

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
In the Administrative Law Court

The Honorable Crystal M. Rookard, Administrative Law Judge

Appellate Case No. 2025-001876

Orangeburg County Assessor Respondent,

v.

Rekha Bali Haribabu and Thiyagarajhan Vasudevan Appellants.

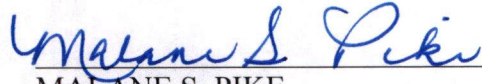
Motion to Dismiss Appeal

The Orangeburg County Assessor (Respondent), through undersigned counsel, hereby moves this Court to dismiss this appeal. The grounds for the motion are that the Appellants failed to file a motion for reconsideration with the Administrative Law Court as required by SCALC Rule 29(D) prior to filing the Notice of Appeal with this Court, thereby depriving this Court of appellate jurisdiction. The facts and legal arguments supporting the motion are set forth in more detail in the accompanying Memorandum in Support of Respondent's Motion to Dismiss Appeal.

(signature on the following page)

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SC Court of Appeals

Respectfully submitted,



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ATTORNEY FOR RESPONDENT
ORANGEBURG COUNTY ASSESSOR

September 29, 2025

THE STATE OF SOUTH CAROLINA
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APPEAL FROM RICHLAND COUNTY
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Orangeburg County Assessor Respondent,

v.

Rekha Bali Haribabu and Thiyagarajhan Vasudevan Appellants.

MEMORANDUM IN SUPPORT OF RESPONDENT’S
MOTION TO DISMISS APPEAL

The Orangeburg County Assessor (“Respondent”) hereby files this Memorandum in Support of Respondent’s Motion to Dismiss Appeal.

I. FACTS AND PROCEDURAL BACKGROUND

This case is an appeal from the decision of the Administrative Law Court (“ALC”) upholding the denial of the Appellants’ legal residence property tax classification pursuant to S.C. Code Ann. §12-43-220(c) (2014 and Supp. 2024). This case was filed with the ALC on December 19, 2024 and was subsequently heard on May 22, 2025. Thereafter, the Court issued a decision on August 7, 2025 in favor of the Respondent, which both parties admit receiving on that same date. The Appellants filed no Motion for Reconsideration or any other documents with the ALC.

On September 4, 2025, the Appellants filed their Notice of Appeal in the Court of Appeals. This Motion to Dismiss is being filed due to the Appellants' failure to comply with the ALC's requirement in Rule 29(D), SCALC that a Motion for Reconsideration must be filed prior to an appeal to the Court of Appeals and the lack of issue preservation resulting therefrom.

II. ARGUMENT AND AUTHORITIES

A. **The ALC is authorized to make rules regarding practice and procedure before it, and pursuant to that authority has amended its Rule 29(D) to require a Motion for Reconsideration prior to filing a Notice of Appeal.**

In April 2025, the ALC amended its Rule 29(D) to require that a Motion for Reconsideration be filed prior to filing a Notice of Appeal. That rule, as of April 2025, reads as follows:

D. Motion for Reconsideration. Any party may move for reconsideration of a final decision of an administrative law judge in a contested case. **A party must file a motion for reconsideration prior to filing a notice of appeal and must state with particularity the points supposed to have been overlooked or misapprehended by the Court.** A motion for reconsideration is subject to the grounds for relief set forth in Rule 59, SCRCF, as follows:

1. Within ten (10) days after notice of the final decision concluding the matter before the administrative law judge, a party may move for reconsideration of the decision. The opposing party may file a response to the motion within ten (10) days of the filing of the motion.
2. The administrative law judge shall act on the motion for reconsideration within thirty (30) days after it is filed if an opposing party does not file a response or within thirty (30) days after an opposing party files a response. If no action is taken by the administrative law judge within the applicable period, the inaction shall be deemed a denial of the relief sought in the motion.
3. The filing of a motion for reconsideration shall not stay effect of the final decision of the administrative law judge or excuse or delay compliance with the final decision.
4. The time for appeal for all parties shall be stayed by a timely motion for reconsideration, and shall run from receipt of an order granting or denying such motion. If no order is filed regarding the motion, the time for appeal shall begin to run thirty (30) days from the date the motion is deemed denied pursuant to subsection (D)(2).

Emphasis Added.

Rule 29(D) is very specific in stating that “[a] party must file a motion for reconsideration prior to filing a notice of appeal...”. The time for appeal is tolled until the motion for reconsideration is resolved or deemed denied. See Rule 29(D)(4), SCALC. This tolling mechanism ensures that the requirement to file a motion for reconsideration does not result in a forfeiture of appeal rights if the motion is denied.

S.C. Code Ann. § 1-23-650 (Supp. 2024) explicitly authorizes the ALC to promulgate rules governing practice and procedure before the Court. This statutory grant of authority has been recognized by South Carolina courts, with the Supreme Court noting in Gateway Enterprises, Inc. v. S.C. Department of Revenue that the ALJ Division has established its own Rules of Procedure as authorized by S.C. Code Ann. § 1-23-650. (See Gateway Enterprises, Inc. v. South Carolina Department of Revenue, 341 S.C. 103, 108, 533 S.E. 2d 896, 899 (2000)). The statutory framework establishes the Administrative Law Court as having broad discretionary authority to create rules necessary for its functioning, consistent with the general principle that the Legislature has the right to vest in the administrative officers and bodies of the state a large measure of discretionary authority, especially to make rules and regulations as to the enforcement of law. Fisher v. J. H. Sheridan Co., 182 S.C. 316, 189 S.E. 356 at 360 (1936).

