

Federal Court



Cour fédérale

**Date: 20220407**

**Docket: IMM-4584-21**

**Citation: 2022 FC 498**

**St. John's, Newfoundland and Labrador, April 7, 2022**

**PRESENT: The Honourable Madam Justice Heneghan**

**BETWEEN:**

**SAMUEL EDENILSON RIVAS MEJIA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS AND JUDGMENT**

[1] Mr. Samuel Edenilson Rivas Mejia (the “Applicant”) seeks judicial review of a decision of the Immigration and Refugee Board, Refugee Appeal Division (the “RAD”), dismissing his appeal from a decision of the Immigration and Refugee Board, Refugee Protection Division (the “RPD”). In its decision, the RPD found that the Applicant was not credible.

[2] The RAD also found that the Applicant was not credible.

[3] The Applicant is a citizen of El Salvador. He made a claim for protection on the basis of his fear of a gang, the Mara Salvatrucha, because he had witnessed the murder of his cousin by members of that gang.

[4] The Applicant advances several arguments about the unreasonableness of the decision.

[5] The Minister of Citizenship and Immigration (the “Respondent”) submits that the decision is reasonable and that judicial intervention is not required.

[6] The decision of the RAD is reviewable on the standard of reasonableness, pursuant to the decision of the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov* (2019), 441 D.L.R. (4th) 1 (S.C.C.).

[7] In considering reasonableness, the Court is to ask if the decision under review “bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on that decision”; see *Vavilov, supra* at paragraph 99.

[8] Findings of credibility are generally entitled to deference by a reviewing Court; see the decision in *Zheng v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 673 at paragraph 16.

[9] Paragraph 13 of the decision provides as follows:

Furthermore, when asked by counsel about this same issue on not disclosing his personal fear at POE, the claimant first testified that he did tell the officer about this. However, when asked second time by the counsel, the claimant answered that he did not tell the officer. The panel finds this to be an evolving testimony and draws negative credibility inference based on these inconsistencies between the POE and the BOC and then within the oral testimony. The panel considered the claimant's lack of education and the fact that he is illiterate, however, to discount the significant discrepancies and inconsistencies, even within his oral testimony, for the fact that he is not sophisticated would be unreasonable. Lack of education and literacy does not automatically equal inability to testify credibly nor do they mean lack of intellectual capacity as a whole. As the fact that he faces risk from the gang because of his cousin's death is the entire heart of the claim, the panel finds these inconsistencies to be material and that it impacts the overall credibility of the claim.

[10] The reference to the Applicant's "intellectual capacity" was raised by the Court in the course of the hearing of the application for judicial review and the parties were given the opportunity to address whether a designated representative should have been appointed for the Applicant.

[11] The parties filed submissions on this question.

[12] Upon consideration of those submissions, I am not satisfied that the negative finding about the Applicant's credibility was untainted by the observation made by the RAD about "intellectual capacity".

[13] In these circumstances, where the RAD may have assessed credibility by reference to a matter that was not clearly raised, the credibility finding is unreasonable. Credibility was a determinative issue; it follows that the decision is unreasonable.

[14] Accordingly, the application for judicial review will be allowed, the decision of the RAD will be set aside and the matter remitted to a differently constituted panel. There is no question for certification proposed.

**JUDGMENT in IMM-4584-21**

**THIS COURT'S JUDGMENT is that** the application for judicial review is allowed, the decision of the Refugee Appeal Division is set aside and the matter is remitted to a differently constituted panel of the Refugee Appeal Division for redetermination. There is no question for certification proposed.

“E. Heneghan”

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Judge

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

**DOCKET:** IMM-4584-21

**STYLE OF CAUSE:** SAMUEL EDENILSON RIVAS MEJIA v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY WAY OF VIDEOCONFERENCE  
BETWEEN TORONTO, ONTARIO AND ST. JOHN'S,  
NEWFOUNDLAND AND LABRADOR

**DATE OF HEARING:** MARCH 23, 2022

**REASONS AND JUDGMENT:** HENEGHAN J.

**DATED:** APRIL 7, 2022

**APPEARANCES:**

Karim Escalona FOR THE APPLICANT

Neeta Logsetty FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Lewis & Associates FOR THE APPLICANT  
Barristers & Solicitors  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario