

Federal Court



Cour fédérale

Date: 20180619

Docket: IMM-4695-17

Citation: 2018 FC 629

Ottawa, Ontario, June 19, 2018

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

RUI MA

Applicant

and

**THE MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr Rui Ma, born in China, became a permanent resident of Canada in 2010. In 2015, Mr Ma applied to renew his permanent resident card, but before receiving it, he travelled to China. In order to return to Canada without his permanent resident card, Mr Ma had to obtain a Permanent Resident Travel Document (PRTD) from the Canadian Embassy in Beijing. Embassy staff noticed that some of the stamps in Mr Ma's passport appeared not to be genuine.

Nevertheless, a visa officer concluded that the fake stamps were not material since Mr Ma had obtained the required period of residency. Mr Ma was granted his PRTD.

[2] When Mr Ma returned to Canada early in 2017, an officer of the Canada Border Services Agency (CBSA) seized his passport and informed him that an investigation was underway into potential misrepresentation.

[3] In response, Mr Ma submitted that the question of misrepresentation was *functus officio* given that the visa officer in Beijing had already concluded that any misrepresentation was immaterial. Nevertheless, the CBSA officer found that the visa officer in Beijing was not assessing whether there had been misrepresentation in Mr Ma's 2015 permanent resident application; rather, the visa officer found that the misrepresentation was not material to the 2016 application for a PRTD.

[4] In 2017, after receiving an inadmissibility report from a CBSA officer, a delegate of the Minister referred Mr Ma for an inadmissibility hearing.

[5] Mr Ma seeks to quash the Minister's delegate's referral decision on the grounds of *functus officio*. I can find no basis for overturning the delegate's decision and must, therefore, dismiss this application for judicial review.

[6] The sole issue is whether the issue of misrepresentation was *functus officio* given the 2016 decision of the visa officer in Beijing.

II. Is the issue of misrepresentation *functus officio*?

[7] Mr Ma argues that the question of misrepresentation was finally determined when the visa officer in Beijing concluded that the misrepresentation was not material, given that Mr Ma had met the residency requirement for permanent residence irrespective of the fake stamps in his passport.

[8] I disagree.

[9] Generally speaking, the doctrine of *functus officio* means that a decision-maker or tribunal cannot revisit a final decision (*Chandler v Alberta Association of Architects*, [1989] 2 SCR 848, at 681). However, for two reasons, that doctrine does not assist Mr Ma.

[10] First, the visa officer in Beijing did not reverse, revisit, or alter his decision. The officer granted Mr Ma a PRTD based on the evidence before him, including the fake passport stamps. He found that the misrepresentation was not material to “the processing of the file”, that is, the file before the officer, which was Mr Ma’s request for a PRTD. No other official has revisited that question. The visa officer is *functus* in respect of the PRTD decision, but that is all.

[11] Second, the referral for an inadmissibility hearing is in respect of an alleged misrepresentation in Mr Ma’s 2015 permanent residence application, an issue that was not before the visa officer in Beijing. Further, no final decision has been made about the materiality of any

misrepresentation on Mr Ma's part in respect of his permanent residence. That will be a question before the Immigration Division.

[12] At times, Mr Ma's submissions appear to be based not on *functus officio*, but on *res judicata*; in other words, that the question of materiality had already been finally determined before the Minister's delegate referred the matter for an inadmissibility hearing. But the latter doctrine does not help Mr Ma, either.

[13] There are two main types of *res judicata*: cause of action estoppel, and issue estoppel. The first prevents re-litigation of a matter that the same parties have already brought before a court or other decision-maker for a decision. That does not apply here because the parties involved in the prior decision of the visa officer were Mr Ma and Immigration, Refugees and Citizenship Canada. In the matter of potential inadmissibility, as reflected in the style of cause above, the parties are Mr Ma and the Minister of Public Safety and Emergency Preparedness. The two matters are not the same.

[14] Issue estoppel applies where the identical issue has already been decided. That does not apply here because the issue before the visa officer in Beijing was whether the misrepresentation was material to Mr Ma's request for a PRTD, whereas the issue before the Minister's delegate was whether the misrepresentation could be material in respect of Mr Ma's permanent residence application. The two issues are not the same.

[15] Therefore, I cannot agree with Mr Ma that there was a legal impediment preventing the Minister's delegate from referring Mr Ma for an inadmissibility hearing.

III. Conclusion and Disposition

[16] There was no legal impediment to referring Mr Ma for an inadmissibility hearing, whether based on *functus officio* or *res judicata*. Therefore, I must dismiss this application for judicial review. Neither party proposed a question of general importance to be certified, and none is stated.

JUDGMENT IN IMM-4695-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. No question of general importance is stated.

"James W. O'Reilly"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4695-17

STYLE OF CAUSE: RUI MA v THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: MAY 23, 2018

JUDGMENT AND REASONS: O'REILLY J.

DATED: JUNE 19, 2018

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