

ARIZONA SUPREME COURT

MARIA DEL CARMEN RENDON
QUIJADA, PETITIONER/APPELLANT

V.

JULIAN JAVIER PIMIENTA
DOMINGUEZ, RESPONDENT/APPELLEE

2 CA-CV 2022-0174-FC

**Superior Court
Case No. D20221319**

**APPELLANT'S RESPONSE TO
APPELLEE'S PETITION FOR REVIEW**

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INTRODUCTION

The Arizona Court of Appeals did not err in deciding to reverse the trial court’s determination that Appellant (“Rendon”) was precluded by law from relocating to the United States permanently and from establishing domicile in the State of Arizona. The Court of Appeals was correct in holding that *Elkins v. Moreno*, 435 U.S. 647 (1978) permitted TD visa holders could seek permanent residence through another visa that permitted and allowed that.

STATEMENT OF MATERIAL FACTS

1. Rendon has been living in the United States of America for well over a dozen years. Rendon has been living in Arizona for an extended period and continues to reside in Arizona at present.

2. Rendon challenged the jurisdiction of the Mexican Court over the dissolution of marriage action and prevailed in that argument. Rendon asserted that she was domiciled in the United States, not in Mexico, and the Mexican court agreed. Both Rendon and Respondent/Appellee Pimienta Dominguez (“Pimienta”) are citizens of Mexico. [Tr. 8/22 ep 26:3-20; Trial exhibit 15]. The Mexican court dismissed the dissolution of marriage action on July 11, 2022. [ROA 43 ep 3].

3. On May 11, 2022, Rendon filed the Petition for Dissolution in this case, asserting she was domiciled in Arizona [ROA 3 ep 1].

4. In December, 2020, Rendon’s United States Citizen sister file a petition for alien relative with the United States Citizenship and Immigration Service (USCIS), naming Rendon as the intended beneficiary. [TR. 8/2/22 ep24: 2-15; Trial exhibit 11].

REASONS THE PETITION SHOULD BE DENIED

The Mexican judicial system has decided that its citizen, Maria Del Carmen Rendon Quijada, is not domiciled in Mexico. The only logical conclusion then is that she is domiciled in the United States. The fact that Rendon has applied for an alternative visa, that does allow for permanent residence status, is not contested. Nothing in the record indicates that requesting permanent residence through that process is illegal or prohibited. The record reflects that Rendon requested this form of immigration relief before the petition for dissolution was filed. Pimienta does not argue against the legality or appropriateness of the petition for alien relative filed by Rendon's sister.

To accept Pimienta's argument that Rendon is not domiciled in Arizona raises the question of where she would be domiciled, if their own country's court system has held that she is not domiciled in Mexico. No other jurisdiction exists that could qualify for domicile from a factual basis. Pimienta is arguing that Rendon has no domicile anywhere and is in essence a stateless person.

Pimienta states that the original TD visa has expired. The visa expired on March 28, 2020 [ROA 43 ep 2]. Therefore, Pimienta argues that the visa that purportedly precludes Rendon from seeking other forms of immigration relief, that could lead to permanent residence status, continues to have relevance, after it has been expired for years. Pimienta cites no law that a TD visa beneficiary whose visa expired cannot request other forms of immigration relief to establish permanent residency or to deny a person in that situation with domicile in Arizona. If no legal way exists for a TD visa holder to obtain permanent resident it will have illogical if not draconian results. A person with an expired TD visa, living in Arizona for years, could not request political asylum. This type of relief can result in the applicant obtaining permanent legal residence in the United States. This would be precluded under Pimienta's argument. A person that is a victim of a qualifying crime, could not qualify for a U visa. This type of visa could lead to permanent residence in the United States. An illegal alien could request this form of relief and become a permanent resident and at some point a U.S. citizen, but a person that entered with a presently expired TD visa could not request this or any type of relief that

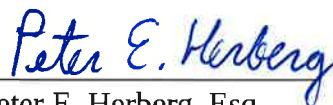
1 would allow them to become a permanent resident. This places TD visa holders in a worse legal spot
2 for immigration purposes than illegal aliens and even illegal reentrants who have committed crimes in
3 the United States, been deported and then entered the country without inspection. This cannot be a
4 correct interpretation of the law. The Opinion should stand.

5 The Opinion was correct in deciding that Rendon was not precluded from being domiciled in
6 Arizona. Rendon's TD visa had expired. Rendon's sister filed a petition for alien relative. The Opinion
7 was formed with the understanding that the country of citizenship of both Rendon and Pimienta had
8 determined that Rendon was not domiciled in Mexico. Pimienta never addresses and cannot logically
9 address the question of where Rendon is domiciled if not Arizona. Pimienta is in essence asking this
10 Court to overturn a decision of the Mexican legal system and in essence rule that she is domiciled in
11 Mexico or has become a stateless person without legal domicile anywhere, while living in Arizona for
12 years. The interpretation requested by Pimienta is bizarre, extreme and illogical. It would deprive
13 Rendon of fundamental human rights. The Opinion was correct in holding that Rendon was domiciled
14 in Arizona.

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17 **CONCLUSION**

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19 The Court should deny the petition for review.

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22 Respectfully submitted,

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25 Peter E. Herberg, Esq.
26 Attorney for Appellant