

Federal Court



Cour fédérale

**Date: 20130221**

**Docket: IMM-6681-12**

**Citation: 2013 FC 182**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Montréal, Quebec, February 21, 2013**

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

**BETWEEN:**

**OTTO RENÉ SOTOJ DIVAS**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The applicant challenges the determination made against him on June 15, 2012, by the Refugee Protection Division (SPR) of the of the Immigration and Refugee Board (IRB), specifying that the applicant is not a Convention refugee and is not a person in need of protection.

[2] The applicant is a citizen of Guatemala who stated at his hearing before the IRB that he fears the Maras group, which he did not mention in his Personal Information Form (PIF) or in his amended PIF.

[3] The applicant alleged that he abandoned his principal residence following a telephone call because of which he alleges that he was forced to register his principal residence in the name of a stranger.

[4] The applicant left Guatemala on June 25, 2010, to come to the United States after crossing Mexico from June 26 to July 9, 2010, without submitting an asylum claim, but he also came to Canada illegally on July 17, 2010, after crossing the border by a wooded path and he did not claim refugee status until he arrived at the Canadian border.

[5] A lack of credibility surrounds the facts of the case. As soon as he arrived at the point of entry in Canada, the applicant should have told his entire story in his PIF. In addition, the fact that he did not submit an asylum claim in the United States, according to the applicant's initial statements, undermines his case. Further, the fact that he did not make a refugee claim at a border post on arriving in Canada, but rather after he had crossed the border illegally adds to the inherent weaknesses of his application before this Court.

[6] The applicant's conduct undermined his own credibility. Further, his actions led to a story devoid of inherent logic and even implausible to the very core of his allegations.

[7] *Biachi v Canada (Minister of the Citizenship and Immigration)*, 2006 FC 589, reflects the applicant's situation well.

[8] ... In *El Balazi v. Canada (Minister of Citizenship and Immigration)* 2006 FC 38, [2006] F.C.J. No. 80, at paragraph 6, Mr. Justice Yvon Pinard states that even in some circumstances, the applicant's conduct may be enough to deny a refugee claim:

The respondent correctly says that the IRB may take into account a claimant's conduct when assessing his or her statements and actions, and that in certain circumstances a claimant's conduct may be sufficient, in itself, to dismiss a refugee claim (*Huerta v. Minister of Employment and Immigration* (March 17, 1993), A-448-91, *Ilie v. Minister of Citizenship and Immigration* (November 22, 1994), IMM-462-94 and *Riadinskaia v. Minister of Citizenship and Immigration* (January 12, 2001), IMM-4881-99).

[8] For all these reasons, the Court dismisses the application for judicial review.

**JUDGMENT**

**THE COURT ORDERS** that the applicant's application for judicial review be dismissed with no question of general importance to certify.

“Michel M.J. Shore”

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Judge

Certified true translation

Catherine Jones, Translator

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

**DOCKET:** IMM-6681-12

**STYLE OF CAUSE:** OTTO RENÉ SOTOJ DIVAS v  
THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** February 21, 2013

**REASONS FOR JUDGMENT BY:** SHORE J.

**DATED:** February 21, 2013

**APPEARANCES:**

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Anne-Renée Touchette FOR THE RESPONDENT

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