

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
A. KHAN,) OTA NO. 18042861
)
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) APPELLANT.
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TRANSCRIPT OF PROCEEDINGS

Sacramento, California

Wednesday, September 30, 2020

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Proceedings, taken at
400 R Street, Sacramento, California, 95811,
commencing at 11:00 a.m. and concluding
at 12:33 p.m. on Wednesday, September 30, 2020,
reported by Ernalyn M. Alonzo, Hearing Reporter,
in and for the State of California.

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APPEARANCES:

Panel Lead: ALJ JEFFREY MARGOLIS

Panel Members: ALJ KENNY GAST
ALJ JOHN JOHNSON

For the Appellant: MICHAEL HALLOCK

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

BRIAN MILLER
SONIA WOODRUFF

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I N D E X

E X H I B I T S

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(Department's Exhibits A-X were received at page 10.)

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1 Sacramento, California; Wednesday, September 30, 2020

2 11:00 a.m.

3

4 JUDGE MARGOLIS: We are now on the record.

5 My name is Jeffrey Margolis, and I'm the lead
6 Administrative Law Judge in the Appeal of Ayaz Kahn, OTA
7 Case Number 18042861. The date is September 30th, 2020,
8 and the time is approximately 11:00 a.m.

9 I am joined here in this electronic hearing by my
10 colleagues, Administrative Law Judges Kenneth Gast and
11 John Johnson. Although I will be the lead Administrative
12 Law Judge for purposes of conducting today's hearing, all
13 three of the judges will have an equal responsibility for
14 and an equal say in deciding this appeal.

15 Will counsel for the parties please identify
16 themselves for the record, beginning with Appellant's
17 counsel.

18 MR. HALLOCK: Yes. For appellant this is Michael
19 Hallock.

20 JUDGE MARGOLIS: Is there anyone else appearing
21 on behalf of Appellant as counsel, Mr. Hallock?

22 MR. HALLOCK: No. I'll be the only one appearing
23 as -- no. Mr. Schultz and Ms. Yu will also be here
24 appearing as counsel, although, they will likely not be
25 speaking -- speaking during the hearing.

1 JUDGE MARGOLIS: Okay. Thank you very much.

2 And who will be appearing for the Respondent?

3 MR. MILLER: Respondent is represented by Brian
4 Miller.

5 JUDGE MARGOLIS: And, Mr. Miller, are you the
6 only attorney appearing today on behalf of the Franchise
7 Tax Board?

8 MR. MILLER: No. Sonia Woodruff is Number 2.

9 JUDGE MARGOLIS: Okay. Great. Let's proceed and
10 make sure we agree on the issues to be decided today. It
11 appears that the issues to be decided today are whether
12 Appellant remained a California resident throughout 2013,
13 and whether he is liable for the late-filing penalty as
14 determined by the Franchise Tax Board.

15 Is that a correct statement of the issue,
16 Mr. Hallock?

17 MR. HALLOCK: This is Mr. Hallock. I agree
18 regarding the residency issue. Regarding late-filing
19 penalty issue, we will not be arguing reasonable cause on
20 that issue. And we would be willing to concede the
21 late-filing penalty as it applies to Appellant's
22 California source income, though not to the Saudi Arabian
23 income.

24 So, essentially, we are willing to concede. The
25 part we don't concede goes away if we win. We don't

1 concede the part that lives and dies on the residency
2 issue, but we concede the part as it applies to California
3 source income.

4 JUDGE MARGOLIS: Okay. Thank you for that
5 concession.

6 Mr. Miller, was my statement of the issue
7 correct?

8 MR. MILLER: Yes. Your statement of the issue is
9 correct.

10 JUDGE MARGOLIS: Okay. And before the end of the
11 day, I may have some questions about the credits and the
12 taxpayer's account. We can get to that later, the \$500.00
13 credit and the computation of the penalty, but let's --
14 we'll get to that at the end of the day here.

15 I understand there are four witnesses,
16 Mr. Hallock; is that correct?

17 MR. HALLOCK: That's correct.

18 JUDGE MARGOLIS: And they're all available today?

19 MR. HALLOCK: Yes. Yes, Your Honor, they're all
20 here available.

21 JUDGE MARGOLIS: Great. Thank you.

22 The parties agreed on most of the facts, and they
23 agreed that most of the documents that the parties have
24 submitted are admissible. I greatly appreciate the
25 cooperation of Mr. Miller and Mr. Hallock. It makes

1 everyone's job much easier.

2 Also per the prehearing conference minutes and
3 orders, various objective facts alleged in the appeal
4 letter and in Appellant's father's affidavit had been
5 admitted as true. As for the documents, we've sent out a
6 hearing binder, and we renumbered some exhibits. I assume
7 that both sides got that. And my record show that the
8 parties have agreed that except for the declaration
9 among -- except for the direct declarations attached as
10 Exhibit 17 through 19, Appellant's Exhibits 1 through 16
11 may be admitted into evidence.

12 Is that correct Mr. Miller?

13 MR. MILLER: It's 17, 18, 19. Yes that's
14 correct.

15 JUDGE MARGOLIS: Okay. And then as far as
16 Respondent's exhibits -- oh, and also by the way, those
17 exhibits include various translations of 2-A, 3-A, 8-A,
18 and 13-A, 15-A, and 15-B, Mr. Miller.

19 MR. MILLER: Yes. Yes, we have those. And yes,
20 those are acceptable.

21 JUDGE MARGOLIS: Okay. Respondent's exhibits
22 that were discussed at the prehearing conference were
23 Exhibits A through V, and Mr. Hallock had no objections to
24 those exhibits is my recollection. Is that correct, Mr.
25 Hallock?

1 MR. HALLOCK: Yes, that's correct. I have no
2 objections.

3 JUDGE MARGOLIS: And Respondent provided two new
4 exhibits, W and X, 15 days or more before the hearing.
5 They are IRS wage and income transcripts. And what was
6 Exhibit X?

7 MR. MILLER: Voter registration.

8 JUDGE MARGOLIS: Oh, voter registration
9 information. Mr. Hallock, do you have any objection to
10 those documents being admitted?

11 MR. HALLOCK: I do not, Your Honor.

12 JUDGE MARGOLIS: Okay. The documents that we've
13 just discussed will be all admitted into the record as
14 evidence.

15 (Appellant's Exhibits 1-16 were received
16 in evidence by the Administrative Law Judge.)

