

Federal Court



Cour fédérale

**Date: 20221026**

**Docket: IMM-5960-21**

**Citation: 2022 FC 1464**

**Ottawa, Ontario, October 26, 2022**

**PRESENT: The Honourable Madam Justice McVeigh**

**BETWEEN:**

**WALTER GEOVANY COREA PINEDA**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] The Applicant, a 42 year old Honduran, Walter Geovany Corea Pineda, seeks judicial review of a decision by the Refugee Protection Division (“RPD”), dismissing his claim for refugee protection.

II. Background

[2] The Applicant says that members of the Mara gang, MS-13, began approaching him when he was around 12 or 13. The Applicant always refused to join the gang, as he did not want to get involved with MS-13's criminal activity. He says the incidents continued to escalate, where the MS-13 approached him on several occasions and hurt him.

[3] Toward the end of 2002 and the beginning of 2003, the Applicant's maternal aunt offered to help the Applicant if he could make it to the United States of America ("USA"). The Applicant walked from Honduras to USA Texas border.

[4] The Applicant sought asylum in the USA but his request and subsequent appeal were denied. He remained in the USA as an undocumented individual. The Applicant did not produce any of his USA immigration decisions or other paper work for his Canadian refugee application.

[5] In September of 2018, the Applicant's younger half-sister informed him that if he came to Canada, she could help support him while he filed a refugee claim. On September 19, 2018, the Applicant crossed from the USA into Canada and commenced the refugee claim process.

[6] The RPD hearing took place on August 4, 2021. The RPD held that the determinative issues in the Applicant's case were credibility and forward-looking risk. The RPD found the Applicant:

- a. lacked credibility and was unable to adduce sufficiently trustworthy evidence to substantiate his claim;
- b. lacked a sufficient nexus to one of the s 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IPRA] Convention grounds, and he was not a person in need of protection; and
- c. did not face a personalized ongoing or forward-looking risk or persecution, per s 97 of the IRPA.

### III. Issue

[7] The issue is whether the RPD's decision was reasonable.

### IV. Standard of Review

[8] The standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). The Court will intervene only where "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Vavilov* at para 100).

V. Analysis

[9] There are two determinative issues in this judicial review. First, the Applicant argued the RPD failed to respond materially to the evidence. Second, the Applicant alleged the RPD erred by finding that the Applicant was not a member of a particular social group under s 96 of IRPA.

[10] Before turning to these determinative issues, I note that the Applicant disputed the RPD's credibility findings. Specifically, the Applicant argues the RPD's adverse credibility findings in relation to whether the Applicant knew members of MS-13 were approaching his mother is unreasonable.

[11] On judicial review, the Court should not interfere or re-weigh evidence when the RPD's conclusions are reasonably based on the record: *Ayala Sosa v Canada (MCI)*, 2014 FC 428 at paragraph 54 [*Ayala Sosa*]. The RPD is also entitled to significant deference in its fact-finding powers and assessments of evidence (*Vavilov* at paras 125-126; *Bayram v Canada (MCI)*, 2021 FC 235 at para 21).

[12] The RPD's credibility findings are reasonable. There are no exceptional circumstances that justify interfering with the RPD's view of the evidence, nor its credibility determinations.

A. *Objective Evidence*

[13] The Applicant submitted that the RPD disregarded key objective documentary evidence in the National Documentation Package (“NDP”). The Applicant points to the evidence in the NDP that dealt with:

- a. cases of people who left Honduras, due to gang or organized-crime related violence, who were killed shortly after returning to San Pedro Sula;
- b. the MS-13 use of violence against anyone it believes is cooperating with law enforcement;
- c. evidence that MS-13 is not above cruel and excessive punishments; and
- d. the effect of passage of time on the gang’s pursuit of people.

[14] The Applicant alleges the RPD did not properly assess the evidence by highlighting the NDP, the five articles he submitted that dealt with MS-13 related crime, the objective evidence of the police report, and the medical certification from the Medical College of Honduras. He alleges the failure to deal with these documents renders the decision unreasonable.

[15] I disagree. Paragraph 22 of the RPD decision shows it clearly considered the documentary evidence and found that the Applicant did not face a different risk than the rest of the population. Paragraph 23 also notes that his mother led the reporting of the gang and that she personally made multiple reports. In light of his mother’s reporting, the RPD found the Applicant was unable to credibly establish that the gang had approached his mother in San Pedro Sula,

where she still lived since he departed. As such, the RPD found that he would not face a forward-looking risk. It is clear that the RPD considered the evidence.

