toscano fled Guatemala on December 13, 2012 and entered Mexico. Three days later, he attempted to enter the US by water, but was apprehended by US border authorities and detained for several weeks. His claim for asylum in the US was denied six years later in April 2018 and his work permit was refused in November 2018.

[12] Fearing return to Guatemala, Mr. Toscano then found contact information for his father on Facebook and sought his father's help to enter Canada. Mr. Toscano arrived on December 10, 2018 and claimed asylum.

[13] Mr. Toscano later amended his BOC to include more recent information about the activities of MS-13 to describe the risks he would face on return as an evangelical Christian, as the son of his father, and as an Indigenous person. For example, in September 2019, Mr. Toscano learned that a young man from Paxtoca was murdered by MS-13 after his return from the US following the denial of refugee status. In August 2021, Mr. Toscano provided evidence of a massacre conducted by MS-13 against the Indigenous community of Paxtoca, in which three of his acquaintances were murdered.

II. The Decision under Review

[14] The RPD dismissed Mr. Toscano's refugee claim under both section 96 and subsection 97(1) of the Act.

[15] Under the heading “Nexus”, the RPD stated: “[t]here is no nexus between this claim and a Convention ground, therefore I am assessing it under IRPA section 97(1)”.

[16] The RPD then stated that “credibility is the issue and the question to be addressed is whether Mr. Toscano established on a balance of probabilities that he would face a risk to his life or of cruel or unusual punishment if returned” (i.e., the section 97(1) claim).

[17] The RPD stated that its decision was based on two conclusions: first, that the actions of Mr. Toscano’s family do not support his allegation that MS-13 was targeting him; and second, that Mr. Toscano’s vague, inconsistent, and implausible testimony did not establish the alleged threats from MS-13 on a balance of probabilities.

[18] The RPD made several adverse credibility findings and concluded that Mr. Toscano was not a person in need of protection pursuant to subsection 97(1) of the Act.

[19] The RPD began by describing why Mr. Toscano’s claim should be situated in the broader context of his family.

[20] Mr. Toscano’s father, Mr. Sic, was a witness at the RPD hearing. Mr. Sic responded to the RPD’s questions and stated that that he did fear that MS-13 could have harmed his wife and five children after he fled. Mr. Sic noted that he had infrequent contact with his family after he fled, because their rural village did not have phones. The RPD found that Mr. Sic did not take an interest in whether his family continued to be threatened by MS-13 and his wife “did not say

much”. However, Mr. Sic noted that his wife once told him that it “seemed like” people were looking for Mr. Toscano.

[21] The RPD noted that Mr. Sic spoke to his wife every few months via phone when she visited a nearby village, but did not know that his children were being targeted by MS-13.

Mr. Sic testified that he did not learn that MS-13 was targeting Mr. Toscano until he spoke with his son at some time after Mr. Toscano fled to the US.

[22] The RPD stated, “[t]he family’s lack of communication or seemingly any concern about the continued threat from MS-13 is not behaviour reflective of a belief ones’ lives are at risk”.

The RPD found this undermined the credibility of Mr. Toscano’s allegation that MS-13 continued to target his family through him.

[23] The RPD also found that Mr. Sic’s actions (i.e., fleeing Guatemala and leaving his wife and children behind) were not “indicative of a family at risk from a violent gang”. The RPD noted that Mr. Sic has been safe since 2010, and could have sponsored his family to come to Canada.

[24] The RPD also noted that Mr. Sic testified that his wife did not wish to leave Guatemala, and he would have needed her signature to obtain passports for his minor children. [He did not indicate that he made any effort to sponsor them]. The RPD commented on Mr. Sic’s wife’s inaction (who was not a witness at the RPD hearing and did not provide any evidence), and did not find it plausible that she would chose to remain and to subject her children to life-threatening

risks from MS-13. The RPD found that Mr. Sic's wife's inaction did not support Mr. Toscano's allegation that MS-13 targeted him constantly from the time his father fled. The RPD concluded:

[31] Therefore, the family's decision not to take advantage of the opportunity to come to Canada through Mr. Toscano's father's sponsorship further demonstrates the absence of fear that their lives were at risk from MS-13, undermining the credibility of Mr. Toscano's claim that MS-13 continued targeting his family through him.

[Emphasis added]

[25] The RPD also found that "Mr. Toscano's inconsistent and implausible testimony confirms what his family's behaviour suggests"; i.e. that he was not targeted by MS-13.