17 (Department's Exhibits A-X were received in
18 evidence by the Administrative Law Judge.)

19 MR. MILLER: May --

20 JUDGE MARGOLIS: Yes, Mr. Miller.

21 MR. MILLER: Clarification. The objective facts
22 of 1 through 13 on Appellant's opening brief, so the -- as
23 the order says, the objective facts of 1 through 13. But
24 legal conclusions and objective facts that are embedded in
25 1 through 13, I do not agree with it. There are no --

1 JUDGE MARGOLIS: I think there were some
2 statements of intent. I'd have to go back and look at
3 them, if you want to wait for a second.

4 MR. MILLER: Yeah, not much but a couple of
5 points to make. Yes.

6 JUDGE MARGOLIS: Okay. Let me go to the -- your
7 brief for a second. Bear with me for a second. So we're
8 talking about the appeal letter?

9 MR. MILLER: Yes. And there's points 1
10 through 13 to be discussed at the prehearing, I agreed to
11 the objective facts.

12 JUDGE MARGOLIS: Okay. And so which statement of
13 fact did you -- were you concerned that was not an
14 objective fact?

15 MR. MILLER: In Number 5. In Number 5, I agree
16 that the begin work was on June 1st, 2013. However, there
17 are other things. I found work with an indefinite end
18 period. That is not an objective fact. And the purpose
19 for leaving was my work, which goes to intent. So that's
20 not an objective fact. However --

21 JUDGE MARGOLIS: Is that you're only -- okay.
22 And with that qualification, is there anything else in
23 facts 1 through 13?

24 MR. MILLER: Yes. Just a second. In Number 13,
25 we agree -- yeah. In 13 he established social connections

1 and relationships, but the second part is subjective. I
2 had no intention. It goes to intent.

3 JUDGE MARGOLIS: Okay. I do not -- it was my
4 understanding that second sentence did not qualify as an
5 objective fact.

6 MR. MILLER: Yes, sir. This is --

7 JUDGE MARGOLIS: With respect -- with respect to
8 statement Number 5, perhaps -- Mr. Hallock, perhaps your
9 client can just testify to that during the hearing, and he
10 can establish those facts in that manner. Is that
11 satisfactory to you?

12 MR. HALLOCK: Sure. I believe he will be
13 testifying that. Although, I don't think that I -- I
14 think an indefinite end period, you know, is an objective
15 fact. And, you know, I -- I don't -- these objections
16 were not raised during the prehearing conference regarding
17 these factual points. And so we're relying, you know, on
18 the statements of intent within, you know, in our
19 arguments. And so, you know, I -- I believe they should
20 be admissible.

21 JUDGE MARGOLIS: Mr. Miller, what's your response
22 with respect to Item 5?

23 MR. MILLER: Item 5?

24 JUDGE MARGOLIS: Yes, with respect to --

25 MR. MILLER: Whether or not --

1 JUDGE MARGOLIS: -- Item Number 5.

2 MR. MILLER: Right. Whether or not he found work
3 with an indefinite end period. There's no objective
4 evidence of that.

5 JUDGE MARGOLIS: Well, it's still a statement of
6 an objective fact. I'm going to -- I'm going to find that
7 you've admitted that -- that you've admitted that fact.
8 You're free to cross-examine Mr. Khan on that. With
9 respect to the second line in finding Number 13, the
10 statement of Number 13 in the brief that "I had no
11 intention to ever establish residency in California,"
12 again, that is specifically the kind of statement that I
13 did not believe qualified as an objective fact. And that,
14 he can testify to that, Mr. Hallock. So that's not --
15 we're not accepting that as an evidentiary fact based upon
16 this statement.

17 MR. HALLOCK: I understand, Your Honor. I'd been
18 planning to raise that in my argument. I'll do my best to
19 remove that and rely only on what he says in his testimony
20 regarding that. Thank you, Your Honor.

21 JUDGE MARGOLIS: Okay. And with that let's move
22 forward. We've said that each side will have five minutes
23 for an opening statement. And then we'll have witness
24 testimony, including questions from the FTB and by the
25 judges, if they have any. And then we'll allow a closing

1 argument by each side of 15 minutes, and 5-minute rebuttal
2 by Appellant. So let's begin with that schedule.

3 Mr. Hallock, you have five minutes for your
4 opening statement. You may begin whenever.

5 MR. HALLOCK: All right. Thank you, Your Honor.

6

7

OPENING STATEMENT

8 MR. HALLOCK: The evidence today will show the
9 following. Dr. Ayaz Khan was living in California at the
10 outset of 2013. In January 2013 his ex-wife, Anushe Khan,
11 filed for a divorce in the San Bernardino Superior Court.
12 They had been separated since September 22nd, 2011.

13 Dr. Khan had longstanding family and religious ties to
14 Saudi Arabia, and he decided to make a fresh start there.

15 His plan was to live in Saudi Arabia
16 indefinitely. He had no intention to establish residency
17 in California again. Shortly after the divorce began, Dr.
18 Khan began cutting ties with California. On February 11,
19 2013, he sold one of his cars. On May 20th he emptied his
20 storage unit. On May 24th he transferred his other
21 vehicle to his ex-wife. Dr. Khan had already terminated
22 his California lease on August 31st, 2012.

23 At the end of May, Dr. Khan moved to Saudi
24 Arabia. And on June 1st, 2013, Dr. Khan began work as an
25 ophthalmologist at Magrabi Hospital in Saudi Arabia where

1 he continued working through the end of the year at issue.
2 Dr. Khan's colleague from Magrabi Hospital, Dr. Elkassas,
3 is here today. After Dr. Khan moved, he continued using
4 his parent's address in California to receive mail, but he
5 did not reside there.

6 After he moved, Dr. Khan took many steps to
7 establish himself as a resident of Saudi Arabia. He
8 rented an apartment with a two-year lease. He purchased a
9 new car. He closed his bank accounts in California and
10 opened overseas bank accounts. Dr. Khan obtained a Saudi
11 residence permit, driver's license, and credit card.
12 Dr. Khan also obtained a Saudi medical license and Saudi
13 malpractice insurance. He took all these steps with the
14 intention of living and working indefinitely in Saudi
15 Arabia.

