

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

In the Matter of:)	
)	
H. P.)	
)	OAH No. 11-0088 PFD
<u>2010 Permanent Fund Dividend</u>)	Agency No. 2010-036-6997

DECISION

I. INTRODUCTION

H. P. 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 had not been lawfully admitted as a permanent resident during all of the 2009 qualifying year. Mr. P. completed the informal appeal process and then requested a formal hearing.

A hearing was held on April 15, 2011. Mr. P. appeared by phone and his son, R. P. also appeared by phone and assisted with translation. The Division was represented by PFD Specialist Pete Scott.

Because Mr. P.'s immigration status during a portion of the qualifying year required him to maintain his status as a foreign resident, he is not eligible to receive a 2010 PFD.

II. FACTS

Mr. P. is a citizen of Guatemala.¹ He came to Alaska in the fall of 2008 on a B-2 Visitor's visa.² In November of 2008, Mr. P.'s son filed an I-130 form with the U.S. Customs and Immigration Service (USCIS).³ This form may be used by a citizen or a lawful permanent resident to obtain permanent resident status for certain relatives, including one's parents.⁴ On January 10, 2009, Mr. P. filed to adjust his status to that of a permanent resident.⁵ He was granted permanent resident status on June 10, 2009.⁶

¹ Exhibit 3, page 1.

² Exhibit 5, page 4.

³ Exhibit 5, page 3.

⁴ <http://www.uscis.gov/USCIS/Resources/Resources%20for%20Congress/Congressional%20Reports/I-130%20Petition%20for%20Alien%20Relative.pdf> (April 12, 2011).

⁵ Exhibit 5, pages 4 – 7.

⁶ Exhibit 5, page 11.

III. DISCUSSION

There are several eligibility requirements to qualify for a PFD, including the requirement that one be a state resident during the entire qualifying year.⁷ The qualifying year is the year proceeding the dividend year.⁸ To be a state resident, one must have the intent to remain in Alaska indefinitely.⁹ In this case, whether Mr. P. is eligible to receive a PFD depends on whether he was legally capable of forming the intent to remain in Alaska indefinitely during the entire 2009 qualifying year.

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.¹⁰ 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.¹¹

For aliens who are allowed to form the intent to remain indefinitely, the Division looks for evidence that they have in fact formed that intent. An applicant who has taken a significant step towards converting his or her immigration status to that of a permanent resident has demonstrated the necessary intent to remain indefinitely. One who has not taken that step is not eligible to receive a PFD.¹²

The significant step rule only applies, however, to those aliens whose immigration status allows them to form the intent to remain indefinitely. It does not apply to those whose status requires them to have the intent **not** to remain indefinitely.

The department will not consider an alien to be lawfully admitted for permanent residence if the USCIS assigns the alien a status that requires the alien to declare that the alien has a residence in a country other than the United States.^[13]

In this case, Mr. P. was in Alaska on a B-2 visa. One requirement of that visa was that he maintain his foreign residence and have no intention of abandoning that residence.¹⁴ Because he had a B-2 visa during some portion of the qualifying year, and did not receive his permanent resident card prior to January 1, 2009, Mr. P. is not eligible to receive a 2010 PFD. Now that he

⁷ AS 43.23.005(a)(3).

⁸ AS 43.23.095(6). The dividend year is the year in which the PFD is declared. 15 AAC 23.993(a)(7).

⁹ AS 01.10.055 & AS 43.23.095(7).

¹⁰ *See State v. Andrade*, 23 P.3d 58, 73 (Alaska 2001).

¹¹ *Id.*

¹² 15 AAC 23.154(d).

¹³ 15 AAC 23.154(b).

¹⁴ *See Attachment A* (printout from U.S. Citizenship and Immigration Services web site).

has received his permanent resident card, he may be eligible for a 2011 PFD if he meets all eligibility requirements.

IV. CONCLUSION

Mr. P. was in Alaska on a B-2 during a portion of the 2009 qualifying year. During that time, he could not legally form the intent to remain in Alaska indefinitely. Accordingly, the Division correctly found that Mr. P. is not eligible to receive a 2010 PFD.

Dated this 19th day of April, 2011.

BY: Signed
Jeffrey A. Friedman
Administrative Law Judge

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 16th day of May, 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.]



U.S. Citizenship and Immigration Services

Visit the U.S.

There are two types of nonimmigrant visas available for people who want to visit the United States.

- Visitor for business (B-1)
- Visitor for pleasure (B-2)

The B-1 visa is for individuals who wish to visit the United States temporarily for business purposes, (e.g. conferences) or for medical treatment, or to accompany a family member who is requires medical treatment.

The B-2 visa is for individuals who wish to visit the United States temporarily or to visit family or friends.

If you are planning to visit the United States, you should be prepared to demonstrate the following:

- Your visit will be temporary
- You will depart at the end of your authorized stay or any extension granted by USCIS
- You are in possession of a valid passport
- You maintain a foreign residence that you have no intention of abandoning
- You are able to support yourself financially while in the United States
- You are admissible to the United States or have obtained a waiver for any ground of inadmissibility. For more information on this topic, see section 212(a) of the Immigration and Nationality Act (INA) in the link to the right.

Generally, if you want to visit the United States you must first obtain a nonimmigrant visitor visa. Travelers from certain countries may be exempt from this requirement. For more information about visa requirements and procedures, see the U.S. Department of State and Customs and Border Protection (CBP) links to the right.

If you want to travel to the United States for reasons other than business or pleasure, you must apply for a visa in the appropriate category. This includes if you want to study, work as a crew member or journalist, etc., You can get help determining which visa you need by selecting the appropriate categories in the “Where to Start” menu on our home page

Passing through a U.S. Port of Entry

You should be aware that a visa does not guarantee admission into the United States. CBP may deny your admission, and also limit the period of time you are authorized to remain in the United States. For more information about the requirements for visiting the United States, go to the CBP link to the right.

If CBP authorizes your admission to the United States at the designated port of entry, you will receive a stamped Form I-94, Record of Arrival-Departure. If you wish to stay beyond the time indicated on the Form I-94, you may apply for an extension by filing Form I-539, Application to Extend/Change Nonimmigrant Status, with USCIS.

If you lose your Form I-94, you may apply for a replacement by filing a Form I-102, Application for Replacement/Initial Nonimmigrant Arrival/Departure Record.

Last updated: 03/31/2010

Plug-ins