[26] The RPD found that Mr. Toscano's BOC narrative was much more detailed than his oral evidence. The RPD noted inconsistencies regarding:

- The dates MS-13 allegedly began targeting him (the two timeframes were off by 1-2 years);
- The details of the extortion allegations (the amount differed by approximately \$50,000 Canadian; the regularity of payments differed); and
- The details surrounding his complaints to police differed.

[27] The RPD also drew negative inferences from Mr. Toscano's failure to provide corroborative evidence, for example, from his family in Guatemala.

[28] Although the RPD accepted the evidence from Mr. Sic's refugee claim as credible, the RPD concluded that there was insufficient credible evidence to establish Mr. Toscano's allegations of persecution or risk of death or harm.

[29] The RPD added that objective evidence about the country conditions in Guatemala is insufficient to support a finding that Mr. Toscano faces a risk to his life or cruel and unusual treatment or punishment. The RPD noted that the correct test is whether Mr. Toscano will face a personalized risk if he is forced to return and found that he would not.

[30] With respect to Mr. Toscano's Indigenous status, the RPD noted that Mr. Toscano testified that his identity only made him more vulnerable when trying to obtain police protection and that police did not respond to his complaints, but that his status did not put him at a serious risk of harm, cruel or unusual treatment or punishment, or torture in Guatemala. The RPD added that if Mr. Toscano alleged a risk from MS-13 because of his Indigenous status, the RPD had already concluded that he had not established that MS-13 targeted him at all.

[31] In the section 97 analysis, the RPD found that Mr. Toscano had not established he would face personalized risks different from all other members of the K'iche' Maya First Nation. [As noted above, the RPD did not consider Mr. Toscano's Indigenous status in the context of section 96 because the RPD summarily dismissed the section 96 claim.]

III. The Issues

[32] Mr. Toscano raises seven arguments, some of which overlap. The Court characterises the issues more broadly as:

1. Whether the RPD reasonably concluded that Mr. Toscano had no nexus to a Convention ground pursuant to section 96 of the Act?

2. Whether the RPD reasonably concluded that Mr. Toscano's claim was not credible, and therefore that he was not a person in need of protection pursuant to subsection 97(1) of the Act?

[33] The second issue includes consideration of: whether the RPD was overly influenced by the conduct of Mr. Toscano's father and made assumptions that coloured their credibility findings and assessment of his well founded fear; whether the RPD misapprehended other evidence; and, whether the credibility findings are unreasonable, despite the deference owed to the RPD regarding credibility findings.

IV. The Standard of Review

[34] The issues raised all relate to the reasonableness of the RPD's decision.

[35] In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], the Supreme Court of Canada provided extensive guidance to the courts in reviewing a decision for reasonableness.

[36] 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 (*Vavilov* at paras 85, 102, 105–07). The court does not assess the reasons against a standard of perfection (*Vavilov* at para 91).

[37] In *Vavilov*, at para 100, the Supreme Court of Canada noted that decisions should not be set aside unless there are “sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” and that “the court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable”.

[38] The Supreme Court of Canada also confirmed that a reviewing court cannot read in reasons that might have existed where a contextual reading and “connecting the dots” does not provide the reasons. The Court stated (*Vavilov*, at para 97):

[97] Indeed, *Newfoundland Nurses* is far from holding that a decision maker’s grounds or rationale for a decision is irrelevant. It instead tells us that close attention must be paid to a decision maker’s written reasons and that they must be read holistically and contextually, for the very purpose of understanding the basis on which a decision was made. We agree with the observations of Rennie J. in *Komolafe v. Canada (Minister of Citizenship and Immigration)*, 2013 FC 431, 16 Imm. L.R. (4th) 267, at para. 11:

Newfoundland Nurses is not an open invitation to the Court to provide reasons that were not given, nor is it licence to guess what findings might have been made or to speculate as to what the tribunal might have been thinking. This is particularly so where the reasons are silent on a critical issue. It is ironic that *Newfoundland Nurses*, a case which at its core is about deference and standard of review, is urged as authority for the supervisory court to do the task that the decision maker did not do, to supply the reasons that might have been given and make findings of fact that were not made. This is to turn the jurisprudence on its head. *Newfoundland Nurses* allows reviewing courts to connect the dots on the page where the lines, and the direction they are headed, may be readily drawn.

