

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

In the Matter of	)	
	)	
W. L.	)	OAH No. 23-0544-PFD
	)	
<u>2021 Permanent Fund Dividend</u>	)	

DECISION

I. Introduction

W. L.’s application for a 2021 Permanent Fund Dividend (“PFD”) was denied by the Permanent Fund Division (the “Division”) on the grounds that he is not a United States citizen, or an alien lawfully admitted for permanent residence in the United States. This matter was submitted for decision based on documents provided by the parties. Since the documentary evidence shows that Mr. L. is subject to a pending deportation order, the decision denying his application is affirmed.

II. Facts

Mr. L. was born in the Soviet Union in 1979, and thereafter entered the United States with his parents in the early 1990’s under the Refugee Act of 1980. He moved to Alaska in 2011. While Mr. L.’s initial entry into the United States was legal, in 2010 an immigration judge ordered that Mr. L. be deported from the United States.¹ Mr. L. is presently allowed to remain out of custody under an “Order of Supervision” issued in 2013 that requires him to report monthly to a Detention and Deportation Officer with the Bureau of Immigration and Customs Enforcement.²

The reason Mr. L. remains in the United States is that his country of origin – now the Russian Federation – has not issued travel documents allowing him to return. As one of his conditions for remaining in the United States, Mr. L. must annually apply for a Russian passport or visa.³ Mr. L. will presumably be deported when the Russian Federation issues the documents allowing him to return.

¹ Ex. 12 at p. 2. The reason why this deportation order was issued is not disclosed in the record.

² Ex. 12 at p. 3.

³ Ex. 12 at p. 2.

At some unknown date, the Bureau of Immigration and Customs Enforcement issued Mr. L. a “Permanent Resident Card” that showed him as having resident status since 1994.⁴ This card listed the following information:

Country of Birth: Russia
Category: RE8⁵
Resident Since: 5/10/94
CARD EXPIRES: 11/14/17

Whether this card was issued before or after Mr. L.’s deportation order was issued is not disclosed in record.

Using this card as evidence that he had permanent resident status, Mr. L. applied for and was granted PFD’s for the period of 2015 through 2019. In those applications he listed his immigration status as “Resident.”⁶ Mr. L. did not disclose the fact he was subject to a deportation order when applying for these dividends.

After forgetting to apply for a dividend in 2020, Mr. L. again applied for a dividend in 2021. In this application, Mr. L. listed his immigration status as “Refugee.”⁷ The Division denied his application on the grounds that his Permanent Resident Card had expired in 2017, and no other documents had been submitted establishing his refugee or permanent resident status.

Mr. L. requested an informal appeal based on his contention that he was a “legal resident alien” since he had been living in Alaska since 2011 and legally working since 2019.⁸ Mr. L. submitted tax returns for the period of 2019-2021 as evidence of his employment and payment of federal income taxes⁹. The Division rejected the appeal based on the lack of documentation showing that Mr. L. was either a permanent resident or had been granted refugee status. Being unaware of Mr. L.’s pending deportation order, the Division made no reference to it in denying his informal appeal.¹⁰

⁴ Ex. 9 at p. 1.

⁵ This “RE8” category indicates Mr. L. entered the United States as a minor child of a refugee parent.

⁶ Ex. 8 at p. 1.

⁷ Ex. 1 at p. 1.

⁸ Ex. 4 at p. 2.

⁹ Ex. 4 at pp. 3-8.

¹⁰ Ex. 5 at p. 2.

Mr. L. requested a formal appeal by correspondence only. After the appeal was opened, in response to a document request submitted by Division he disclosed the documents which showed the existence of the 2010 deportation order.

III. Discussion

As the party requesting this appeal, Mr. L. has the burden of showing that the Division erred in denying his PFD application.¹¹ Since Mr. L. is not a United States citizen, to qualify for a dividend he must establish that he has been (1) lawfully admitted for permanent residence in the United States; (2) granted refugee status; or (3) granted asylum in in the United States.¹² Since an individual's immigration status is controlled by federal law,¹³ the role of the Division is limited to determining whether individual applicants have produced documents proving that they meet these eligibility criteria.¹⁴

Here, Mr. L. has not carried his burden of establishing that he has been granted a status under federal immigration law that permits him to indefinitely remain in the United States. While Mr. L. lawfully entered the United States as a refugee at some point in the past, he lost that status upon issuance of his deportation order in 2010. Mr. L. cannot circumvent the legal effect of that order by labeling himself a refugee or resident alien in a PFD application.¹⁵ The fact Mr. L. wants to remain in Alaska, and has at times been granted permission to obtain employment by the federal officials who are supervising him, does not alter this analysis.

As noted in past Department of Revenue decisions, persons who are subject to deportation orders are ineligible to receive PFD's since they cannot legally form the intent to remain indefinitely in Alaska.¹⁶ Mr. L. is accordingly ineligible to receive a PFD and

¹¹ 15 AAC 05.030(g).

¹² AS 43.23.005(a)(5). *See also* 15 AAC 23.154(a) (aliens seeking a PFD must provide verification that they have been assigned an immigration status under federal law that "allows the alien to adopt the United States as the alien's domicile").

¹³ An alien's immigration status is governed by the Immigration and Nationality Act, 8 U.S.C. § 1101-1189, and related regulations.

¹⁴ 15 AAC 23.154(a).

¹⁵ *In re H.Q.*, OAH No. 13-0778-PFD at 2 (Dept. of Rev. 2013) (applicant lost refugee status following issuance of deportation order).

¹⁶ *In re N.T-M.*, OAH No. 20-0253-PFD at 3 (Dept. of Rev. 2020) (a pending deportation order prevents a person from "legally forming the intent to remain indefinitely in Alaska"); *In re N.T-O*, OAH No. 17-0696-PFD at 2-3 (Dept. of Rev. 2017) (same).

shall remain so until such time as he can prove there has been a change to his immigration status.

IV. Conclusion

Since Mr. L. is an alien subject to a pending deportation order, he is ineligible to receive a Permanent Fund Dividend. Accordingly, the Division's decision to deny Mr. L.'s 2021 PFD application is affirmed.

Dated: November 8, 2023

Signed

Max Garner
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 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 11th day of December, 2023.

By: Signed
Max Garner
Administrative Law Judge

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