STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from the South Carolina Administrative Law Court

Milton V. Kimpson, Presiding Judge

Appellate Case No. 2019-001800

Habibunnisa Begum,…...……..……..Respondent,

v.

Florence County Tax Assessor,…….……...……Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES

I. Did the Administrative Law Court commit reversible error in concluding that the Respondent's real property, her only residence, qualifies to be assessed at a four percent real property tax rate under S.C. Code Ann. § 12-43-220(c)(1)?

STATEMENT OF THE CASE

The Appellant, the Florence County Assessor, seeks reversal of the decision of the Administrative Law Court ("ALC") that Respondent is entitled to have her real property taxes for her home assessed at the four percent residential rate under S.C. Code Ann. § 12-43-220(c)(1).

The Respondent purchased the property involved in this case in 2016. (R. p. 3.) She purchased it to live there permanently, and she has no intention of moving elsewhere. She does not rent the property and does not use it for anything other than a residence. She does not have any other real property, and she does not live, even part-time, at any other location.

Respondent is not a United States citizen, but she is a lawful United States resident. (R. p. 3.) She is a citizen of India. (R. p. 3.) She lives and works legally in this country, possessing an H-1B visa for her work as a science teacher at Marion High School in Marion, South Carolina. (R. pp. 3-4.) She has lived in South Carolina for fourteen years, first in Marion County, and then, since 2016, at the subject property in Florence County. (R. p. 3.) The Marion County School District sponsors her efforts to obtain a "Permanent Resident Card," commonly known as a Green Card, and that process is underway. (R. p. 4.)

After purchasing her Florence County home, Respondent applied to the county assessor for application of the four percent residential property tax rate under S.C. Code Ann. § 12-43-220(c)(1) for her property. The Appellant denied her application, giving as its sole reason that "[t]he owners have to be US citizens in order to be approved." (R. pp. 5, 106.)

Respondent requested an appeals conference with the Appellant. (R. p. 5.) The Appellant did not change its ultimate position and again refused to apply the four percent tax rate to Respondent's property. The Appellant did slightly change the reasoning it advanced for its denial, stating that "[a]liens in the United States illegally or legally on a non-immigrant or temporary visa cannot form the requisite intent to remain in the United States permanently and therefore, do not qualify for the 4% legal residence assessment ratio." (R. pp. 5-6, 107.) Respondent then appealed to the Florence County Board of Assessment Appeals, which upheld the Appellant's decision. (R. p. 6.)

Respondent filed a request for contested case hearing with the ALC. The ALC determined that Respondent and her property meet all the requirements under S.C. Code Ann. § 12-43-220(c)(1) to be eligible for the four percent real property tax rate. (R. pp. 2-29.)

Appellant has appealed that decision to this court.

STANDARD OF REVIEW

> In an appeal from the ALC, the Administrative Procedures Act provides our standard of review. See Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control, 411 S.C. 16, 28, 766 S.E.2d 707, 715 (2014) (citing S.C. Code Ann. § 1-23-610(B) (Supp. 2019)). Appellate courts must confine their analysis to whether the ALC's decision is:
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> (a) in violation of constitutional or statutory provisions;
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> (b) in excess of the statutory authority of the agency;
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> (c) made upon unlawful procedure;
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> (d) affected by other error of law;

> (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
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> (f) arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.
>
> Id.
>
> "Thus, this court can reverse the ALC if the findings are affected by error or law, are not supported by substantial evidence, or are characterized by abuse of discretion or clearly unwarranted exercise of discretion." Olson v. S.C. Dep't of Health & Envtl. Control, 379 S.C. 57, 64, 663 S.E.2d 497, 501 (Ct. App. 2008).

Schwiers v. S.C. Dept. of Health & Envtl. Control, 429 S.C. 43, 48-49, 837 S.E.2d 730, 733 (Ct. App. 2019).

> When the evidence conflicts on an issue, the court's substantial evidence standard of review defers to the findings of the fact-finder. In determining whether the ALC's decision was supported by substantial evidence, this court need only find that, upon looking at the entire record on appeal, there is evidence from which reasonable minds could reach the same conclusion that the ALC reached. [W]e may not substitute our judgment for that of the [ALC] as to the weight of the evidence on questions of fact unless the [ALC's] findings are clearly erroneous in view of the reliable, probative and substantial evidence in the whole record.

A.O. Smith Corp. v. S.C. Dept. of Health & Envtl. Control, 428 S.C. 189, 200, 833 S.E.2d 451, 457 (Ct. App. 2019) (brackets in original, citations and quotation marks omitted).

ARGUMENT

The judge of the ALC made the right decision. Respondent demonstrated that her property meets the criteria for assessment of real property taxes at the four percent rate under S.C. Code Ann. § 12-43-220(c)(1). The criteria in this statute do not

reference United States citizenship of the owner, and there is nothing about Respondent's H-1B visa status that precludes this property from being her legal residence. The property, as a matter of fact, is Respondent's residence, as the ALC found. (R. pp. 2, 10-11, 28, 29.) Accordingly, the only thing that might prevent the subject property from being Respondent's "legal residence" under S.C. Code Ann. § 12-43-220(c)(1) is a provision of law that prevents the law from recognizing the property as her residence. No such provision exists.

I. The subject property, Respondent's home, is her legal residence.

The statute at the heart of this case reads, in material part, as follows:

> The legal residence and not more than five acres contiguous thereto, when owned totally . . . in fee . . . and occupied by the owner of the interest . . . are taxed on an assessment equal to four percent of the fair market value of the property. . . . [F]or purposes of the assessment ratio allowed pursuant to this item. a residence does not qualify as a legal residence unless the residence is determined to be the domicile of the owner-applicant.

S.C. Code Ann. § 12-43-220(c)(1) (emphasis added).

The subsection following S.C. Code Ann. § 12-43-220(c)(1) sets out the following with regard to what must be shown for property to be taxed at the four percent rate under S.C. Code Ann. § 12-43-220(c)(1).

> (2)(i) To qualify for the special property tax assessment ratio allowed by this item, the 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. A residence which has been qualified as a legal residence for any part of the year is entitled to the four percent assessment ratio provided in this item for the entire year, for the exemption from property taxes levied for school operations pursuant to Section 12-37-251 for the entire

year, and for the homestead exemption under Section 12-37-250, if otherwise eligible, for the entire year.

(ii) This item does not apply unless the owner of the property or the owner's agent applies for the four percent assessment ratio before the first penalty date for the payment of taxes for the tax year for which the owner first claims eligibility for this assessment ratio. In the application the owner or his agent shall provide all information required in the application, and shall certify to the following statement:

"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."

(iii) For purposes of subitem (ii)(B) of this item, "a member of my household" means:

(A) the owner-occupant's spouse, except when that spouse is legally separated from the owner-occupant; and

(B) any child under the age of eighteen years of the owner-occupant claimed or eligible to be claimed as a dependent on the owner-occupant's federal income tax return.

(iv) In addition to the certification, the burden of proof for eligibility for the four percent assessment ratio is on the owner-occupant and the applicant must provide proof the assessor requires including, but not limited to:

(A) a copy of the owner-occupant's 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 proper 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, if the residence that is the subject of the application is not rented for more than seventy-two days in a calendar year. For purposes of determining eligibility, rental income, and residency, the assessor annually may require a copy of applicable portions of the owner's federal and state tax returns, as well as the Schedule E from the applicant's federal return for the applicable tax year.

S.C. Code Ann. § 12-43-220(c)(2) (emphasis added).

Respondent made that entire factual showing, and the Appellant does not challenge the ALC's factual findings that Respondent resides at the subject property and that it is Respondent's domicile. The Appellant's contention, rather, is that Respondent's status as an H-1B visa holder makes her legally unable to have the subject property as her residence. A fundamental problem with the Appellant's position, however, is that there is no provision of law disqualifying this property from being Respondent's residence.

There are no expressly stated definitions of the terms "residence" or "domicile" in South Carolina's tax statutes in Title 12 of the South Carolina Code of Laws. South Carolina statutory law, however, does contain definitions of these terms, as S.C. Code Ann. § 7-1-25(A) provides that "[a] person's residence is his domicile. 'Domicile' means a person's fixed home where he has an intention of returning when he is absent.

A person has only one domicile." This is consistent with case law about these terms that preceded this statute. As the ALC ruled, it is well established that these are substantively equivalent terms. (R. p. 9); see, e.g., Gasque v. Gasque, 246 S.C. 423, 426, 143 S.E.2d 811, 812 (1965) (construing statutory residence requirement as equivalent in substance to domicile); Phillips v. S.C. Tax Comm'n, 195 S.C. 472, 12 S.E.2d 13, 16 (1940) (recognizing that "[t]he phrase 'legal residence' is sometimes used as the equivalent of domicile"); Estate of Nicholson ex rel. Nicholson v. S.C. Dept. of Health & Human Servs., 377 S.C. 590, 597, 660 S.E.2d 303, 306 (Ct. App. 2008) ("a person's 'legal residence' is often determined by his or her domicile").

While the tax statutes do not contain a definition of "legal residence," South Carolina's tax regulations do. "For property tax purposes the term 'Legal Residence' shall mean the permanent home or dwelling place owned by a person and occupied by the owner thereof and where he or she is domiciled." S.C. Code Ann. Regs. 117-1800.1(2) (2012). Recognizing this, the ALC first analyzed whether Respondent was domiciled at the subject property during the tax year in question, 2017, and determined that she was. (R. pp. 9-11.)

The ALC noted, as follows, that intention to have a place as one's home is the touchstone of what determines a person's domicile:

> In Gasque v. Gasque, our Supreme Court defined 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. The true basis and foundation of domicile is the intention, the quo animo, of residence." 246 S.C. 423, 426, 143 S.E.2d 811,812 (1965) (citation omitted); accord O'Neill's Estate v. Tuomey Hosp., 254 S.C. 578, 583, 176 S.E.2d 527, 530 (1970). The court further explained that "[t]he question of domicile is largely one

> of intent to be determined under the facts and circumstances of each case." Id. at 427, 143 S.E.2d at 812; see also Ravenel v. Dekle, 265 S.C. 364, 379, 218 S.E.2d 521, 528 [(1975)] (recognizing that "intent is a most important element in determining the domicile of any individual."). Expanding on the principle that intent is the touchstone for determining an individual's domicile, in Ravenel, the court provided an analytical framework for evaluating an individual's intent: "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." 265 S.C. at 379, 218 S.E.2d at 528.
>
> Gasque and Ravenel establish that the question of domicile is unique to each instance and profoundly dependent upon the "facts and circumstances of each case."

(R. p. 10.) "One of the essential elements to constitute a particular place as one's domicile or principal place of residence is an intention to remain permanently, or for an indefinite time, in such place." Barfield v. J.L. Coker & Co., 73 S.C. 181, 53 S.E. 170, 171 (1906).

Applying these principles here, the judge of the ALC found that the subject property is Respondent's domicile and her residence. (R. p. 11.) The ALC judge noted the following evidence, all of which supports his findings and all of which is uncontradicted by anything else in the record:

> Begum has lived in the state for over thirteen years and has resided in the Subject Property, the only home she owns, along with her family since July 2016. Begum also has a South Carolina driver's license listing her address as the Subject Property, pays taxes to the State as a resident on her income, pays taxes for her real and personal property, and is firm and compelling in her testimony that, since purchasing the Subject Property, she intends this property to be her permanent home.

(R. p. 11.)

The terms "citizen" and "resident" are not synonymous and have a long history of being treated differently under South Carolina law. See Ravenel, 265 S.C. at 373-74. The language at issue in S.C. Code Ann. § 12-43-220(c)(1) deals with residence, not citizenship. Neither citizenship nor visa status is an element of the definitions of "residence" or "domicile" under South Carolina case law. See Ravenel, 265 S.C. at 379; O'Neill's Estate, 254 S.C. at 583; Gasque, 246 S.C. at 426; Barfield, 53 S.E. at 171; Nicholson, 377 S.C. at 597. Neither of them is an element of the definitions of "residence" or "domicile" under S.C. Code Ann. § 7-1-25(A). Neither of them is an element of the legal definition of "residence" under South Carolina tax regulations. S.C. Code Ann. Regs. 117-1800.1(2). Citizenship and visa status are the only reasons that the Appellant denied Respondent's application for the four percent residential property tax rate. (R. pp. 5-6, 106, 107.)

Appellant argues that a holder of an H-1B visa has a status that "precludes the realization of intent to have a permanent residence in Florence County." (Final Brief of Appellant p. 9.) The Appellant suggests that, while Respondent's subject property is her residence as a matter of fact, it cannot be her *legal* residence because she is in this county on an H-1B visa.

As the ALC judge observed, however, the federal law providing for nonimmigrant aliens to be in the United States under an H-1B visa contains no legal impediment to such a visa holder establishing residence in the United States. 8 U.S.C. § 1101(a)(15)(H)(i)(b); (R. p. 23). This is in contrast to language in some other non-immigrant visa classifications, as noted by the ALC judge. (R. p. 23.) "Indeed, in 8 U.S.C.A §§ 1101(a)(15)(B), (F), (H)(ii)(a), (J), (M), (O)(ii), (P), and (Q), Congress

explicitly limited eligibility for nonimmigrant status to those aliens having 'a residence in a foreign country which the alien has no intention of abandoning' or 'foreign residence which the alien has no intention of abandoning.'" (R. p. 23.)

Even further, the ALC judge correctly noted that the former version of 8 U.S.C. § 1101(a)(15)(H)(i)(b) *did* contain foreign-residence requirement language like that now present in 8 U.S.C. §§ 1101(a)(15)(B), (F), (H)(ii)(a), (J), (M), (O)(ii), (P), and (Q). 8 U.S.C. § 1101(a)(15)(H) (West 1991). Congress removed that language from 8 U.S.C. § 1101(a)(15)(H)(i)(b). "It will be presumed that the Legislature in adopting an amendment to a statute intended to make some change in the existing law." Vernon v. Harleysville Mut. Cas. Co., 244 S.C. 152, 157, 135 S.E.2d 841, 844 (1964). When Congress amended the statute and enacted the present version of 8 U.S.C. § 1101(a)(15)(H)(i)(b), it changed the law to remove the part of it that arguably could be said to make H-1B visa holder status inconsistent with legal residence in the United States. See id.

The Appellant asks this court to adopt the reasoning of Florida decisions concerning its homestead exemption and ineligibility of people living in Florida under a temporary visa to qualify for it. See DeQuervain v. Desguin, 927 So.2d 232 (Fla. 2d DCA 2006). This court should reject that request, for at least two independent reasons.

First, Florida courts have reached this result because Florida law mandates it. Fla. Admin. Code Ann. R. 12D-7.007(3) states that "[a] person in this country under a temporary visa cannot meet the requirement of permanent residence or home and, therefore, cannot claim homestead exemption." South Carolina has no such statute or regulation.

Second, not only does South Carolina law have no provision like Fla. Admin. Code Ann. R. 12D-7.007(3), our tax statutes actually conflict with the idea of disparate treatment of taxpayers simply depending on whether they hold temporary visas. Per S.C. Code Ann. § 12-43-210(A), our law commands that "[a]ll property must be assessed uniformly and equitably throughout the State." Accord cf. S.C. Code Ann. § 27-13-10 (providing that an alien may hold property in the same manner as a citizen). In the same statutory scheme, S.C. Code Ann. § 12-43-220 begins with this language: "Except as otherwise provided, the ratio of assessment to value of property in each class shall be equal and uniform throughout the State. All property presently subject to ad valorem taxation shall be classified and assessed as follows[,]" after which the section sets out the various tax rates and the criteria for when each applies.

In other words, for property tax assessment purposes, distinctions are permitted to be made between pieces of property based on the criteria set out in the statute, but they are not permitted to be made based on other things. Id. Nowhere in the list of classifications in S.C. Code Ann. § 12-43-220 is a distinction regarding application of the four percent residential tax rate under S.C. Code Ann. § 12-43-220(c)(1) permitted to be made based on the citizenship or visa status of the property's owner. It would have been a simple matter for the General Assembly to write such a distinction into this subsection had it intended one; indeed, it drew such a distinction with regard to corporate ownership of agricultural real property. S.C. Code Ann. § 12-43-220(d)(1)(A)(iii) (excluding agricultural property owned by corporations that "[h]ave a nonresident alien as a shareholder" from application of four percent agricultural rate).

That citizenship and visa status are not elements of whether S.C. Code Ann. § 12-43-220(c)(1) applies to a given piece of property is further supported by general principles of statutory construction.

> "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (quoting Norman J. Singer, Sutherland Statutory Construction § 46.03 at 94 (5th ed. 1992)). "We are not at liberty, under the guise of construction, to alter the plain language of [a] statute by adding words [that] the [l]egislature saw fit not to include." Shelley Constr. Co. v. Sea Garden Homes, Inc., 287 S.C. 24, 28, 336 S.E.2d 488, 491 (Ct. App. 1985).

First Citizens Bank & Trust Co., Inc. v. Blue Ox, LLC, 422 S.C. 461, 471, 812 S.E.2d 418, 423 (Ct. App. 2018).

Under South Carolina law, courts "must give the words found in the statute their "plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). A court is not permitted "[t]o impute an exception that would require [the court] to read language into [a] statute that is not there." First Citizens, 422 S.C. at 471.

While the Appellant trumpets the principle of construing tax exemption statutes strictly against the taxpayer, this principle does not override generally applicable principles of statutory construction, nor does it trump the plain language of S.C. Code Ann. § 12-43-220(c)(1).

> In this case, interlaced with these standard canons of statutory construction is our policy of strictly construing tax exemption statutes against the taxpayer. See Se.-

> Kusan, Inc. v. S.C. Tax Comm'n, 276 S.C. 487, 489, 280 S.E.2d 57, 58 (1981). "This rule of strict construction simply means that constitutional and statutory language will not be strained or liberally construed in the taxpayer's favor. It does not mean that we will search for an interpretation in [DOR]'s favor where the plain and unambiguous language leaves no room for [395 S.C. 75] construction." Id. It is "[o]nly when the literal application of the statute produces an absurd result will we consider a different meaning." Id. at 499–90, 280 S.E.2d at 58.

CFRE, LLC v. Greenville County Assessor, 395 S.C. 67, 74-75, 716 S.E.2d 877, 881 (2011) (brackets in CFRE opinion). Indeed, our Supreme Court has refused to read unwritten exceptions into tax exemption statutes. Id. at 76-77; Se.-Kusan, 276 S.C. at 490.

"The canon of construction '*expressio unius est exclusio alterius*' or '*inclusio unius est exclusio alterius*' holds that 'to express or include one thing implies the exclusion of another, or of the alternative.'" Hodges, 341 S.C. at 86 (quoting Black's Law Dictionary 602 (7th ed. 1999)). The General Assembly included alien owner status as a distinction to be drawn under S.C. Code Ann. § 12-43-220(d)(1)(A) but did not include it or anything similar as a distinction to be drawn under S.C. Code Ann. § 12-43-220(c)(1). Under the plain language of S.C. Code Ann. § 12-43-220(c)(1), the only distinctions to be drawn under this subsection are those set out in it, which do not include any distinction based on citizenship or visa status.

Accordingly, given that it has been factually established that the property in question is Respondent's residence, the Appellant's argument could prevail only if there were something about Respondent's H-1B visa status that prevented the law from recognizing this property as her residence. See Schwiers, 429 S.C. at 48-49 (standard

of review on appeal from ALC decision); A.O. Smith Corp., 428 S.C. at 200 (same). As discussed above, there is not. 8 U.S.C. § 1101(a)(15)(H)(i)(b).

II. The ALC was correct not to accept the Department of Revenue's position that a person who resides in South Carolina and holds an H-1B visa cannot have property in South Carolina that is her legal residence. That position is plainly incorrect.

The Appellant relies on an April 20, 2018, letter from the South Carolina Department of Revenue ("DOR"). In that letter, which appears to have been written to address this case exclusively, DOR asserted that an individual in the United States as a nonimmigrant holding a temporary visa cannot qualify for the four percent residential property tax rate under S.C. Code Ann. § 12-43-220(c)(1). DOR founded its conclusion on the following reasoning:

> Although the individuals in question may have every intent to make South Carolina their home, the fact that they are in the United States on a "non-immigrant" visa obviates any local intent. Stated differently, because these applicants have told their home country, the federal entity that issued their visa, that they will not emigrate to the United States, that federal statement overrides any individual intent that the applicant may have.
>
> . . . [I]f the home country can require that the applicant return to the home country, or if the applicant has certified to the home country that the applicant will not apply for citizenship in the United States in order to be granted the visa to leave the home country, then those federal interests will trump the individual's personal intent to remain in the United States.
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> In addition, the statute cited above [S.C. Code Ann. § 12-43-220(c)(2)(ii)] requires that the applicant 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." Clearly the fact that the applicant holds a visa from another country is evidence of the applicant claiming to be a "legal resident of a jurisdiction other than South Carolina." In order to

> qualify for and receive that visa, the applicant would have to present proof of citizenship to that issuing country. Such evidence would preclude the applicant from truthfully signing the certification required for legal residence in South Carolina.

(R. p. 116.)

"Interpreting and applying statutes and regulations administered by an agency is a two-step process. First, a court must determine whether the language of a statute or regulation directly speaks to the issue. If so, the court must utilize the clear meaning of the statute or regulation." Kiawah Dev. Partners, II v. S.C. Dept. of Health & Envtl. Control, 411 S.C. 16, 32, 766 S.E.2d 707, 717 (2014). "If the statute or regulation 'is silent or ambiguous with respect to the specific issue,' the court then must give deference to the agency's interpretation of the statute or regulation, assuming the interpretation is worthy of deference." Id. at 33, 766 S.E.2d at 717 (quoting Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 843, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984)).

The Appellant points out the principle that courts "defer to an agency interpretation unless it is 'arbitrary, capricious, or manifestly contrary to the statute.'" Id. at 34-35 (quoting Chevron, 467 U.S. at 844)). Here, DOR's "interpretation" contradicts the plain language of both S.C. Code Ann. § 12-43-220(c)(1) and 8 U.S.C. § 1101(a)(15)(H)(i)(b) and is based on false assumptions. It is "arbitrary, capricious, or manifestly contrary to" both those statutes, contrary to South Carolina statutory construction law and the plain language of those statutes, and unworthy of deference. Kiawah Dev. Partners, II, 411 S.C. at 34-35.

DOR's position conflates the concepts of "citizenship" and "residence," which as discussed above, are different things. See Ravenel, 265 S.C. at 373-74. That conflation is unworthy of any deference, as it arbitrarily and capriciously treats as equivalent concepts that are distinct as a matter of law. See id. DOR arbitrarily settled on the notion that these legally different things are actually the same, with no legal support for its position. See id.

Also, DOR's letter reasons that "because these applicants [i.e., all non-immigrant visa holder applicants for the four percent residential property tax rate under S.C. Code Ann. § 12-43-220(c)(1),] have told their home country, the federal entity that issued their visa, that they will not emigrate to the United States, that federal statement overrides any individual intent that the applicant may have." (R. p. 116.) The letter further states that "[c]learly the fact that the applicant holds a visa from another country is evidence of the applicant claiming to be a 'legal resident of a jurisdiction other than South Carolina.'" (R. p. 116.) No explanation is given by DOR for what makes this "clear[]." (R. pp. 115-16.) These statements are arbitrary and capricious, and they are certainly not founded in law. As the ALC noted repeatedly, Respondent was adamant in her testimony that she has never signed any document containing such a statement as DOR's letter presupposes she has made; thus, the ALC found that at no point did Respondent sign any such document. (R. pp. 5, 14, 24.) No contrary evidence was ever presented, nor is there any legal basis for DOR to presuppose that any nonimmigrant visa holder must have made such a statement or that the mere holding of any sort of nonimmigrant "visa from another country is evidence of the applicant claiming to be a 'legal resident of a jurisdiction other than South

Carolina.'" (R. p. 116.) As the ALC judge observed, not all nonimmigrant visas are conditioned on the visa holder's "intent to not abandon their foreign residences or, via implication, on an intent not to seek domicile in the United States." (R. p. 14); accord Elkins v. Moreno, 435 U.S. 647, 665-67 (1978); Mathews v. Diaz, 426 U.S. 67, 79 n.13 (1976) (recognizing the different nonimmigrant classifications). As discussed above, H-1B visas are not. 8 U.S.C. § 1101(a)(15)(H)(i)(b). DOR seems to have plucked from thin air the notions in which its interpretation is grounded, and its interpretation is at odds with the language of the statutes at issue. It is the sort of agency interpretation that is "arbitrary, capricious, or manifestly contrary to the statute" and to which courts owe no deference. Kiawah Dev. Partners, II, 411 S.C. at 34-35.

The ALC committed no error.

III. Appellant's reliance on unpublished ALC opinions from other cases is against the law.

The Appellant cites to this court from unpublished opinions of the ALC in other cases. This is expressly prohibited by law. Rule 268(d)(2), SCACR. "Memorandum opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved." Id. Had the ALC based its decision on those opinions, that would have been error. See Hodge v. UniHealth Post-Acute Care of Bamberg, LLC, 422 S.C. 544, 554-56, 813 S.E.2d 292, 297-99 (Ct. App. 2018); Higgins v. Med. Univ. of S.C., 326 S.C. 592, 601, 486 S.E.2d 269, 273 (Ct. App. 1997). In seeking for this court to apply these unpublished opinions in its reasoning in this case, the Appellant asks this court to commit error. This court should not do so.

CONCLUSION

The judge of the ALC issued a decision that is thorough, is supported by the evidence and the law throughout, and is correct. There is nothing wrong with it. It is not reversible under the standard applicable to this appeal. See Schwiers, 429 S.C. at 48-49; A.O. Smith Corp., 428 S.C. at 200. This court should affirm.

Respectfully submitted,

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August 19, 2020

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from the South Carolina Administrative Law Court

Milton V. Kimpson, Presiding Judge

Appellate Case No. 2019-001800

Habibunnisa Begum,…...……..……..Respondent,

v.

Florence County Tax Assessor,…….……...……Appellant.

CERTIFICATE OF COMPLIANCE WITH RULE 211(b), SCACR

I certify that the foregoing final brief of respondent in this case complies with Rule 211(b), SCACR.

[Signature page follows]

Respectfully submitted,

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