V. The Applicant's Submissions

(1) The RPD erred by not conducting an analysis of the section 96 claim

[39] Mr. Toscano submits that the RPD was required to determine whether he met the definition of a Convention refugee, and failed to do so (*Canada (Attorney General) v Ward*, 1993 CanLII 105 (SCC), [1993] 2 SCR 689 [*Ward*]; *Iqbal v Canada (Citizenship and Immigration)*, 2018 FC 299 at para 15 [*Iqbal*]).

[40] Mr. Toscano submits that the RPD failed to assess his risk under section 96 based on his status as an Indigenous person and a member of the K'iche' Maya First Nation, and based on his status as a family member of Mr. Sic, who was found to be a Convention refugee, noting that both grounds were clearly set out in his BOC.

[41] Mr. Toscano submits that "family" is a Convention ground where there is a nexus between the family member and the claimant (*Macias v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1749 at para 13 [*Macias*]; *Tomov v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1527 [*Tomov*]; *Santos v Canada (Citizenship and Immigration)*, 2011 FC 644 at paras 30, 32 [*Santos*]).

[42] Mr. Toscano argues that the RPD conflated the legal tests for section 96 and subsection 97(1); the test under section 96 is whether there is more than a mere possibility that a claimant will be persecuted on a Convention ground and this risk need not be a personalized risk, as is

otherwise required for subsection 97(1) claims (*Fi v Canada (Minister of Citizenship and Immigration) (FC)*, 2006 FC 1125 at paras 14-16).

[43] Mr. Toscano points to the National Documentation Package [NDP] for Guatemala in support of his argument that the human rights of Indigenous Peoples in Guatemala are at risk and that, therefore, he is at risk of persecution.

(2) The RPD erred in focusing on the conduct of his family

[44] Mr. Toscano submits that the RPD erred in finding that his family's behaviour was inconsistent with a family at risk from a violent gang, given the evidence that the family was not intact and did not communicate regularly. He submits that it is unreasonable to blame him for the failure of his father to sponsor the family to come to Canada (citing *Vieira Sebastiao Melo v Canada (Citizenship and Immigration)*, 2022 FC 544 at para 46).

[45] Mr. Toscano argues that the RPD's finding that Mr. Toscano lacked subjective fear of persecution is based on an unreasonable assumption due to his father's inaction to sponsor the family, which was out of Mr. Toscano's control given that he was a minor at the time. He submits that the RPD's assumption that his mother could have influenced his father's inaction is also unreasonable. Mr. Toscano submits that the actions of his mother and father were not issues for the RPD to assess; they were not claimants and he had no control over their actions. He also notes that there was no evidence from his mother at all.

(3) The credibility findings are unreasonable

[46] Mr. Toscano notes that the RPD's credibility findings are related only to subsection 97(1) given that section 96 was not assessed. He submits that, as found in *Lakatos v Canada (Citizenship and Immigration)*, 2018 FC 20, section 97 claims are objective and credibility issues are not necessarily dispositive of the claims (at paras 18-19).

[47] Mr. Toscano also disputes the reasonableness of the RPD's credibility findings. Mr. Toscano submits that the RPD's credibility findings were based, in large part, on the RPD's unreasonable conclusions about how his family should have acted.

[48] Mr. Toscano also notes that he provided evidence about how trauma affects memory. He adds that his account was otherwise corroborated by his father's own refugee claim. Mr. Toscano submits that a refugee claim is not a memory test, and that his father's successful refugee claim should have been considered as corroborative evidence of his claim (citing *Sheikh v Canada (Minister of Citizenship and Immigration)* (2000), 2000 CanLII 15200 (FC) at para 28; *Sivaraja v Canada (Citizenship and Immigration)*, 2015 FC 732; *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at para 33).

[49] Mr. Toscano further submits that the RPD ignored his photographic evidence of his injuries and the academic articles he submitted.

[50] Mr. Toscano disputes the RPD's finding that he faced only a generalized risk. He submits that being personally targeted by a gang is sufficient to find that risk is not generalized (citing

Guerrero v Canada (Citizenship and Immigration), 2011 FC 1210 at paras 28, 34; *Correa v Canada (Citizenship and Immigration)*, 2014 FC 252). He submits that the risk he faced in Guatemala — as described in his BOC — was highly personalized and went beyond mere extortion (*Portillo v Canada (Citizenship and Immigration)*, 2012 FC 678 at paras 40-41; *Galeas v Canada (Citizenship and Immigration)*, 2015 FC 667 at para 48).

