

Federal Court



Cour fédérale

Date: 20221026

**Dockets: IMM-7864-21
IMM-9816-21**

Citation: 2022 FC 1439

Ottawa, Ontario, October 26, 2022

PRESENT: The Honourable Mr. Justice Pamel

Docket: IMM-7864-21

BETWEEN:

RYAN SAINFLINA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

Docket: IMM-9816-21

AND BETWEEN:

RYAN SAINFLINA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Ryan Sainflina, and his brother Medji Ghandi Sainflina, are citizens of Haiti. On October 13, 2021, the Refugee Appeal Division [RAD] dismissed Ryan Sainflina's appeal of a negative Refugee Protection Division [RPD] decision for lack of perfection of his appeal [October 13 decision]; Ryan Sainflina had supposedly failed to file his appeal record within the statutory time limits. On November 19, 2021, a different panel of the RAD dismissed on the merits the Sainflina brothers' joint appeal of the same RPD decision, this time after having considered their appeal record [November 19 decision]; the RAD determined that the RPD was correct to conclude that the Sainflina brothers were not credible regarding their allegations of past harm or prospective risk at the hands of criminals acting on behalf of a police inspector in Haiti.

[2] In the first application for judicial review dated November 2, 2021, challenging the October 13 decision [IMM-7864-21], Ryan Sainflina asserts that the RAD breached the principles of natural justice and procedural fairness because it failed to realize that he had indeed filed his appeal record on September 2, 2021; he now seeks to have this Court quash the decision and refer the matter back for redetermination by a differently constituted panel of the RAD. The respondent, the Minister of Citizenship and Immigration [Minister], concedes that there has been a breach of procedural fairness and agrees to the October 13 decision being set aside, but argues that the matter need not be sent back for redetermination on account of the fact that the RAD corrected its administrative error with its November 19 decision.

[3] In the second application for judicial review dated December 31, 2021, which challenges the November 19 decision [IMM-9816-21], the Sainflina brothers ask the Court to quash the impugned decision as null and void without returning it to the RAD for redetermination as the RAD was *functus officio* in rendering its decision as a result of having already issued the October 13 decision. Both underlying applications for judicial review were joined for hearing. I should also mention that a partial discontinuance of the second application for judicial review was filed on behalf of Medji Ghandi Sainflina; consequently, the only interested applicant in both applications is Ryan Sainflina.

[4] For the reasons that follow, I allow in part the application for judicial review in IMM-7864-21 and set aside the October 13 decision; however, I dismiss the application for judicial review in IMM-9816-21.

II. Facts

[5] The Sainflina brothers initially filed individual basis of claim forms on September 12, 2019, in support of their claims for refugee protection, alleging that they fear criminals acting on behalf of a police inspector who has been seeking revenge against their father. On October 23, 2019, the RPD informed them that their refugee claims would be joined for hearing.

[6] On July 8, 2021, the RPD rejected the Sainflina brothers' claim for refugee protection. The RPD set out a number of problems that undermined the brothers' credibility with respect to their fear of harm, notably various material contradictions and inconsistencies in the evidence. On July 30, 2021, a notice of appeal of the RPD decision was filed, but seemingly only on behalf

of Ryan Sainflina; the RAD registry acknowledged it on August 3, 2021, and assigned it file number MC1-05708.

[7] On August 27, 2021, counsel for the Sainflina brothers informed the RAD that he noticed what he described as a “clerical error” in the acknowledgement of receipt of the notice of appeal in that it was only addressed to Ryan Sainflina, when it was intended to also apply to his brother – both claims having been joined. Before me, counsel for Ryan Sainflina asserted that he never had a mandate to appeal the RPD decision on behalf of Medji, which was in direct contradiction of his own letter to the RAD confirming that he did. Be that as it may, and regardless of the circumstances that followed, counsel for the Sainflina brothers proceeded to file an amended notice of appeal, this time naming both Ryan and Medji Ghandi Sainflina.

[8] In what the Minister describes as a clear administrative error, upon receipt of the amended notice of appeal, the RAD registry opened two new files – file numbers MC1-06951 and MC1-06952 – rather than simply using the existing file that had been opened when the first notice of appeal was received – file MC1-05708; regrettably, the RAD never deleted, closed or rendered inactive file MC1-05708 or in any way linked that file to the two new files opened for the brothers’ appeal. Once the two new files were opened, all future correspondence with the RAD, including the Sainflina brothers’ appeal record of September 2, 2021, was filed by the RAD in the two new files and not in original file MC1-05708.

