

Federal Court



Cour fédérale

**Date: 20180126**

**Docket: IMM-2166-17**

**Citation: 2018 FC 83**

**Ottawa, Ontario, January 26, 2018**

**PRESENT: The Honourable Madam Justice Kane**

**BETWEEN:**

**EBER ISAI OAJACA SALAZAR**

**Applicant**

**And**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicant, Eber Isai Oajaca Salazar [the Applicant or Mr. Salazar], seeks judicial review of the decision of the Refugee Appeal Division [RAD] which dismissed his appeal of the decision of the Refugee Protection Division [RPD]. The RPD had found that Mr. Salazar was not a Convention refugee pursuant to section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c27 [the Act], nor a person in need of protection pursuant to section 97 of the Act.

[2] For the reasons that follow, the Application is dismissed. The RAD did not err in finding that Mr. Salazar had not established a well-founded fear of persecution based on a Convention ground pursuant to section 96. As the RAD emphasized, the determinative issue was nexus- or lack thereof- to a Convention ground. Mr. Salazar's fear of retaliation for refusing job offers from individuals he assumed belonged to gangs or cartels did not establish a nexus to a Convention ground. In addition, the RAD did not err in finding that the risk claimed by Mr. Salazar upon return to Guatemala, which the RAD characterized as a risk of being a victim of crime, would be a generalized risk of violence, and as a result, he did not fall within the protection of section 97.

I. The Background

[3] Mr. Salazar recounts that he entered the Guatemalan army in 2012 and was later accepted into the elite Special Forces Unit, known as the "Kaibil." He describes the Kaibil as known for their rigorous training and ruthless tactics. He completed his military service in October, 2014 and returned home to his village of El Juleque where he lived with his grandmother.

[4] Mr. Salazar also recounts that he began receiving offers of work, primarily to perform certain criminal activities. He alleges these offers were made because of his specialized skills and Kaibil training, which he submits made him a "commodity" and attractive to gangs and cartels. He described several such offers. He was approached by a "military man" who offered him work as a bodyguard. Another man, appearing to be a farmer, asked him to take care of cattle, which he assumed was an offer to perform criminal acts, because the man was armed. He

adds that the farmer was killed in July, 2016, which buttressed his assumption that the offer to take care of cattle was associated with crime.

[5] On another occasion, three bodyguards approached him and asked him to kill a person. He learned, after coming to Canada, that these bodyguards had been killed, which he suggests was due to their age and lack of on-going usefulness to cartels. Mr. Salazar also recounts that a man known as “El Gringo” taunted and insulted him for not putting his Kaibil skills to use in criminal activities.

[6] Mr. Salazar claims that he began moving throughout Guatemala because of his fear that he would be targeted for his refusals to take these job offers. He states that while he was away, a man came to his grandmother’s house asking about his whereabouts. Mr. Salazar came to Canada in March, 2015, as a temporary foreign worker and worked on farms. He made his claim for refugee protection in September, 2016.

[7] In his Basis of Claim [BOC] narrative, he states that he was afraid of “who else would pressure me to do something for them and I would refuse and be killed.” He also stated “My fear is that I refused the offers of these men, and if I returned to Guatemala they will continue to ask me to join them and force me to do what they ask. I do not know up to what point they will allow me to just walk away and not force me in joining them or doing work for them.”

[8] The RPD dismissed his claim, finding that that there was no nexus between Mr. Salazar's fears and a Convention ground, that there was insufficient credible evidence to support his allegations of persecution, and that he had failed to rebut the presumption of state protection in Guatemala.

## II. The RAD Decision under Review

[9] The RAD conducted the appeal guided by the principles in *Canada (Minister of Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 103, 396 DLR (4<sup>th</sup>) 527, noting that it would conduct its own review of the evidence and independently assess the issues.

[10] The RAD considered the grounds of appeal raised by Mr. Salazar. Mr. Salazar first argued that the RPD erred in assessing his profile as a trained Special Forces operative. He argued that the RPD ignored the deaths of the various men who approached him with job offers. He stated that he presumed that some of these men were killed because they were no longer valued as bodyguards due to their age. His argument appears to have been that their deaths were indicative of the risks he faced from gangs. The RAD found that these deaths were irrelevant to Mr. Salazar's claim, noting that there was no persuasive evidence to suggest that the alleged killings had anything to do with the victims' age or anything to do with Mr. Salazar.