B. *The Respondent's Submissions*

[51] The Respondent submits that: the RPD reasonably addressed Mr. Toscano's lack of nexus to a Convention ground; and, the RPD reasonably found that Mr. Toscano's story was not credible and that he was not a Convention refugee or person in need of protection under section 96 or subsection 97(1) of the Act. The Respondent submits that the credibility findings were dispositive of both claims.

[52] The Respondent submits that credibility findings are owed significant deference; moreover, the RPD's credibility findings are well supported by the inconsistencies and omissions in Mr. Toscano's evidence.

[53] The Respondent submits that the RPD's conclusion underpinning the entire decision is that there was insufficient credible evidence that MS-13 was targeting Mr. Toscano, or will target him upon his return to Guatemala; in other words, he did not face a forward-looking risk of persecution.

- (1) The RPD reasonably addressed Mr. Toscano's lack of nexus to a Convention ground

[54] The Respondent submits that the RPD reasonably found that Mr. Toscano's fear of MS-13 was not related to persecution but to criminality and therefore found that he had no nexus to a Convention ground. The Respondent submits that vendettas and threats from criminals are not a basis of persecution under section 96 (citing *Prato v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1088).

[55] The Respondent notes that the RPD addressed Mr. Toscano's claim that he was targeted due to his father's activism. The RPD also addressed his status as an Indigenous person and concluded that his Indigenous identity did not put him at risk of persecution, only that he may face impediments in seeking assistance from authorities, as Mr. Toscano testified.

- (2) The RPD reasonably found that Mr. Toscano was not a person in need of protection under subsection 97(1)

[56] The Respondent argues that the RPD reasonably found that, due to credibility concerns, Mr. Toscano was not at risk beyond the risks faced by the general population.

[57] The Respondent submits that Mr. Toscano cannot rely on the fact that many of the events he recounts occurred over 12 years ago as an explanation for misremembering important details. The Respondent submits that the RPD reasonably determined that Mr. Toscano's inconsistent statements were indicia of a lack of credibility and not mere memory lapses.

[58] The Respondent further submits that Mr. Toscano must establish his own claim without reliance on his father's refugee claim. The Respondent notes that the RPD did not dispute that Mr. Sic's refugee claim had been established, but rather, took issue with Mr. Toscano's credibility regarding the events that took place *after* his father's departure.

[59] The Respondent submits that there is no evidence that MS-13 continued to look for Mr. Toscano after he fled to the US, and as a result, he could not establish a forward-looking risk.

VI. The Decision is not reasonable

A. *The RPD failed to assess the section 96 claim*

[60] The RPD's finding that "there is no nexus between this claim and a Convention ground" lacks justification and intelligibility.

[61] While the Respondent has offered possible reasons for such a conclusion, these are not the reasons of the RPD; the RPD does not provide any analysis or reasons.

[62] Contrary to the Respondent's submission that the credibility findings applied to both claims, the RPD clearly stated that it assessed Mr. Toscano's claim only under subsection 97(1).

[63] Mr. Toscano made his claim under both section 96 and 97. With respect to section 96, he pointed to his membership in a family that had been targeted by MS-13. His father's account of threats, murder, and extortion due to his activism in attempting to prevent young persons from

joining gangs was accepted in granting refugee protection to Mr. Sic. Mr. Toscano also noted that he was an Indigenous person and claimed that police protection was not forthcoming due to his status. Both Convention grounds were raised and both should have been assessed, including their intersection.

[64] Although the RPD's reasons are not held to a standard of perfection, there must be discernable reasons to provide a rationale for the RPD's finding that there is no nexus to a Convention ground. The Court cannot determine if a decision is reasonable in the absence of any discernable reasons (*Vavilov*, at para 84). This is not a situation where the Court can "connect the dots" or fill in the gaps in the decision, as there are no dots to connect.

[65] As the Court recently noted in *Saeed v Canada (Citizenship and Immigration)*, 2024 FC 129 at para 47:

[47] As noted in *Vavilov* at para 95, while reasons are to be read holistically and in context and the standard is not perfection, there are limits to how a reviewing court can discern reasons and "connect the dots on the page" where there are no reasons stated.

The same comment applies in the present case.

[66] Mr. Toscano correctly noted that family can constitute membership in a social group and is a valid nexus if a claimant can demonstrate a clear nexus between the persecution of a family member and the alleged persecution of the claimant (*Macias* at para 10; *Tomov* at para 11; *Santos* at para 30-32; and more recently in *Anonyai v Canada (Citizenship and Immigration)*, 2021 FC 480 at para 27).