[9] On October 13, 2021, noting that no appeal record had been submitted in file MC1-05708 and without any knowledge of the two new files that had been opened following the filing of the

amended notice of appeal, the first RAD panel, as a purely procedural matter, dismissed Mr. Ryan Sainflina's appeal for lack of perfection, and a notice of decision dated October 15, 2021, was sent to him. Rather than simply advising the RAD of what was clearly an error on its part and requesting a reopening of the appeal, Ryan Sainflina proceeded on November 2, 2021, to file his application for judicial review against the October 13 decision.

[10] Without any knowledge of what the first RAD panel had undertaken on October 13, 2021, with file MC1-05708, on November 19, 2021, a second RAD panel dismissed the Sainflina brothers' joint appeal on the merits in files MC1-06951 and MC1-06952, having considered their appeal record and the responding record from the Minister. As stated earlier, the second RAD panel found that the RPD was correct to determine that the appellants lacked credibility with respect to their allegations of past harm and prospective risk at the hands of criminals. On December 31, 2021, the Sainflina brothers filed an application for judicial review against the November 19 decision; the discontinuance on behalf of Medji Ghandi Sainflina was filed on January 24, 2022. Going forward, I will refer to Ryan Sainflina simply as Mr. Sainflina.

III. Issues and standard of review

[11] With respect to IMM-7864-21, the Minister concedes the breach of natural justice and the failure to extend procedural fairness when the RAD dismissed Mr. Sainflina's appeal for lack of perfection, when in fact he had filed his appeal record on September 2, 2021. The only issue before me is whether I, in setting aside the October 13 decision, should also order that the matter be redetermined by another panel of the RAD. As stated, Mr. Sainflina argues that it should be,

while the Minister argues that it need not be, given the subsequent decision of the RAD which corrected the oversight.

[12] With respect to IMM-9816-21, Mr. Sainflina raises no issues regarding the merits of the November 19 decision; his argument on judicial review is limited strictly to the issue of whether the second RAD panel was *functus officio* when rendering it; the Minister argues that it was not.

[13] The appropriate standard of review regarding issues of *functus officio* has been subject to debate in recent jurisprudence. In some cases, the Court concluded that the interpretation of the *functus officio* principle is a pure question of law reviewable on a standard of correctness (*El-Helou v Canada (Courts Administration Service)*, 2016 FCA 273 at para 63 [*El-Helou*]; *Canadian Association of Film Distributors and Exporters v Society for Reproduction Rights of Authors, Composers and Publishers in Canada (SODRAC) Inc*, 2014 FCA 235 at para 58). In others, the answer depended on whether the interpretation of the *functus officio* principle by the decision-maker turned on a question of law or was largely fact-based, which would attract, respectively, the correctness and reasonableness standards (*El-Helou* at para 64; *St-Amour v Canada (Attorney General)*, 2014 FC 103 at paras 20-23; *IMP Group Ltd Aerospace Division (Comox) v Public Service Alliance of Canada*, 2007 FC 517 at paras 25-28). However, as I set out below, the question here is not so much whether the second RAD panel was or was not *functus officio* when it rendered its decision, but whether the doctrine of *functus officio* even applies to the facts of this particular case. The onus was on Mr. Sainflina to first establish that the doctrine of *functus officio* applied, and I am not convinced that he succeeded in doing so.

IV. Analysis

[14] I should first put to rest any notion that Mr. Sainflina was the author of the dilemma in which he now finds himself. The Minister suggests that when Mr. Sainflina received the October 13 decision, the error of the decision was patently obvious, as he had filed his memorandum of argument in his appeal a month earlier. The reasonable thing would have been, argues the Minister, for Mr. Sainflina to have simply sent a letter to the RAD pointing out the error and asking the RAD to reopen the file. Rather, Mr. Sainflina filed an application for judicial review, the suggestion being, as I understand it, that Mr. Sainflina, noting the clear administrative error, was keeping his powder dry while waiting to see what the decision on the merits of his appeal would be and that he thus allowed the second RAD panel to proceed under false pretences; he was therefore, I take it, pleading his own turpitude. From my perspective, such a proposition is predicated upon Mr. Sainflina actually being aware of the distinct RAD files, MC1-06951 and MC1-06952, when he received the October 13 decision. His counsel asserts that he was not and that he always acted on the premise that the RAD had only one case file, that is, file MC1-05708. I have no reason to disbelieve him when he says that he was as surprised by the November 19 decision as anyone would be. As to the fact that he chose to file an application for judicial review of the October 13 decision rather than simply asking the RAD to reopen his file, the fact remains that nothing obliged Mr. Sainflina to seek the reopening of his RAD file, and in fact, from a tactical perspective, he may have felt that he was buying himself

more time by filing a “slam dunk” application for judicial review rather than seeking to reopen his file. That is fair game.