[11] The RAD emphasized that the determinative issue in the claim was nexus to a Convention ground. The RAD found that Mr. Salazar had not demonstrated that he faced any persecution or that he would face any in the future. The RAD also found that there was

insufficient evidence to establish that the men who offered Mr. Salazar jobs were criminals, adding that it was not persecution to be offered jobs, even if offered by suspected criminals.

[12] The RAD concluded that the RPD did not err in finding that nothing had happened to Mr. Salazar following his refusals to take the jobs offered.

[13] In response to Mr. Salazar's other arguments, the RAD agreed that the RPD should have taken time to consider recent country condition documents submitted by Mr. Salazar, rather than immediately delivering its decision at the conclusion of the hearing. However, the RAD found that this error was not fatal. The RAD reiterated that the determinative issue was nexus to a Convention ground, which the country condition documents did not establish.

[14] The RAD further found that the RPD did not err in its treatment of Mr. Salazar's psychological report. The RAD found that the Report reiterated what Mr. Salazar had recounted in his claim. The RAD acknowledged his diagnosis of Post-Traumatic Stress Disorder [PTSD] but found that the Report did not provide any information that was relevant to the determinative issue of nexus or possible future harm.

[15] The RAD noted that Mr. Salazar had also asserted that the RPD breached procedural fairness in his notice of appeal, but had not followed up on the alleged errors in his submissions.

[16] The RAD summarized its section 96 analysis, again emphasizing that the key issue was nexus. The RAD stated,

Once again, the core of this claim and appeal is nexus. Before it becomes necessary to analyze issues such as subjective fear, objective fear, state protection or IFA, a nexus to section 96 must first be established and must be for one of the five grounds for refugee protection given in the Convention. As previously mentioned both by the panel and by myself, there is no nexus in this case. The Appellant was never persecuted for any reason. No one threatened him and when he refused the job offers, nothing happened to him or his family or friends as a result of his refusal to accept the job offers.

[17] The RAD acknowledged that Mr. Salazar might fear that he would be harmed in the future, and that there may be an objective basis for that fear, but found that being a victim of crime or a vendetta is not a ground for protection under the Convention.

[18] With respect to whether Mr. Salazar was a person in need of protection under section 97, the RAD found that an applicant “must fear something that a large proportion of the population does not fear.” The RAD noted that Guatemala was a very violent country and the fear of becoming a victim of crime is faced by almost the entire population. Therefore, the RAD found that Mr. Salazar faced a generalized risk, beyond the scope of section 97.

### III. The Issues

[19] Mr. Salazar’s written submissions raise several issues, including with respect to the RPD’s decision, which is not the decision under review. For example, he argued that both the RPD and RAD erred in their state protection findings, despite the fact that the RAD clearly found that the determinative issue with respect to section 96 was nexus, and did not conduct a state protection analysis. Moreover, any alleged error the RPD may have made with respect to state protection is not relevant, as only the decision of the RAD is under review in this Court.

[20] Mr. Salazar also argued that the RPD showed bias, or at least a closed mind, due to the RPD's use of passages from their decision with respect to his claim in a later decision involving another refugee claimant. This issue is addressed below, although it has no bearing on this judicial review, which is a judicial review of the RAD's decision. There are no allegations of bias against the RAD.

[21] I would characterize the issues in the judicial review as follows;

- Did the RAD misapprehend or ignore evidence of the Applicant's risk under section 96?
- Did the RAD err in finding that there was no nexus to a Convention ground; i.e., that the Applicant had not established a well-founded fear of persecution on a Convention ground?
- Did the RAD err in finding that the Applicant faced only a generalized risk under section 97?

#### IV. The Standard of Review

[22] Questions of mixed fact and law arising from the RAD are reviewed on the reasonableness standard (*Ching v Canada (Minister of Citizenship and Immigration)*, 2015 FC 725 at para 45, 255 ACWS (3d) 805).

[23] Where the reasonableness standard applies, the Court considers "the existence of justification, transparency and intelligibility within the decision-making process" and "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect

of the facts and law”: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190.

