

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

In the Matter of:)	
)	
H Q)	
)	OAH No. 13-0778-PFD
<u>2012 Permanent Fund Dividend</u>)	Agency No. 2012-042-6994

DECISION

I. Introduction

H Q applied for a 2012 Permanent Fund Dividend (PFD). The Permanent Fund Dividend Division (division) denied his application based on its determination that he was not a U.S. citizen and had not been lawfully admitted for permanent residence in the United States during all of the 2011 qualifying year. A hearing was held on July 10, 2013. Mr. Q appeared in person and testified on his own behalf. The division was represented by PFD Specialist Bethany Thorsteinson. Because Mr. Q did not meet all seven eligibility criteria found at Alaska Statute 43.23.005(a), he is ineligible for a 2012 PFD and the division's decision to deny Mr. Q's 2012 PFD application is affirmed.

II. Facts

Mr. Q entered the United States in 1994 as a refugee from Sudan. He was ordered deported on January 16, 2001.¹ However, because the Government of Sudan failed to issue the appropriate travel documents, Mr. Q remains in the United States under an Order of Supervision.² For Mr. Q to remain in the population at large and legally work he must comply with all conditions contained in the Order of Supervision, including that he make an annual application to the Sudanese Embassy for a valid Sudanese Passport and travel documents.³

Mr. Q moved to Alaska from Nebraska on May 30, 2010 and is making a life here. He works, rents an apartment, and from time to time has received public assistance.⁴ He timely applied for a 2012 PFD.⁵ His application was denied at the informal appeal level because he was not a resident for purposes of the PFD, was not a citizen or a legal alien, and had not taken a

¹ Exhibit 4, page 1.
² Exhibit 4.
³ *Id.*
⁴ Exhibit 6.
⁵ Exhibit 1.

significant step toward becoming a permanent resident of the United States prior to 2011.⁶

This formal appeal and request for hearing followed. Mr. Q testified consistent with the information provided in support of his request for formal appeal. He contends that any order of removal is expired; he is a resident of Alaska, and filed for a green card.⁷ In support, Mr. Q filed a document showing that on November 5, 2012, Citizen and Immigration Services received his form I-765, Application for Employment Authorization.⁸

III. Discussion

To be eligible for a PFD, an individual must meet each of seven criteria throughout the qualifying year.⁹ The qualifying year for the 2012 PFD is 2011.¹⁰ The criteria are set out in Alaska Statute 43.23.005(a). The division has addressed Mr. Q's failure to meet several of the eligibility criteria. However, failure to meet one of the seven criteria requires an applicant be found ineligible for that year's PFD.

One of the criteria requires that on the date of application the person be a citizen, refugee, asylee, or "an alien lawfully admitted for permanent residence in the United States."¹¹ There is overlap between these two criteria. It is well established that "lawfully admitted for permanent residence," as it appears in this state law does not require Mr. Q to have had his application for permanent residence granted, it means only that he must be lawfully "present and able to form the requisite intent to remain in Alaska."¹² He establishes lawful admittance by presenting evidence sufficient to establish by a preponderance of the evidence that on the date of his application he was granted refugee status under 8 U.S.C. 1157 or 1159.¹³

It is undisputed that Mr. Q came to the United States as a refugee. It is also undisputed that he was ordered removed/deported by an Immigration Judge on January 16, 2001. He was released from Immigration custody under an Order of Supervision as provided for at 8 U.S.C. 1231(a)(3). The division denied his application for a 2012 PFD because Mr. Q failed to establish his alien status while remaining under an Order of Supervision.

⁶ Exhibit 9.

⁷ Exhibit 16.

⁸ Exhibit 6, page 10.

⁹ AS 43.23.005(a).

¹⁰ 15 AAC 23.993(11).

¹¹ AS 43.23.005(5).

¹² *State, Dep't of Revenue v. Andrade*, 23 P.3d 58, 75 (Alaska 2001).

¹³ 15 AAC 23.154(e). Under this subsection an alien has the burden of proving on the date of application that he or she was lawfully admitted under 15 AAC 23.154(a), granted asylum under 8 U.S.C. 1154, or granted refugee status under 8 U.S.C. 1157, 1159. Mr. Q is only claiming refugee status.

Mr. Q repeatedly refers to himself as a refugee. However, just because he refers to himself as a refugee does not mean he was granted refugee status under 8 U.S.C. 1157 or 1159 as of the date of his PFD application. Under these circumstances, it is reasonable to expect proof of his status in the form of corroborating documentation from the appropriate government agency, considering Mr. Q was ordered removed.

Because Mr. Q failed to establish by a preponderance of the evidence that he was granted refugee status under 8 U.S.C. 1157 or 1159 as of the date of application, his appeal fails and it is unnecessary to discuss whether he has established his intent to remain in Alaska indefinitely.

IV. Conclusion

Mr. Q does not meet all the eligibility requirements for the 2012 PFD. The division's decision to deny Mr. Q's application for a 2012 PFD is affirmed.

Dated this 31st day of October, 2013.

Signed _____
Rebecca L. Pauli
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 29th day of November, 2013.

By: *Signed* _____
Signature
Lawrence A. Pederson
Name
Administrative Law Judge
Title

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