Date: 20080723

Docket: IMM-4769-07

Citation: 2008 FC 899

Toronto, Ontario, July 23, 2008

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

ANITA MARIA SALEWSKI

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT

[1] This is an application pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (Act) for judicial review of a decision of Officer Matsui (Officer) of the Department of Citizenship and Immigration Canada (CIC or the Department), dated November 7, 2007 (Decision) to recall and cancel the permanent resident card issued to Ms. Anita Maria Salewsksi (Applicant).

BACKGROUND

[2] The Applicant, a citizen of Germany, became a permanent resident of Canada in 1958. She left Canada in 1968 following the break-up of her marriage. There is no indication that the Applicant returned to Canada at any time from 1968 to 2007. The Applicant entered Canada in February 2007. It is not clear whether she entered Canada as a visitor or a permanent resident. However, on June 19, 2007 she sought to extend her visitor's status.

[3] On June 4, 2007, the Case Processing Centre in Sydney, Nova Scotia (CPC Sydney) received an application from the Applicant for a permanent resident card. The Applicant alleges that during the application process, she informed CIC as follows:

- she resided in Canada for ten years (from 1958 to 1968);
- she has three Canadian born children;
- she returned to Germany in June 1968 for personal reasons and remained there until February 5, 2007;
- she now intends to remain in Canada to be with her children, who are residents and citizens of Canada; and
- she requests that the card be issued on Humanitarian and Compassionate (H&C) grounds.

[4] On June 22, 2007, the Applicant's application was returned because her guarantor was not an authorized guarantor. Her application, with a proper guarantor, was returned to CPC Sydney on July 13, 2007. On August 16, 2007, the Applicant was issued a permanent resident card and, as a result, she terminated her residency in Germany and relocated to Canada.

[5] In September 2007, CIC discovered that no residency determination had been made with respect to the Applicant and that, according to CIC, the residency card had been issued in error. In a letter dated September 21, 2007, the Applicant was informed by Officer Currie of CPC Sydney that her residency card had been issued in error and that she should return the card to CIC officials. In response to this letter, the Applicant sent a letter to CIC dated September 27, 2007, in which she refused to return the card and requested clarification of CIC's reasons for recalling the card.

[6] By letter dated September 25, 2007, CIC requested information and material from the Applicant in support of a new application for a permanent resident card. In response, the Applicant sent a second copy of her letter dated September 27, 2007.

[7] Having failed to return her permanent resident card, the first letter from CIC dated September 21, 2007 was followed by a letter dated November 7, 2007 from Officer Matsui of the CIC Permanent Resident Card Unit in Vancouver. This second letter constitutes the Decision under review in the present application.

[8] To date, the Applicant has not returned the permanent resident card to CIC.

DECISION UNDER REVIEW

[9] In the letter dated November 7, 2007, Officer Matsui requested that the permanent resident card issued to the Applicant be returned on the basis that the card is the property of Her Majesty.

The Officer noted that Regulation 53(2) of the *Immigration and Refugee Protection Regulations*, S.O.R. 2002/227 (Regulations) provides that "[a] permanent resident card remains the property of Her Majesty in right of Canada at all times and must be returned to the Department at the Department's request." The letter also advised the Applicant that the 5-year permanent resident card would be cancelled and rendered null and void.

[10] In the letter, Officer Matsui also expressly stated that Regulation 60, which deals with revocation of a permanent resident card, does not apply in the Applicant's situation. He further requested that the Applicant provide the documents and information requested in the letter dated September 25, 2007 so that a residency determination could be made.

ISSUES

[11] The issues raised in this application are:

1. Was the Decision to recall, cancel and render null the Applicant's permanent resident card contrary to the principles of natural justice and procedural fairness?

2. Was the Decision to recall, cancel and render null the Applicant's permanent resident card within the jurisdiction of the Officer?

3. Was the Officer *functus officio*?

RELEVANT STATUTORY PROVISIONS

[12] Permanent residents must satisfy the following residency obligations set out in Section 28 of the Act:

28. (1) A permanent resident must comply with a residency obligation with respect to every five-year period.

28. (1) L’obligation de résidence est applicable à chaque période quinquennale.

