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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

**MILTON G. KIMPSON, JUDGE
SOUTH CAROLINA ADMINISTRATIVE LAW COURT**

**Docket No. 18-ALJ-17-0198-CC
Appellate Case No: 2019-001800**

Habibunnisa BegumRespondent

v.

Florence County Tax Assessor Appellant

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT IN REPLY

Begum's Argument I. States that the Respondent argues there is "No provision of law disqualifying this property from being Respondent's residence." South Carolina Department of Revenue ruling 97-4 defines domicile. "'Domicile' has its usual meaning and is considered to be that residence where that person has a true, fixed, and permanent home and principal establishment, and to which whenever the person is absent has the intention of returning." Under the ruling of the South Carolina Department of Revenue, for the Respondent to have a domicile in Florence County, South Carolina it must be the Respondent's permanent domicile. This is further buttressed under S.C. Code Regs. 117-1800.1(2). In this regulation, a legal residence for property taxes "shall mean the permanent home or dwelling place owned by a person and occupied by the owner there of and where he or she is domiciled. The operative word in defining a residence is "Permanent".

In *DeQuervain v. Desquin*, 927 So.2d 232 (Fla.2d DCA 2006) the court quoted *Juarrero v. McNayr* 157 So.2d 79(Fla. 1963). This case predated the adoption of Florida Administrative Code Fla Admin Code R.12D-7.007(2002). In the *Juarrero* case the Florida Supreme Court opined that an alien residing in the United States with a temporary visa "does not have the legal ability to determine for himself his future status and does not have the ability legally to convert a temporary residence into a permanent home." Id. at 81. In other words, Mr. Juarrero could not make his Florida residence his permanent home for purposes of the homestead exemption.

The Respondent argues that there is no provision in SC Code Ann. §12-43-220 to make a distinction regarding the application of the residential tax rate based on a property owners visa status. There is a provision that allows the tax assessor to require other proof to determine eligibility for the residential assessment ratio, SC Code Ann. § 12-43-220(c)(iv)(C). The

Appellant was well within his statutory authority to inquire concerning the immigration status of the Respondent.

Respondents Argument II asserts that the principal of agency deference is inapplicable due to it being exercised in an arbitrary and capricious manner. The Department of Revenue has consistently opined that a nonimmigrant visa obviates any local intent. (Appellant's Exhibit #1). The Respondent argues that this position of the Department of Revenue is arbitrary and capricious. The letter of Mr. Cleland of March 29, 2016 is not fickle or inconsistent. In his letter, he recites an analysis of nonimmigrant status. He gives a valid analysis of immigration law and concludes that a nonimmigrant cannot obtain the status of a permanent residence in South Carolina.

Respondents Argument III finds the Respondent citing Rule 268(d)(2) SCACR for the proposition that this rule prohibits any reference to unpublished opinions of the Administrative Law Court. Rule 268(d)(2) applies to opinions of the Supreme Court or Court of Appeals. The argument set forth in the Respondent's brief is inapposite to the clear language of the Rule. A review of the Administrative Law Court webpage shows that both the *Godhrawala* and the *Herrera* case are reported decisions of the Administrative Law Court as published on its website.

CONCLUSION

For the reason cited in the Appellant's briefs the finding of the of the Administrative Law Court should be reversed. The Court should follow Ockham's Razor which is the principle that the simplest solution is probably correct. (William of Ockham 1287 – 1347). The Administrative Law Court, in ta tortuous opinion, tried to conform the Respondent's intent to U.S. Immigration Law. The simple solution is, once an individual has a Green Card, she can form the necessary intent to be a Florence County resident. Absent that, she cannot.

Florence, SC

August 17, 2020

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CERTIFICATE OF COUNSEL

The undersigned certifies, pursuant to Rule 211(b) of the South Carolina Rules of Appellate Practice the Final Reply Brief of Appellant contains no matter which is irrelevant to the Appeal.

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