The Court will not re-weigh the evidence.

V. Did the RAD misapprehend or ignore evidence of the Applicant’s risk under section 96?

A. *The Applicant’s Submissions*

[24] Mr. Salazar’s submissions at the hearing of this Application focused on his profile as a trained Kaibil, whose skills make him an attractive “commodity” for gangs and cartels in Guatemala. He submits that the RAD erred in finding that there was insufficient evidence to link the deaths of men who had offered him jobs with his risk. He points to his own testimony that the three bodyguards, who were in their fifties, offered him money to kill someone, and that the bodyguards were later killed. He submits that the cartels were actively seeking younger bodyguards, as older guards were of less value.

[25] Mr. Salazar argues that the RAD erred by finding that he only speculated that the people who offered him jobs, including the farmers, were criminals simply because they were armed. He submits that job offers to kill people are clearly from criminals. Mr. Salazar counters that the RAD speculated that some of the job offers may have been legitimate.

[26] Mr. Salazar submits that the fact that nothing had happened to him for refusing these offers highlights his potential value as a trained killer for the gangs seeking his assistance. He adds that it is only a matter of time before his refusals will not be accepted.



[27] Mr. Salazar also argues that the RAD ignored his evidence and the country condition documents or failed to understand its significance. He submits that the documents, in particular, the Home Sweet Home Report authored by Amnesty International, set out the profiles of those at risk in Guatemala, including “those persecuted by a gang due to the gang’s perception that they do not comply with the gang’s authority.” He argues that he would be persecuted by a gang due to the gang’s perception that he would not comply with the gang’s authority – for refusing their job offers.

[28] Mr. Salazar also submits that the RAD failed to give the appropriate weight to his psychological report which demonstrates that he has severe PTSD. He submits that the psychologist’s report is objective evidence of his subjective fear of persecution because it is based on the tests conducted by the psychologist. He further submits that the psychologist’s report demonstrates a nexus to a Convention ground.

B. *The Respondent’s Submissions*

[29] The Respondent submits that the RAD reasonably concluded that Mr. Salazar’s subjective fear of persecution was not objectively supported by evidence.

[30] The Respondent submits that Mr. Salazar’s testimony was not ignored or misunderstood by the RAD. The RAD acknowledged that men who approached Mr. Salazar were later killed, but the RAD reasonably found that there was no link between these deaths and any risk faced by Mr. Salazar.

[31] The Respondent also submits that the RAD did not err in finding that Mr. Salazar's explanation that the bodyguards were killed because of their age was speculative.

[32] The Respondent notes that the issue is the reasonableness of the RAD's finding that the Applicant would not be at risk due to his training as a Kaibil. The Respondent points out that there is no evidence that Mr. Salazar suffered, or would suffer, persecution as a result of turning down the various job offers, regardless of their source. The Respondent acknowledges that the documentary evidence indicates that former members of the Kaibil are a source of workers for cartels, but submits that there is no evidence to demonstrate that former members of Kaibil are forced to work for cartels, or that the cartels persecute those who refuse. The Respondent adds that there have been no consequences for Mr. Salazar's refusals of the various job offers.

[33] The Respondent further submits that the RAD did not err in its treatment of the more recent country condition documents. The determinative issue was nexus and the documents did not establish that the risk claimed had a nexus to a Convention ground.

*C. The RAD did not ignore or misapprehend evidence of the risks claimed by the Applicant*

[34] Mr. Salazar's evidence is simply that he received multiple offers for work, some of which appeared legitimate but which he assumed were criminal in nature, and some of which were explicitly criminal. He refused all of the offers, with no consequence. After coming to Canada, he learned that the bodyguards were dead. He assumes that they died because they were older and of less value to the gangs. He also claims that he is an attractive commodity and of high value to the cartels because of his Kaibil training, and that he will therefore continue to be

pressured or compelled to join these cartels and kill on their behalf and/or eventually will be targeted if he continues to refuse these offers. Nothing in the decision suggests that the RAD misapprehended or ignored any of this. Rather, the RAD found that there was no evidence that he had faced this risk and that this risk had no nexus to a Convention ground.

[35] The RAD accepted that some persons who had offered Mr. Salazar jobs were killed. However, the RAD reasonably found that there was “no persuasive evidence...to suggest that these alleged killings had anything to do with the victim’s age or lack of value, or for that matter, anything to do with [the Applicant].” The only possible evidence of a link between these events and Mr. Salazar was Mr. Salazar’s own assumption that the deaths of the bodyguards somehow establish the risk he alleges. The RAD did not err in refusing to accept this assumption as evidence.

[36] Contrary to Mr. Salazar’s submissions, the RAD did not state that all of the job offers may have been legitimate. Rather, they noted that *some* of the job offers may have been legitimate. Mr. Salazar’s own evidence was that he was offered various jobs including as a bodyguard, and to protect cattle, and that he assumed or presumed that these were actually offers to perform criminal work. More importantly, the RAD reasonably found that there was no evidence that Mr. Salazar had been threatened or put at risk for refusing this work, regardless of who offered it.

[37] The RAD addressed the country condition documents briefly, but reasonably found that they were not determinative because no nexus to a Convention ground had been established and, again noted that Mr. Salazar was never threatened or harmed in anyway.

[38] While the documents relied on by Mr. Salazar confirm that many former Kaibils often have difficulty re-integrating into society, that the Government does not assist with their re-integration and as a result, some may resort to more lucrative work with the cartels, the documents do not indicate that former Kaibils who refuse work are persecuted by those cartels.

[39] The Home Sweet Home Report, relied on by Mr. Salazar, states in its Executive Summary:

*The UNHCR has established that asylum-seekers from the Northern Triangle countries fall within a certain risk profile: those persecuted by a gang due to the gang's perception that they do not comply with the gang's authority; persons working or involved in activities susceptible to extortion; victims and witnesses of crimes committed by gangs or members of the security forces...*

[40] Contrary to Mr. Salazar's submission, this document is not determinative of his claim. The Home Sweet Home Report sets out risk profiles or categories of asylum-seekers from Guatemala and other Central American countries that have sought refugee protection; this does not guarantee or even establish that anyone who may fit into one of the profiles will be granted refugee protection. Each refugee claimant must establish a well-founded fear of persecution on a Convention ground. Mr. Salazar submits that he falls within one of the profiles – those persecuted by a gang due to the perception that they will not comply with the gang's authority – because he refuses to work for a gang. However, there is no evidence that the offers of jobs were

made by gangs or cartels or that he faced or would face any consequences for his refusal. The RAD did not err by concluding that the country condition documents, including the Home Sweet Home Report, did not provide evidence to establish that Mr. Salazar faces persecution based on a Convention ground.

[41] The RAD also did not err in its treatment of Mr. Salazar's psychological report. The weight to attach to the Report is for the RAD to determine. The Report states- based on Mr. Salazar's own account and that of his counsel to the psychologist- that he was a trained Kaibil member and had received various job offers, including for criminal activities, and that he feared repercussions for his continued refusal. The psychologist's diagnosis of Mr. Salazar's PTSD was based on both the account of events provided by him and psychological testing.

[42] The Court has cautioned that psychological reports cannot usurp the role of the decision-maker. For example, in *Czesak v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1149 at paras 37-40, 235 ACWS (3d) 1054, Justice Annis noted concerns about psychological reports that advocate in the guise of an opinion and "propose to settle important issues to be decided by the tribunal."

[43] Similarly, in *Egbesola v Canada (Minister of Citizenship and Immigration)*, 2016 FC 204, [2016] FCJ No 204 (QL), Justice Zinn addressed arguments that the report of a psychologist had not been considered. Justice Zinn noted at para 12:

12. As submitted by the respondent, the "facts" on which the report is based are those told to Dr. Devins by the principal applicant, and thus are not facts until found to be so by the tribunal. What can be reasonably taken from the report is that the

principal applicant suffers from PTSD, and that she requires medical treatment for it.

[44] In the present case, the RAD accepted Mr. Salazar's subjective fear and his PTSD diagnosis. Contrary to Mr. Salazar's submission, the psychological report is not objective evidence of his claim nor does it establish nexus to a Convention ground.