(2) The following provisions govern the residency obligation under subsection (1):

(2) Les dispositions suivantes régissent l’obligation de résidence :

(*a*) a permanent resident complies with the residency obligation with respect to a five-year period if, on each of a total of at least 730 days in that five-year period, they are

a) le résident permanent se conforme à l’obligation dès lors que, pour au moins 730 jours pendant une période quinquennale, selon le cas :

(i) physically present in Canada,

(i) il est effectivement présent au Canada,

(ii) outside Canada accompanying a Canadian citizen who is their spouse or common-law partner or, in the case of a child, their parent,

(ii) il accompagne, hors du Canada, un citoyen canadien qui est son époux ou conjoint de fait ou, dans le cas d’un enfant, l’un de ses parents,

(iii) outside Canada employed on a full-time basis by a Canadian business or in the federal public administration or the public service of a province,

(iii) il travaille, hors du Canada, à temps plein pour une entreprise canadienne ou pour l’administration publique fédérale ou provinciale,

(iv) outside Canada accompanying a permanent resident who is their spouse or common-law partner or, in the case of a child, their parent and who is employed on a full-time basis by a Canadian business or in the federal public administration or the public service of a province, or

(iv) il accompagne, hors du Canada, un résident permanent qui est son époux ou conjoint de fait ou, dans le cas d’un enfant, l’un de ses parents, et qui travaille à temps plein pour une entreprise canadienne ou pour l’administration publique fédérale ou provinciale,

(v) referred to in regulations providing for other means of compliance;	(v) il se conforme au mode d'exécution prévu par règlement;
(*b*) it is sufficient for a permanent resident to demonstrate at examination (i) if they have been a permanent resident for less than five years, that they will be able to meet the residency obligation in respect of the five-year period immediately after they became a permanent resident; (ii) if they have been a permanent resident for five years or more, that they have met the residency obligation in respect of the five-year period immediately before the examination; and […].	*b*) il suffit au résident permanent de prouver, lors du contrôle, qu'il se conformera à l'obligation pour la période quinquennale suivant l'acquisition de son statut, s'il est résident permanent depuis moins de cinq ans, et, dans le cas contraire, qu'il s'y est conformé pour la période quinquennale précédant le contrôle; […]

[13] Section 28(2)(*c*) provides that an exception from the residency requirements of the Act may be granted where there are humanitarian and compassionate grounds to warrant such an exception:

28. […] **(2)** (*c*) a determination by an officer that humanitarian and compassionate considerations relating to a permanent resident, taking into account the best interests of a child directly affected by the determination, justify the retention of permanent resident status overcomes any breach of the residency obligation prior to the determination.	**28.** […] **(2)** *c*) le constat par l'agent que des circonstances d'ordre humanitaire relatives au résident permanent — compte tenu de l'intérêt supérieur de l'enfant directement touché — justifient le maintien du statut rend inopposable l'inobservation de l'obligation précédant le contrôle.

[14] Section 31 of the Act provides that a permanent resident shall be provided with a document indicating their status and, unless an officer determines otherwise, a person in possession of a status document is presumed to have the status indicated:

31. (1) A permanent resident and a protected person shall be provided with a document indicating their status.	**31. (1)** Il est remis au résident permanent et à la personne protégée une attestation de statut.
(2) For the purposes of this Act, unless an officer determines otherwise	**(2)** Pour l'application de la présente loi et sauf décision contraire de l'agent, celui qui est muni d'une attestation est présumé avoir le statut qui y est mentionné; s'il ne peut présenter une attestation de statut de résident permanent, celui qui est à l'extérieur du Canada est présumé ne pas avoir ce statut. […]
(*a*) a person in possession of a status document referred to in subsection (1) is presumed to have the status indicated; and	
(*b*) a person who is outside Canada and who does not present a status document indicating permanent resident status is presumed not to have permanent resident status. […]	

[15] The applicable Regulations in this case are Regulations 53(2) and 60 :

53.(2) A permanent resident card remains the property of Her Majesty in right of Canada at all times and must be returned to the Department on the Department's request.	**53.(2)** La carte de résident permanent demeure en tout temps la propriété de Sa Majesté du chef du Canada et doit être renvoyée au ministère à la demande de celui-ci.
…	…
60. A permanent resident card is revoked if	**60.** La carte de résident permanent est révoquée dans les cas suivants :

(*a*) the permanent resident becomes a Canadian citizen or otherwise loses permanent resident status;	*a*) le titulaire obtient la citoyenneté canadienne ou perd autrement son statut de résident permanent;
(*b*) the permanent resident card is lost, stolen or destroyed; or	*b*) la carte de résident permanent est perdue, volée ou détruite;
(*c*) the permanent resident is deceased.	*c*) le titulaire est décédé.

ANALYSIS

Standard of Review

[16] The first issue raised is one of procedural fairness, which is a question of law reviewable on a standard of correctness. With respect to the second and third issues raised by the Applicant, these issues are also, in my view, reviewable on a standard of correctness because they involve questions of law. If the Officer acted without jurisdiction or was *functus officio*, the Decision should be set aside.

1. Was the Decision to recall, cancel and render null the Applicant's permanent resident card contrary to the principles of natural justice and procedural fairness?

[17] The Applicant submits that CIC has not informed her of the details of the alleged error which caused the permanent resident card to be issued; nor has CIC provided details regarding who

caused the card to be issued. Further, the Applicant submits that CIC gave the Applicant no warning of the Decision to recall, cancel and render null her permanent resident card.

[18] I do not agree with the Applicant that the Decision contains insufficient detail regarding the error made by CIC which led to the issuance of the Applicant's permanent resident card. In the letter dated November 7, 2007, Officer Matsui made reference to the letter sent by Officer Currie, dated September 27, 2007, wherein it was clearly stated that the Applicant did not meet the residency requirements and that a residency determination would have to be made. In my view, the error and the reason for recalling the card were sufficiently clear in the letter to the Applicant. I also find that failing to provide the name of the Officer who issued the card in error does not constitute a breach of procedural fairness or natural justice. The issue here is whether the Officer's Decision to recall, cancel and render void the Applicant's permanent resident card was contrary to law. The reasons contained in the Officer's Decision, in my view, are sufficiently clear and do not constitute a breach of procedural fairness.

[19] With respect to the Applicant's allegation that the Officer failed to warn the Applicant of his Decision, I do not find that this amounts to a breach of procedural fairness or natural justice. I stress that the Officer's Decision was to recall, cancel and render void the Applicant's permanent resident card and was not a decision pertaining to the Applicant's permanent resident status, or lack thereof.

[20] Recently in *Ikhuiwu v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 35 at para. 19, Justice de Montigny held that the mere possession of a permanent resident card does not in and of itself confer status as a permanent resident:

> **19.** Turning first to the permanent resident card, the legislative scheme under the *IRPA* makes it clear that the mere possession of a permanent resident card is not conclusive proof of a person's status in Canada. Pursuant to section 31(2) of the *IRPA*, the presumption that the holder of a permanent resident card is a permanent resident is clearly a rebuttable one. In this case, it is clear that the permanent resident card, which was issued in error after it was determined by the visa officer in Nigeria that the applicant had lost his permanent residence status, could not possibly confer legal status on him as a permanent resident, nor could it have the effect of restoring his permanent resident status which he had previously lost because he didn't meet the residency requirements under section 28 of the *IRPA*. There is no provision in the *IRPA* or the *Regulations* which suggests that the mere possession of a permanent residence card, which was improperly issued, could have the effect of restoring or reinstating a person's prior permanent resident status.

[21] As provided by the Act, a permanent resident may only lose his or her status in one of the following prescribed ways:

46. (1) A person loses permanent resident status	**46. (1)** Emportent perte du statut de résident permanent les faits suivants :
(*a*) when they become a Canadian citizen;	*a*) l'obtention de la citoyenneté canadienne;
(*b*) on a final determination of a decision made outside of Canada that they have failed to comply with the residency obligation under section 28;	*b*) la confirmation en dernier ressort du constat, hors du Canada, de manquement à l'obligation de résidence;
(*c*) when a removal order made against them comes into force; or	*c*) la prise d'effet de la mesure de renvoi;
(*d*) on a final determination	*d*) l'annulation en dernier

under section 109 to vacate a decision to allow their claim for refugee protection or a final determination under subsection 114(3) to vacate a decision to allow their application for protection.	ressort de la décision ayant accueilli la demande d'asile ou celle d'accorder la demande de protection.
(2) A person who ceases to be a citizen under paragraph 10(1)(*a*) of the *Citizenship Act*, other than in the circumstances set out in subsection 10(2) of that Act, becomes a permanent resident.	**(2)** Devient résident permanent quiconque perd la citoyenneté au titre de l'alinéa 10(1)*a*) de la *Loi sur la citoyenneté*, sauf s'il est visé au paragraphe 10(2) de cette loi.

[22] In the present circumstances, the Officer's letter of November 7, 2007 clearly states that his Decision was only to recall, cancel and render void the Applicant's permanent resident card and that, after receiving the card, a residency determination would be made and humanitarian and compassionate factors would be considered if the Applicant failed to meet the enumerated residency requirements.

[23] The Respondent submits that, since the card is the property of Her Majesty the Queen, there is no procedural fairness requirement to seek submissions prior to requesting the return of the card. In the alternative, the Respondent argues that even if there was a duty to hear submissions from the Applicant prior to seeking the return of the card, the Applicant was given an opportunity, and availed herself of that opportunity prior to the Decision at issue being made.

[24] The Applicant says that her real concern is that, as far as she knows, a legitimate decision to grant her permanent residence status has been made and the card issued as a consequence. She says that the evidence offered by the Respondent that the Court is dealing with an administrative error is not sufficient to undermine a presumption that she is entitled to the card. She says that the Minister's actions in requesting a return of the card are just as consistent with the Minister having made a positive decision on permanent residence (which the Minister is now attempting to reverse) as they are with the offered justification of administrative error.

[25] I have reviewed the evidence carefully and I cannot agree with the Applicant on this crucial point. It may be that there is no affidavit evidence from the person actually responsible for the mistake at CPC Sydney, but there is no reason not to accept the explanation from Officer Matsui regarding what has occurred in this case.

[26] Officer Matsui says that he has examined the file and that it was the Vegreville office that contacted CPC Sydney because Vegreville had noticed that a permanent resident card had been issued to the Applicant despite the fact that she did not meet the residence requirements. Officer Matsui then opines that "CPC Sydney then contacted our office because they noted that no residency determination had ever been made and that therefore the card had been issued in error." (paragraph 18 of affidavit of Glenn Matsui).

[27] Officer Matsui also swears that he has “personal knowledge of the facts and the matters herein deposed to save and except where the same are based on information and belief and whereso stated I believe them to be true.” (paragraph 1)

[28] The Applicant says that, because there is no affidavit from CPC Sydney by someone actually involved with the mistake, the Court cannot rely upon what Officer Matsui says in this regard. But the Applicant has had every opportunity to cross-examine Officer Matsui on these issues and has chosen not to. What is more, the Applicant presents the Court with no real evidence that what occurred was anything more than an administrative error. In the end, the Court is left to balance Officer Matsui’s explanation – and other confirmatory materials on file – against the Applicant’s speculative hypothesis that an authorized decision regarding the Applicant’s entitlement to permanent residence could have been made in Sydney and that the Minister has more to deal with here than administrative error.

[29] I think I have to prefer the Respondent’s evidence on this issue. There is nothing to suggest, in my view, that Officer Matsui has not provided the Court with a true picture of what occurred or that the Applicant is anything more than the victim of an administrative error. I have to find that no determination has ever been made regarding the Applicant’s present residency status.

[30] In my view, the governing legislation makes it clear that Parliament did not intend to confer statutory procedural protections upon a person whose card is recalled. Regulation 53(2) of the

Regulations expressly provides that a permanent resident card is the property of Her Majesty the Queen:

53. […]	**53.** […]
(2) A permanent resident card remains the property of Her Majesty in right of Canada at all times and must be returned to the Department on the Department's request.	**(2)** La carte de résident permanent demeure en tout temps la propriété de Sa Majesté du chef du Canada et doit être renvoyée au ministère à la demande de celui-ci.

[31] Neither the Act nor the Regulations provide that a holder of a permanent resident card is to be provided an opportunity to make submissions before his or her card is recalled. Instead, Regulation 53(2) explicitly states that the card "remains the property of Her Majesty...at all times and must be returned to the Department on the Department's request" [my emphasis].

[32] However, as recognized by the Supreme Court of Canada in *Cardinal v. Director of Kent Institution*, [1985] 2 S.C.R. 643 at p. 653 [hereinafter *Director of Kent Institution*], "there is, as a general common law principle, a duty of procedural fairness lying on every public authority making an administrative decision which is not of a legislative nature and which affects the rights, privileges or interests of an individual" (see also *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817). In *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653 at p. 668, citing *Director of Kent Institution*, the Supreme Court added that there "may be a general right to procedural fairness, autonomous of the operation of any statute, depending on consideration of three factors which have been held by this Court to be determinative of the existence of such a right." These three factors are: (i) the nature of the decision to be made by the administrative body

in question; (ii) the relationship between that body and the individual; and (iii) the effect of that decision on the individual's rights.