[67] Mr. Toscano's submissions and evidence linked the violence he experienced from MS-13 to the persecution of his father, Mr. Sic, who was granted refugee protection. However, the RPD did not address whether Mr. Toscano had a nexus to a Convention refugee ground by virtue of being his father's son.

[68] As the Respondent notes, targeting by a criminal gang is often not regarded as providing a nexus to a Convention ground. However, the RPD did not provide this rationale, nor did the RPD address the impact of Mr. Toscano's identity as an Indigenous person as an impediment in seeking police assistance.

[69] The failure of the RPD to analyse Mr. Toscano's section 96 claim and to provide any reasons is a serious shortcoming that is central to the decision and requires that the Court set aside the decision as unreasonable.

B. *Other observations*

[70] The Court's finding that the RPD erred in not assessing the section 96 claim is sufficient to grant the application for judicial review. However, some additional observations are warranted.

[71] The RPD's preoccupation with the conduct of Mr. Sic appears to have coloured the RPD's analysis.

[72] The RPD's assessment of Mr. Toscano's family circumstances, the conduct of his parents and the inferences and assumptions made by the RPD lack logic and consistency. On one hand,

the RPD finds that Mr. Sic did not take an interest in whether his family continued to be threatened by MS-13. On the other hand, the RPD assumes that Mr. Sic would or could have sponsored his family to come to Canada. In addition, the RPD attributes Mr. Sic's wife's lack of initiative to leave Guatemala as indicative of a lack of risk, but without any evidence from her. The RPD also refers to the conduct of the "family" as supporting an inference that they were not at risk without acknowledging that Mr. Toscano was a part of this family and, as he claimed, he was targeted as the eldest son of Mr. Sic, experienced threats and violence, and sought to leave.

[73] The RPD inconsistently acknowledged that the family did not communicate, noting the lack of access to a telephone and Mr. Sic's infrequent contact, yet finds that Mr. Toscano should have somehow told his father of the extortion and violence and encouraged his father to sponsor the family to Canada. However, the RPD also noted that Mr. Sic stated that his wife told him that "it seemed like people were looking for [Mr. Toscano]".

[74] Although the RPD does not have any role in determining sponsorship applications, the RPD assumed that the family in Guatemala could have done something to secure a sponsorship, despite that it was up to Mr. Sic to do so, and despite noting that he was an uncommunicative father.

[75] The RPD curiously stated, "the family's decision not to take advantage of the opportunity to come to Canada through Mr. Toscano's father's sponsorship further demonstrates the absence of fear that their lives were at risk from MS-13, undermining the credibility of Mr. Toscano's claim that MS-13 continued targeting his family through him" (emphasis added). However, that opportunity never existed. Mr Sic did nothing to assist his family. There is no evidence that

Mr. Sic even considered sponsoring his family. His response that he would have needed his wife's signature does not address the fact that he took no initiative at all.

[76] The RPD's adverse credibility findings stem in large part from Mr. Toscano's father's failure to take some initiative to help his family and sponsor them to come to Canada.

Mr. Toscano should not be regarded as responsible for his father's inaction. It is not logical for the RPD to attribute the conduct of a non-communicative father – who fled due to the risks he faced, leaving his wife and five children behind – to Mr. Toscano.

[77] In conclusion, the RPD's decision is not reasonable. There is no analysis of the section 96 claim at all. The RPD must redetermine Mr. Toscano's claim based on both section 96 and subsection 97(1) of the Act and on the basis of Mr. Toscano's allegations and evidence, rather than on assumptions, including those arising from the inaction of his father.

JUDGMENT in file IMM-2752-22

THIS COURT'S JUDGMENT is that:

1. The Application for Judicial Review is granted.
2. The decision of the RPD is set aside and the matter is remitted for redetermination by a different decision maker.
3. There is no question for certification.

"Catherine M. Kane"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2752-22

STYLE OF CAUSE: JOSE MIGUEL TOSCANO ROSALES v THE
MINISTER OF CITIZENSHIP AND, IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 20, 2024

JUDGMENT AND REASONS: KANE J.

DATED: APRIL 9, 2024

APPEARANCES:

Adela Crossley FOR THE APPLICANT

Sarah Merredew FOR THE RESPONDENT

SOLICITORS OF RECORD:

CROSSLEY LAW FOR THE APPLICANT
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario