

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Richland County
In the Administrative Law Court

Crystal M. Rookard, Administrative Law Judge

Appellate Case No. 2025-001876

Orangeburg County Assessor.....Respondent,

v.

Rekha Bali Haribabu and Thiyagarajhan Vasudevan.....Appellants

BRIEF IN REPLY

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I. The I-140 petition for approval of Rekha Haribabu's employment with the Orangeburg School District is of no relevance to the issue of her husband's residence.

The Orangeburg County Assessor relies heavily on a document which was not authored by Rekha Haribabu and which is not intended to establish either her relationship to her husband or his domicile to deny them the preferred residential tax.

The clear purpose of the I-140 petition is to qualify a non-citizen in the U.S. for employment with the U.S. Citizenship and Immigration Services (U.S.C.I.S.). The filing of the petition constitutes a request that the non-citizen be classified for a specialized employment need, and upon approval the non-citizen is granted a visa to work in the U.S. *Lendo v. Gonzales*, 493 F.3d 439, 441-442 (4th Cir. 2007). Later, and depending upon certain other eligibility requirements, the employed non-citizen may apply for permanent residence, e.g. the "green card." *Id.*, citing 8 U.S.C.A. § 1255(a). Ms. Haribabu intends to do so. After all, she has a house here, the only one she has ever owned.

It is not necessary that her husband be on this form in order for her to gain employment with the approved visa. The USCIS considers the application submitted by her prospective employer on its own merits. As her spouse, along with any unmarried children under the age of 21 at the time of the application, he is a derivative beneficiary.¹

In time, Ms. Haribabu will be eligible to apply for permanent residence – a green card – but not before she meets the quota for immigrants such as her from her native country, India. As such, she is given a priority date upon the approval of the I-140 petition. This will be accomplished with the submission of an "Application to Register Permanent Residence or Adjust Status," using the USCIS Form I-485. *Lendo v. Gonzales, supra*, at 442. It is then that her

¹ At the time of the application in January, 2021, the couple's son, Charan, was 22-year's old, hence his inclusion on the I-140 at Part 7 as a dependent.

husband may also submit a Form I-485 to likewise become a permanent resident, along with his wife.

The Orangeburg Assessor knows this, as it was explicated on the record before the administrative law court by her counsel. [ROA p. 31, l. 13 – p. 33, l. 13]

And if Ms. Haribabu moves to amend her application to include her husband to oblige the Assessor? The Assessor's counsel answered this question, posed by the administrative law judge:

“...I did call Homeland Security and ask that question. And what I was told was that, well, they could amend it. But first of all, that would put their priority date back again...And secondly, it would – might cause undue attention to her application. And of course, nobody wants that, especially in this environment. So the person I talked to told me it would be very unwise. It could be done, but it would be very unwise to do it.”

[ROA p. 221, l. 14 – p. 222, l. 3.]

It is clear from the record that the inclusion of Mr. Vasudevan on Form I-140 is completely unnecessary for him to qualify for permanent residence along with his wife when she is eligible to do so. What's more, amendment of the form, needless for purposes of immigration status, would only harm the both of them.

The Assessor points to the absence of testimony from attorney Larry Needle, who prepared the I-140 petition for the school district, as some unspecified negative inference for this couple's case for preferential residential tax treatment. Mr. Needle could only testify about the law, and not the couple's marital status or residence, whether separate or apart, because he has no first-hand knowledge about their circumstances. As to opinions on the law, he is precluded from offering them. *See, Dawkins V. Fields*, 354 S.C. 298, 580 S.E.2d 433 (2003) (expert testimony on issues of law

is generally inadmissible); *see also*, *Carter v. Bryant*, 429 S.C. 298, 838 S.E.2d 523 (Ct.App. 2020).

As evidence of the arbitrary and capricious character of the Assessor's misplaced reliance on Form I-140, it should be remembered that the Assessor's first denial of the couple's application was based on Ms. Haribabu not having permanent resident status. Her second denial on remand was based on the omission of Mr. Vasudevan from the petition. *See*, Appellant's Brief at fn. 1.

This leaves the question before this court to be based on the record of this couple's history of their marriage and travel to and from the United States, their intent to be married and live as a couple in Orangeburg, South Carolina. That needn't be belabored here. But it should be remembered that they have lived together for most of their now-29 years of marriage. They are of modest means. The Assessor would have Mr. Vasudevan as a wealthy man of the world, able to come and go as he pleases, notwithstanding U.S. immigration laws. This is neither realistic nor logical.

The omission of his name from Form I-140 should be given no weight on the question of his domicile.

II. The question of his domicile is squarely before this court.

The Assessor argues that the rule of the administrative law court requiring a motion for "reconsideration" under Rule 26(D) of the Administrative Law Court is important for issue preservation, allowing administrative law judges to "correct errors without requiring appellate intervention." Respondent's Brief at p. 19.

Yet the Assessor points to no issue which was not addressed by the administrative law court judge in its order regarding the issue of Mr. Vasudevan's domicile. And the court had the

benefit of two comprehensive proposed orders addressing every issue of law and fact now before this court. [ROA pp. 359; 372]

As to that, there is but one question before this court – whether Mr. Vasudevan was and is a member of the household qualifying for the special assessment ratio provided by S.C. Code Ann. § 12-43-220(c)(1) (Supp. 2014).

CONCLUSION

The omission of Mr. Vasudevan's name from the Orangeburg School District's submission of petition I-140 to enable Ms. Haribabu to work as a teacher there is irrelevant to whether he intends to live with his wife. The issue is squarely before this court, and if not, then the matter should be remanded to resolve any question unaddressed by the administrative law court, if any there is.

Respectfully submitted,

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July 14th, 2026

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CERTIFICATE OF COUNSEL

Counsel certifies that the opening brief and reply brief comply with Rule 211(b) of the
South Carolina Appellate Court Rules.

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July 14th, 2026