[15] That said, favouring the finality of proceedings, the doctrine of *functus officio* indicates, as a general rule, that once a tribunal has rendered a final decision (and thus performed its office), it has lost its jurisdiction and cannot reconsider the decision (*Canadian Broadcasting Corp v Manitoba*, 2021 SCC 33 at para 33). This principle is applicable to administrative tribunals even when the tribunal has changed its mind or made an error within its jurisdiction (*Narvaez v Canada (Citizenship and Immigration)*, 2009 FC 514 at para 25, citing *Chandler v Alberta Association of Architects*, [1989] 2 SCR 848 at p 861 [*Chandler*]).

[16] Justice Sopinka, at page 860 of *Chandler*, found that the “rule that a final decision of a court cannot be reopened ... was subject to two exceptions: (1) where there had been a slip in drawing it up; and (2) where there was an error in expressing the manifest intention of the court”. Nevertheless, he found that in cases where the whole proceeding is tainted by a denial of natural justice, the tribunal is bound to start afresh in order to cure the defect (*Chandler* at p 863). Justice Nadon reaffirmed this principle in *Zelzle v Canada (Minister of Citizenship and Immigration)*, [1996] 3 FC 20, finding the following:

The “breach of natural justice exception” to the principle of *functus officio* was established to allow an administrative tribunal to reopen proceedings where, if the hearing of an application has not been held according to the rules of natural justice, the administrative tribunal may treat its decision as a nullity and reconsider the matter.

[17] In the present case, I agree with the parties that the October 13 decision must be set aside for reasons of procedural fairness; clearly, Mr. Sainflina had perfected his appeal; however, his memorandum had been filed as part of the second case file. The dispute is, as stated, whether I order that the October 13 decision also be redetermined, and if so, what should be done with the November 19 decision.

[18] Having heard the parties, I am not convinced that the second RAD panel was *functus officio*. Mr. Sainflina concedes that the principle would not prevent the second RAD panel from rendering its decision had it become aware of the administrative error with the October 13 decision prior to rendering the November 19 decision, and simply decided to correct the failure in procedural fairness by reopening the file and rendering its decision on the merits in case file MC1-05708. I have not been convinced that the situation is any different here, where the second RAD panel was not aware of the administrative error and the October 13 decision when it rendered the November 19 decision. Either way, and even putting aside the issue of whether the *functus officio* principle applies to a decision that is strictly procedural in nature, the breach of procedural fairness was rectified with the review by the RAD of Mr. Sainflina's appeal on the merits.

[19] As I have found that the breach of procedural fairness in the October 13 decision was rectified by the November 19 decision, which considered Mr. Sainflina's appeal record in full, I see no reason to fully grant the relief sought by Mr. Sainflina in IMM-7864-21 and to remit the matter back to the RAD for redetermination. Moreover, since Mr. Sainflina, in IMM-9816-21,

does not take issue with the reasonableness of the November 19 decision save for the issue of *functus officio*, I see no reason to set that decision aside.

JUDGMENT IN IMM-7864-21 AND IMM-9816-21

THIS COURT’S JUDGMENT is that:

1. The style of cause is amended to remove Medji Ghandi Sainflina as an applicant.
2. The application for judicial review in Court file number IMM-7864-21 is allowed in part and the October 13, 2021 decision is set aside.
3. The application for judicial review in Court file number IMM-9816-21 is dismissed.
4. There is no question for certification.

“Peter G. Pamel”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-7864-21

STYLE OF CAUSE: RYAN SAINFLINA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

AND DOCKET: IMM-9816-21

STYLE OF CAUSE: RYAN SAINFLINA v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HEARD BY VIDEOCONFERENCE

DATE OF HEARING: SEPTEMBER 29, 2022

JUDGMENT AND REASONS: PAMEL J

DATED: OCTOBER 26, 2022

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