

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

In the Matter of:)	
)	
G. K.,)	
)	OAH No. 11-0028 PFD
<u>2010 Permanent Fund Dividend</u>)	Agency No. 2010-043-3734

DECISION

I. INTRODUCTION

G. K. applied for a 2010 Permanent Fund Dividend (PFD). His application was denied by the Permanent Fund Dividend Division (Division) because he is not a citizen, and he is not an alien lawfully admitted for permanent residence in the United States. Mr. K. completed the informal appeal process and requested a formal hearing.

A hearing was held on March 1, 2011. Mr. K. appeared in person. The Division was represented by PFD Specialist Bethany Chase. Based on the record in this case, Mr. K. did take a significant step towards converting his residency status prior to the start of the qualifying year. Accordingly, he is entitled to receive a 2010 PFD.

II. FACTS

There are no material facts in dispute. Instead, the parties disagree as to the legal significance of those facts.

Mr. K. applied for a 2010 PFD.¹ According to his application he is not a United States citizen. He was, however, legally present in this country on a L1 visa.² He obtained permanent employment in Alaska in July of 2008, and moved his household belongings to Alaska in September of 2008.³ He registered his vehicle in Alaska in 2007.⁴

Mr. K. was married on February 28, 2009, and was then eligible to apply for a Permanent Residence Card based on his marriage to a U.S. citizen.⁵ Prior to his marriage, and during 2008,

¹ Exhibit 1, page 1.
² Exhibit 1, page 2. According to Mr. K., his visa was first issued in 2006. Exhibit 3, page 2.
³ Exhibit 1, page 3 & page 22.
⁴ Exhibit 6, page 8.
⁵ Exhibit 6, page 3.

Mr. K. purchased an engagement ring⁶ and paid a non-refundable deposit for a wedding photographer.⁷ He was issued a Permanent Residency Card on July 9, 2009.⁸

In order to obtain his Permanent Residency Card, Mr. K. had to fill out several forms, pay various fees, and attend an interview.⁹ He testified that he was able to complete this process on his own without the assistance of a lawyer.

III. DISCUSSION

Mr. K. was denied a PFD because his immigration status was not that of a permanent resident and he had not taken a significant step towards converting his status to permanent prior to the start of the 2009 qualifying year.¹⁰ The Division does not dispute that Mr. K. would be eligible if he had taken a significant step towards converting his status prior to January 1, 2009.

Some aliens are admitted into the United States on the condition that they maintain residency in their country of origin. Others, even though explicitly admitted to the United States as temporary visitors, are not required to maintain their residency in another country.¹¹ These aliens are permitted to form the intent of remaining in the United States indefinitely, and are also, therefore, able to form the intent to remain in Alaska indefinitely for PFD eligibility purposes.¹²

The Department has adopted a regulation to assist in evaluating whether an alien lawfully admitted to the United States on a temporary visa has in fact formed the intent to remain indefinitely.

[T]he department will not consider the alien to be a resident under AS 43.23.005(a)(3) and this section, unless the department finds that the alien has taken a significant step to convert or adjust to a permanent or indefinite status. A significant step includes the filing of a petition or application with the USCIS.^[13]

During the 2009 qualifying year, Mr. K. was present in the United States on an L-1 visa. The parties agree that this visa does not create permanent residency status, but that it also does not prohibit the holder of the visa from forming the intent to remain indefinitely. Thus, it is necessary to determine whether Mr. K. has shown his intent to remain indefinitely by taking a significant step towards converting his status to a permanent or indefinite status.

⁶ Exhibit 6, page 12.

⁷ Exhibit 6, page 7.

⁸ Exhibit 1, page 6.

⁹ Testimony of Mr. K.

¹⁰ Exhibit 10, page 3; Division's Position Statement, page 4.

¹¹ See *State v. Andrade*, 23 P.3d 58, 73 (Alaska 2001).

¹² *Id.*

¹³ 15 AAC 23.154(d). USCIS means the United States Citizenship and Immigration Service. 15 AAC 23.154(g)(2).

The Commissioner has previously interpreted the intent of this regulation:

[A] significant step is an objective act that unequivocally demonstrates an intent to be a permanent resident. This is a fact-specific inquiry and it is not limited to the filing of a petition or application. The purpose of the regulation is simply to determine whether the applicant is more likely one of the [visa] holders who plans to return to their country of origin after working in the United States for a while, or whether the applicant is more likely one of the [visa] holders who plans to remain in the United States.^[14]

Mr. K.'s objective actions show that he is in fact an applicant who is more likely to be someone who plans to remain in the United States rather than one who plans to return to his country of origin.

Mr. K. has moved his household belongings to Alaska.¹⁵ He obtained permanent employment in Alaska,¹⁶ and filed a declaration with the Canadian government relinquishing his Canadian residency.¹⁷ All of this occurred in 2008, prior to the 2009 qualifying year. In addition, Mr. K. became engaged to a United States citizen and during 2008 he made non-refundable deposits towards his wedding.¹⁸ He also consulted a lawyer during 2008 to learn the procedure for obtaining his Permanent Residency Card as the spouse of a United States citizen.¹⁹

Relinquishing his Canadian residency, along with the other objective acts taken during 2008, unequivocally demonstrate Mr. K.'s intent to be a permanent resident. Since these all occurred prior to the qualifying year, he is entitled to receive a 2010 PFD.

IV. CONCLUSION

Mr. K. did unequivocally take actions that showed his intent to remain in Alaska indefinitely, and he took those actions prior to January 1, 2009. Accordingly, he is entitled to receive a 2010 PFD. The Division's decision denying him a 2010 PFD is reversed.

Dated this 4th day of March, 2011.

Signed

Jeffrey A. Friedman
Administrative Law Judge

¹⁴ *In re J.E.R.*, OAH No. 09-02243-PER (Alaska Commissioner of Revenue 2009), page 7.

¹⁵ Exhibit 1 page 3 & 7 – 9.

¹⁶ Exhibit 1, page 3.

¹⁷ Exhibit 6, page 4.

¹⁸ Exhibit 6, pages 6 – 7.

¹⁹ Exhibit 8; Testimony of Mr. K.

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 4th day of April, 2011.

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

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