[33] In the present case, the nature of the Decision is purely administrative and, although it is final with respect to the particular card issued to the Applicant, it is not a final decision with respect to the Applicant's status as a permanent resident. Further, if she submits another application for permanent residence status, as the Applicant has been invited to do in the present case, the Applicant may obtain permanent residence status and, with that, a permanent resident card. With respect to the second factor, there exists no "relationship" *per se* between the Applicant and the Department. Finally, a right to procedural fairness will exist only if the decision is a significant one and has an important impact on the individual. The effect of the Decision in the present case cannot be said to be significant. It does not deny the Applicant any right, privilege or interest. As Regulation 52(3) makes clear, a holder of a permanent resident card does not have an unfettered right to maintain his or her card and, as Justice de Montigny made clear in *Ikhuiwa*, the mere possession of the card does not confer permanent resident status. Instead, the Regulation expressly states that the card remains the property of Her Majesty and must be returned upon request by the Department. For these reasons, I find that no procedural requirements were required before deciding to recall, cancel, and render null the Applicant's permanent resident card on the basis of administrative error, other than have already been extended to the Applicant in this case. In addition, the Applicant has been given the opportunity to state her case.

2. Was the Decision to recall, cancel and render null the Applicant's permanent resident card within the jurisdiction of the Officer?

[34] The Applicant argues that the Decision made by CIC officers was outside their jurisdiction since, according to the Applicant, there exists no statutory power authorizing an officer to recall and cancel a permanent resident card in these circumstances. The Applicant submits that the governing Act and Regulations prescribe circumstances in which a card may be revoked and contain provisions explicitly empowering officials to cancel documents or terms and conditions. However, there exist no explicit provisions empowering any official to cancel or render null a permanent resident card.

[35] The Respondent argues that, pursuant to Regulation 53(2), which provides that a permanent resident card remains the property of Her Majesty and must be returned at the Department's request, the Decision by the Officer to seek the return of the card was within the Officer's jurisdiction. The Respondent stresses that, contrary to the express right to recall a permanent resident card conferred by the Regulations upon CIC, there is no lawful authority for the Applicant to refuse to return the card.

[36] I agree with the Respondent's submissions on this issue. The Regulations give the express authority to the Department to recall a permanent resident card in Regulation 53(2). Although the governing Act and Regulations do not provide that an officer may cancel or render void a previously issued permanent resident card, the Regulations do grant the authority to revoke a permanent resident card (Regulation 60) and set out the requirements that must be met for the

issuance of a new permanent resident card by an officer (Regulation 59). Where a permanent resident card has been issued in error, as in the present circumstances, I do not find that canceling or rendering the card void is beyond the jurisdiction of an officer or, more generally, the issuing department. I do not think that it was Parliament's intent to confer the authority upon the Department to recall a permanent resident card but to limit the Department's power to cancel or render null a permanent resident card, especially where the card has been issued in error and the person to whom it was issued has refused to return it. For these reasons, I find that the Officer did not act beyond his jurisdiction by recalling, canceling and rendering void the Applicant's permanent resident card in this case. The Applicant has no entitlement to the card and she is simply refusing to return it.

3. Was the Officer functus officio?

[37] The Applicant argues that the Officer's Decision was contrary to the principle of *functus officio*. According to the Applicant, the issuance of the resident card to the Applicant was, in the absence of cogent evidence to the contrary, proof that an officer of CIC decided to waive the usual residency requirements for issuing permanent residence cards and issued the card on H&C grounds.

[38] The Applicant also contends that the card was properly issued and submits that CIC officials have on more than one occasion stated that it was only upon a review of her application that they decided that another application for issuance should be made. The Applicant argues that the Respondent has failed to provide evidence that the card was issued in circumstances where it is void

or a nullity from the beginning. Mere evidence that the card was issued in an extraordinary way, suggests the Applicant, is not evidence that it was issued without authority to avoid the operation of the principle of *functus officio*. Further, the Applicant argues that there is no evidence before the Court to suggest that the decision to issue the card was taken by someone who is not an officer, or an officer not acting with authority to waive the residency requirements and issue the card based on H&C grounds. To the contrary, the Applicant argues that there is evidence that the card was issued as a result of a decision taken by someone at CPC Sydney where the application was received and initially considered and that "there are immigration officers there." In the Applicant's view, the evidence suggests that one or more CIC officials have had second thoughts about the decision to issue the card and that, in these circumstances, the principle of *functus officio* should apply.

