ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY

Quijada v. Dominguez,
CV-23-0160-PR

PARTIES:

Petitioner: Julian Javier Pimienta Dominguez ("Pimienta")

Respondent: Maria Del Carmen Rendon Quijada ("Rendon")

Amicus: Immigration Reform Law Institute

FACTS:

Pimienta and Rendon were married in Mexico in 1999; they share one son who is a minor. In 2007, the family came to the United States on visas issued under the North American Free Trade Agreement, which has since been replaced by the United States–Mexico–Canada Agreement. Pimienta came on a TN visa, which permits a "business person to engage in business activities at a professional level" in the U.S. and grants the person "entry without the intent to establish permanent residence." 8 C.F.R. § 214.6(a), (b). Pimienta sponsored Rendon and their son for TD visas, a type of visa sponsored by TN-visa holders for family members.

In March 2020, both Rendon's and the son's TD visas expired. Pimienta did not sponsor the renewal of their TD visas.

In November 2020, Pimienta filed for dissolution of marriage in Mexico. Rendon challenged the jurisdiction of the Mexican court, arguing that the marital residence was in Arizona. The Mexican court declined jurisdiction and dismissed the case.

Also in 2020, Rendon began seeking to become a lawful permanent resident of the United States. In January 2021, Rendon's sister, who is a U.S. citizen, filed a Petition for Alien Relative with the U.S. Citizenship and Immigration Service; the petition remained pending at the time of the trial court hearings in this case in August 2022. By March 2021, Pimienta had moved to Virginia, while Rendon and their son remained in Arizona.

In May 2022, Rendon filed a petition for dissolution of marriage in Pima County Superior Court. Pimienta filed a motion to dismiss, arguing that the Arizona courts lacked subject matter jurisdiction because Rendon's immigration status prevented her from being domiciled in Arizona. The trial court agreed and dismissed the case, finding that Rendon could not legally be domiciled in Arizona because she had entered the United States on a TD visa and could not establish a permanent residence in the United States. Rendon timely appealed.

The court of appeals stated that under the federal regulations set out in 8 C.F.R. § 214.6,

"noncitizens intending to become United States residents may not obtain or renew a TN or TD visa," but they are not precluded "from seeking an immigrant visa and permanent residency." *In re: Marriage of Quijada*, 255 Ariz. 429, 433 ¶ 14 (App. 2023). The court noted that it was "unclear" whether Rendon would be able to "obtain permanent residency" under federal law. *Id.* ¶ 15.

The court then turned to federal caselaw determining "when noncitizens may be domiciled in the United States." *Id.* ¶ 16. The court stated that in *Elkins v. Moreno*, 435 U.S. 647 (1978), the U.S. Supreme Court had held that federal law did not preclude certain visa holders from "establishing a United States domicile," even if "they were admitted on visas requiring them to maintain a permanent foreign residence." *Id.* at 433 ¶ 17, 434 ¶ 22. It also noted, however, that two cases from the Ninth Circuit applying *Elkins* were "relevant here;" the trial court had held that those cases "precluded a finding that Rendon is domiciled in Arizona." *Id.* 433 ¶ 18, 434 ¶ 21 (discussing *Carlson v. Reed*, 249 F.3d 876 (9th Cir. 2001), and *Park v. Barr*, 946 F.3d 1096 (9th Cir. 2020)).

After analyzing the caselaw, the court of appeals concluded that federal law, including the Ninth Circuit cases, did not "preclude[] visa holders from entering the United States without an intent to remain, then changing that intent and seeking an immigrant visa or permanent residence later, including through the adjustment-of-status process recognized in *Elkins*." *Id.* at 434–35 ¶ 24. The court of appeals concluded that "federal law does not preempt Arizona from allowing Rendon to establish domicile under Arizona law." *Id.* at 435 ¶ 28. The court then remanded to the trial court to permit it to address in the first instance Arizona's domicile statute, A.R.S. § 25-312 and the "numerous factors that might relate to Rendon's domicile." *Id.* at 436 ¶¶ 31, 33.

ISSUES:

1. Did the panel err by holding that federal law does not preempt Arizona from allowing Rendon to establish domicile under Arizona law?

2. Did the Court of Appeals err in finding that 8 U.S.C. § 1184(e)(1) permits a TD visa holder to change her domiciliary intent upon entering the United States?

3. Did the Court of Appeals err finding *Elkins v. Moreno*, 435 U.S. 647 (1978) permits TD visa holders to nullify the conditions of their visas by seeking a visa that could lead to permanent residence?