[45] The RAD reasonably found that there was no objective evidence that Mr. Salazar was at risk of persecution from gangs due to his Kaibil training or his refusals. He offered no evidence of being threatened, or being put at risk in any way, for refusing the various offers. His assumptions about the deaths of the men are speculative, and do not address any risk he might face. In other words, there was no objective basis for Mr. Salazar's fear that he would be persecuted by virtue of his Kaibil membership.

VI. Did the RAD err in finding that the Applicant had not established a well- founded fear of persecution with a nexus to a Convention ground?

A. *The Applicant's Submissions*

[46] In Mr. Salazar's written submissions, he did not focus on the determinative issue, as found by the RAD, of nexus to a Convention ground. In his oral submissions in response to the Court's questions, he argued that his profile as a trained Kaibil, whose skills make him an attractive commodity for gangs and cartels, and his fear of being coerced to work for them is sufficient to establish a nexus to a Convention ground.

[47] Mr. Salazar also argued that country condition documents, in particular, the Home Sweet Home Report, set out the profiles of those at risk, which meet the definition of Convention refugee. As noted above, he argues that he fits into the profile because he would be persecuted by a gang due to the gang's perception that he would not comply with the gang's authority for refusing their job offers.

[48] At the hearing of this judicial review, in response to questions, Mr. Salazar also asserted that the Convention ground he relied on was his imputed political opinion.

B. *The Respondent's Submissions*

[49] The Respondent submits that the risks claimed by Mr. Salazar in his BOC- that he would be at risk due to his training as a Kaibil and for refusing offers of work from gangs and cartels- are not grounds for refugee protection. The Respondent submits that the RAD did not err in finding that Mr. Salazar's fear of persecution was not based on a Convention ground. His current assertion that his risk of persecution is based on his imputed political opinion is not consistent with his BOC and had not been previously asserted.

[50] The Respondent submits that the determinative issue was nexus, and that the country condition documents did not establish that the risk claimed by the Applicant had a nexus to a Convention ground. Moreover, with respect to the Home Sweet Home Report, the Respondent submits that the Applicant does not fit into any of the categories highlighted.

C. *The RAD did not err in finding that the Applicant's risk of persecution had no nexus to a Convention ground*

[51] The RAD correctly stated the law in its decision, noting, "Before it becomes necessary to analyze issues such as subjective fear, objective fear, state protection or IFA, a nexus to section 96 must first be established and must be for one of the five grounds for refugee protection given in the Convention." The RAD reasonably found that no nexus to a Convention ground had been established.

[52] The Act requires that a refugee claimant must establish a well-founded fear of persecution based on a Convention ground. Section 96 provides as follows,

**Convention refugee**

96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that

**Définition de réfugié**

96 A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.



country.

[53] In Mr. Salazar's BOC form, he did not claim protection based on a well-founded fear of persecution for any of the grounds set out in section 96. His BOC stated that he was afraid of "who else would pressure me to do something for them and I would refuse and be killed" and "My fear is that I refused the offers of these men, and if I returned to Guatemala they will continue to ask me to join them and force me to do what they ask. I do not know up to what point they will allow me to just walk away and not force me in joining them or doing work for them."

[54] The country condition documents which note several risk profiles of asylum-seekers from Central America do not assist Mr. Salazar in establishing a nexus to a Convention ground, even if he could establish that he fit within one of the profiles.

[55] At the hearing of the judicial review, in response to questions, Mr. Salazar asserted that the Convention ground he relied on was his imputed political opinion. This newly asserted ground appears to be based on his theory that if he refuses the jobs offered by suspected cartels or gangs, he will be presumed to be aligned with the government. This theory makes little sense. He did not seek protection based on persecution due to his imputed political opinion in his BOC, nor was this advanced at the RPD or RAD, nor is this consistent with his testimony. Moreover, there is no evidence to support a theory that those formerly in the military are assumed to be politically aligned with the government or that any such alignment would put him at risk.

[56] Mr. Salazar now submits that he does not fear becoming a victim of crime, but rather he fears being forced by gangs and cartels to kill and harm others due to his special Kaibil skills.

This submission is illogical and inconsistent with his BOC and his testimony. His fear is what will happen to him if he refuses the jobs offered. If in fact there is some retribution for his refusals, he would be a victim of crime. Being a victim of crime or facing a risk of being a victim of crime is not a ground for refugee protection pursuant to the Convention or section 96 of the Act. Although Mr. Salazar may regard this as a callous statement, it is the reality and the law.

VII. Did the RAD err in its section 97 analysis and in finding that the Applicant would not face a danger of torture, a risk to life, or a risk of cruel and unusual treatment or punishment if returned to Guatemala?

A. *The Applicant's Submissions*

[57] Mr. Salazar argues that the RAD conducted only a cursory analysis of risk pursuant to section 97, which demonstrates that the RAD does not understand the distinction between generalized and particularized risk. He argues that his risk is due to his special Kaibil training which puts him in the position of being exploited and forced or coerced to kill others. He submits that this is not a generalized risk, as only those with his particular skills face this risk and, as a result he is a person in need of protection pursuant to section 97.

[58] Mr. Salazar further submits that the Home Sweet Home Report and other country condition documents describe the difficult transition from military training to civilian life and the lack of legitimate job opportunities, which supports his particularized risk.

B. *The Respondent's Submissions*

[59] The Respondent submits that the RAD did not err in finding that Mr. Salazar was not at a particular risk based on his profile as an ex-Kaibil. His continued assertion that he faces a special risk by virtue of his Kaibil training is not supported by the evidence. A risk of violence and crime in a country where violence is widespread is not a personalized risk for the purposes of section 97 (citing *Prophète v Canada (Minister of Citizenship and Immigration)*, 2008 FC 331, 70 Imm LR (3d) 128 [*Prophète*]).

C. *The RAD did not err in its section 97 analysis*

[60] The RAD's analysis regarding section 97 focuses on the issue of whether a fear of becoming a victim of crime for refusing to accept a job offer is a particularized risk, as opposed to a risk faced generally by a country's entire population.

[61] The RAD did not err in failing to elaborate on whether Mr. Salazar faced a particularized risk as someone who would be forced or coerced to kill by virtue of his Kaibil training. The RAD had already found that there was no evidence that Kaibil members are forced to work as contract killers for cartels, or that they are persecuted for not doing so. Moreover, Mr. Salazar's claim for refugee protection was based on his fear of what would happen to him for refusing the job offers, and the logical extension of his fear is that he would eventually be harmed by gangs or cartels, which the RAD reasonably characterized as the fear of being a victim of crime.

[62] This Court has considered the application of section 97 in many cases and has clarified how the section 97 analysis, which differentiates between personalized or particularized risk and generalized risk, should be conducted. In *Arenas v Canada (Minister of Citizenship and Immigration)*, 2013 FC 344 at para 9, [2013] FCJ No 377 (QL), Justice Gleason referred to her previous decision in *Portillo v Canada (Minister of Citizenship and Immigration)*, 2012 FC 678, 409 FTR 290 [*Portillo*], which canvassed a long line of jurisprudence. Justice Gleason noted,

[9] As I held in *Portillo*, section 97 of the IRPA mandates the following inquiry. First, the RPD must correctly characterize the nature of the risk faced by the claimant. This requires the Board to consider whether there is an ongoing future risk, and if so, whether the risk is one of cruel or unusual treatment or punishment. Most importantly, the Board must determine what precisely the risk is. Once this is done, the RPD must next compare the risk faced by the claimant to that faced by a significant group in the country to determine whether the risks are of the same nature and degree.

[63] In *Portillo, supra* at para 41, Justice Gleason explained the steps in the section 97 analysis:

[41] The next required step in the analysis under section 97 of IRPA, after the risk has been appropriately characterized, is the comparison of the correctly-described risk faced by the claimant to that faced by a significant group in the country to determine whether the risks are of the same nature and degree. If the risk is not the same, then the claimant will be entitled to protection under section 97 of IRPA. Several of the recent decisions of this Court (in the first of the above-described line of cases) adopt this approach.

[64] In the present case, although the RAD's analysis is brief, the RAD conveys that it characterized the risk claimed by Mr. Salazar as a fear of being the victim of crime and then considered whether that risk was faced by a significant group in the country, and found that it was.

