

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL  
BY THE COMMISSIONER OF REVENUE**

In the Matter of:	)	
	)	
M. Y.	)	
	)	OAH No. 09-0443-PFD
<u>2008 Permanent Fund Dividend</u>	)	Agency No. 2008-044-4627

**DECISION AND ORDER**

**I. Introduction**

M. Y. applied to receive the 2008 Permanent Fund Dividend (PFD). His application was incomplete and the Permanent Fund Dividend Division requested additional information. Mr. Y. provided much of the requested information, but did not submit a completed Adult Supplemental Schedule.

The Department denied Mr. Y.'s application for a PFD because 1) he was a non-citizen who had not taken significant steps to obtain permanent residency; and 2) he had not provided the Adult Supplemental Schedule. Mr. Y. first requested an Informal Appeal and was unsuccessful in reversing the initial determination. Mr. Y. requested a formal hearing by correspondence. The Permanent Fund Dividend Division filed a Formal Hearing Position Statement; Mr. Y. did not. The Department's denial is affirmed for the reasons discussed below.

**II. Facts**

Mr. Y. signed his PFD application on January 21, 2008. He indicated that he had not received a 2007 PFD and was therefore required to submit the Adult Supplemental Schedule with his application, but he did not submit it. He also did not complete the section requesting verifier names and addresses.

In a letter dated July 11, 2008, the PFD Division asked Mr. Y. to provide the information missing from his original application.<sup>1</sup> Mr. Y. responded to that request, but did not provide the Adult Supplemental Schedule.<sup>2</sup>

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<sup>1</sup> Exhibit 2.

<sup>2</sup> Exhibit 3.

In his request for an Informal Appeal, Mr. Y. indicated that he was not a citizen but that he continued to reside in the United States.<sup>3</sup> He subsequently provided Exhibit 7, which documents Mr. Y.'s efforts to obtain permanent resident status. This document appears to have been submitted to the U.S. Citizenship and Immigration Services (USCIS) on August 10, 2007. Page 20 – 22 of Exhibit 7 is a form I-140 requesting permanent resident status. This document was signed on July 5, 2007.

Based on Mr. Y.'s PFD application, Mr. Y. was present in Alaska on the date of his application and was not absent from the state for more than 90 days during 2007, the qualifying year. It also appears that while Mr. Y. is not a U.S. citizen, he is lawfully residing in this country.

### **III. Discussion**

One does not need to be a United States citizen to receive a PFD. Aliens are also eligible to receive a PFD if they are 1) lawfully admitted for permanent residence in the United States; 2) an alien with refugee status; or 3) an alien granted asylum under federal law.<sup>4</sup> An alien who has not yet been granted permanent residence in the United States may also be eligible to receive a PFD if he has taken a significant step towards converting his status to permanent.<sup>5</sup>

Mr. Y. submitted a copy of his Employment Authorization Card.<sup>6</sup> This card was valid for December 19, 2007 through December 18, 2008, but he may have had similar authorization for prior years. The back of this card, however, states: “This card is not evidence of U.S. citizenship or permanent residence.” Individuals may obtain permission to work in the United States on a temporary basis without intending to become permanent residents. Mr. Y. has not demonstrated that obtaining this card is a significant step towards obtaining permanent residency.

Mr. Y. also submitted a copy of his USCIS I-140 application.<sup>7</sup> This application, if granted, would give Mr. Y. permanent residency. Thus, the filing of this application could be sufficient to establish Mr. Y.'s eligibility. However, this document was not signed until July 5, 2007.

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<sup>3</sup> Exhibit 5, page 2.

<sup>4</sup> AS 43.23.005(a)(5).

<sup>5</sup> 15 AAC 23.154(d).

<sup>6</sup> Exhibit 3, page 2.

<sup>7</sup> Exhibit 7, pages 20 – 22.

The qualifying year for the 2008 PFD was 2007. To be eligible for the 2008 PFD, Mr. Y. must show that he was an Alaska resident during all of the qualifying year.<sup>8</sup> To be an Alaska resident, he must intend to remain in Alaska indefinitely.<sup>9</sup>

By regulation, the Department of Revenue has established that an alien cannot be considered a resident unless he “has taken a significant step to convert or adjust to a permanent or indefinite status.”<sup>10</sup> In essence, an alien cannot show the required intent to remain indefinitely until taking some step towards obtaining permanent residency status. Mr. Y. has the burden of showing he took a significant step to obtain permanent status prior to January 1, 2007. Based on the evidence in the record, Mr. Y. did not make that required effort prior to January 1, 2007. He could not show his intent to remain in Alaska indefinitely – a necessary element of being an Alaska resident – until after he filed his I-140 and therefore was not an Alaska resident during the entire qualifying year.

Mr. Y. also failed to complete his PFD application. Despite several requests, he never submitted the Adult Supplemental Schedule.<sup>11</sup> Failure to provide requested information is an independent ground to deny his PFD application.<sup>12</sup>

#### **IV. Conclusion**

The Department correctly determined that Mr. Y. is not eligible to receive the 2008 PFD because he had not taken a significant step towards being granted permanent resident status before January 1, 2007, and also because he had failed to provide information requested by the Department. The decision of the Permanent Fund Dividend Division to deny the application of M. Y. for a 2008 Permanent Fund Dividend is affirmed.

DATED this 18<sup>th</sup> day of December, 2009.

By: Signed  
Jeffrey A. Friedman  
Administrative Law Judge

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<sup>8</sup> AS 43.23.005(a)(3).

<sup>9</sup> AS 43.23.095(7).

<sup>10</sup> 15 AAC 23.154(d).

<sup>11</sup> See Exhibit 1, page 1; Exhibit 2, page 1; Exhibit 4, page 1.

<sup>12</sup> 15 AAC 23.173(d).

## Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 15th day of January, 2010.

By: Signed  
Signature  
Jeffrey A. Friedman  
Name  
Administrative Law Judge  
Title

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