

# ARIZONA SUPREME COURT

MARIA DEL CARMEN RENDON  
QUIJADA,

Petitioner/Appellant,

v.

JULIAN JAVIER PIMIENTA  
DOMINGUEZ,

Respondent/Appellee.

Arizona Supreme Court  
No. CV-23-0160-PR

Court of Appeals  
Division Two  
No. 2 CA-CV 2022-0174-FC

Pima County Superior Court  
Case No. D 2022-1319

## RESPONDENT/APPELLEE'S SUPPLEMENTAL BRIEF

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## STATEMENT OF FACTS

Appellee (“Husband”) respectfully incorporates by reference the statement of facts contained in the Petition for Review. *See* Pet. For Rev. at 5-7.

## STATEMENT OF THE ISSUES

Husband respectfully incorporates the statement of the issues contained in the Petition for Review. *See* Pet. For Rev. at 4.

## ARGUMENT

- I. **The panel’s interpretation of 8 U.S.C. § 1184 cannot be reconciled with the text and structure of the Immigration and Nationality Act (“INA”).**

Husband respectfully incorporates by reference the arguments made in his Petition for Review concerning the legal prohibition against TD visa holders forming domiciliary intent. *See* Pet. For. Rev. at 8-11. The TD visa is part of a group of twenty-two (22) “non-immigrant” visas that are enumerated in 8 U.S.C. § 1101(a)(15)(A)-(V). Federal immigration law distinguishes between “immigrants” and “nonimmigrants,” the difference being that “immigrants” are permitted to establish domicile in the United States while “nonimmigrants” are generally precluded from doing so. *See Toll v. Moreno*, 458 U.S. 1, 13 (1982), 17; *Elkins v. Moreno*, 435 647, 665 (1978). *See* generally 8 U.S.C. § 1153 (categories of aliens

eligible for “immigrant” visas); 8 U.S.C. § 1101(a)(15) (distinguishing “immigrant” from “nonimmigrant” visas and listing categories of nonimmigrant visas).

Through the INA, Congress has reserved certain benefits to individuals that are allowed to establish domicile in the United States. Notwithstanding, the panel said that the specific “non-immigrant” conditions of the TD visa only apply at the time of entry and visa renewal, as opposed to ongoing conditions for an alien to remain in the United States. *See* Opinion ¶ 24. The panel also claimed that Congress has allowed TN visa holders to lawfully intend to remain in the United States by pursuing an adjustment of status. *Id.* at ¶ 30. This interpretation obstructs a clear federal objective in granting and withholding domiciliary status under the INA.

In discerning the meaning of text, an interpretation that furthers rather than obstructs a document’s purpose should be favored. *See* Antonin Scalia & Brian A. Garner, *Reading Law: The Interpretation of Legal Texts* 63 (2012). The correct interpretation is that non-immigrant visa holders must comply with the terms of their visas both at entry and during their presence in the United States. As shown below, the United States Supreme Court, Federal Appellate Courts, and the U.S. Attorney General agree with this proposition.

The United States Supreme Court held that nonimmigrant visa holders must satisfy the conditions of their visa both at entry and during their presence in the United States. *See Elkins v. Moreno*, 435 U.S. 647, 666-67 (1978) (“Of course,

should a G-4 alien terminate his employment with an international treaty organization, both he and his family would those their G-4 status”). Multiple federal appellate courts have reached the same conclusion. *See e.g. Khano v. INS*, 999 F.2d 1203, 1207 & n.2 (7th Cir. 1993) (stating the immigration authorities may deport "those nonimmigrants who fail to maintain the conditions attached to their nonimmigrant status while in the United States"); *Graham v. INS*, 998 F.2d 194, 196 (3d Cir. 1993) (holding that if an alien on a temporary worker visa planned "to make the United States his domicile, then he violated the conditions of his visa and his intent was not lawful"); *Castillo-Felix v. INS*, 601 F.2d 459, 464 (9th Cir. 1979) (holding that aliens who "are here for a temporary purpose" yet intend to remain in the country "violate the terms of their admission and are no longer here lawfully").

The Attorney General, through the Department of Homeland Security (“DHS”) issues regulations that govern a nonimmigrant’s stay in the United States. For example, DHS permits F-1 student visa holders a short period of time to remain in the country after they graduate, because they are not expected to depart the moment their studies end. *See* 8 C.F.R. § 214.2(f)(5)(iv). This regulation is within the authority granted conferred on the Attorney General under 8 U.S.C. § 1184—to set the time and conditions for admission.

It should be noted that the panel’s interpretation was based, in part, on a misinterpretation of 8 U.S.C. § 1184(e)(1). *See* Opinion ¶ 24. This statute is a delegation of authority to the Attorney General over the time and conditions for admission of non-immigrants into the country. Specifically, it says: “*the admission to the United States of any alien as a non-immigrant shall be for such time and under such conditions as the Attorney General may by regulations prescribe.*” 8 U.S.C. § 1184(a)(1). The express purpose of this delegation of authority is to ensure that non-immigrants depart from the United States upon expiration of the failure to maintain the status under which they were admitted. *Id.* It does not support the panel’s conclusion that non-immigrants can change their domiciliary intent after arriving in the United States. *See* Opinion ¶ 24.

In summary, of 8 U.S.C. § 1184 does not authorize non-immigrants to disclaim the condition of their visas post-arrival, nor does it contradict the definitions of the non-immigrant category in 8 U.S.C. § 1101(a)(15)(A)-(V). The conditions of a non-immigrant visa apply post-arrival in the United States—and the conditions of the TD visa apply to the Appellant (“Wife”) in this case.

## **II. Wife does not have permission to apply for an adjustment of status**

The panel declared that as early as 2020 Wife began seeking status as a lawful permanent resident. *See* Opinion ¶ 5. However, in this case, no adjustment of status has been or can be sought by Wife. At the time of trial in this matter, Wife’s sister

submitted a Petition for Alien Relative/I-130 to the Government. *Id.* Unless and until the Federal Government accepts the Petition, Wife is not even eligible to apply for an adjustment of status. *See* 8 C.F.R. 204.2(G)(3). This is discretionary decision reserved for the Federal Government.

Notwithstanding this federal discretion, the panel attached legal significance to the concept of “seeking an adjustment of status” prior to filing her petition for dissolution of marriage. *See* Opinion ¶ 5. In the INA there is no legal significance to a party “seeking” an adjustment of status. It violates the Supremacy Clause for a State court to add to Congress’s complete field preemption of immigration law. It is incorrect to supplement the definitions in the INA with the concept of “seeking immigration status.”

### **III. Preemption**

The panel notes that federal laws are presumed not to preempt state laws. *See* Opinion ¶ 24, citing *Conklin v. Medtronic, Inc.* 245 Ariz. 501 ¶ 8, (2018). However, this presumption is readily overcome if state law would require something federal law prohibits. *See* Scalia & Garner, *supra* at 290. This is the circumstance that presents itself here: A.R.S. § 25-312, requires the establishment of an Arizona domicile prior to initiating a dissolution of marriage action, whereas 8 U.S.C. § 1184(e)/8. C.F.R. § 214.6(b), prohibits a TD visa holder from lawfully forming a domiciliary intent.

#### IV. Consequentialism

There are obvious consequences to a sound textual interpretation of the INA. Here, an honest textual result may produce an arguably regrettable outcome. At the Superior Court, Judge Goodwin asked counsel undersigned how the Wife's circumstances were any different from a person who is present in the United States in violation of the immigration laws. At the Court of Appeals, the panel said: "*Nor do we address more generally whether federal law would preclude deportable citizens from establishing domicile.*" See Opinion ¶ 29. Both levels of our court system have expressed concern about the consequences of this decision on a portion of the State's population that already suffers from significant legal disabilities.

Of course, some outcome-pertinent consequences are relevant to a sound decision, specifically those that would cause a governmental prescription to be invalid, ineffective, or contain a provision that contradicts another provision. See Scalia & Garner *supra* at 352. Yet *consequentialism* invokes a different type of consequence, asking "Will this decision produce a good or bad result?" *Id.* Who wins? Is this decision good for the 'little guy'? *Id.* Questions like these are appropriately asked by those who write the laws, but not by those that apply them. *Id.*

## CONCLUSION

Congress has authority over nonimmigrant aliens. Congress did not confer the privilege of establishing domicile on TD Visa holders. The Supremacy Clause applies, and the Opinion of the Arizona Court of Appeals should be reversed.

Respectfully submitted,

/s/ Luke E. Brown 11/22/2023  
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