[39] The Respondent argues that there has been no "decision" that the Applicant is a permanent resident. Thus, as the permanent resident card was issued without such a decision being made, this case falls within one of the exceptions to the doctrine of *functus officio*, that is, administrative error. In support of its argument on this point, the Respondent relies on *Nozem v. Canada (Minister of Citizenship and Immigration)* (2003), 244 F.T.R. 135, 2003 FC 1449 [hereinafter *Nozem*]. In that case, an applicant received two notices of decision concerning his refugee claim. The first decision granted his refugee application and the second decision refused his claim for refugee protection. He sought to quash the negative finding on the basis that the tribunal was *functus*, having already issued a positive decision. The Court disagreed and held at paragraph 32 as follows:

> **32.** The principle of *functus officio* has no application because the notice of decision dated August 20, 2002, was issued in error. There was never any intention by the tribunal to issue a positive decision

> and it never rendered a positive decision of which notice could be given.

[40] The Respondent argues that the present case is analogous to *Nozem*, since there is no determination on the record that the Applicant met the residency requirement; nor could there be since the Applicant was outside of Canada for virtually the entire five-year period prior to her application. The Respondent also submits that there is no record that the Applicant was granted H&C relief from the residency requirements contained in section 28 of the Act.

[41] The Respondent further submits that the evidence supports the contention that the Applicant's card was issued in error. The process for considering applications for permanent resident cards is set out in the affidavit of Officer Matsui. He deposes that if a person does not clearly meet the residency requirements set out in the legislation, the file is transferred to a local office which, in this case, was Vancouver. He also deposes that only he and one other person in the Vancouver Office have the authority to grant H&C relief from the residency requirements of the Act. Further, according to Officer Matsui, the Immigration Services Clerks who distribute the permanent resident cards do not have the delegated authority to grant H&C relief.

[42] The Respondent argues that Officer Matsui's affidavit establishes that the normal course for determining whether the residency obligations were met was not followed in the present case. Further, the record shows that CPC Sydney was clearly of the view that the card was issued in error. An e-mail from the client services unit in Sydney to the Vancouver permanent resident unit states as follows:

> The following clients [*sic*] [permanent resident] card application should have been referred to your office for residency. The client has been outside the country for over 5 yrs. A [permanent resident] card was requested in error and given to the client last month…The card needs to be recalled and a residency determination needs to be done... .

[43] The Respondent argues that there has been no exercise of jurisdiction by CIC on the issue of whether the Applicant meets the residency requirements (it is conceded she does not), because there is no indication on the record that a calculation of residency was done by CIC at the time the permanent resident card was requested. Further, there is no indication that H&C relief from the provisions of section 28 of the Act was considered or granted by anyone at CIC, or specifically by anyone with the required delegated authority. Thus, in the Respondent's view, there was also no decision with respect to whether sufficient H&C grounds exist for the Applicant to be exempted from the residency requirements. As no jurisdiction was ever exercised, the Respondent submits, it is open to the Minister to now deal with the question of whether the requirements of the Act and Regulations are met.

[44] Finally, the Respondent submits that the Applicant's interpretation of the Act would mean that, once a decision on admissibility is made, the question of a person's admissibility to Canada could never be revisited even where new information came to light or a mistake was made. The Respondent submits that such an interpretation is not only inconsistent with the scheme of the Act, which allows for reports of inadmissibility of permanent residents (section 44), but it is also inconsistent with prior decisions of this Court and the Federal Court of Appeal where it has been held that visa officers may revisit decisions where new information comes to light (see *Chan v.*

Canada (Minister of Citizenship and Immigration), [1996] 3 F.C. 349 (F.C.T.D.) [hereinafter *Chan*]; *Mauger v. Canada (Minister of Citizenship and Immigration)* (1980), 119 D.L.R. (3d) 54 (F.C.A.)).

[45] The doctrine of *functus officio* was considered by the Supreme Court of Canada in *Chandler v. Alberta Association of Architects*, [1989] 2 S.C.R. 848 [hereinafter *Chandler*], wherein Justice Sopinka, writing for the majority, noted the following at page 860:

> The general rule that a final decision of a court cannot be reopened derives from the decision of the English Court of Appeal in *In re St. Nazaire Co.* (1879), 12 Ch. D. 88. The basis for it was that the power to rehear was transferred by the Judicature Acts to the appellate division. The rule applied only after the formal judgment had been drawn up, issued and entered, and 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. See *Paper Machinery Ltd. v. J. O. Ross Engineering Corp.*, [1934] S.C.R. 186.

