IN THE SUPREME COURT OF FLORIDA

DADE COUNTY PROPERTY
APPRAISER, et al.,

Petitioners,

CASE NO. 92,628

v.

JOSE LISBOA,

Respondent.
_____/

AMICUS ANSWER BRIEF ON BEHALF OF RESPONDENT, JOSE LISBOA

BRIEF FOR THE PROJECT TO MOBILIZE IMMIGRANT STUDENTS FOR EDUCATION (**PROMISE**), A PROJECT OF THE FLORIDA IMMIGRANT ADVOCACY CENTER, INC. AS AMICUS CURIAE

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SUMMARY OF THE ARGUMENT

An asylum applicant residing in the United States pending a determination of his application for asylum can satisfy the residency requirements contained within Article VII, Section 6 of the Florida Constitution and Section 196.031(1), Florida Statutes, in order to qualify for Florida's homestead tax exemption.

The Court should answer the question certified positively and affirm the Third District Court of Appeals' decision based on federal immigration law, as construed by the Supreme Court, and Florida domicile law. It is clear that the pertinent constitutional and statutory provisions on the homestead tax exemption require domicile in the State to qualify for the exemption. Domicile is established where actual residence in the state is coupled with a good faith present intention to reside permanently or indefinitely in the State.

An alien can establish domicile in a state where: (1) federal immigration law does not prohibit him from acquiring domicile and (2) the State's common law of domicile allows aliens to acquire domicile. In the case of an asylum applicant, there is no federal or state bar to acquisition of domicile. Specifically, asylum applicants are legally capable of forming the intent to permanently reside in Florida. Indeed, if any alien has expressed an intent to abandon their prior domicile and

acquire a new domicile it is the asylum applicant who must show that he is "unable and unwilling to return to their country of nationality . . . because of persecution or a well-founded fear of persecution." 8 U.S.C. § 1101(a)(42)(A) (1998).

The Court's 1963 decision in Juarrero v. McNayr, 157 So. 2d 79 (Fla. 1963) is inapposite here because it is premised on the distinction between permanent and temporary visas. Because an asylum applicant is not a visa category, but rather an immigration status wholly independent of visas, this distinction is irrelevant to the present case. Moreover, the continuing validity of Juarrero, even within the limited area of Florida domicile law where it may have precedential value, must be seriously questioned in light of developments in immigration law and the U.S. Supreme Court's ruling in Elkins v. Moreno, 435 U.S. 647 (1978).

Consequently, Juarrero is not the controlling decision in this case. Provided with an opportunity in this case to establish controlling precedent, this Court should hold that aliens, both legal aliens (such as Lisboa) and illegal aliens, have the legal capacity to acquire a domicile of choice in Florida. Florida domicile law in the divorce context, as well as cases from other jurisdictions, support this conclusion.

In conclusion, the Third District's decision should be affirmed.

ARGUMENT

I. THE CLEAR IMPORT OF ARTICLE VII, SECTION 6 OF THE FLORIDA CONSTITUTION AND CHAPTER 196, FLORIDA STATUTES, IS TO ESTABLISH A HOMESTEAD TAX EXEMPTION FOR PERSONS DOMICILED IN THE STATE OF FLORIDA.

A. Because it arises in several contexts, domicile is a well-developed concept in Florida common law that includes several general rules.

Domicile is a person's true, fixed, and permanent home and principal establishment, and to which whenever he is absent, he has the intention of returning. Minick v. Minick, 149 So. 483, 487 (Fla. 1933). The essential elements of domicile are actual residence in the State coupled with a present intention to remain. Id. at 487.

There are three types of domicile: domicile of origin (or birth); domicile of choice, and domicile by operation of law. Wade v. Wade, 113 So. 374, 375 (Fla. 1927). A domicile of choice can be acquired by "one who coming from another state or country actually lives in this state with the intention of permanently remaining here. Minick, 149 So. at 488 (emphasis supplied); Wade, 113 So. at 375. As stated by this Court: "Where a good faith intention is coupled with an actual removal evidenced by positive overt acts, then the change of [domicile] is accomplished and becomes effective. This is so because [domicile] consists of the concurrence of both fact and intention." Bloomfield v. City of St. Petersburg Beach, 82 So.

