

BEFORE THE DEPARTMENT OF REVENUE
STATE OF ALASKA

IN THE MATTER OF

K D

2002 PERMANENT FUND DIVIDEND

PERMANENT FUND
DIVIDEND DECISION

CASELOAD NO. 030391

K D timely applied for a 2002 permanent fund dividend. The Permanent Fund Dividend Division determined that Mr. D was not eligible, and it denied the application initially and at the informal appeal level. Mr. D requested a formal hearing. The Department of Revenue heard the appeal on August 26, 2003. Mr. D did not appear or show cause for his failure to appear. This decision is therefore based on the record in accordance with 15 AAC 05.030(j). The hearing examiner finds that Mr. D does qualify for a 2002 dividend.

The PFD Division summarizes this case as follows:

K J. D' 2002 PFD application was originally denied and subsequently upheld at the informal appeal level because he failed to provide specifically requested information showing that he had taken a minimum of one significant step to convert or adjust his immigration status to permanent or indefinite, including the filing of a petition or application with the Immigration Naturalization Service (INS), prior to January 1st of the 2001 qualification period.

Mr. D stated in his request for Informal Appeal that he "...submitted all the immigration papers (my Indian Status Card + S.S.#) to show that I am a legal resident...I was a legal resident from Sept. 2000 on. I submitted copies of my Indian Affairs card and social security cards which are all i need to legally reside in the U.S....". [sic (the division's)].

Mr. D stated in his Request for Formal Hearing that "...I am a North American Indian. With that right i can work + reside anywhere in the U.S. legally without a green card, visa, alien number, or resident card. I have done so the previous 10 years and in Alaska since Sept. 2000. I only need my status card + social security which I have submitted numerous times...".[sic (the division's)].

The Division contends that Mr. D has failed to provide credible evidence of any kind support having filed a petition with the INS to convert or adjust his immigration status to permanent or indefinite prior to the beginning of 2001, the qualifying year for the 2002 dividend. In fact, there is no evidence that Mr. D has taken any actions to adjust his immigration status through the date he signed his

Request for Formal Hearing, June 1, 2003. Although Mr. D may not need an alien registration card to legally cross the U.S. / Canada border, he must, by law, be a citizen of the United States, or an alien lawfully admitted for permanent residence, or an alien with refugee status, or an asylee before the beginning of the qualifying year in order to be eligible to receive the dividend.

Mr. D still has not made any attempt to become a citizen of the United States, or to convert or adjust his immigration status to permanent or resident. In fact, as stated on his 2002 Adult Supplemental Schedule, Mr. D continues to maintain a vehicle registration and driver's license in Saskatchewan, Canada which is certainly indicative of continued residence in Canada.

The simple answer to this case is that Mr. D is correct. The division has overlooked Section 289 of the Immigration and Naturalization Act, 8 U.S.C. 1359, which reads, "nothing in this title shall be construed to affect the right of American Indians born in Canada to pass the borders of the United States, but such right shall extend only to persons who possess at least 50 per centum of blood of the American Indian race." The division is correct that an applicant must be a citizen, permanent resident, asylee, or refugee in order to qualify for a dividend. But as the Alaska Supreme Court recognized in the *Andrade*¹ case, "permanent resident" does not necessarily mean somebody to whom the INS or BCIS has granted the official title of Permanent Resident. For purposes of AS 43.23.005, a permanent resident is anybody who may legally form the intent to remain in the country indefinitely and make their home here. The division may not restrict the rights of any alien to whom Congress has granted a right to remain in the country.

Congress may not have exactly granted Mr. D the right to remain in the country, but it has formally acknowledged in the INA that he and his family have had the right to travel throughout North America before the United States and Canada were invented and learned to draw lines between themselves. With the right to travel, Mr. D has the right to stop traveling when and where he chooses. There is no dispute that Mr. D enjoys the right to remain in Alaska indefinitely, for the rest of his life if it suits him. He is, therefore, a "permanent resident" as the *Andrade* court has explained that the term is to be used, and the "significant step" test of 15 AAC 23.154(d) does not apply to him. As there are no other eligibility issues, Mr. D' application should be granted.

THEREFORE, IT IS ORDERED that the application of K D for a 2002 permanent fund dividend be GRANTED.

Appeal Rights: Applicants may ask the Commissioner of Revenue to reconsider this decision by filing a written Motion for Reconsideration within 10 days after the date of this decision, pursuant to 15 AAC 05.035(a). The motion must state specific grounds for relief, and should be addressed to: Commissioner's Office Appeals (Reconsideration), Alaska Department of Revenue, P.O. Box 110400, Juneau, Alaska 99811-0400.

¹ *State of Alaska v. Andrade*, 23 P.3d 58 (Alaska 2001).

If a Motion for Reconsideration is not filed, this order is the final administrative decision of the Alaska Department of Revenue. Appeals may be taken to the Alaska Superior Court. Appeals must be filed within 30 days of the date of this order, in accordance with Rules of Appellate Procedure 601-612 and 15 AAC 05.040.

DATED: November 5, 2003

Signed _____
DALE WHITNEY
Revenue Hearing Examiner

ORDER OF ADOPTION OF DECISION OF HEARING OFFICER

I, Mark T. Handley, Senior Revenue Hearing Examiner, under the authority of AS 43.05.010, order that the attached decision relating to the eligibility of K D for a 2002 permanent fund dividend be adopted and entered in the applicant's file as of this date as the final administrative determination in this matter.

This decision was prepared by Dale A. Whitney, who was duly appointed under the authority of AS 44.17.010 and AS 44.25.010 as Hearing Officer, to consider the arguments and evidence presented in this appeal and to recommend a decision in this matter.

DATED: November 5, 2003

Signed _____
MARK T. HANDLEY
Senior Revenue Hearing Examiner

[This document has been modified to conform to the technical standards for publication.]