16 In July 2013 in Saudi Arabia, Dr. Khan befriended
17 Ahmed Alnajjar, who is also here today. Ahmed Alnajjar and
18 Dr. Khan became good friends. And after Dr. Khan --
19 excuse me. Became good friends after Dr. Khan performed
20 eye surgery on Ahmed Alnajjar's mother at Magrabi Hospital.
21 And Dr. Khan and Ahmed Alnajjar saw each other frequently
22 during Ahmed Alnajjar's long visits to Saudi Arabia.

23 After befriending Ahmed Alnajjar, Dr. Khan met
24 Nour Alnajjar, Ahmed's sister. They began to see each
25 other in Saudi Arabia regularly through the end of the

1 year at issue. Dr. Khan and Nour Alnajjar are now married.
2 Nour Alnajjar is also here today.

3 Ayaz Khan's accountant mistakenly filed a
4 California resident income tax return for him for the year
5 2013. Dr. Khan realized this error, contacted his
6 accountant, and attempted to correct this error and filed
7 an amended return on February 16, 2016, well before the
8 FTB issued the Notice of Proposed Assessment pertaining to
9 his 2013 residency on June 26, 2017.

10 The facts will show that once Ayaz Khan moved to
11 Saudi Arabia, he ceased to be a resident and domiciliary
12 of California and became a resident and domiciliary of
13 Saudi Arabia.

14 That concludes my opening statement. Thank you,
15 Your Honor.

16 JUDGE MARGOLIS: Mr. Miller, you may proceed with
17 your opening statement.

18 MR. MILLER: Good morning, Judges.

19

20 OPENING STATEMENT

21 MR. MILLER: The evidence will show that
22 Appellant was a California resident during the entire 2013
23 tax year. Under Revenue & Taxation Code Section 17014,
24 person domiciled in California who is outside the State
25 for a temporary or transitory purpose is a California

1 resident. There's no dispute that Appellant was a
2 California domiciliary during all of 2013, and no dispute
3 that he was a California resident in January through
4 May 2013.

5 Appellant now contends, after reporting on his
6 2013 return, that he was a California resident, that he
7 abandoned his California domicile to non-resident of
8 California during the disputed period of June 2013 through
9 December 2013 because he claims he was outside of
10 California, rather than a temporary purpose, no intention
11 to return. However, the evidence shows otherwise.

12 The evidence will show that Appellant was
13 employed abroad for about a year, and that he returned to
14 California in July or August 2014 with an expired Saudi
15 medical license and an expiring Saudi work permit -- work
16 visa. There's no objective evidence that Appellant
17 returned to Saudi after August 2014, such as renewed
18 residency permit, medical license, or employment
19 agreement. The evidence will show that Appellant returned
20 to California during the summer of 2014 and practiced
21 medicine in the state while simultaneously claiming that
22 he was permanently absent.

23 The evidence will show that Appellant maintained
24 his California medical license during his year in Saudi in
25 preparation for his return to this state. The evidence

1 will show that Appellant maintained significant ties to
2 California while he worked abroad. His children lived in
3 this state, and he visited them here. He maintained his
4 California driver's license. He appeared in California
5 court rooms. He used his parents' California address for
6 his California income tax returns, driver's license, and
7 voter registration.

8 In summary, the evidence will show that Appellant
9 did not sever his consequential connections to California
10 while working abroad and maintained significant ties in
11 readiness for his return. His maintenance of these
12 connections demonstrates that his absence from June 2013
13 through December 2013 was not other than a temporary
14 purpose. Because the evidence does not support
15 Appellant's contention that he was absent other than a
16 temporary purpose, Appellant was a California resident for
17 the entirety of 2013.

18 Thank you.

19 JUDGE MARGOLIS: Okay. Thank you.

20 Mr. Hallock, you may call your first witness.

21 MR. HALLOCK: Yes, Your Honor. This is Michael
22 Hallock. First witness is Ayaz Khan.

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AYAZ O. KHAN,

produced as a witness, and having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

JUDGE MARGOLIS: You need to unmute your microphone to answer.

MR. KHAN: Okay. I do, Your Honor. Good morning and you can hear me?

JUDGE MARGOLIS: Yes. We can hear you fine. Mr. Hallock, proceed.

MR. HALLOCK: All right. Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. HALLOCK:

Q Okay. Dr. Khan, I'm going to ask you some questions now. Dr. Khan, were you living in California at the beginning of 2013?

A Yes, I was.

Q And were you getting divorced at that time?

A Yes, I was.

Q Okay. Could you tell the panel a little bit of history about that separation and divorce, please?

A My ex-wife and I separated on September 22, 2011 -- back in 2011. I filed for divorce on January 31st, 2013 after realizing I was moving to

1 Saudi Arabia. She knew I was planning on moving and that
2 I was selling all of my belongings. She asked the court
3 not to allow me to take my children out of the country.
4 And that's --

5 Q Okay. Thank you.

6 A And that's, you know --

7 Q All right. Thank you, Dr. Khan. Okay. So you
8 decided to move to Saudi Arabia?

9 A Correct.

10 Q Okay.

11 A Yes. So I decided to move to Saudi Arabia. I
12 had made the decision sometime in early 2012.

13 (INTERNET DISTORTION)

14 JUDGE MARGOLIS: Could you repeat that, Mr. Khan?
15 You made the decision when?

16 MR. KHAN: Early 2000 --

17 (INTERNET DISTORTION)

18 -- in summer of --

19 (INTERNET DISTORTION)

20 -- stopped leasing a house in summer of 2012.

21 And my parents allowed me to live with them for a few
22 months until I finally left. Due to delays on my overseas
23 licensure and work start date, I did not leave until the
24 last week of May 2013. On June 1st, 2013, I was in Saudi
25 Arabia.

1 BY MR. HALLOCK:

2 Q Okay. So why -- and just to be clear, why did
3 you decide to move there?

4 A I'd always wanted to move there. I have a --
5 it's the holiest city in my religion, Islam. And I
6 visited in the past a few times and few days at a time as
7 vacation. And I felt peace there and starting a new phase
8 of my life while living there and working indefinitely. I
9 had a difficult marriage, and I wanted to break free from
10 the past and focus on my spiritual growth. The ex-wife
11 did not agree with my plans and filed for divorce in 2013.

12 Q Okay. Thank you. And so had you lived there
13 before in Saudi Arabia?

14 A I have. So my parents and siblings lived there
15 when I was younger. My younger sister was born there. My
16 father is a retired civil engineer who spent a large part
17 of his career working there. He was a U.S. citizen and
18 then he moved there, and he was working there. And my
19 younger sister was born there.

20 I was -- I was born while my father was working
21 there also. I happen to be born in Pakistan, but that's
22 because there wasn't a hospital in the city that my father
23 was working at in Saudi Arabia at the time. So after I
24 was born, a few weeks later we were back in Saudi Arabia,
25 and I was there until 1985.

1 Q Okay. Thank you. Okay. So how long did you
2 intend to live there?

3 A So for me it was indefinitely. I -- I -- this
4 was an indefinite move, and I, you know, didn't have any
5 returns -- plans on returning to California.

6 Q Okay. Thank you. And so you did not intend to
7 return to California?

8 A I did not, but I had in the back of my mind that
9 the ex-wife would not, you know, send the kids. I knew no
10 California court would allow -- especially in a contested
11 divorce -- no California court would allow the children to
12 go overseas. So I had mentally prepared that I would have
13 to return in the summers and visit the kids. So that was
14 a possibility that I was aware of.

15 Q Okay. But you didn't intend to establish
16 residency in California?

17 A Absolutely not.

18 Q Okay. And you didn't plan to move back there on
19 any sort of long-term basis?

20 A No, not at all.

21 Q Thank you. Okay. So given all that, what steps
22 are you taking to get ready to leave California?

23 A So, you know, I stopped renewing the house I was
24 renting. 2009 all the way to 2013 I had been renting a
25 home. From summer 2012 --

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(INTERNET DISTORTION)

-- California came up I stopped, and I had already been making the preparations to move. My licensure had not started in Saudi Arabia yet, and the work arrangements made yet. So I didn't quite leave on time. But that was one where I stopped renting.

I own two cars for many years, and they were bought brand new by me. I sold both of them in 2013. Or I sold one and then transferred the title to the other to the ex-wife. And so I got rid of my ownership in both cars right before I left. I had my things in storage until May 2013 just four or five days before I left California. And I was renting a storage locker for about year and a half, and I had my things in there and I got rid of it right before my departure. So I sold all my things that I had in storage in California, and I had no intention of coming back.

Once I reached Saudi Arabia, I got a, you know, a two-year lease on an apartment. I bought a brand-new car. I didn't lease one. I bought a brand new one. You know, started attending religious gatherings, daily mosque gatherings. I joined the ophthalmology society meetings. You know, I established work there and, you know, my social connections there.

Q Sure. All right. Thank you, Dr. Khan. And so

1 when did you actually move to Saudi Arabia?

2 A On May 31st, 2013.

3 Q All right.

4 A -- in Saudi Arabia June 1st working.

5 Q Great. Thank you. And so -- yeah. So you were
6 employed there?

7 A Correct.

8 Q All right. Who was your employer?

9 A My employer was Magrabi Eye Hospital.

10 Q Okay. And when did that start?

11 A So June 1st, 2013.

12 Q Okay. Thank you. And could you tell the panel
13 just a little bit about the nature of your position there?

14 A I'm an eye doctor. So I was working as an eye
15 doctor over there.

16 Q Okay. All right. Thank you. And so were you
17 employed in this position for the remainder of 2013 after
18 you moved?

19 A Yes, I was.

20 Q Okay. Thank you. Outside of work, I believe you
21 just mentioned it, but just to be clear, did you attend
22 meetings for any professional societies in Saudi Arabia?

23 A I did. So the Saudi Ophthalmology Society and
24 the Emirates Ophthalmology Congress. Both of those I
25 attended in 2013.

1 Q Okay. Thank you. And did you attend meetings
2 for any religious organizations in Saudi Arabia in 2013?

3 A I did, daily mosque gathers.

4 Q Okay. Did you form any other social connections
5 over there?

6 A So I met a lot of friends and family there. Some
7 of them you'll meet today. My most important social
8 connection is my wife Nour Alnajar. I met her in 2013
9 while I was there, and we developed a relationship. And
10 we eventually ended up getting married this year.

11 Q Thank you. Okay. And did you return to the
12 United States at all in 2013 after you moved?

13 A I did not.

14 Q Thank you. Okay. Turning to a few final
15 questions. In 2013 were you using your parents' address
16 at [REDACTED] in San Dimas to receive mail in California?

17 A Yes, I was.

18 Q Okay. And why were you using that address?

19 A So I was in the midst of a contested divorce and
20 needed a mailing address to be served and a central place
21 in the United States to gather all my important documents.
22 I had always used my parents' address as a mailing
23 address, even while I did residency in New York. While I
24 was there for three years, I always had my parent's
25 address as a mailing address.

1 I've leased separate homes from 2009 to 2012
2 while living in California and not living at my parents'
3 address. And, again, I was always using my parents'
4 address as a mailing address as just a central place to
5 collect my mail.

6 Q Okay.

7 A My tax returns were, you know, filed with the
8 [REDACTED] even in previous years when I was not living at
9 my parents' address.

10 Q I see.

11 A So I had frequent moves over the years and --

12 Q Okay. Thank you. And did -- were you -- but you
13 were not -- were you living at all at that address --

14 A I was not.

15 Q -- in 2013 after you moved?

16 A After I moved, I was not living at that address.

17 Q Okay. Thank you. Just a few more questions.

18 Did you vote in 2013, either in California or Saudi
19 Arabia?

20 A I did not.

21 Q Okay. And did you own any property in 2013?

22 A I did not.

23 Q Did you take a homeowner's property tax exemption
24 in 2013?

25 A I did not.

1 Q And did you have any business interest in
2 California after you moved to Saudi Arabia?

3 A I did not.

4 Q Okay. Thank you very much, Dr. Khan.

5 MR. HALLOCK: No further questions, Your Honor.

6 JUDGE MARGOLIS: Mr. Miller, do you have any
7 questions of the witness?

8 Can't hear you, Mr. Miller.

9 MR. MILLER: No questions for this witness.

10 JUDGE MARGOLIS: Okay. Let me ask my
11 co-panelists if they have any questions for Mr. Khan.
12 Judge Gast, do you have any questions.