[65] Many cases from this Court have found that a risk of crime from cartels in Guatemala is experienced by the entire population, and is therefore generalized (*Menendez v Canada (Minister of Citizenship and Immigration)*, 2010 FC 221 at para 20, 14 Admin LR (5<sup>th</sup>) 151; *Ipina v Canada (Minister of Citizenship and Immigration)*, 2011 FC 733 at paras 17-19, 204 ACWS (3d) 131; *Alvarez Fuentes v Canada (Minister of Citizenship and Immigration)*, 2012 FC 218 at paras 23-25, [2012] FCJ No 253 (QL)). This is true even where a particular sub-group is more at-risk than the general population, for instance because of their wealth (*Prophète*), unless an individual can show that he is personally being targeted for a particular reason (for instance, see *Pineda v Canada (Minister of Citizenship and Immigration)*, 2007 FC 365, 65 Imm LR (3d) 275, where the applicant and his family had actually been threatened for his refusal to join a gang). In this case, there is no evidence of the Applicant facing any consequences for having refused the various offers. His fear is of a generalized risk of crime, albeit in a country with a high crime rate. Although his fear may be heightened due to his notoriety as an ex-Kaibil, the RAD's analysis and finding reflects the jurisprudence and is reasonable.

#### VIII. Observations on the Applicant's Allegations of Bias

[66] Mr. Salazar alleges that the RPD member used parts of the decision in his claim in a subsequent decision regarding a different refugee claimant from El Salvador. He notes that this came to his attention after the RAD hearing. Mr. Salazar submits that in both decisions, the RPD used older country condition documents and did not refer to the Home Sweet Home Report. He argues that the approach of using the same text in two decisions demonstrates a closed mind to the risks he faces and a reasonable apprehension of bias on the part of the RPD.

[67] The Respondent submits that Mr. Salazar and the other refugee claimant raised similar arguments and, as a result, the similarities in the decisions of the RPD are not surprising and demonstrate the RPD member's consistent application of the law to similar facts.

[68] As the Respondent notes, it is the decision of the RAD that is the subject of this judicial review. There are no allegations of any bias on the part of the RAD.

[69] Although the two RPD decisions submitted by Mr. Salazar do demonstrate that the RPD member used passages from Mr. Salazar's decision in a subsequent decision, this does not demonstrate any preconceived views or a closed mind regarding refugee claimants from Central America. Similar facts may result in similar decisions and the same relevant jurisprudence is likely to be cited in similar cases and should be consistently applied.

[70] The passages at issue are about the respective claimants' failure to establish a nexus to a Convention ground, followed by an analysis of the jurisprudence which has found that gang violence is a generalized risk in certain Central American countries.

[71] Where the same text appears in different decisions, the issue for the Court is whether the decision-maker turned its mind to the issues raised by the particular claimant and based its decision on the evidence before it. As noted by Justice Snider in *Gomez Cordova v Canada (Minister of Citizenship and Immigration)*, 2009 FC 309 at para 24, [2009] FCJ No 620 (QL): "Provided that the "boilerplate" is based on the documentary evidence and addresses the

particular evidence and position of a claimant, the Board's repetition of certain passages from other decisions is not, in and of itself, an error."

[72] In conclusion, the issue on judicial review of the RAD's decision is whether the decision is reasonable. The RAD assessed all the evidence, applied the law to the facts before it and did not err in finding that Mr. Salazar's fear or claimed risk was not based on a Convention ground and that the risk he may face upon return to Guatemala would be a generalized risk of violence. The decision is justified, transparent and intelligible and is well supported by the facts before the RAD and the law.

**JUDGMENT IN IMM-2166-17**

**THIS COURT'S JUDGMENT is that**

The Application for Judicial Review is dismissed.

There is no question for certification.

“Catherine M. Kane”

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Judge



**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-2166-17

**STYLE OF CAUSE:** EBER ISAI OAJACA SALAZAR v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** DECEMBER 14, 2017

**JUDGMENT AND REASONS:** KANE J.

**DATED:** JANUARY 26, 2018

**APPEARANCES:**

Mary Jane Campigotto FOR THE APPLICANT

Rachel Hepburn Craig FOR THE RESPONDENT

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