[46] In that case, Justice Sopinka (as he then was) held that the doctrine applied to administrative bodies as well as to the courts, but he added the following qualification at page 862:

> …I am of the opinion that its application must be more flexible and less formalistic in respect to the decisions of administrative tribunals which are subject to appeal only on a point of law. Justice may require the reopening of administrative proceedings in order to provide relief which would otherwise be available on appeal.
>
> Accordingly, the principle should not be strictly applied where there are indications in the enabling statute that a decision can be reopened in order to enable the tribunal to discharge the function committed to it by enabling legislation…..

[47] This passage was considered by this Court in *Chan*, *supra*, wherein Justice Cullen (as he then was), in the context of the former *Immigration Act*, stated at paragraphs 27-28:

> **27.** ...I understand this decision to mean that administrative decision-making, because it is more flexible and less formalistic than judicial decision-making, can be "re-opened" in the interests of justice where the enabling statute contemplates reconsideration of a decision.
>
> **28.** Does the *Immigration Act* contemplate that a visa officer can reconsider his decision? There is nothing in the statute that deals with whether a visa officer may review decisions already made. I would take this silence, however, not to be a prohibition against reconsideration of decisions. Rather, I think that the visa officer has jurisdiction to reconsider his decision, particularly when new information comes to light. One can well imagine a situation opposite the one in the case at bar. What if the applicant was initially denied her visa because the officer considered her to be a member of the Sun Yee On triad? Could she not have brought new information to light, asking the visa officer to reconsider his decision? If the new information was persuasive, I have little doubt that the visa officer would have jurisdiction to issue a new decision, granting a visa. In my view, the same logic applies to the case at bar. The visa officer, upon receiving information that the applicant was a member of an inadmissible class, had jurisdiction to reconsider his earlier decision and revoke her visa. To squeeze the administrative decisions of visa officers into the same *functus officio* box that is imposed on judicial decision-makers would, in my view, not accord with the role and duties of visa officers.

[48] I have already said what I think the Respondent's evidence establishes with regards to what occurred in this case, and there is no need to repeat my conclusions here. Consequently, I have to agree with the Respondent on this point. No decision on permanent residence has been made in relation to the Applicant.

[49] Like the former *Immigration Act*, the current Act does not preclude an officer from re-opening a decision to issue a permanent resident card; nor does the Act provide that an officer may

do so. I adopt the analysis of Justice Cullen, above, and find the doctrine of *functus officio* does not apply to the case at bar. It is clear from the Decision and the evidence before me that the permanent resident card was issued in error and, therefore, the exception to the doctrine of *functus officio* applies in the present case. Following the Supreme Court of Canada's decision in *Chandler*, *supra*, the error in issuing the card to the Applicant without conducting the residency determination, or considering the H&C factors that may warrant an exception to these requirements, should not, on these facts, preclude the Minister from re-opening the decision to issue a permanent resident card to the Applicant.

[50] None of this is to suggest that the consequences of the administrative error made in this case are not relevant to any final determination regarding the Applicant's residency status. There is nothing to suggest on the facts before me that the Applicant has not acted in good faith at all material times. Any problems that may have resulted from the error will be addressed in an H&C determination and that decision will be subject to the usual procedures for judicial review.

[51] On the narrow issue before me concerning the Decision of Officer Matsui, however, I have to dismiss the application for the reasons given.

[52] Counsel are requested to serve and file any submissions with respect to certification of a question of general importance within seven days of receipt of these Reasons for Judgment. Each party will have a further period of three days to serve and file any reply to the submission of the opposite party Following that, a Judgment will be issued.

"James Russell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4769-07
STYLE OF CAUSE:	*Anita Maria Salewski v. Minister of Citizenship and Immigration*
PLACE OF HEARING:	Vancouver, British Columbia
DATE OF HEARING:	June 17, 2008
REASONS FOR JUDGMENT:	RUSSELL J.
DATED:	July 23, 2008

APPEARANCES:

Charles E.D. Groos	FOR THE APPLICANT
Sandra E. Weafer	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Charles E.D. Groos Barrister & Solicitor Surrey, British Columbia	FOR THE APPLICANT
John H. Sims, QC Deputy Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT