INTERNATIONAL MONETARY FUND
WASHINGTON, D.C. 20431

Facsimile Number
1-202-623-4661

September 14, 2015

David Fuss, Esq.
Wilkes Artis
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Dear David:

Thank you so very much for facilitating the settlements of these six Fund staff members who sued the District over the denial of their homestead deduction. They are all very pleased with receiving the anticipated refunds. Please find enclosed the original settlement agreements signed by each of them. They would still be interested to know the mechanics of the refunds (whether it will be credits or a check), and whether they should reapply for the homestead deduction by September 30. If you learn any more information on this, please let me know.

Even more important than these individual settlements, we are delighted with the legal victory for the institution at large. We anticipate that this victory by you and your firm will allow many more Fund staff (and staff of other international organizations) to benefit from the homestead tax deduction on their residences in D.C.

Thank you again for all of your effort on the briefs, and powers of persuasion with OTR and OAG in bringing this to a happy close!

Sincerely yours,

Juliet Johnson
Counsel
Legal Department

Enclosures (6)

cc: M. Endicott, HRD
J. Reback, HRD
D. Benoit, LEG

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

LEO BONATO	)	
	)	
and	)	
	)	DOCKET NO. 2010 CVT 10557
LAURA VALLI	)	
	)	
Petitioners,	)	
v.	)	
	)	
DISTRICT OF COLUMBIA,	)	
	)	
Respondent.	)	
	)	
	)	

ORDER

Before the Court is the petitioners' motion for partial summary judgment, filed on June 14, 2013, the District's opposition filed on August 13, 2013, and petitioners' reply filed on September 16, 2013. The sole issue before the Court is whether petitioners, as G-4 visa holders, qualify for the District of Columbia homestead tax deduction. For the purpose of this motion only, the District has stipulated that but for the petitioners' G-4 status they would qualify as domiciliaries of the District for homestead deduction purposes. For the reasons stated below, the motion for partial summary judgment is **GRANTED**.

Background

Petitioners own the real property located at 4445 Q Street, N.W. Leo Bonato is an employee at the International Monetary Fund ("IMF") and Laura Valli, his wife, is an employee at the World Bank. The petitioners are nonimmigrant aliens who hold G-4 visas. Congress has

defined G-4 visa holders as: "The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens . . . officers, or employees of such international organizations, and the members of their immediate families." 8 U.S.C. § 1101 (a)(15)(G)(iv).

Petitioners moved to the District in 1999 and on May 9, 2002, acquired the residence on Q Street. Petitioners applied for and received the homestead deduction from Tax Year 2004 through the first half of Tax Year 2010. For owners of real property in the District to qualify for the homestead deduction pursuant to D.C. Code § 47-850, the owner must be domiciled in the District. See D.C. Code §§ 47-849 and 47-850. During the course of calendar year 2010, the District revoked the homestead deduction as it relates to the subject property.

In their motion for partial summary judgment, petitioners argue that the Office of Tax and Revenue's ("OTR") presumption that G-4 visa holders cannot, as a matter of law, form the intent necessary to become domiciliaries of the District is unlawful. Petitioners argue that domicile is a question of fact, and that nonimmigrant aliens who are issued G-4 visas can establish domicile in the District. In their opposition, the District states that generally, a holder of a G-4 visa must leave the United States within 60 days of the termination of employment with an international organization. Thus, a G-4 visa allows the holder to remain in the U.S. only temporarily, because the ability to remain in the U.S. under the visa is limited to the term of the holder's employment. The District claims that since the G-4 visa holder's ability to stay in the U.S. is coextensive with their employment, their presence in the U.S. has a definite endpoint, and a visa holder's intent to stay in the U.S. past the termination of employment would be contrary to the terms of the visa.

Standard

A party moving for summary judgment bears the burden of showing that there are no material factual disputes and that the party is entitled to judgment as a matter of law. A motion for summary judgment must be granted if, taking all inferences in the light most favorable to the nonmoving party, a reasonable juror, acting reasonably, could not find for the nonmoving party, under the appropriate burden of proof. *Woodfield v. Providence Hosp.*, 779 A.2d 933, 936-37 (D.C. 2001); *Nader v. de Toledano*, 408 A.2d 31, 42 (D.C. 1979), *cert. denied*, 444 U.S. 1078 (1980).

