

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

In the Matter of)	
)	
N T-M)	OAH No. 20-0253-PFD
_____)	Agency No. 2019-039-5990

DECISION

I. Introduction

N T-M appealed the Permanent Fund Dividend Division’s decision denying his 2019 Permanent Fund Dividend (PFD) application.¹ A hearing was held on his appeal on May 11, 2020. Peter Scott appeared telephonically for the Permanent Fund Dividend Division (Division) and explained the Division’s rationale in denying the application. Mr. T-M appeared telephonically and testified on his own behalf, with a Spanish interpreter’s assistance.

Prior decisions of the Office of Administrative Hearing (OAH), and the record developed at the hearing in this case, demonstrate that Mr. T-M’s immigration status has not changed since the denials of his 2015, 2017 and 2018 PFDs were upheld by the Department of Revenue. Because those decisions are binding on the Department, Mr. T-M is ineligible for the 2019 PFD.

II. Facts

Mr. T-M has come before the Office of Administrative Hearings a total of twelve times prior to this case and since late 2015; this is his fourth appeal of a PFD denial.² On February 2, 2016, a final administrative decision was issued in OAH case number 15-1412-APA, finding that Mr. T-M is a non-qualified alien for purposes of public assistance programs.³ Mr. T-M did not appeal that decision. The written decision in that case describes Mr. T-M’s Country A citizenship and immigration status. The detailed history of Mr. T-M’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.”⁴

¹ Exh. 4, p. 1; exh. 6, p. 1.

² 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, 18-0963-APA, 18-1328-PFD, 19-0596-PFE.

³ See Final Decision in OAH No. 15-1412-APA, Mr. T-M’s first appeal of the Department of Health and Social Services decision that he is ineligible for public assistance benefits (available on OAH’s website at <https://aws.state.ak.us/OAH/Decision/Display?rec=309>).

⁴ *Id.* at p. 2; See Exh. 7 (letter from U.S. Immigration & Customs Enforcement).

After the issuance of the decision in case number 15-1412-APA, Mr. T-M's application for a 2015 PFD was denied, and he appealed. The Division upheld the denial after an informal appeal; an administrative law judge (ALJ) from OAH conducted a hearing on Mr. T-M's formal appeal; and the denial was affirmed in a decision that confirmed that his immigration status makes Mr. T-M ineligible for a PFD.⁵

Subsequently, Mr. T-M was denied his 2017 PFD application and he appealed that decision. The denial was 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.⁶

Mr. T-M was then denied a 2018 PFD, and he pursued an appeal of that denial. After a hearing before the undersigned ALJ, the denial was affirmed on the same basis as the prior denials.⁷ Mr. T-M appealed that decision to the Alaska Superior Court, where the denial was affirmed.⁸

In the current case, Mr. T-M's application for a 2019 PFD was denied on August 30, 2019.⁹ He filed a timely informal appeal,¹⁰ which was denied on February 27, 2020.¹¹ Mr. T-M filed his formal appeal on March 3, 2020.¹²

At the May 11, 2020 hearing on his formal appeal, Mr. T-M 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 Country A, he has made an honest effort to "be a good citizen," and the denial is the result of a conspiracy to deny him of his rights.¹³

During the hearing, Mr. Scott explained that the Division's decision was based on its prior denials of Mr. T-M's eligibility, which were binding on the Division in making its determination regarding his 2019 application. The prior determinations were based on the results of Division inquiries to the U.S. Immigration and Customs Enforcement agency (I.C.E.)

⁵ See Final Decision in OAH case No. 17-0696-PFD.

⁶ See Final Decision in OAH case No. 18-0288-PFD. In that case, Mr. T-M 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.

⁷ See Final Decision in OAH case no. 18-1328-PFD (Exh. 3 in this record).

⁸ See Decision on Appeal, case no. 3AN-19-00000 CI (attached hereto).

⁹ Exh. 2, p. 1.

¹⁰ Exh. 4, p. 1.

¹¹ Exh. 5, pp. 1-2.

¹² Exh. 6.

¹³ T-M testimony.

regarding Mr. T-M's current immigration status. His status was explained in a letter from an I.C.E. officer dated June 4, 2018:

Mr. T-M 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-M 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.^[14]

As mentioned, despite this clear statement by I.C.E., Mr. T-M holds a sincere belief that he should be considered a refugee. He clearly does not understand or accept the distinction between his subjective belief in his refugee status and I.C.E.'s legal determinations regarding his status.

III. Discussion

Mr. T-M has the burden of proof to establish that he is eligible for the PFD.¹⁵ Among other PFD eligibility requirements, he must show that he is 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.¹⁶

Prior decisions establish that Mr. T-M 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-M's immigration status (subject to deportation) prevents him from legally forming the intent to remain indefinitely in Alaska, another requirement for the PFD.¹⁷

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.**¹⁸ Mr. T-M's immigration status has been well-established in his prior OAH cases involving his 2015, 2017

¹⁴ Exh. 7.

¹⁵ 15 AAC 05.030(h).

¹⁶ AS 43.23.005(a)(5).

¹⁷ 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).

¹⁸ See Final Decision in OAH case no. 18-1328-PFD (Exh. 3 in this record), affirmed by the Superior Court in case no. 3AN-19-00000 CI; Final Decision in OAH case no. 17-0696-PFD; see also Final Decision in OAH case no. 16-0893-APA (a second appeal by Mr. T-M of the Department of Health and Social Services decision that he is ineligible for public assistance benefits).

and 2018 PFDs and his public assistance benefits. He was advised of his right to appeal each of the prior decisions discussed in this decision. As noted above, he appealed the decision affirming the denial of his 2018 PFD to the Alaska Superior Court, where the decision was affirmed. The court held that Mr. T-M was collaterally estopped from relitigating the impact of his immigration status on his PFD eligibility, having litigated the issue on multiple prior occasions before OAH.¹⁹

Absent a change in immigration status, which he has the burden to prove, Mr. T-M will remain ineligible for PFDs. At the hearing of this matter, he submitted no evidence to demonstrate that I.C.E.'s characterization of his immigration status is incorrect or has changed in some manner.²⁰

While the record wholly supports finding that Mr. T-M does not have refugee status under federal law, Mr. T-M continues to sincerely believe that he is or should be categorized as a refugee. He vociferously argued that the denial of his 2019 PFD is unjust, because he cannot return to Country A, he has made an honest effort to "be a good citizen," and there is a conspiracy in state government to deny him of his right to a PFD. However, Mr. T-M presented no evidence regarding the critical issue in this case, i.e., whether there has been any change to his immigration status since the issue was last addressed in the decision regarding his 2018 PFD. As mentioned, prior decisions are binding in this matter.

In its denial of Mr. T-M's informal appeal, the Division also cited as grounds for the denial the determination that he had intentionally provided deceptive information on his application.²¹ The informal appeal decision cites Mr. T-M's response to question 13 on the 2019 PFD application form as the basis for this determination, where he provided the answer "refugee" in response to a question regarding his legal immigration status.²²

Because Mr. T-M'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-M holds a sincere belief that he should be

¹⁹ Decision on Appeal, case no. 3AN-19-00000 CI (attached hereto).

²⁰ Although Mr. T-M did submit a copy of a document indicating that he was "paroled indefinitely" as a Country A parolee in 1988, he did not suggest that I.C.E. is unaware of the document, and even if that were the case, he did not explain how it might impact I.C.E.'s position regarding his status. *See* Exh.6, p. 3.

²¹ Exh. 5, p. 1 (decision denying informal appeal).

²² Exh. 1, p. 2.

considered a refugee, and 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-M's state of mind in filling out his 2019 PFD application. During the hearing, Mr. Scott presented no other evidence and elicited no testimony from Mr. T-M bearing on this issue. Based on these factors, the Division did not meet its burden of proving that he **intentionally** provided false information on his application.

IV. Conclusion

Mr. T-M presented no evidence that his immigration status has changed since the prior decisions finding him ineligible for a PFD. Therefore, he is ineligible for the 2019 PFD.

Dated this 15th day of June, 2020.

By: Signed
Andrew M. Lebo
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 17th day of July, 2020.

By: Signed
Signature
Michael Barnhill
Name
Deputy Commissioner
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]