

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

In the Matter of	)	
	)	
N T-O	)	OAH No. 18-1328-PFD
_____	)	Agency No. 2018-041-6806

**DECISION**

**I. Introduction**

N T-O appealed the Permanent Fund Dividend Division’s decision denying his 2018 Permanent Fund Dividend (PFD) application.<sup>1</sup> A hearing was held on January 22, 2019. Peter Scott appeared telephonically and explained the rationale of the Permanent Fund Dividend Division (Division) in denying the application. Mr. T-O appeared in person and testified on his own behalf, with a Spanish interpreter’s assistance. Mr. T-O was also accompanied and assisted by his church pastor, M Z.

Prior Office of Administrative Hearing (OAH) decisions, and the record developed at the hearing, demonstrate that Mr. T-O’s immigration status has not changed since the denials of his 2015 and 2017 PFDs were upheld by prior decisions of the Department of Revenue. Because those decisions are binding on the Department, Mr. T-O is ineligible for the 2018 PFD.

**II. Facts**

Mr. T-O has come before the Office of Administrative Hearings a total of ten times since the end of 2015; this is his third appeal of a PFD denial.<sup>2</sup> On February 2, 2016, a final administrative decision was issued in OAH case number 15-1412-APA, finding that Mr. T-O is a non-qualified alien for purposes of public assistance programs.<sup>3</sup> Mr. T-O did not appeal the decision. That decision details Mr. T-O’s Cuban citizenship and immigration status. The detailed history of Mr. T-O’s immigration status will not be repeated here. It is sufficient to note that his immigration status is properly categorized as “under an active Order of Supervision, subject to deportation.”

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<sup>1</sup> Exh. 7, p. 1; exh. 9, p. 2.

<sup>2</sup> See OAH Nos. 15-1412-APA, 16-0199-CMB, 16-0811-PFE, 16-0893-APA, 16-1374-ATP, 17-0696-PFD, 17-0710-PFE, 17-0808-APA, 18-0288-PFD

<sup>3</sup> See Final Decision in OAH 15-1412-APA, Mr. T-O’s first appeal of the Department of Health and Social Services decision that he is ineligible for public assistance benefits, attached hereto.

After the issuance of the decision in case number 15-1412-APA, Mr. T-O's application for a 2015 PFD was denied, and he appealed. The Division upheld the denial after an informal appeal; an administrative law judge from OAH conducted a hearing on his formal appeal; and the denial was affirmed in a decision that confirmed that Mr. T-O's immigration status makes him ineligible for a PFD.<sup>4</sup>

Subsequently, Mr. T-O was denied his 2017 PFD application and he appealed that decision. The denial was also affirmed in a final decision that confirmed there had been no change in his immigration status, and consequently he was still ineligible for a PFD.<sup>5</sup>

In the current case, Mr. T-O's application for a 2018 PFD was denied on June 18, 2018.<sup>6</sup> He filed a timely informal appeal,<sup>7</sup> which was denied on December 17, 2018.<sup>8</sup> Mr. T-O filed a formal appeal on December 21, 2018.<sup>9</sup>

At the hearing on his formal appeal, Mr. T-O testified that he has been in the country many years, and he sincerely believes he has refugee status. Also, he believes that the denial of his eligibility is unjust because he cannot return to Cuba, he has made an honest effort to "be a good citizen," and he cannot obtain public assistance in order to feed his children.<sup>10</sup>

During the hearing, Mr. Scott testified that Division staff had made inquiries to the U.S. Immigration and Customs Enforcement agency (I.C.E.) regarding Mr. T-O's current immigration status. I.C.E. responded with a letter dated June 4, 2018, which stated that:

Mr. T-O was Ordered Removed by an Immigration Judge on December 19, 1984, and released on an Order of Supervision ... . Our records indicate that this individual is in full compliance with the conditions of his release. Mr. T-O last reported on June 4, 2018, is scheduled to report in again on September 4, 2018, and is reporting to us in timely fashion, as required.[<sup>11</sup>]

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<sup>4</sup> See Final Decision in OAH case No. 17-0696-PFD.

<sup>5</sup> See Final Decision in OAH case No. 18-0288-PFD. In that case, Mr. T-O also appealed the denial of 2017 PFDs to his two minor children; the claims of the children were eventually resolved through a mediation process with the result that their dividends were paid to them through a different sponsor.

<sup>6</sup> Exh. 6, p. 1.

<sup>7</sup> Exh. 7, p. 1.

<sup>8</sup> Exh. 8, pp. 1-2.

<sup>9</sup> Exh. 9.

<sup>10</sup> Mr. T-O's own ineligibility for public assistance benefits should not prevent him from obtaining such benefits for his children.

<sup>11</sup> Exh. 3, p. 1.

### III. Discussion

Mr. T-O has the burden of proof to establish that he is eligible for the PFD.<sup>12</sup>

Among other PFD eligibility requirements, an individual must be either a:

- Citizen of the United States;
- An alien lawfully admitted for permanent residence in the United States;
- An alien with refugee status under federal law, or
- An alien that has been granted asylum under federal law.<sup>13</sup>

Prior decisions establish that Mr. T-O does not fall under any of these categories and is ineligible for the PFD. The June 4, 2018 letter from I.C.E. confirmed that his immigration status is still correctly characterized as “under an active Order of Supervision, subject to deportation.” Furthermore, Mr. T-O’s immigration status (subject to deportation) prevents him from legally forming the intent to remain indefinitely in Alaska, another requirement for the PFD.<sup>14</sup>

In the context of this case, it is important to understand **that prior administrative decisions on the same issue are controlling absent a change in circumstances.**<sup>15</sup> Mr. T-O’s immigration status has been well-established in his prior OAH cases involving his 2015 and 2017 PFDs and his public assistance benefits. He was advised of his right to appeal each of the prior decisions discussed in this decision, and he did not appeal any of them. Absent a change in immigration status, which he must prove, Mr. T-O will remain ineligible for PFDs. At the hearing of this matter, however, he submitted no evidence to demonstrate that I.C.E.’s characterization of his immigration status is incorrect or has changed in some manner.

While the record wholly supports finding that Mr. T-O does not have refugee status under federal law, Mr. T-O continues to sincerely believe that he is or should be categorized as a refugee. He vociferously argued that the denial of his 2018 PFD is unjust, because he needs the money to support his children, he cannot return to Cuba, and he is disabled and unable to work. However, no evidence was presented to show any change to his immigration status, the

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<sup>12</sup> 15 AAC 05.030(h).

<sup>13</sup> AS 43.23.005(a)(5).

<sup>14</sup> See *In re HQ*, OAH No. 13-0778-PFD; see also *State, Dep’t of Revenue v. Andrade*, 23 P.3d 58, 75 (Alaska 2001).

<sup>15</sup> See Final Decision in OAH case No. 17-0696-PFD; see also Final Decision in OAH 16-0893-APA, a second appeal by Mr. T-O of the Department of Health and Social Services decision that he is ineligible for public assistance benefits, attached hereto.

critical issue in this case, since the issue was addressed in his prior case regarding his 2017 PFD. As mentioned, that decision is binding in this matter.

In its denial of Mr. T-O's informal appeal, the Division also cited as grounds for the denial the determination that he had intentionally provided deceptive information on his application.<sup>16</sup> Testifying on behalf of the Division, Mr. Scott stated that the basis for this determination was Mr. T-O's response to question 13 on the application form, where he marked the answer "refugee" in response to the question "what was your legal immigration status on December 31, 2018?"<sup>17</sup> Mr. Scott explained that Mr. T-O "knows that he is under an order of deportation and has not been granted refugee status," and therefore his answer was intentionally deceptive.

Because Mr. T-O's ineligibility turns on his actual immigration status, it is not necessary to decide the question of whether he intentionally provided deceptive information on his application. However, it is clear that Mr. T-O holds a sincere belief that he should be considered a refugee, and further that he does not understand the distinction between his subjective belief in his refugee status and the legal determinations of the United States government. These factors are pertinent to Mr. T-O's state of mind in filling out his 2018 PFD application. Based on these factors, the Division did not meet its burden of proving that he **intentionally** provided false information on his application.<sup>18</sup>

#### **IV. Conclusion**

Mr. T-O presented no evidence that his immigration has changed since the prior decisions finding him ineligible for a PFD. Therefore, he is ineligible for the 2018 PFD.

Dated this 22<sup>nd</sup> day of April, 2019.

By: Signed  
Andrew M Lebo  
Administrative Law Judge

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<sup>16</sup> Exh.8, p.1 (decision denying informal appeal).

<sup>17</sup> Exh. 1, p. 2.

<sup>18</sup> If Mr. T-O submits future applications for PFDs and, notwithstanding the clear language of this decision, continues to indicate "refugee" as his "legal immigration status," it is possible that a future decision might reach a different result on this issue.

## 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 16<sup>th</sup> day of May, 2019.

By: Signed  
Signature  
Andrew M. Lebo  
Name  
Administrative Law Judge  
Title

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