Analysis

The petitioners' motion for partial summary judgment should be granted. The question of whether G-4 visa holders can become domiciliaries of the U.S. has already been considered by the Supreme Court and at least one state high court. In *Elkins v. Moreno*, 435 U.S. 647 (1978), the Supreme Court was presented with the question of whether, as a matter of federal and Maryland law, G-4 visa holders can form the intent necessary to allow them to become domiciliaries of Maryland. The University of Maryland had denied in-state status for tuition purposes to individuals who were G-4 visa holders, as it was the University's opinion that a holder of a G-4 visa cannot acquire the requisite intent to reside permanently in Maryland, as such intent is necessary to establish domicile. In deciding the question of whether federal law prohibited G-4 visa holders from acquiring the necessary intent to form domicile in the U.S., the Court first examined the Immigration and Nationality Act of 1952 ("INA"). The Court described the INA as a "comprehensive and complete code covering all aspects of admission of aliens to this country, whether for business or pleasure, or as immigrants seeking to become permanent

residents." *Id.* at 664. The Court concluded that there was no legislative intent to preclude G-4 visa holders from having a U.S. domicile. *See id.* at 667 ("Under present law, therefore, were a G-4 visa holder to develop a subjective intent to stay indefinitely in the United States, he would be able to do so without violating either the 1952 Act, the Service's regulations, or the terms of his visa.").[1] After concluding that federal law did not prohibit G-4 visa holders from establishing the intent necessary to become domiciliaries of the U.S., the Court certified the following question to the Court of Appeals of Maryland: "Are persons residing in Maryland who hold or are named in a visa under 8 U.S.C. § 1101(a)(15)(G)(iv) (1976 ed.), or who are financially dependent upon a person holding or named in such a visa, incapable as a matter of state law of becoming domiciliaries of Maryland?" *Id.* at 668.

On remand, the Maryland Court of Appeals held that nothing in Maryland common law renders a G-4 visa holder incapable of becoming domiciled in Maryland. *Toll v. Moreno*, 397 A.2d 1009, 1018 (Md. 1979) ("*Toll I*").[2]

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[1] Regarding Congress' intent, the Court also noted:

> By including restrictions on intent in the definition of some nonimmigrant classes, Congress must have meant aliens to be barred from these classes if their real purpose in coming to the United States was to immigrate permanently . . . . But Congress did *not* restrict every nonimmigrant class. In particular, no restrictions on a nonimmigrant's intent were placed on aliens admitted [pursuant to a G-4 visa]. Since the 1952 Act was intended to be a comprehensive and complete code, the conclusion is therefore inescapable that, where as with the G-4 class Congress did not impose restrictions on intent, this was deliberate. Congress' silence is therefore pregnant, and we read it to mean that Congress, while anticipating that permanent immigration would normally occur through immigrant channels, was willing to allow nonrestricted nonimmigrant aliens to adopt the United States as their domicile. Congress' intent is confirmed by the regulations of the Immigration and Naturalization Service, which provide that G-4 aliens are admitted for an indefinite period -- so long as they are recognized by the Secretary of State to be employees or officers (or immediate family members of such employees or officers) of an international treaty organization . . . Of course, should a G-4 alien terminate his employment with an international treaty organization, both he and his family would lose their G-4 status. Nonetheless, such an alien would not necessarily be subject to deportation nor would he have to leave and re-enter the country in order to become an immigrant.

Elkins, 435 U.S. at 666-67 (emphasis in original) (citations omitted).

[2] The case then went back before the Supreme Court. Prior to the Maryland Court of Appeals decision in *Toll I*, however, the University of Maryland adopted a resolution reaffirming its policy of denying in-state status to nonimmigrant aliens regardless of whether its policy conformed to the definition of domicile under Maryland law. The Supreme Court then declined to hear the case, as the Court's decision in *Elkins* rested on the premise that the

As the Supreme Court has held that it is possible for G-4 visa holders to adopt the U.S. as their domicile, the question to be determined – as the Supreme Court directed Maryland to do in *Elkins* – is whether G-4 visa holders are incapable, as a matter of District common law, of becoming domiciliaries of the District.

This question concerns the general District law of domicile. *See Toll I*, 397 A.2d at 1014. In the District, "[t]he requirements for establishing domicile are: (1) physical presence, and (2) intent to abandon the former domicile and remain here for an indefinite period of time." *Rzeszotarski v. Rzeszotarski*, 296 A.2d 431, 434-35 (D.C. 1972) (internal citation omitted). The legal principles stated above are applied regardless of the context. *See, e.g., Rzeszotarski*, 296 A.2d at 434 (determining domicile for a divorce proceeding); *Bartholomew v. D.C. Office of Tax & Revenue*, 78 A.3d 309 (D.C. 2013) (determining domicile for tax purposes); *In re Estate of Derricotte*, 744 A.2d 535 (D.C. 2000) (determining domicile for probate purposes). *See also Alexander v. District of Columbia*, 370 A.2d 1327,1330 (D.C. 1977) ("[I]t has never been contended that the criteria determining domicile for divorce differ from those applicable to domicile for taxation . . . ."). Petitioners point to a number of cases in which individuals with various immigration statuses have been found to be domiciled in the District. *See, e.g.*,

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University of Maryland had no interest in continuing to deny in-state status to G-4 visa holders as a class if they can become Maryland domiciliaries, and the Court remanded the case back to the District Court to first consider the new issues of constitutional law. *Toll v. Moreno*, 441 U.S. 458 (1979).

Finally, the case came before the Supreme Court a third time. This time the issue before the Court was "whether the University of Maryland's in-state policy is invalid under the Supremacy Clause of the U.S. Constitution, insofar as the policy categorically denies in-state status to domiciled nonimmigrant aliens who hold G-4 status." *Toll v. Moreno*, 458 U.S. 1, 3 (1982) ("*Toll II*"). In *Elkins*, the Court specifically declined to address the respondents' Supremacy Clause argument, as the Court decided the case on other grounds. *Elkins*, 435 U.S. at 659 n.7. The Court ultimately concluded that the University's policy violates the Supremacy Clause:

> In sum, the Federal Government has not merely admitted G-4 aliens into the country; it has also permitted them to establish domicile and afforded significant tax exemptions on organizational salaries. In such circumstances, we cannot conclude that Congress ever contemplated that a State, in the operation of a university, might impose discriminatory tuition charges and fees solely on account of the federal immigration classification. We therefore conclude that insofar as it bars domiciled G-4 aliens (and their dependents) from acquiring in-state status, the University's policy violates the Supremacy Clause.

Toll II, 458 U.S. at 17.

Rzeszotarski, 296 A.2d at 434 (Polish citizen determined to be domiciled in the District when the individual had entered the United States under a cultural-scientific exchange program for two years, even though subject to deportation in the event of failure to effectuate a change in immigration status prior to the expiration of the two-year period); *Alves v. Alves*, 262 A.2d 111 (D.C. 1970) (British citizen determined to be domiciled in the District when the individual was in the United States pursuant to a special nonimmigrant visa that permitted him to remain in the United States as long as he was employed by the IMF). Future contingent events that may or may not happen do not alone destroy domiciliary intent.

The District claims that since Congress has changed the law governing G-4 visas, the premise on which the Supreme Court based its ruling in *Elkins* has "ceased to be valid." In support of this proposition, the District distinguishes between what it terms "convertible" G-4 visas and "nonconvertible" G-4 visas. The District claims that G-4 visas are "convertible" to "permanent status" once they meet certain preconditions,[3] and that the 1986 amendments (officially called the Immigration Reform and Control Act of 1986) to the INA provided the circumstances under which a G-4 visa holder could remain indefinitely in the U.S. This so-called distinction is of no consequence. The 1986 amendments did in fact provide ways for G-4 visa holders (and their families) to stay in the U.S. if the G-4 visa holder retired or died. Thus, the 1986 amendments made it easier for G-4 visa holders to stay in the U.S.; this change does not affect the subjective intent required of domicile. Further, *Elkins*, *Toll I*, and *Toll II* were decided before the 1986 amendments – when it was *more difficult* for a G-4 visa holder to stay in the U.S. at the completion of their employment – and the Supreme Court and the Maryland Court of Appeals found that G-4 visa holders could acquire the intent to reside permanently in the United

[3] These preconditions include retirement from the international organization, residence for specified periods within the U.S., and prompt application for new status. Resp't's Mem. in Opp'n to Pet'r's Mot. for Partial Summ. J. at 3.

States at that time. The Court also finds persuasive petitioners' argument that *Elkins* controls. As *Elkins* was predicated on whether Congress placed any restriction on the intent of G-4 visa holders, and the 1986 amendments did not place any restrictions on G-4 visa holders' intent, they merely provided ways for visa holders to stay permanently in the U.S. Thus, the District's argument is not convincing.

Here, there are no material factual disputes and petitioners are entitled to judgment as a matter of law. In light of the Supreme Court's interpretation of federal law, Maryland's conclusion that nothing in its general law of domicile renders G-4 visa holders incapable of becoming domiciled in that state, and the D.C. Court of Appeals' decisions in *Rzeszotarski v. Rzeszotarski*, 296 A.2d 431, 434 (D.C. 1972) and *Alves v. Alves*, 262 A.2d 111 (D.C. 1970), the Court concludes that G-4 visa holders can form the intent to be domiciled in the District and the petitioners' motion for summary judgment is **GRANTED**.

It is further **ORDERED** that the petitioners' September 3, 2014, Motion to Request November Hearing Regarding Petitioners' Pending Motion for Partial Summary Judgment is **DENIED AS MOOT**.

SO ORDERED, this 26th day of September, 2014.

JUDGE JOHN M. CAMPBELL

eServe:

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