2d 364, 368(Fla. 1955).

The bona fides of the intent is a key factor. Id. at 368. Additionally, an individual's intent is subjective and the best proof of a person's domicile is where the person says it is. Ogden v. Ogden, 33 So. 2d 870, 873 (Fla. 1947); Keveloh v. Carter, 699 So. 2d 285, 288 (Fla. 5th DCA 1997).

Although a person may have several residences at the same time, he can have only one domicile. Minick, 149 So. at 488. In determining domicile, a court may look at a variety of factors including place of residence, statements or declarations of the party, location of the party's business or trade, membership in clubs, churches, purchase of property, location of burial plots, and payment of taxes. See generally, 20 Fla. Jur. 2d *Domicile* §§ 26-30 (1980). The fact of residence in a locality is prima facie evidence of domicile in that locality. Warren v. Warren, 75 So. 35 (Fla. 1917).

B. "Permanent residence," as used in homestead exemption constitutional and statutory provisions, is synonymous with domicile.

The term "permanent residence" as it appears in Article VII, Section 6 of the Florida Constitution and throughout Chapter 196, Florida Statutes, is synonymous with "domicile."

This Court has recognized that the term "residence or equivalent terms," such as legal residence and permanent residence are synonymous with domicile when used in statutes

relating to taxation, divorce, voting rights, and limitations on actions. Minick, 149 So. At 488; Herron v. Passailague, 110 So. 539, 543 (Fla. 1926); see Bloomfield, 82 So. 2d 364(using domicile analysis to determine whether person was a "permanent resident" within meaning of voting rights statute). Indeed, in Judd v. Schooley, the Court used domicile interchangeably with "permanent home" and "permanent residence," the terms then found in the homestead exemption provisions in the Florida Constitution and Florida Statutes. 158 So. 2d 514 (Fla. 1963).

The current constitutional and statutory provisions on homestead exemption clearly indicate the same interchangeable use of permanent residence and domicile. The definition of "permanent residence" in Section 196.012(18), Florida Statutes, is taken almost verbatim from the common law definition. § 196.012(18), Fla. Stat. (1998); compare Minick, 149 So. at 487; Fla. Admin. Code R. 6C-7.005(3)(b) (1997)(providing nearly identical definition of "domicile" for in-state tuition purposes). Moreover, the definition cites the basic common law principle that a person can have only one permanent residence at a time. § 196.012(18), Fla. Stat. (1998). Finally, the factors listed in section 196.015 as indicia of permanent residence are similar to the factors used in determining domicile. § 196.015, Fla. Stat. (1998), compare 20 Fla. Jur. 2d *Domicile* §§ 26-30 (1980).

To summarize, the residency requirements stated in Article VII, Section 6 of the Florida Constitution and Chapter 196, Florida Statutes, require that a person establish domicile in the State in order to qualify for the homestead tax exemption. To acquire domicile in Florida a person must establish actual residence in the state concurrently with a good faith present intention to reside indefinitely in the State.

II. AN ASYLUM APPLICANT SUCH AS LISBOA CAN ESTABLISH "PERMANENT RESIDENCE" IN FLORIDA BECAUSE THERE IS NOTHING INHERENT TO ASYLUM APPLICANT STATUS THAT PRECLUDES HIM UNDER FEDERAL STATUTES OR STATE COMMON LAW FROM FORMING THE INTENT NECESSARY TO ACQUIRE A DOMICILE OF CHOICE.

A. Where an alien asserts domicile in a state, the domicile issue presents a mixed question of federal law and state law.

In Elkins v. Moreno, the U.S. Supreme Court addressed the issue in the present case, namely, whether an alien has the legal capacity to form the intent necessary to establish domicile in a State. 435 U.S. 647, 658 (1978). In Elkins, the aliens held G-4 non-immigrant visas and sought to establish domicile for purposes of acquiring in-state tuition status at Maryland's public universities. Id. at 650.

The Court stated that a two-part analysis was necessary for resolving the legal capacity issue. Id. at 662. Specifically, the Court found that in analyzing the intent of the alien, two issues must be addressed: (1) whether federal immigration law creates a

legal disability precluding the acquisition of domicile which States are bound to recognize under the Supremacy Clause; and (2) whether the State's common law of domicile defining intent precludes the acquisition of domicile. Id. at 663.[1] The Court held that a G-4 alien was not precluded under federal immigration statutes and certified the question to the Maryland Court of Appeals for the state law issue. Id. On certification, the State's high court held that G-4 aliens could establish domicile under Maryland law. Toll v. Moreno, 397 A.2d 1009 (Md. 1979).

B. An asylum applicant is not precluded under federal immigration law from forming the intent necessary to establish domicile because Congress has not conditioned asylum applicant status on an intent not to abandon a foreign residence or by implication, an intent not to seek domicile in the United States.

In answering the federal law question, the Court in Elkins engaged in a thorough analysis of immigration statutes. Id. at 664-68. Under the Immigration and Nationality Act (herein, the Act), an "alien" is any person who is not a citizen or national of the United States. 8 U.S.C. § 1101(a)(3) (1998). The Court noted that the Act divides aliens into two basic categories, immigrant aliens and non-immigrant aliens. Elkins, 435 U.S. at 664; see 8 U.S.C. § 1101 (a)(15) (1998). The Act defines an immigrant alien negatively, providing that all aliens not

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[1] In Rodriguez v. Steirheim, 465 F. Supp. 1191 (S.D. Fla. 1979), the District Court adopted the Elkins analysis to question the continuing validity of this Court's decision in Juarrero v. McNayr, 157 So.2d 79 (Fla. 1963).

specifically listed in the Act as non-immigrant aliens, are "immigrant aliens." Elkins, 435 U.S. at 664; Saxbe v. Bustos, 419 U.S. 65, 67 (1974); 8 U.S.C. § 1101(a)(15)(1998).

The Court held that if Congress does not explicitly include restrictions on intent in the definition of the alien's status -- specifically, restrictions stating that the alien must have no intention to abandon a foreign residence -- then the alien can develop the intent necessary to establish domicile. Elkins, 435 U.S. at 665-666. The Court's "inescapable" conclusion was that "where as with the G-4 class, Congress did not impose restrictions on intent, this was deliberate" and Congressional silence implied permission to establish domicile. Id. at 666.

Importantly, the Court's analysis did not hinge upon a permanent versus temporary visa dichotomy. The Court was fully cognizant that G-4 aliens are non-immigrants, and thus generally viewed as "temporary visitors" to the U.S., but did not deem this an important factor. See id. at 665. Rather, the Court's sole inquiry was whether federal immigration law requires the alien to declare the intent to retain his prior domicile in order to qualify for the status, as in the case of tourists and students. Id. at 665; 8 U.S.C. §§ 1101(a)(15)(B)(tourists) and 1101(a)(15)(F)(students).

Applying the Elkins holding to this case, it is apparent that an asylum applicant does have the legal capacity to form the

intent necessary for domicile. First, an asylum applicant is an immigrant alien since the Act presumes that any alien not enumerated in the non-immigrant category is an immigrant alien. Elkins, 435 U.S. at 664; Saxbe, 419 U.S. at 67; 8 U.S.C. § 1101(a)(15)(1998). Second, under immigration laws asylum applicants do not have to declare an intention to retain their prior domicile as a condition for applying for asylum or being granted asylum. See 8 U.S.C. § 1158(1998)(procedure for applying for asylum); 8 C.F.R. § 208.1 et seq. (1998). To the contrary, in order to apply for asylum an alien must declare that he is "unable and unwilling to return to" his country of nationality because he fears persecution. 8 U.S.C. § 1101(a)(42)(A) (defining a "refugee") and 8 U.S.C. § 1158 (b)(1)(stating that an asylum applicant may be granted asylum where the alien demonstrates that he is a "refugee"). Consequently, if there is an intent inherent to the asylum applicant status it is precisely the intent to abandon the foreign domicile and to acquire a domicile of choice in the place of sanctuary.

In summation, there is no legal disability under federal immigration laws precluding asylum applicants from establishing domicile in a State.

C. An asylum applicant is not precluded under state law from acquiring a domicile of choice in Florida because there is nothing in the intent inherent to asylum applicant status that contradicts the state law of domicile regarding intent.

1. *Juarrero* is not the controlling precedent in this case because it is obsolete and entirely inapposite in cases involving alien categories that are not visa categories.

This Court's decision in Juarrero v. McNayr, 157 So. 2d 79 (Fla. 1963), has been superseded by developments in immigration law as well as the Supreme Court's decision in Elkins. Whatever precedential value remains of Juarrero, it is inapposite in this case.

In Juarrero, the Court held that aliens residing in the United States under temporary visas were legally incapable of establishing domicile in the State for homestead exemption purposes. Id. The Court's holding in Juarrero relies heavily on the permanent visa-temporary visa dichotomy, specifically, on the "temporary nature of the visa" in question. Id. at 81.

Juarrero is no longer good precedent. First, the Supreme Court's decision in Elkins, specifically holding that aliens with non-immigrant visas can establish domicile seriously calls into question the continuing validity of Juarrero. The Juarrero Court equated non-immigrant visas with temporary visas, describing the visa in question as "non-immigrant" initially and then using "temporary visa" throughout the opinion. Id. at 80. Juarrero precludes all non-immigrant visa holders from establishing domicile, consequently, its validity is doubtful given the decision in Elkins. For good reason, then, the District Court in

Rodriguez v. Steirheim, stated that the "Juarrero dichotomy was no longer clear cut under federal law" and cited Elkins to question its validity. 465 F. Supp. 1191, 1194 (S.D. Fla. 1979).

Second, Juarrero's blanket prohibition on temporary visa holders from establishing domicile may not withstand constitutional scrutiny. In Toll v. Moreno, the Supreme Court held that Maryland's blanket prohibition preventing all non-immigrant aliens, even those who can acquire domicile, from acquiring in-state tuition status violated the Supremacy Clause. 458 U.S. 1 (1982). The Court stated that when state law imposes additional burdens not contemplated by Congress on aliens residing lawfully in the country, then it violates the Supremacy Clause. Id. at 12. Similarly here, Juarrero's prohibition on non-immigrant visa holders, which would include G-4 aliens, violates the Supremacy Clause.

Third, assuming arguendo that Juarrero continues to have precedential value, it is limited to visa category cases, and consequently, is inapposite in this case because an asylum applicant is not a visa category.

As a preliminary matter, there is no definition of "permanent visa" or "temporary visa" in immigration statutes, so the Juarrero dichotomy is not rooted in immigration terminology. See 8 U.S.C. § 1101 (1998) (definition section of the Act). Rather, the Act refers to "immigrant visas" and "non-immigrant

visas." 8 U.S.C. § 1101(a)(16) and (a)(26). A review of the immigrant and non-immigrant visa categories reveals that the status in question here -- asylum applicant -- is not a visa category. See 8 U.S.C. § 1101(a)(15) (non-immigrant visas); § 1101(a)(27) ("special" immigrant visas); and §§ 1151 and 1153 (categories of immigrant visas).

Asylum applicant is one of a whole array of immigration statuses that aliens may acquire when they file an application with the Immigration and Naturalization Service or Immigration Court. See 8 C.F.R. § 274a.12(c) (1998)(listing alien categories wholly unrelated to visas, such as suspension of deportation applicant, adjustment of status applicant, and legalization applicant, that render aliens eligible to apply for work permits). A person may apply for asylum and obtain asylum applicant status regardless of how he initially enters the country, with a visa or not, legally or illegally. See 8 U.S.C. §§ 1158(1998); 8 C.F.R. §§ 208.1 et seq. (1998). Simply stated, an asylum applicant is lawfully in the country by virtue of his pending asylum application, not by virtue of a visa . Consequently, equating the asylum applicant here with the "temporary visa" holder in Juarrero is entirely inappropriate.

Similarly, analogizing an asylum applicant to a non-immigrant visa holder is improper. The shared characteristic of non-immigrant visas is that they exist for a defined purpose (for

example, to study or visit the U.S.) with a defined end (i.e., a date certain for departure), and the alien often has to declare an intention no to abandon the prior domicile. See Solis v. Dept. of Health and Rehabilitative Services, 580 So. 2d 146, 149 (Fla. 1991). In contrast, an asylum applicant is in the U.S. with no defined purpose or defined end. Id.

Finally, although Juarrero refers to "political asylum," the Court was using that term in the generic sense and not referring to asylum applicant status. At the time of Juarrero, asylum applicant status did not exist: the procedure for aliens physically present in the U.S. to apply for asylum was established in the Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (1980). See 2 C. Gordon and S. Mailman, Immigration Law and Procedure, § 33.01[3], p. 33-10 (Rev. ed. 1994). Indeed, the word "asylum" did not appear in immigration statutes until 1980. T. Aleinikoff and D. Martin, Immigration: Process and Policy 734 (2d ed. 1991).

To summarize, Juarrero cannot be used either directly or by analogy in reaching a decision in this case because it is concerned exclusively with visa categories. Even within the visa category context, the decision at best, has limited precedential value in light of Elkins.

2. The Court should adopt the rule that any alien has the legal capacity to form the intent necessary for domicile, except those persons who are in an alien category which requires them to declare an intent to retain their prior domicile.

Based on Elkins, Florida domicile law in the divorce context, and decisions from other jurisdictions, the Court should hold that aliens can establish domicile, provided that the intent inherent to the alien's status does not require him to declare an intent to retain a prior domicile.

The Supreme Court's holding in Elkins on the legal capacity of aliens to establish domicile is rooted in sound domicile principles. The Elkins rule should inform this Court's decision in determining Florida domicile law regarding aliens. See Toll v. Moreno, 397 A.2d 1099 (Md. 1979)(relying largely on the Supreme Court's analysis of federal law in Elkins to hold that G-4 alien can establish domicile under Maryland law). Specifically, this Court should follow Elkins, and hold that any alien has the legal capacity to form the intent necessary for domicile, except those persons who are in an alien category which requires them to declare an intent to retain their prior domicile.

Florida's domicile law already provides the basis for holding that aliens, whether legal aliens such as Lisboa, or

illegal aliens,[2] have the legal capacity to establish domicile in Florida. See Perez v. Perez, 164 So. 2d 561 (Fla. 3d DCA 1964).

In Perez, the alien was allowed in the U.S. on a "temporary basis" as a parolee and allowed to remain in the U.S. for an indefinite period. Id. at 562 (referring to parole provisions at 8 U.S.C. § 1182(d)(5) and (6)). Parole is a discretionary mechanism in immigration law that allows the immigration authorities to admit aliens into the country as non-immigrants, usually due to urgent or humanitarian reasons. 8 U.S.C. § 1182(d)(5); 8 C.F.R. § 212.5 (1998). Consequently, Perez was in a status virtually identical to Juarrero who had been allowed indefinite stay and was present with a non-immigrant visa. The Third District held that a parolee was not precluded from forming the requisite intent to acquire a domicile of choice in Florida. Perez, 164 So. 2d at 564; accord Nicolas v. Nicolas, 444 So. 2d 1118 (Fla. 3d DCA 1984)(alien who was not a permanent resident but intended to remain indefinitely in Florida established domicile).

The court's reasoning correctly emphasizes the subjective intent of the alien, stating:

> A person who resides in the country from

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[2] The term "illegal alien" is not defined in the Act, but generally includes persons who have had no contact with immigration authorities and have no applications pending with the Immigration and Naturalization Service ("undocumented"), and persons who have a final order of deportation.

> which he is liable to be deported may lack the *animus manendi* because his residence is precarious. But if in fact he forms the necessary intention, he acquires a domicile of choice. This applies both where he is given permission to reside for a limited period but is liable to deportation and also where he is given permission to reside for a limited period which can be extended at the discretion of the authorities of the country in question. Once such a person has acquired such a domicile choice he does not lose it merely because a deportation order has been made against him; he only loses it when he is actually deported. Perez, 164 So. 2d at 564(quoting Dicey, Conflict of Laws, Rule 9.2 (7th ed.)