Practice and procedure rules face stringent requirements and oversight mechanisms. These rules must satisfy two substantive criteria: they must be consistent with the rules of procedure governing civil actions in courts of common pleas and must be not otherwise expressed in Chapter 23, Title 1. (See Section 1-23-650). This requirement ensures harmony between administrative proceedings and traditional civil litigation while preventing the court from contradicting existing statutory procedures.

Upon approval by a majority of the court's judges, practice and procedure rules must be promulgated by the court and are subject to review as are rules of procedure promulgated by the Supreme Court under Article V of the Constitution. (See Section 1-23-650). This constitutional review process operates through Article V, Section 4A of the South Carolina Constitution, which requires that all court rules governing practice and procedure be submitted to the Judiciary Committee of each House of the General Assembly during regular sessions, no later than February first and become effective ninety days after submission unless disapproved by a three-fifths vote of both houses. (S.C. Const. art. V, § 4A)

Accordingly, the amendment to SCALC Rule 29(D) was subject to all of the requirements and oversight mechanisms listed above and was thereafter implemented in April 2025.

B. SCALC Rule 29(D) serves as a mechanism for issue preservation and is consistent with existing statutes and case law governing appeals from the ALC.

The South Carolina Administrative Procedures Act establishes that appeals must be filed within thirty days after final agency decisions, or if a rehearing is requested, within thirty days after the rehearing decision is rendered. (See S.C. Code Ann. §§ 1-23-380(1) and 1-23-610(A) (Supp. 2024)). SCALC Rule 29(D)'s requirement of a Motion for Reconsideration functions as the primary mechanism for preserving issues within this framework. It does not conflict with the time period for appeal in the above referenced statutes in that SCALC Rule 29(D)(4) specifically provides that a Motion for Reconsideration tolls the time period for an appeal. Thus, the 30 day appeal period is not abrogated in any way.

South Carolina courts have consistently held that SCALC Rule 29(D) motions are mandatory for preserving issues on appeal, even when those issues were previously raised and addressed by the Administrative Law Court. In S.C. Department of Motor Vehicles v. Dover, the Court of Appeals found that the DMV's argument regarding the ALC's reliance on incorrect

statutory authority was unpreserved because the DMV did not file a Rule 59(e), SCRCPP, or a SCALC Rule 29(D) motion for reconsideration to call the ALC's attention to its purported improper reliance on the statute in question. South Carolina Department of Motor Vehicles v. Dover, 423 S.C. 153 n3, 813 S.E. 2d 532 n3 (Ct. App. 2018). This holding applied despite the fact that the statutory interpretation issue had been briefed and addressed during the underlying proceedings.

The case of Risher v. S.C. Department of Health & Environmental Control reinforces this strict preservation requirement. The Supreme Court declined to address the merits of appellants' challenge to the ALC's inclusion of the judge's on site observations of the subject property in its final order, finding the issue unpreserved because Appellants failed to file a motion for reconsideration or a motion to alter or amend the judgment pursuant to SCALC Rules 29 or 68 or Rules 59(e) or 60, SCRCPP. The Court emphasized that this preservation requirement applies despite any uncertainty that might have existed about the availability of such motions in ALC proceedings. Risher v. South Carolina Dept. of Health and Environmental Control, 393 S.C. 198, 206, 712 S.E.2d 428, 431 (2011).

Although the above cases predate the amendment to SCALC Rule 29(D), it is obvious that the ALC amendment embodies the intent of these cases. It is interesting to note that a former version of SCALC Rule 29(D) specifically stated that a motion for reconsideration was not a prerequisite to filing a notice of appeal. In 2019, that language was deleted from the rule for the stated reason that it was inconsistent with applicable case law on issue preservation. (See SCALC Rule 29, 2019 Revised Notes (2019 to 2024)). In fact, case law has consistently recognized that Motions for Reconsideration are necessary vehicles for issue preservation. However, there was

no court rule that specifically required that such be filed until the amendment to SCALC Rule 29(D) in April 2025.

Motions for Reconsideration are valuable tools for the judiciary in that they promote judicial economy and efficiency by allowing administrative law judges to correct errors without requiring appellate intervention. In addition, the ALC rule requiring that Motions for Reconsideration be filed protects parties from inadvertent failure to preserve issues for appeal.¹

C. Without having filed a timely Motion for Reconsideration with the ALC, the Appellant has deprived the Court of Appeals of appellate jurisdiction in that no issues have been preserved for review by this Court. As such, this appeal must be dismissed.

The result of not having filed a Motion for Reconsideration is that the Court of Appeals now has no appellate jurisdiction to hear this case. In Great Games, Inc. v. S. C. Department of Revenue, the Supreme Court clarified that the failure of a party to comply with the procedural requirements for perfecting an appeal may deprive the court of ‘appellate’ jurisdiction over the case, but it does not affect the court’s subject matter jurisdiction. Great Games, Inc. v. South Carolina Dept. of Revenue, 339 S.C. 79 n5, 529 S.E.2d 6 n5 (2000). Thus, the requirement to file a Motion for Reconsideration found in SCALC Rule 29(D) is a procedural requirement, in which the failure to file can deprive the court of appellate jurisdiction over issues not properly preserved. In the matter at hand, there are no issues preserved for appeal in that no Motion for Reconsideration was filed.