[16] The Applicant argued that the credibility findings of the decision-maker were microscopic and that approach was an error. The Applicant raised concerns in relation to his mother and sister's letters receiving little weight. The Applicant submitted that making these microscopic findings directly influenced the RPD's credibility findings in relation to the Applicant, thus making the decision reviewable.

[17] What the Applicant's submissions really ask is for the Court to take a different view of the evidence and to re-weigh it. That is not the role of this Court. The RPD reviewed the letters and came to a reasonable conclusion.

B. *The RPD's Section 96 Analysis*

[18] The Applicant argues that the RPD erred when it found the Applicant was not a member of a particular social group. The RPD found that "[t]hreats from criminal acts do not generally form a nexus to the Convention grounds. A person's exposure of corruption or opposition to crime will not generally place this person in a particular social group."

[19] In support of this argument, the Applicant relies on *Banegas v Canada (Citizenship and Immigration)*, 2015 FC 45 [*Banegas*]. *Banegas* dealt with a nineteen-year old Honduran man who the Mara 18 targeted for recruitment. Since the applicant was twelve, he had repeatedly resisted the Mara 18's violent attempts to recruit him. There, the RPD refused to examine the

applicant's claim under section 96 of the IRPA, finding that the applicant was a victim of widespread criminality, "rather than a targeted member of a "particular social group"" (*Banegas* at para 8). The Court relied on United Nations High Commissioner for Refugee guidelines to find the applicant had innate or unchangeable characteristics that should have been considered by the RPD when assessing "membership in a particular social group" (*Banegas* at paras 25-26).

[20] The Respondent distinguishes *Banegas* from the facts here. Namely, the Respondent submits that Justice Shore accepted the applicant's assertion that his characteristics of gender, youth, social status and lack of parental guidance were immutable characteristics, which the RPD did not properly address in that case. Whereas here, the Applicant is not a young adolescent as he is almost 42. Importantly, in *Banegas*, the RPD found the applicant credible, unlike here, where the RPD found the Applicant not credible.

[21] I agree with the Respondent that the facts here are substantively different and the Court's reasoning in *Banegas* does not apply to the Applicant.

[22] The Applicant's argument on social group must also fail. This Court's jurisprudence has explicitly rejected the arguments raised by the Applicant: see *Canada (Attorney General) v Ward*, [1993] 2 SCR 689, 1993 CanLII 105 (SCC) [*Ward* cited to SCR]. In *Ward*, the Supreme Court of Canada Court reasoned that due to the surrogate nature of the international refugee system, viewing "an association of people as a "particular social group" merely by virtue of their common victimization as the objects of persecution," (at 729) would not be sufficient to meet the definitions of the Convention. This was because, "[a]lthough the delegates inserted the social

group category in order to cover any possible lacuna left by the other four groups, this does not necessarily lead to the conclusion that any association bound by some common thread is included” (*Ward* at 732). The Supreme Court of Canada cautioned that “Canada should not overstep its role in the international sphere by having its responsibility engaged whenever any group is targeted” (*Ward* at 738).

[23] In *Ayala Sosa* at paragraph 28, the Court similarly held the RPD’s findings that the applicants lacked a nexus to a s 96 ground reasonable. The Court found, “once all the qualifiers that are not unchangeable (such as youth, poverty and education) are taken away, they are in essence alleging that being targeted makes them part of a particular social group” (at para 29). The Applicant’s argument here fails for the same reasons.

[24] The decision touched on all the important aspects of the s 96 inquiry, even though there was not an extensive discussion of s 96. The decision must be considered as a whole, and when considered as such, it demonstrates the RPD did touch on the age issue and found that the Applicant, then aged 41, did not fit that young and impressionable social group. This issue, coupled with the fact that the incidents were approximately 20 years ago, makes the RPD’s prospective risk analysis reasonable.

[25] I will dismiss the application. No question was presented for certification and none arose.



**JUDGMENT IN IMM-5960-21**

**THIS COURT'S JUDGMENT is that:**

1. The matter is dismissed;
2. No question is certified.

"Glennys L. McVeigh"

---

Judge

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

**DOCKET:** IMM-5960-21

**STYLE OF CAUSE:** WALTER GEOVANY COREA PINEDA v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** SEPTEMBER 15, 2022

**JUDGMENT AND REASONS:** MCVEIGH J.

**DATED:** OCTOBER 26, 2022

**APPEARANCES:**

Sheau Lih Vong FOR THE APPLICANT

Melissa Mathieu FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Vong Law Professional Corporation FOR THE APPLICANT  
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario