

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20150115**

**Docket: A-256-14**

**Citation: 2015 FCA 10**

**CORAM: DAWSON J.A.  
STRATAS J.A.  
BOIVIN J.A.**

**BETWEEN:**

**FRANCISCO IVAN GIL ARANGO**

**Appellant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

Heard at Toronto, Ontario, on January 12, 2015.  
Judgment delivered at Toronto, Ontario, on January 15, 2015.

**REASONS FOR JUDGMENT BY:**

**DAWSON J.A.**

**CONCURRED IN BY:**

**STRATAS J.A.  
BOIVIN J.A.**

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**REASONS FOR JUDGMENT**

**DAWSON J.A.**

[1] This is an appeal from a decision of the Federal Court rendered in an application for judicial review pursuant to the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27. The appeal is before us because the Federal Court certified the following question:

Once a PRRA officer has reached a final decision, and that decision has been communicated to the applicant, can the officer revisit that decision or does the doctrine of *functus officio* apply?

[2] The question arises in the following context.

[3] After being notified of his eligibility to make an application for a Pre-Removal Risk Assessment (PRRA) on January 15, 2013, the appellant filed an application on January 30, 2013. The submissions in support of the PRRA application were provided when due on February 14, 2013. In the fax cover sheet that accompanied the submissions, counsel for the appellant advised that an additional affidavit and supporting documents would be sent by courier at an unspecified time. Counsel asked that the decision not be rendered until the further documents were received.

[4] A Senior Immigration Officer rendered a negative decision in respect of the PRRA application on February 20, 2013. Thereafter:

- i) the appellant's further documents were received on February 21, 2013;
- ii) the Officer's decision was served on the appellant on February 22, 2013;
- iii) the Officer returned to work, noted the further documents, reopened her decision and rendered supplementary reasons confirming the negative PRRA decision on February 27, 2013;
- iv) an application for leave to commence an application for judicial review of the initial decision was served and filed by the appellant on February 27, 2013; and
- v) the Officer's supplementary reasons were served on the appellant February 28, 2013.

[5] Subsequently, leave was granted to the appellant to commence an application for judicial review.

[6] For reasons cited as 2014 FC 370, a judge of the Federal Court dismissed the appellant's application for judicial review of the Officer's decision and certified the question set out above.

[7] Despite the able submissions of Mr. Crane, I am of the view that the Judge correctly concluded that the Officer was not barred from considering the further documents by operation of the doctrine of *functus officio*. I reach this conclusion for the reasons given by the Judge.

[8] On this appeal, the appellant raises an additional, related issue: did the Officer breach the duty of fairness by rendering her decision without waiting to receive the further documents that the appellant said would be provided?

[9] I begin consideration of this issue from the following premises: procedural protections must be afforded in the context of the PRRA process and a PRRA officer has the discretion to defer her or his decision in order to wait for late filed or additional material.

[10] Notwithstanding, in the present case I conclude that the appellant failed to establish any breach of procedural fairness by the Officer. I reach this conclusion on the following basis.

[11] When the appellant was notified of his PRRA eligibility on January 15, 2013 he was also advised that his PRRA submissions were to be received by February 14, 2013 and that thereafter

a decision could be rendered. This is consistent with section 162 of the *Immigration and Refugee Protection Act Regulations*, SOR/2002-227.

[12] Nonetheless, the appellant did not file all of his material by February 14, 2013. Instead, he requested an unspecified extension of time in order to file the balance of the material, without giving any explanation as to why all of the material could not be filed within the specified period.

[13] It is also a relevant consideration that at the time of the Officer's decision the appellant was in detention – a factor that militated in favour of a timely decision on the PRRA application.

[14] In these circumstances the Officer did not breach the duty of fairness by rendering her decision on February 20, 2013.

[15] It follows that I would dismiss the appeal. I would answer the certified question as follows:

A PRRA officer may revisit or reconsider a final decision in appropriate circumstances because the doctrine of *functus officio* does not strictly apply in non-adjudicative administrative proceedings.

“Eleanor R. Dawson”

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J.A.

“I agree  
David Stratas J.A.”

“I agree  
Richard Boivin J.A.”

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-256-14

**STYLE OF CAUSE:** FRANCISCO IVAN GIL ARANGO  
v. THE MINISTER OF  
CITIZENSHIP AND  
IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JANUARY 12, 2015

**REASONS FOR JUDGMENT BY:** DAWSON J.A.

**CONCURRED IN BY:** STRATAS J.A.  
BOIVIN J.A.

**DATED:** JANUARY 15, 2015

**APPEARANCES:**

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