¹ The case of Home Medical Systems, Inc. v. South Carolina Dept. of Revenue was decided in 2009 when SCALC Rule 29(D) still contained the language indicating that a motion for reconsideration was not a prerequisite for filing a notice of appeal from a final decision of an administrative law judge. In that case the Supreme Court emphasized that such motions were often required for issue preservation but bolded the language in SCALC Rule 29(D) that such motions were not required. Home Medical Systems, Inc. v. South Carolina Dept. of Revenue, 382 S.C. 556, 561, 677 S.E.2d 582, 585 (2009). Although the Home Medical case has not been overruled, the subsequent Risher case in 2011, *supra*, was much more forceful in stating that a Motion for Reconsideration was required for issue preservation. Since the Risher case is a more recent opinion with respect to this issue and was, likewise, issued before the ALC removed the language stating that a Motion for Reconsideration was not a requirement to appeal, it should be given greater weight in the determination of the matter at hand.

D. The change to SCALC Rule 29(D) requiring Motions for Reconsideration prior to appeal, which became effective April 15, 2025, is applicable to the Appellants because the rule was effective when the ALC issued its decision on August 7, 2025. Further, the application of the rule is feasible and would not work injustice.

South Carolina follows a clear framework for determining when new procedural rules apply to pending cases. Rule 86(a), SCRCP establishes that new rules govern all further proceedings in actions then pending unless applying the new rule would not be feasible or would work injustice. Graham v. Dorchester County School Dist., 339 S.C. 121, 124, 528 S.E.2d 80, 82 (Ct. App. 2000). The South Carolina Court of Appeals in the Graham decision applied the existing Rule 86(a), SCRCP framework and found that in that specific case, retroactive application was feasible and would not work injustice. *Id.* at 125, 528 S.E. 2d at 82.

The court in Graham further explained that procedural rules, like statutes, should be given their plain meaning, and that the same principles used for statutory law changes apply to determining whether an amended procedural rule should have prospective or retroactive effect. *Id.* at 124, 528 S.E. 2d at 81. South Carolina courts have consistently recognized that a newly adopted procedural statute is generally held applicable to pending cases unless its application either would impair some vested right or would violate some constitutional guaranty. McGann v. Mungo, 287 S.C. 561, 566, 340 S.E. 2d 154, 157 (Ct. App. 1986)

The Administrative Law Court rules specifically provide for the application of South Carolina Rules of Civil Procedure when ALC rules do not address particular issues. SCALC Rule 68 states that the South Carolina Rules of Civil Procedure and the South Carolina Appellate Court Rules may, in the discretion of the presiding administrative law judge, be applied in proceedings before the Court to resolve questions not addressed by these rules. The intent of the ALC in promulgating SCALC Rule 68 was to allow the SCRCP to be used to fill gaps in the ALC rules

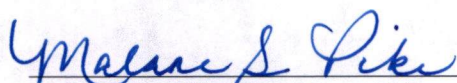
for contested cases and to allow the SCACR to be used to fill gaps in the ALC rules for appellate cases before the ALC. Allen v. South Carolina Public Employee Ben. Authority, 411 S.C. 611, 621, 769 S.E.2d 666, 672 (2015) This integration means that the framework established by Rule 86, SCRCF for applying new procedural rules to pending cases extends to ALC proceedings.

The South Carolina Supreme Court has confirmed that Rule 59(e) motions are permitted in ALC proceedings and that issue preservation requirements apply in administrative appeals just as they do in other appellate matters. Home Medical Systems, Inc. v. South Carolina Dept. of Revenue, 382 S.C. 556, 677 S.E.2d 582 (2009) This established precedent demonstrates that civil procedure rules regularly govern ALC proceedings when the ALC rules do not provide specific guidance.

Rule 86(a), SCRCF uses the test of whether the application of a new rule to a pending case would not be feasible or would work injustice test to determine the rule's applicability to a particular case. Applying the 2025 amendment to SCALC Rule 29(D) requiring that a Motion for Reconsideration be filed prior to filing a notice of appeal is feasible and would not work injustice. The application is feasible because the rule establishes clear procedural steps that parties can follow after receiving an adverse ALC decision. Parties who filed cases before April 14, 2025, but whose cases were decided after April 14, 2025 have had ample opportunity to apprise themselves of the new rule and comply with the content. As such, they have not been deprived of any vested procedural rights. The rule change affects only future proceedings in their cases rather than altering past actions or completed proceedings.

III. CONCLUSION

In respect for the authorities cited above, this Court is respectfully requested to dismiss this action in that SCALC Rule 29(D) is applicable to the Appellants and their failure to file a Motion for Reconsideration prior to filing a Notice of Appeal to this Court now leaves this Court without appellate jurisdiction in that no issues have been preserved for appeal.



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Attorney for Respondent

Date: September 29, 2025

EXHIBIT A
(Request for Contested Case Hearing)

**South Carolina Administrative Law Court (SC ALC)
Request for Contested Case Hearing FORM
Mail to: 1205 Pendleton St., Suite 224, Columbia, SC 29201**

Last Name: Orangeburg County Assessor	First:	Middle:	Docket No. (To Be Completed by ALC)
Mailing Address: 1437 Amelia Street	City: Orangeburg	State and Zip: SC 29115	
Home Number:	Work Number: 803-533-6231	Cell Number:	*E-Mail Address: lsingleton@orangeburgcounty.org

*By providing your e-mail address, you consent to receive court orders and notices via electronic transmission

REPRESENTATION

Are you representing yourself? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Name of Attorney: Malane S Pike
Are you represented by an Attorney? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	City, State and Zip: White Rock, SC 29177
Attorney Mailing Address: PO Box 729	Attorney E-Mail Address: pikemal@gmail.com
Attorney Work Number and Cell Number: 803-622-1493	

CASE INFORMATION

Name of Agency that Issued the Decision: (Example - Dept. of Revenue, Dept. of Insurance, DHEC)

In order to have your case processed, you must attach the agency decision. Is it attached?: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	If no, please explain:
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Date the decision was issued: December 13, 2024 Date the decision was received: December 13, 2024

Please provide a brief statement regarding why the hearing is being requested and the relief sought:
The issue in this case is whether the husband of Ms. Haribabu, who has been in India for 2 years but holds an H-4 nonimmigrant visa, has exhibited sufficient intent to make Orangeburg County, SC his legal residence. The Assessor has found no objective evidence of such intent and disagrees with the Board of Assessment Appeals decision. This matter was previously assigned to Judge Reibold and was remanded back to the County on August 23, 2024.

Payment (applicable **filing fee pursuant to ALC Rule 71**) is being submitted today to the Administrative Law Court

via Check Money Order Cash N/A
via U.S. Postal Service Hand-delivery

Malane S Pike December 19, 2024
X Your Signature or Signature of Attorney Date

PROOF OF SERVICE (MUST BE COMPLETED)

Your Name: Malane S Pike Date: December 19, 2024 City: Columbia State: SC

I hereby certify that on the date and place listed above, I served a copy of the foregoing Request for Contested Case Hearing **on all other parties** to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows (use the reverse side for any additional names):

Name and/or Agency Name Rekha Bali Haribabu	Address 105 Lata Palm Court	City, State and Zip Orangeburg, SC 29118
Name and/or Agency Name Thiyagarajhan Vasudevan	Address 105 Lata Palm Court	City, State and Zip Orangeburg, SC 29118

Malane S Pike December 19, 2024
X Your Signature or Signature of Attorney Date

Attention: All cases filed in the Administrative Law Court are subject to the Rules of Procedure found at the Court's website www.scalc.net or from the Clerk of Court. Failure to follow these rules may result in dismissal of your case.

EXHIBIT B
(Order of Administrative Law Court)

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Orangeburg County Assessor,

Petitioner,

v.

Rekha Bali Haribabu and Thiyagarajhan
Vasudevan,

Respondents.

Docket No. 24-ALJ-17-0435-CC

ORDER

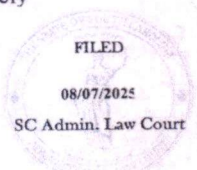
APPEARANCES: For Petitioner: Malane Pike, Esquire
For Respondents: John D. Elliott, Esquire

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or Court) pursuant to a request for a contested case hearing filed by the Orangeburg County Assessor (Petitioner or Assessor). Petitioner disputes the decision issued by the Orangeburg County Board of Assessment Appeals granting Rekha Bali Haribabu and Thiyagarajhan Vasudevan (Respondents or Haribabu or Vasudevan) the 4% legal residence property tax classification.¹

After proper notice, the Court held a hearing on the merits on May 22, 2025, at the ALC in Columbia, South Carolina. The Court convened for a hearing where Petitioner, Respondents, and counsel for both parties were in attendance. Both Petitioner and Respondents testified at the hearing. After careful consideration of the evidence presented and the applicable law, the Court finds that the Respondents' application for the legal residence property tax classification should be denied.

¹ This matter was the subject of a prior appeal to the ALC in July 2024 by Ms. Haribabu and Mr. Vasudevan on the basis of an adverse decision of the Orangeburg County Board of Assessment Appeals. Thereafter, both parties requested that the matter be remanded to the Orangeburg County Assessor for the purpose of obtaining additional information. An Order of Remand was issued by this Court on August 23, 2024. Such additional information did not resolve the case, and the Orangeburg County Board of Assessment Appeals heard the matter a second time on the basis of the additional information. The Board granted the legal residence classification and the Assessor timely appealed that decision to this Court, which is now the subject of this matter.



FINDINGS OF FACT

Having carefully considered the testimony, exhibits, and arguments presented at the hearing, and considering the credibility and accuracy of the evidence, the Court makes the following Findings of Fact by a preponderance of the evidence:

Mr. Vasudevan and Ms. Haribabu are both citizens of India and have been married for twenty-eight years, since 1997. They have one son Charan Rajhan Thiyagarajhan (Thiyagarajhan), born in 1998. Ms. Haribabu purchased a residence located at 105 Lata Palm Court in Orangeburg, South Carolina (Tax Map # 0151-12-04-072.000) on January 31, 2022. The residence is solely in her name, as is the mortgage on the property. On December 6, 2023, Ms. Haribabu and Mr. Vasudevan filed a legal residence application. That application was denied by the Assessor on the grounds that the domiciliary intent of Mr. Vasudevan had not been provided.

Ms. Haribabu is in the United States legally under an H-1B nonimmigrant visa, which allows United States employers to hire foreign workers in specialty occupations. She is currently employed as a teacher in the Orangeburg County School District. Ms. Haribabu came to the United States in 2009 on a J-1 nonimmigrant visa. Under the terms of that visa, she was allowed to teach for three years in the United States but was then required to return to her home country for two years before being allowed to return to the United States. Upon her return, she taught school in Connecticut from 2009 to 2012. She was then required to return to India from 2012 to 2014. She returned to the United States in 2014 and taught in the Richland County School District One.

Ms. Haribabu was employed by the Orangeburg County School District in August of 2018. The Orangeburg County School District assisted her in obtaining her H-1B visa in 2019, which served to extend her stay in the United States. From 2014 to present, her only travel back to India occurred in December 2019 to February 2020, to obtain her master's degree. In January 2021, the Orangeburg County School District filed a Form I-140, Immigrant Petition for Alien Worker (Form I-140), on Ms. Haribabu's behalf, which was thereafter approved by the United States Citizenship and Immigration Services (USCIS).² Ms. Haribabu is currently waiting for her priority date to become current such that she can apply for a Green Card.

² This form is used to petition for an alien worker to become a lawful permanent resident United States. *See I-140, Immigrant Petitioner for Alien Workers*, U.S. Citizenship and Immigration Services, <https://www.uscis.gov/i-140> (last visited August 7, 2025).

Although the Form I-140 specifically requires that the applicant provides the names of the spouse and children and whether or not they will apply for adjustment of status along with the applicant. Mr. Vasudevan's name was not included on Ms. Haribabu's Form I-140. Mr. Thiyagarajhan was included but indicated that he would not be requesting an adjustment of status. Ms. Haribabu testified the Form I-140 was prepared by the attorney for her employer and she could not explain why Vasudevan's name was not included. In further testimony, she admitted that she reviewed the Form I-140 prior to it being filed. Mr. Thiyagarajhan came to the United States from 2018 to 2022 on an F-1 student visa. He attended Midlands Technical College during that time but returned to India in 2022. He was thereafter denied readmission to the United States on an F-1 visa. He returned to the United States in March of 2025 and is completing his degree at South Carolina State University. Since he was over the age of 18 at all times during this appeal, his intent is not a determining factor in this matter.

Ms. Haribabu currently owns no real property in India but may inherit a portion of her ancestral home. The couple has automobile insurance through the Government Employees Insurance Company, or GEICO, on three vehicles registered in South Carolina. Ms. Haribabu's domiciliary intent is not in question in this case.

Mr. Vasudevan is in the United States legally under an H-4 nonimmigrant spousal visa, which allows spouses of H-1B visa holders to come to the United States and remain in the United States for the period of time that the H-1B visa is valid. He has held this visa since 2019, and he came to the United States for the first time in April of that year. Mr. Vasudevan's H-4 visa expires August 8, 2026. Mr. Vasudevan holds a bachelor's degree in mathematics. He previously owned a printing business in India that closed around 2018. Mr. Vasudevan obtained an Employment Authorization Document (EAD) in 2022. He worked in various motels as a front desk clerk in the United States during 2022 and 2023 and again in April and May of 2025. Mr. Vasudevan's EAD expires August 8, 2026.

Mr. Vasudevan's testimony and his previous passport show that he never came to the United States during the period 2009 through 2012 and 2014 through 2018 – all periods in which Mrs. Haribabu was in the United States alone. Mr. Vasudevan's current passport and I-94 travel history were introduced into evidence at the hearing. For the 2023 and 2024 tax years under appeal, these documents show that Mr. Vasudevan was in the United States 234 days, namely from January 1, 2023 through August 22, 2023. Mr. Vasudenvan left the United States on August 23, 2023 and

did not return until March 27, 2025. He was therefore outside of the United States for 582 consecutive days.

Mr. Vasudevan's mother, father, and sister reside in India. Mr. Vasudevan resides with his parents when he is in India. His mother has had two knee surgeries during the period that he was in India and is now doing well. Mr. Vasudevan testified that he remained in India to take care of his parents, but in later testimony admitted that his sister lives close to his parents, approximately three kilometers (1.86 miles) away. Mr. Vasudevan testified that since his adult son is now in the United States along with his wife, he intends to remain here with his family.

Mr. Vasudevan currently owns no real property in India. Mr. Vasudevan holds a South Carolina driver's license, is a named insured on an automobile insurance policy, and filed joint income tax returns with his wife for 2022 and 2023. Even though Mr. Vasudevan was not listed on Mrs. Haribabu's Form I-140, he can obtain a Green Card with the consent of Mrs. Haribabu when Mrs. Haribabu's priority date becomes current.

The Assessor requires all taxpayers to file an application for the legal residence property tax classification for properties that they purport to own and occupy as their legal residence. On that application, the taxpayer must certify that he/she is domiciled at that residence, that no member of his/her household claims to be a resident of a jurisdiction other than South Carolina for any purpose, and that the taxpayer nor any member of his/her household claims the legal residence classification on another residence.

Nonimmigrants must show proof of their intent to make South Carolina their new domicile. The Assessor testified she first looks to the Form I-797 to determine whether an individual can apply for legal residence. The form is a decision document that can extend approval in the United States for a nonimmigrant. The Assessor indicated that the Form I-797 is sufficient on its own when an individual is single. If an individual is married, the Assessor requires more information, typically the Form I-140. The Form I-140 Form is requested so the Assessor can look to see if the spouse is included on the form as requesting an adjustment of status.

The Assessor relies upon a prior ALC decision and will extend its analysis to grant the legal residence classification in situations where an approved Form I-140 includes the name of the nonimmigrant spouse as requesting an adjustment of status, assuming that all other requirements of the legal residence statute are met. *See Begum v. Florence Cnty. Assessor*, Docket No. 18-ALJ-17-0198-CC (S.C. Admin. Law Ct. Oct. 2, 2019). The Assessor indicates the inclusion of the

spouses' name shows the intent for both parties to jointly make South Carolina their new domicile. The Assessor testified that if no spouse is listed, then there is no indication that the spouse has the intent to get a Green Card. Thus, the legal residence tax exemption is not approved, unless a separate showing is made that the spouse is seeking permanent residency.

Since Mr. Vasudevan was not listed on Mrs. Haribabu's Form I-140, the Assessor required additional evidence of Mr. Vasudevan's domiciliary intent. The Assessor did not find the income tax returns, insurance declaration pages, and driver's license, all reflecting Mr. Vasudevan's name to be sufficient evidence of domiciliary intent.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, the Court concludes the following as a matter of law:

The Court has jurisdiction pursuant to sections 1-23-600 and 12-60-2540(A) of the South Carolina Code (Supp. 2024 & 2014) ("Within thirty days after the date of the board's written decision, a property taxpayer or county assessor may appeal a property tax assessment made by the board by requesting a contested case hearing before the Administrative Law Court in accordance with the rules of the Administrative Law Court."). The proceeding before this Court is a *de novo* contested case hearing to determine whether the Respondent qualifies for the 4% residential assessment ratio based upon the evidence presented at the hearing. "When a tax assessment case reaches the AL in this posture, [i.e. upon appeal from a county board of assessment appeals], the proceeding in front of the ALJ is a *de novo* hearing." See *Smith v. Newberry County Assessor*, 350 S.C. 572, 577, 567 S.E.2d 501, 504 (Ct. App. 2002) ;see also *Reliance Ins. Co. v. Smith*, 327 S.C. 528, 535, 489 S.E.2d 674, 677 (Ct. App. 1997) ("[A]lthough a case involving a property tax assessment reaches the ALJ in the posture of an appeal, the ALJ is not sitting in an appellate capacity and is not restricted to a review of the decision below. Instead, the proceeding before the ALJ is in the nature of a *de novo* hearing.").

In a contested case before the ALC, the party contesting the decision has the burden of proof. *Id.* at 534, 489 S.E. 2d at 677. Here, the Assessor requested the contested case hearing, and as such, bears the burden of proving the accuracy of its decision.

Section 12-43-220(c)

Section 12-43-220(c) of the South Carolina Code discusses legal residence property tax classification and affords a special assessment ratio of 4% on owner occupied legal residences as

opposed to the 6% assessment ratio on most other real property. *See* S.C. Code Ann. §12-43-220(c) (2014 & Supp. 2024). In addition, subsection 12-37-220(B)(47)(a) of the South Carolina Code provides a property tax exemption from all school operating millage for owner-occupied residential property qualifying for the special assessment ratio in section 12-43-220(c). *See* S.C. Code Ann. §12-37-220(B)(47)(a) (2014).

As a property tax exemption statute, subsection 12-43-220(c) must be strictly construed. *See CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011); *see also Mead v. Beaufort County Assessor*, 419 S.C. 125, 796 S.E.2d 165 (Ct. App. 2016); *see also Hibernian Soc. v. Thomas*, 282 S.C. 465, 319 S.E.2d 339 (1984). This means that the statutory language will not be strained or liberally construed in favor of the taxpayer. *Hibernian Soc. v. Thomas*, 282 S.C. 465, 470 319 S.E.2d 339, 342 (1984). Language of a tax exemption statute must be given its plain, ordinary meaning and must be strictly construed against the claimed exemption. *TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 620, 503 S.E.2d 471, 476 (1998) (*citing John D. Hollingsworth on Wheels, Inc. v. Greenville County Treasurer*, 276 S. C. 314, 278 S.E.2d 340 (1981)); *see also Berkeley County School District v. S.C. Department of Revenue*, 383 S.C. 334, 679 S.E.2d 913 (2009).

In order for a taxpayer to qualify for the special assessment ratio, the taxpayer must own and occupy the residence as his legal residence and be domiciled at that address for some period during the applicable tax year. S.C. Code Ann. §12-43-220(c)(2)(i) (Supp. 2024); *see also Mead v. Beaufort Cnty. Assessor*, 419 S.C. 125, 796 S.E.2d 165 (Ct. App. 2016) (owner occupant must have actually owned and occupied the residence as his legal residence and been domiciled at that address for some period during the applicable tax year to be entitled to the special assessment ratio.). In addition, the taxpayer must make the following certification:

Under penalty of perjury, I certify that:

(A) the residence which is the subject of this application is my legal residence and where I am domiciled at the time of this application and that neither I, nor any member of my household claim to be a legal resident of a jurisdiction other than South Carolina for any purpose; and

(B) that neither I, nor a member of my household claim the special assessment ratio allowed by this section on another residence.

S.C. Code Ann. § 12-43-220(c)(2)(ii) (2014).

By requiring that every applicant for legal residence certify that “neither I, nor any member of my household claim to be a legal resident of a jurisdiction other than South Carolina for any purpose”, South Carolina law makes clear that the applicant as well as all members of the applicant’s household have the burden of proving their legal residency independently. *Id.*

“Member of my household,” as referred to in the above certification, includes the spouse of the owner/occupant. *See* S.C. Code Ann. §12-43-220(c)(2)(iii)(A)(Supp. 2024)(“ the owner-occupant's spouse, except when that spouse has filed a complaint for separate support and maintenance with the appropriate family court, lives separate and apart in a different residence, and no longer cohabitates as husband and wife with the owner-occupant.”). In addition to the certification, the South Carolina Code places the burden of proof on the applicant to establish his eligibility for the 4% assessment ratio by providing proof required by the Assessor including but not limited to:

- (A) a copy of the owner-occupants most recently filed South Carolina individual income tax return;
 - (B) copies of South Carolina motor vehicle registrations for all motor vehicles registered in the name of the owner-occupant and registered at the same address of the four percent domicile;
 - (C) other proof required by the assessor necessary to determine eligibility for the assessment ratio allowed by this item.
- If the owner or the owner’s agent has made a property certificate as required pursuant to this subitem and the owner is otherwise eligible, the owner is deemed to have met the burden of proof and is allowed the four percent assessment ratio allowed by this item ...

See S.C. Code Ann. §12-43-220(c)(2)(iv)(2014 & Supp. 2024).

Legal Residence

South Carolina Regulations define the term "legal residence" as “the permanent home or dwelling place owned by a person and occupied by the owner thereof and where he or she is domiciled.” *See* S.C. Code Ann. Regs. 117-1800.1(2) (2012). “Legal residence” is the equivalent of “domicile” for purposes of taxation. *See Phillips v. South Carolina Tax Com’n*, 195 S.C. 472, 12 S.E. 2d 13 (1940).

The South Carolina Supreme Court has defined the term “domicile” as “the place where a person has his true, fixed and permanent home and principal establishment, to which he has, whenever he is absent, an intention of returning.” *See Gasque v. Gasque*, 246 S.C. 423, 426, 143 S.E.2d 811, 812 (1965). The question of domicile “is largely one of intent to be determined under the facts and circumstances of each case.” *Id.* 246 S.C. at 427, 143 S.E. 2d at 812. Domicile does

not change “in the absence of clear proof of an intent to abandon the old domicile and acquire a new one.” *Id.*; see also *Ferguson v. Employers Mutual Casualty Company*, 254 S.C. 235, 174 S.E. 2d 768 (1970).

The S.C. Supreme Court further explained domicile in the case of *Ravenel v. Dekle*, 265 S.C. 364, 379, 218 S.E. 2d 521, 528 (1975) as follows:

It is generally recognized, as we did in *Gasque*, that intent is a most important element in determining the domicile of any individual. It is also elementary, however, that any expressed intent on the part of a person must be evaluated in the light of his conduct which is either consistent or inconsistent with such expressed intent. Other elementary propositions which require no citation of authority are that a person can have only one domicile at a time; one maintains his prior domicile until he establishes or acquires a new one. A person may have more than one residence, but cannot have more than one domicile or be a citizen of more than one state at the same moment.

The case *Habibunnisa Begum v. Florence County Assessor*, Docket No. 18-ALJ-17-0198-CC, 2019 WL 5208156 (S.C. Admin Ct. October 2, 2019) addresses the sufficiency of evidence necessary to establish domicile for personas holding a nonimmigrant visa. In that case, Begum, a citizen of India, was legally present in the United States on an H-1B visa and was employed as a teacher. Begum had an approved Form I-140 and was awaiting her Green Card. See *Begum v. Florence Cnty. Assessor*, Docket No. 18-ALJ-17-0198-CC at *2 (S.C. Admin. Law Ct. Oct. 2, 2019), *aff'd*, Op. No. 2022-UP-069, 2022 WL 470961 (Ct. App. 2022). Begum testified that she intended to make the subject residence her permanent residence and presented the following evidence of domiciliary intent: she held a South Carolina driver’s license; she paid South Carolina income taxes, as well as real and personal property taxes; and she held a social security card indicating that she was a temporary worker in the United States. *Id.* at *1-2. The Court found that Begum’s H-1B visa no longer had a definite end date in that her approved Form I-140 would allow her to remain in the United States indefinitely until such time as she could obtain her Green Card. This coupled with the other factors previously discussed presented sufficient evidence that she had taken discrete steps to abandon her old domicile and acquire a new one at the subject property per *Gasque*, and as such, was qualified to receive the legal residence classification.³

³ Although the facts in the *Begum* case indicate that Begum was married and residing with her spouse, the issue of the spouse’s domiciliary intent was not addressed by the court.

Domiciliary Intent of Mr. Vasudevan

The issue before this Court is whether the facts and circumstances of this case support Mr. Vasudevan's expressed intent to be domiciled in South Carolina. The Court finds that the facts and circumstances do not support Mr. Vasudevan's domiciliary intent for the 2023 and 2024 tax years.⁴ The Court declines to venture into such uncertainty regarding the possibility of future legal residence applications and focuses its determination on whether Mr. Vasudevan possessed the requisite intent to be domiciled at the residence during the 2023 and 2024 tax years.

The Assessor principally relied on two factors in determining that Mr. Vasudevan had not established domiciliary intent. The first was that Mr. Vasudevan was not included on Ms. Haribabu's Form I-140 as a spouse requesting to change his status. Ms. Haribabu and Mr. Vasudevan were married at the time the application was completed, thus she had the opportunity to include her spouse, but did not.⁵ The inclusion of both spouses on the I-140 petition is a compelling indication that the couple has jointly made the decision to establish domiciliary intent. Ms. Haribabu testified the Form I-10 was prepared by her employer's attorney and she could not explain why her husband's name was not on it.⁶ However, she further testified that she reviewed the document prior to it being filed. Ultimately, her review did not result in her husband's name being added to the Form I-140.

The circumstances surrounding the omission of Mr. Vasudevan from the Form I-140 raises questions of Mr. Vasudevan's domiciliary intent that were not sufficiently answered by the testimony of the Respondents. Respondent argues the Court asked the Assessor about what, in addition to the Form I-140 filed on behalf of Ms. Haribabu, would be needed to prove Mr. Vasudevan had the requisite intent to establish domicile. Counsel candidly informed the Court that in order to include him on the Form I-140, the District would need to amend it to include him, and the amendment would revert the petition to the beginning of the waiting period for her priority date to be eligible for her green card, her (and her husband's) eligibility for permanent resident status in the United States. This would be an unnecessary amendment serving no purpose other

⁴ Mrs. Haribabu's domiciliary intent is not in question in this case.

⁵ The failure to list a spouse or children on Form I-140 petition will not preclude those individuals from filing a derivative application for a Green Card when the applicant's priority date becomes current.

⁶ Notably, the attorney was not present at the hearing and did not appear as a witness to corroborate any of this testimony.

than to provide documentary evidence of Mr. Vasudevan's domicile.⁷ However, the absence of a spouse on the Form I-140 for good cause shown is not detrimental to a determination of domiciliary intent if other evidence of domiciliary intent can be shown. Therefore, the absence of a spouse on the Form I-140 without good cause is, at best, a strong indicator that domiciliary intent does not exist.

The second factor relied on by the Assessor was Mr. Vasudevan's extended absence from the United States. Mr. Vasudevan's I-94 shows that he left the United States on August 23, 2023, and did not return until March 27, 2025, a period of 582 consecutive days. Thus, he was only in the United States for a part of tax year 2023 and none of tax year 2024. Mr. Vasudevan testified that he was in India taking care of his aged parents, more specifically his mother who had knee surgery, for this extended period. However, in further testimony, Mr. Vasudevan admitted that he had a sister living less than two miles from his parents. When asked if he would be returning to India to care for his parents, he no longer expressed concern about his aging parents but responded that he was in the United States to stay since his son and wife were here. Mr. Vasudevan's testimony did not address his domiciliary intent for tax years 2023 and 2024, but instead only addressed his current intent to now remain in the United States since his son and wife are here.

The only mitigating evidence presented by the Respondents was Mr. Vasudevan's employment during 2022 and 2023. Mr. Vasudevan testified that he worked as a motel desk clerk in several motels, moving from one motel to another to obtain a higher hourly wage. There was no evidence presented as to how many months Mr. Vasudevan worked in either of those years. Upon his return in 2025, Mr. Vasudevan readily obtained employment as a desk clerk in two different motels.

Respondent argues that commonly filed tax returns, diver's licenses, and auto insurance with coverage on both the husband and the wife, establish they are members of the same household. The Court disagrees. The totality of the above circumstances strongly suggests that Mr. Vasudevan did not have the requisite domiciliary intent for the years in question. To establish domicile or legal residence both residence or physical presence and intent must occur. *See also* 28 C.J.S. Domicile § 12, Westlaw Precision (database updated May 2025) (“[U]nion of act and intent, or

⁷ Ms. Haribabu's I-140 application filed by the Orangeburg School District has been approved, but she is waiting for her priority date established by the Immigration and Nationality Act for her to be eligible for permanent resident status. This is discussed at length in the Administrative Law Court decision in *Begum v. Florence County Assessor*. As well, the ability of Ms. Haribabu to extend her stay in the U.S., and concomitantly her husband, is discussed there at length.

actual location in, or removal to, a particular place with intent to remain has been required for residence or legal residence.”). *Id.*

The previously discussed case law regarding domicile establishes that intent is the most important element in determining “domicile” and expressed intent alone is insufficient without consistent conduct evidencing such intent. Further, a person may not have more than one domicile at a time or be a citizen of more than one state at a time. A change of domicile requires “clear proof of an intent to abandon the old domicile and acquire a new one.” *See Ravenel v. Dekle*, 265 S.C. at 379, 218 S.E.2d at 528 (1975); *see also Gasque v. Gasque*, 246 S.C. at 427, 143 S.E. 2d at 812 (1965). This is the basis for the “discrete action” which the *Begum* case refers to as being necessary to establish domicile. The above actions on the part of Mr. Vasudevan do not evidence an intent to abandon his old domicile and acquire a new one in Orangeburg County. This decision does not preclude the Respondents from applying for the legal residence special classification in a future year if domiciliary intent can be evidenced.

ORDER

IT IS THEREFORE ORDERED that the Respondents are not eligible for the 4% legal residence property tax classification for tax year 2023 and 2024. As such, the Orangeburg County Board of Assessment Appeals granting of their application is **REVERSED**.

AND IT IS SO ORDERED.

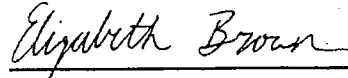
Crystal M Rookard

The Honorable Crystal M. Rookard
South Carolina Administrative Law Judge

August 7, 2025
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Elizabeth Brown, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



Elizabeth Brown
Judicial Law Clerk

August 7, 2025
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
In the Administrative Law Court

The Honorable Crystal M. Rookard, Administrative Law Judge

RECEIVED
SEP 29 2025
SC Court of Appeals

Appellate Case No. 2025-001876

Orangeburg County Assessor Respondent,

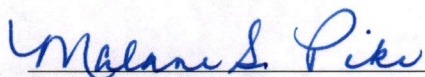
v.

Rekha Bali Haribabu and Thiyagarajhan Vasudevan Appellants.

PROOF OF SERVICE

I, the undersigned attorney for the Respondent, hereby certify that the Motion to Dismiss in the above referenced matter was served on the following counsel of record today via U.S. Mail, postage paid at the address listed below:

John D. 'Jay' Elliott
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Columbia, SC 29202
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Date: September 29, 2025

MALANE S. PIKE

Attorney at Law

Post Office Box 729 White Rock, South Carolina 29177 (803) 622-1493

September 29, 2025

RECEIVED

SEP 29 2025

SC Court of Appeals

The Honorable Jenny Abbot Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RE: Orangeburg County Assessor v. Rekha Bali Haribabu and Thiyagarajjhan Vasudevan
Appellate Case No. 2025-001876

Dear Ms. Kitchings:

Enclosed for filing please find the Respondent's Motion to Dismiss Appeal, Memorandum in Support of Respondent's Motion to Dismiss Appeal with attached Exhibits A-B, and Proof of Service in the above referenced matter as well as a check in the amount of \$50 for the filing fee.

If you have questions or require additional copies, please feel free to contact me at (803) 622-1493.

With kind regards,



Malane S. Pike
Attorney for Respondent

cc: John D. 'Jay' Elliott
Post Office Box 607
Columbia, SC 29202

Enclosure