The Court should extend the holding in Perez to the homestead exemption context.[3] Although the Perez court attempted to distinguish divorce from the homestead context, the reasons provided are not persuasive. First, the court cited the language of the homestead provision, which requires the showing of a good faith "permanent home" as opposed to the divorce statute, which requires "residence." Id. at 564. However, Perez itself equates residence with domicile and Judd v. Schooley, a contemporaneous Supreme Court homestead case uses permanent home and domicile interchangeably. Perez, 164 So. 2d at 564; Judd, 158 So. 2d 514.

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[3] Such a ruling would further develop a unitary concept of domicile in Florida. Several Florida courts have relied on domicile decisions from other contexts in deciding a case involving a different purpose. See e.g., Judd, 158 So. 2d at 516 (homestead case citing a divorce case, Merritt v. Merritt, 55 So. 2d 735 (Fla. 1951)); Ashmore v. Ashmore, 251 So. 2d 15, 16n.2 (Fla. 2d DCA 1971) (divorce case citing homestead case, Judd, supra.)

Consequently, this semantical exercise amounts to a distinction without a difference.

Second, the court offered a policy reason as a basis for distinction, namely, that the state is a party of interest in all divorce actions and the public welfare and morals are necessarily involved. Perez, 164 So. 2d at 564. Similar policy concerns exist in the homestead context. Specifically, given the nearly identical statuses involved in Juarrero and Perez, it is patently unfair that the same individual can be sued for divorce in Florida but cannot claim a homestead exemption. Moreover, if an an alien is a resident for purposes of assessment of property taxes, he should also be deemed a resident for exemption of taxes. The legal fiction that an alien "disappears" from Florida for exemption purposes but is present for assessment purposes violates fundamental notions of fairness.

The Perez court's conclusion that even illegal aliens, such as persons who have been ordered deported, have the legal capacity to form the intent necessary for domicile is supported by domicile decisions from other jurisdictions. Indeed, in Plyler v. Doe, the U.S. Supreme Court recognized that illegal entry into the country does not bar an alien from obtaining domicile within a State. 457 U.S. 202, 227 n.6 (1982).

Other state courts have held that illegal aliens can establish domicile in a State. In St. Joseph's Hospital and

Medical Center v. Maricopa County, the Arizona Supreme Court held that undocumented aliens were residents within the meaning of a state medical care reimbursement statute. 688 P.2d 986, 992-93 (Ariz. 1984). As in Perez, the court found that residence and domicile were synonymous, and rejected the argument that an alien who was illegally present under federal law and subject to deportation was legally incapable of forming the intent for domicile. Id. at 991. The court stated that the intent requirement is essentially an issue of subjective intent, and while insanity, marital status, and minority age, may have some bearing on capacity to form intent, immigration status does not. Id.

Similarly, in Cabral v. State Bd. of Control, a California appellate court held that illegal aliens could establish domicile in California for purposes of a state criminal statute. 169 Cal.Rptr. 604 (Cal. Ct. App. 1980). The court stated that "anyone having the legal capacity to contract may change his or her domicile," and concluded that the aliens possessed the legal capacity to become California domiciliaries. Id. at 607.

Finally, in Das v. Das, a New Jersey appellate court held than an illegal alien could establish domicile in New Jersey for purposes of a state divorce statute. 603 A.2d 139 (N.J. Sup.Ct. Ch. Div. 1992). In Das, the alien was unlawfully in the country because she had stayed beyond the expiration date of her tourist

visa, withdrawn her request for political asylum, and failed to maintain the conditions of her visa. Id. at 141. The court concluded that none of these factors precluded her, by operation of law, from establishing domicile in the State. Id. at 141, 141n.3. The Court recognized that the alien was deportable, but stated, "given the uncertainty of knowing when, if ever, deportation proceedings will be commenced, this court is persuaded that no legal disability precluding a change of domicile should exist." Id. at 142.

Indeed, in determining New Jersey domicile law, the court went beyond Elkins, finding that even where an alien holds a visa that requires an intent to retain his foreign residence, if she forms an actual intent to change her domicile contrary to the terms of the visa, she can acquire a domicile of choice. Id. at 142 (citing Williams v. Williams, 328 F. Supp. 1380, 1383 (D.V.I. 1971))(stating that "constructive intent" inherent to visa category cannot overcome the actual intent of the alien).

In conclusion, based on Elkins, and the Perez rationale as supported by other states' case law, the Court should rule that aliens, including illegal aliens, can establish domicile in Florida, unless the intent inherent to the alien category requires the alien to declare an intent to retain a prior domicile.

3. Lisboa has acquired a domicile of choice in Florida.

An asylum applicant is a "permanent resident" of the State for purposes of the homestead tax exemption.

First, it is undisputed that Lisboa actually resides in the State of Florida. Dade Co. Property Appraiser v. Lisboa, No. 97-875 (Fla. 3d DCA 1998), slip op. at 2. Indeed, he has resided exclusively in Miami, Florida since arriving in this country. Id. Moreover, it is undisputed that he has resided at the property in question since purchasing it in 1994. [R1:14-15].

Second, regarding his intent, it also seems undisputed that Lisboa has formed an honest, subjective intent to remain indefinitely in this State. Petitioners' briefs do not, at any point, question his intent as a matter of fact.

Rather, Petitioners question his intent as a matter of law. As stated above, as a matter of federal law, Lisboa is not precluded from establishing domicile because his alien category does not require him to declare an intent to retain his prior domicile in Brazil. As a matter of state law, the Court must similarly find that there is nothing inherent in the status of an asylum applicant that precludes him from forming the requisite intent for domicile.

As stated previously, the intent inherent to this status is an intent to abandon the foreign domicile and establish a

domicile of choice in the place of sanctuary. Moreover, as an asylum applicant Lisboa can form a present intention to remain here because there is no definite end to his stay in this country. Solis, 580 So. 2d at 149. Indeed, if granted asylum he has the right to apply for adjustment of status and thereby become a permanent resident of the United States. 8 C.F.R. § 209.2 (1998) (adjustment of status procedure for aliens granted asylum). The availability of the adjustment of status mechanism to Lisboa argues in favor of finding that he can form the requisite intent for domicile. Elkins, 435 U.S. at 668; Das, 603 A.2d at 142n.7.

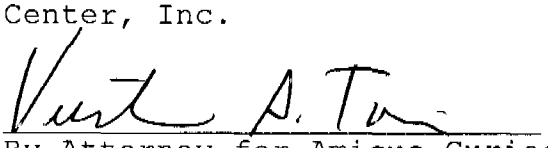
In summation, the Court should hold that asylum applicants such as Lisboa satisfy the residency requirements of the homestead exemption provisions because he is domiciled in Florida. Given the opportunity to provide a precedential decision in this context, the Court should further hold that any alien, and not simply lawfully present aliens such as asylum applicants, has the legal capacity to acquire domicile in Florida, provided that the alien does not have to declare an intent to retain a prior domicile as part of the requirements of the alien category in question.

CONCLUSION

For the foregoing reasons, the Court should answer the certified question affirmatively and the Third District's opinion should be affirmed.

Respectfully submitted,

PROMISE, a project of the
Florida Immigrant Advocacy
Center, Inc.



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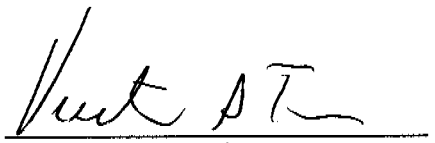
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Brief as Amicus Curiae was sent by Federal Express this 22nd day of June, 1998 to: Brion Blackwelder, Counsel for Respondent Jose Lisboa, Nova Southeastern Civil Law Clinic, 3305 College Avenue, Fort Lauderdale, Florida 33314; Robert A. Ginsburg, Miami-Dade County Attorney, and Melinda S. Thornton, Assistant County Attorney, Counsel for Dade County Property Appraiser & Tax Collector, Stephen P. Clark Center, Suite 2810, 111 N.W. 1st Street, Miami, FL 33128-1993; Joseph C. Mellichamp, III, Senior Assistant Attorney General, Counsel for Department of Revenue, Office of the Attorney General, The Capitol, Room LL04, Tallahassee, Florida 32399-1050, and Charlie McCoy, Assistant Attorney General, Counsel for Department of Revenue, Office of the Attorney General, The Capitol, Room PL-01, Tallahassee, Florida 32399-1050.



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