13 JUDGE GAST: Thank you. This is Judge Gast. I
14 do have one question for Mr. Khan. FTB submitted
15 Exhibit W, and it indicates that you received compensation
16 from California Laser Eye Associates in 2013 of about
17 \$6,000. Can you address that compensation?

18 MR. KHAN: Yes, sir. That was earned prior to my
19 move. I had been working as a locums [sic], doing locums
20 work just prior to my move. And that was earned early in
21 2013. Actually, probably half of it was earned in 2013,
22 and they ended up paying me in 2013. But all of that is
23 related to work prior to my move.

24 JUDGE GAST: Okay. Thank you. No further
25 questions.

1 JUDGE MARGOLIS: Judge Johnson, do you have any
2 questions?

3 JUDGE JOHNSON: Judge Johnson. I have no
4 questions. Thank you.

5 JUDGE MARGOLIS: I have just a few questions.
6 Mr. Khan, I couldn't hear sometimes. So when did you -- I
7 know you went to -- you moved in May of 2013, but when did
8 you make the decision to move to Saudi Arabia?

9 MR. KHAN: Probably about April or May of 2012 is
10 when I started communicating with -- you know, trying to
11 look for work overseas. So right about then.

12 JUDGE MARGOLIS: And were you --

13 MR. KHAN: But that's April or May of 2012.

14 JUDGE MARGOLIS: I'm sorry. What's that again?

15 MR. KHAN: April or May of 2012 is when I first
16 started communicating with perspective employees overseas.

17 JUDGE MARGOLIS: So more than a year before you
18 actually made the move; correct?

19 MR. KHAN: Correct. Yes.

20 JUDGE MARGOLIS: Okay. And did you have social
21 and family connections in Saudi Arabia before you moved
22 there as well as after?

23 MR. KHAN: I did. I've developed friends over
24 the years from visiting. I have a Dr. Lawrence Brown who
25 actually lives in Medina who I got to meet several times

1 even before I move there. As I stated, my family actually
2 used to live in Saudi Arabia with us, with me, until 1985.
3 And after we moved to the United States -- we were U.S.
4 citizens, but my parents were still living there.

5 After we moved back to the United States later in
6 1999 to 2006, my father and mom again went back to Saudi
7 Arabia and my dad continued to work there as a civil
8 engineer. And so I used to visit frequently. So it's --
9 it's a place I've developed an attachment to, especially,
10 the City of Medina. I probably wouldn't have gone --

11 (INTERNET DISTORTION)

12 JUDGE MARGOLIS: Okay. And one final question.
13 Your employment agreement with the hospital in Magrabi --
14 I probably butcher the name -- but your employment
15 agreement overseas, was that for a fixed amount of time,
16 or is that an indefinite agreement?

17 MR. KHAN: It's an indefinite agreement.

18 JUDGE MARGOLIS: Okay. I have nothing further.
19 In light of my questions, does -- Mr. Miller, do you have
20 any additional questions?

21 MR. MILLER: No further questions.

22 JUDGE MARGOLIS: Mr. Hallock, do you have any
23 additional questions?

24 MR. HALLOCK: No further questions. Thank you,
25 Your Honor.

1 JUDGE MARGOLIS: Okay. Mr. Hallock, you may call
2 your next witness.

3 MR. HALLOCK: Okay my next witness is Nour
4 Alnajar.

5 MS. ALNAJAR: Yes.

6

7

NOUR ALNAJAR,

8 produced as a witness, and having been first duly sworn by
9 the Administrative Law Judge, was examined and testified
10 as follows:

11

12 JUDGE MARGOLIS: Okay. Please proceed,
13 Mr. Hallock.

14 MR. HALLOCK: All right. Thank you, Your Honor.

15 All right. Ms. Alnajar, can you please tell us
16 your story now?

17 JUDGE MARGOLIS: What was that question,
18 Mr. Hallock?

19 BY MR. HALLOCK: I asked her if he -- she was
20 going to go ahead. We -- we agreed that she was -- that
21 she was just going to tell her story -- her testimony in a
22 narrative form. So I was just asking her to go ahead and
23 tell that.

24 JUDGE MARGOLIS: Okay. That's fine.

25 MR. HALLOCK: Your Honor, it appears she's muted

1 or at least she was.

2 JUDGE MARGOLIS: Ms. Alnajjar, can you unmute your
3 microphone so we can hear you?

4 MS. ALNAJAR: Yes.

5 JUDGE MARGOLIS: Okay. That's better. Talk --
6 talk loud please. You can proceed with your testimony.

7

8 WITNESS TESTIMONY

9 MS. ALNAJAR: Yes. I'm Nour Alnajjar. This was
10 the appearing for Ayaz case. I grew up in Saudi Arabia.
11 I was living in Medina in 2013. I introduce to Ayaz Khan
12 when he was the surgeon for my mother in her current
13 surgery in July 2013. After the surgery, my brother Ahmed
14 Alnajjar became friends with Ayaz Khan.

15 Ayaz Khan and I start to see each other in social
16 family gathering. It start in July 2013 due to the
17 friendship with my brother Ahmed. Ayaz and I begin to
18 relationship in October 2013. We was -- saw each other
19 about every couple of weeks from October 23rd, '13 -- from
20 October 23rd, 2013, until July 2014 when he left Saudi
21 Arabia for visit to see his children.

22 After he return to Saudi Arabia September 2014,
23 we continue to see each other about every two weeks until
24 Ayaz move to back -- move back to United States in
25 January 2015. Most of our meeting was at home with family

1 or outside in restaurants. We also meet gathering between
2 our two families in Medina every -- every couple -- every
3 few years -- few months between July 2013 and
4 January 2015.

5 Ayaz stay in Medina. Our plan was to getting
6 married in Medina and living over there in his apartment.
7 Ayaz rent a large apartment, and he has a car, his own car
8 over there in Medina, which we plan to live close from our
9 family -- my family in Medina. After Ayaz move back to
10 United States in January 2015, our relationship continue.

11 I moved to United States when my visa approved in
12 early 2020 this year. Ayaz Khan and I were get married on
13 June 7th, 2020. I did clear understand of perjury. This
14 for me true and correct.

15 MR. HALLOCK: Thank you, Ms. Alnajjar. I have no
16 further questions, Your Honor.

17 (INTERNET DISTORTION)

18 MS. ALNAJAR: Because I not living with him
19 anywhere.

20 JUDGE MARGOLIS: Mr. Miller, do you have any
21 questions?

22 MR. MILLER: I do not have any questions for this
23 witness. Thank you.

24 JUDGE MARGOLIS: Okay. Judge Gast, do you have
25 any questions for this witness?

1 JUDGE GAST: This is Judge Gast. I do not have
2 any questions. Thank you.

3 JUDGE MARGOLIS: Judge Johnson. Do you have any
4 questions?

5 JUDGE JOHNSON: This is Judge Johnson. No
6 question. Thank you.

7 JUDGE MARGOLIS: Okay. I don't have any
8 questions either.

9 Mr. Hallock, you may call your next witness.

10 MR. HALLOCK: Okay. Thank you, Your Honor. Next
11 witness is Ahmed Alnajar.

12 MR. ALNAJAR: Present.

13

14 AHMED ALNAJAR,

15 produced as a witness, and having been first duly sworn by
16 the Administrative Law Judge, was examined and testified
17 as follows:

18

19 JUDGE MARGOLIS: Okay. Thank you.

20 Mr. Hallock, please proceed.

21 MR. HALLOCK: Thank you, Your Honor.

22 Yes. Okay. Mr. Alnajar, you can go ahead,
23 please, and tell your story now.

24 ///

25 ///

1 sister, had begun a relationship. This relationship
2 continued after Ayaz returned to the United States in
3 2015. Ayaz and my sister got married in 2000 -- in 2020
4 this year.

5 I declare under penalty of perjury that this was
6 a truth.

7 MR. HALLOCK: Thank you. Thank you, Mr. Alnajar.
8 No further questions, Your Honor.

9 JUDGE MARGOLIS: Mr. Miller, do you have any
10 questions of this witness?

11 MR. MILLER: I do not have any questions for this
12 witness.

13 JUDGE MARGOLIS: Judge Gast, do you have any
14 questions?

15 JUDGE GAST: This is Judge Gast. I do not have
16 any further questions.

17 JUDGE MARGOLIS: Judge Johnson, any questions?

18 JUDGE JOHNSON: This is Judge Johnson. No
19 questions. Thank you.

20 JUDGE MARGOLIS: Okay. I don't have any
21 questions either.

22 Mr. Hallock, you may call your next witness.

23 MR. HALLOCK: All right. Thank you, Your Honor.
24 All right. Next witness is Ahmed Elkassas.

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AHMED ELKASSAS,

produced as a witness, and having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

JUDGE MARGOLIS: Okay. You may proceed, Mr. Hallock.

MR. HALLOCK: Thank you, Your Honor.

All right. Dr. Elkassas, could you please go ahead and tell your story now. Thank you.

WITNESS TESTIMONY

MR. ELKASSAS: I'm Ahmed Elkassas. I'm a former colleague of Appellant in this case, Ayaz Khan. I'm an ophthalmologist at Magrabi Eye Hospital, which is in Saudi Arabia. In 2013 I was employed as an ophthalmologist at Magrabi Eye Hospital in Medina. Magrabi has hospitals in both in Jeddah and Medina. Ayaz Khan became my colleague at Magrabi Hospital in June 2013. He worked with me as an ophthalmologist.

I would see Ayaz Khan at work at Magrabi Hospital at least five days per week, from June 2013 until he left the hospital in January 2015; except when he visited his children in the United States briefly in summer 2014. We would also eat at restaurants together about once per week

1 during that period. We would also socialize outside work
2 on our days off. We once took a trip together. And also
3 went fishing together about three times.

4 I also helped Ayaz Khan to locate an apartment in
5 Medina and purchased a car in July 2013. When he searched
6 for an apartment, Ayaz told me that he was planning to
7 stay in Medina indefinitely. He said he wished to marry a
8 woman in Saudi Arabia following his divorce and bring his
9 children to Saudi Arabia if it was possible. We found a
10 large apartment. He wanted an apartment suitable for a
11 family. He also purchased a large car because he said he
12 was going to need a family car there.

13 MR. HALLOCK: Thank you, Dr. Elkassas.

14 No further questions, Your Honor.

15 JUDGE MARGOLIS: Mr. Miller, do you have any
16 questions of this witness?

17 MR. HALLOCK: Excuse me. I'm sorry. I don't
18 believe he's finished. He just signaled that he was not
19 finished.

20 JUDGE MARGOLIS: Oh, okay.

21 MR. ELKASSAS: No. I finished already.

22 MR. HALLOCK: Okay. I'm sorry. I thought he
23 made a signal that he had not finished. I'm sorry.

24 MR. ELKASSAS: Just some message coming over my
25 cell phone over here.

1 JUDGE MARGOLIS: Mr. Miller, do you have any
2 questions of this witness?

3 MR. MILLER: I do not have any questions for this
4 witness. Thank you.

5 JUDGE MARGOLIS: Judge Gast, do you have any
6 questions?

7 JUDGE GAST: This is Judge Gast. I do not have
8 any questions.

9 JUDGE MARGOLIS: Judge Johnson, do you have any
10 questions?

11 JUDGE JOHNSON: This is Judge Johnson. No
12 questions. Thank you.

13 JUDGE MARGOLIS: Okay. I don't have any
14 questions either. But in going through my notes. I do
15 have two questions I'd like to ask the taxpayer.
16 Mr. Khan. If that's -- if it's not too late, which I'm
17 saying it's not.

18 Mr. Khan, you've talked about the mailing
19 address. I'm just wondering how long does it take to get
20 mail that's sent from the United States to Saudi Arabia,
21 if people had to send their mail directly to Saudi Arabia?

22 I can't hear you.

23 MR. KHAN: It's actually surprisingly quite
24 difficult in Medina. The mail does not get delivered to
25 the actual house address. It actually goes either to your

1 employer's address, or it goes to -- you have to get a
2 P.O. Box at, like, the local post office. There's one in
3 the city. And it's a difficult process to actually get
4 your mail. The easiest is probably at your employer's
5 office. But I had a lot of private stuff going through a
6 divorce and stuff like that, and I didn't want all these
7 private mailings happening there.

8 Also my ex-wife needed a proper place to serve me
9 and send me documents related to the divorce. And I've
10 always had that California address. It's always been
11 easy. My brother was living there, and it was always easy
12 to get documents sent to me when I needed it.

13 JUDGE MARGOLIS: Okay. There's an allegation in
14 your brief that when you applied for Saudi driver's
15 license you had a choice of a 1-year driver's license, a
16 5-year driver's license, or a 10-year driver's license.
17 You got the t10-year driver's license. Was that more
18 expensive? Is that more expensive than the 5-year or the
19 1-year?

20 MR. KHAN: Yes. It's also about -- you can ask
21 Dr. Elkassas also. But I don't remember the exact price,
22 but it's about double or triple the price of -- maybe
23 quadruple the price of the 3-year license or something.
24 So and it actually comes out to 9 year. It's actually not
25 10 years. It's just a little under 10. But it was the

1 maximum extent license.

2 JUDGE MARGOLIS: Okay. In light of those
3 questions, does Mr. Hallock or Mr. Miller, do either of
4 you have any further questions of this witness?

5 MR. HALLOCK: I have no further questions, Your
6 Honor. This Michael Hallock.

7 MR. MILLER: I have no further questions. Brian
8 Miller.

9 JUDGE MARGOLIS: Okay. Mr. Hallock, is that your
10 last witness?

11 MR. HALLOCK: It is, Your Honor.

12 JUDGE MARGOLIS: Are you ready to provide us with
13 your closing argument?

14 MR. HALLOCK: I am, Your Honor. May I go ahead?

15 JUDGE MARGOLIS: Yes. Please proceed.

16 MR. HALLOCK: All right. Thank you, Your Honor.

17

18 CLOSING STATEMENT

19 MR. HALLOCK: All right. The issue here is
20 whether Dr. Khan remained a California resident throughout
21 2013. Dr. Khan did not remain a California resident
22 throughout 2013. Rather, he was a part-year resident. He
23 cut ties with California and established new ties with
24 Saudi Arabia and was a Saudi Arabian resident and
25 domiciliary and no longer a California resident and

1 domiciliary from that point onward.

2 The OTA's pending precedential Appeal of Mazer
3 proposes two alternative test which could determine
4 California residency. The first test is that for an
5 individual not domiciled in California, were they in
6 California for other than a temporary or transitory
7 purpose. The second test is that for individuals
8 domiciled in California, whether the individual is outside
9 California for a temporary or transitory purpose.

10 Regarding the first test, of course, the evidence
11 and conceded points 1 through 13 from the prehearing
12 conference established that Dr. Khan was not present in
13 this state from June 1st, 2013, until the end of 2013.
14 The FTB is not asserting he was present in California from
15 June 1st through the end of the tax year for any purpose.
16 Therefore, there's no issue of whether Dr. Khan was in
17 California for a temporary or transitory purpose. He was
18 not in California at all.

19 So the first test definitely does not show that
20 Dr. Khan was a California resident. That means we are
21 mainly arguing the second definition. Respondent is
22 asserting that Dr. Khan was domiciled in this state, and
23 he was outside the state only for a temporary or
24 transitory purpose. That is not true. He was not
25 domiciled in California, nor was he outside California for

1 a temporary or transitory purpose.

2 To begin with, Dr. Khan was not a domiciliary of
3 California from June 1st, 2013 onward. Per Mazer, an
4 individual could have one domicile. And domicile is
5 defined as the one location where an individual has the
6 most settled and permanent connection and the place to
7 which an individual intends to return when absent. Per
8 Mazer, in order to change domicile, a taxpayer must
9 actually move to a new residence and intend to remain there
10 permanently or indefinitely.

11 Per California Code of Regulations Section
12 17014(c), an individual who is domiciled in California and
13 leaves the states, retains his or her California domicile
14 as long as there's a definite intention of returning to
15 California regardless of the length of time or the reasons
16 for the absence. However, Dr. Khan moved to a new
17 residence, Saudi Arabia, and intended to remain there
18 permanently.

19 We discussed in point 13 of the conceded points
20 at the prehearing conference, that Dr. Khan had asserted
21 in that point that he had no intention to ever establish
22 residency in California again. It appears now that
23 point -- as a point of intention, that point was not
24 conceded. However, he did assert that in that point. In
25 addition, all witnesses today have also asserted,

1 including Dr. Khan, that he intended to remain there
2 permanently.

3 In addition, Dr. Khan's work overseas had an
4 indefinite end period as he also obtained the maximum
5 allowable length driver's license of 10 years, conceded in
6 factual point 9. He also obtained a Saudi Arabia
7 residence permit and a car, apartment, bank account,
8 medical license, and insurance; all of which will be
9 discussed further shortly. But all these facts support
10 Dr. Khan's intention to stay in Saudi Arabia permanently.

11 I reiterate to you. All witnesses, including
12 Mr. Khan, have stated that he had no intention to ever
13 establish residency again. For all these reasons,
14 Dr. Khan was not a California domiciliary after he began
15 work on June 2013. However, even assuming there's any
16 doubt as to whether Dr. Khan changed his California
17 domicile, he was not a resident of California once he
18 moved to Saudi Arabia with the intent to remain there
19 indefinitely.

20 Per Mazer, the primary question is whether he was
21 outside California for a temporary or transitory purpose.
22 Per California code of regulations section 17014(b),
23 whether an individual is outside California for temporary
24 or transitory purpose is a question of fact determined by
25 examining all the circumstances of each particular case.

1 In the appeals of Mazer, the Office of Tax Appeals apply
2 the closest connection test in determining residency,
3 which takes into account the connections the taxpayer
4 maintains within California and outside of California in
5 determining whether they had a temporary or transitory
6 purpose.

7 The Office of Tax Appeals apply the Bragg factors
8 in determining where the taxpayer had the closest
9 connection. The Appeal of Bragg provides a list of
10 non-exclusive objective factors used to determine where an
11 individual had the closest connection for the period in
12 question. Mazer poses the Bragg categories into -- excuse
13 me.

14 Mazer organizes the Bragg factors into three
15 categories. The first category is registrations with the
16 State or other agency. The next category include driver's
17 license, automobile registration, address using state of
18 residence claimed on federal and state returns, voter
19 registration and participation history, and homeowner's
20 property tax exemption. Dr. Kahn obtained a valid Saudi
21 driver's license after he moved there and requested the
22 maximum length of validity allowed there as stated and
23 conceded point 9, and also shown in Exhibit 2. And he did
24 not renew his California driver's license after he moved.

25 In Exhibit F, FTB's driving record for Dr. Khan,

1 it only shows he renewed his California license in 2016.
2 It has no information about 2013. In any case, Dr. Khan
3 replaced his California license with a Saudi Arabian one.
4 And the Saudi Arabian one was the only one he used after
5 he moved. He was driving on Saudi Arabian roads, after
6 all. Since Dr. Khan obtained a Saudi license and did not
7 renew his California license, the driver's license factor
8 supports Dr. Khan's non-California residency.

9 In addition, Dr. Khan sold or otherwise
10 relinquished his California registered vehicles before the
11 day he left, shown in Exhibits 4, 10 and 11. After he
12 arrived in Saudi Arabia, Dr. Khan purchased a new vehicle
13 there, shown in Exhibit 3. Since he relinquished his
14 California registered vehicles and obtained new vehicles
15 overseas, the automobile registration factor supports
16 Dr. Khan's non-California residency.

17 Regarding the address on the tax returns, while
18 Dr. Khan originally filed a California resident income tax
19 return for 2013, this was due to a mistake by his tax
20 preparer. Dr. Khan recognized this mistake and attempted
21 to correct this mistake by contacting his tax preparer on
22 February 16th, 2016. This was 15 months prior to the
23 issuance of the Notice of Proposed Assessment on
24 June 26, 2017. This is shown on Exhibit 6.

25 Dr. Khan did not express his intent though the

1 mistakenly filed return. That doesn't make sense.
2 Rather, the only time he expressed his intent was in
3 asking his tax preparer to change it to reflect he was not
4 a resident after he moved. Because the California
5 resident return was a mistake and Dr. Khan tried to file a
6 non-resident return, this, again, supports his non --
7 Dr. Khan's non-California residency.

8 And regarding the California address that
9 Dr. Khan used, Dr. Khan continued to use his parents'
10 address throughout 2013. The declaration of Dr. Khan's
11 father included, which is in the binder's Exhibit 7,
12 explains that Dr. Khan had long used this address and
13 continued to use it after he moved to overseas, which is
14 understandably convenient, but he did not reside at this
15 address after he moved.

16 Finally, Dr. Khan did not vote in 2013 either in
17 California and Saudi Arabia or take a homeowner's property
18 tax exemption in 2013. For these factors in the first
19 Bragg category, the evidence show that Dr. Khan created
20 new overriding connections overseas from the ones he had
21 in California.

22 The second Bragg category is personal and
23 professional associations. This category includes
24 employment, bank and savings accounts, memberships in
25 social, religious, and professional organizations,

1 maintenance in ownership or business interest,
2 professional licenses, ownership of investment in real
3 property, and presence, connections in residency is
4 indicated by third party affidavits and declarations.

5 Regarding employment, after he moved, Dr. Khan
6 was only employed at Magrabi Hospital in Medina, Saudi
7 Arabia in 2013, per his own testimony and Dr. Elkassas'
8 testimony. This employment was for an indefinite period
9 as he has stated. He was not employed in California
10 during the latter half of 2013. Since he worked in Saudi
11 Arabia but not California during the period at issue, this
12 factor supports Dr. Khan's non-California residency.

13 Regarding bank accounts, FTB has conceded that
14 Dr. Khan both closed his California bank accounts prior to
15 moving in point 11, and opened bank accounts overseas in
16 Saudi Arabia shortly after moving, shown in and conceded
17 in point 10. Because he both closed his California bank
18 accounts and opened new ones overseas, the bank accounts
19 factor clearly supports Dr. Khan's non-California
20 residency.

21 Regarding religious organizations, once in Saudi
22 Arabia, Dr. Khan attended a mosque per his own testimony.
23 Regarding professional organizations, he also attended
24 meetings of the Saudi Ophthalmological Society, per his
25 own testimony. These religious and professional

1 organizations support his non-California residency. And
2 as far as business interest go, Dr. Khan maintained no
3 business interest in California after he moved. So the
4 business interest factor favors his non-California
5 residency.

6 As I have mention -- excuse me. Regarding
7 professionally license, as I have mentioned, Dr. Khan
8 obtained and overseas professional license after moving,
9 shown in Exhibit 8. Of course, I don't think many doctors
10 would go to the trouble to actively cancel their
11 California medical license after moving. Nonetheless,
12 Dr. Khan obtained an overseas license which supports his
13 work -- which supported his work after he left.
14 Therefore, the professional license factor supports
15 Dr. Khan's non-California residency.

16 In terms of real party, Franchise Tax Board has
17 conceded that Dr. Khan did not own any investments or real
18 property in California after his move in 2012. So the
19 investments in real property factor supports Dr. Khan's
20 non-California residency.

21 And regarding presence by third-party
22 declarations, there are three third-party declarations in
23 the hearing binder which are to be considered for
24 admission in the event any of today's witnesses were not
25 present. Those witnesses are here today. These

1 witnesses' testimony and declaration show Dr. Khan's
2 physical presence, social connections, and residency in
3 Medina, Saudi Arabia from June 2013 onward.

4 In Exhibit 17 -- excuse me. Respondent has also
5 conceded that Dr. Khan established social connections
6 overseas in point 13 of the factual points referenced in
7 the minutes and orders. So the third-party declaration
8 factor supports Dr. Khan's non-California residency.

9 The third and final Bragg category is physical
10 presence and property. This category includes location,
11 values and sizes of residential real property, where the
12 taxpayer's spouse and children reside, origination point
13 of the taxpayer's checking account and credit card
14 transactions, and number and general purpose of days the
15 taxpayer spends in California versus other states. Again,
16 FTB has conceded that Dr. Khan did not own any property in
17 California in point 12.

18 However, he did rent a home in Saudi Arabia once
19 he moved there, shown in Exhibit 15 and described in the
20 testimony. Therefore, the property factor supports
21 Dr. Khan's non-California residency. Regarding Dr. Khan's
22 spouse and children, Appellant was in divorce proceedings
23 from his spouse at the time, shown in Exhibits 1 and E.
24 Appellant's children were in California at this time, but
25 this was not his decision.

1 The evidence shows that Dr. Khan's ex-wife had
2 initiated the divorce proceedings as shown in Exhibit 1,
3 and the terms of the custody prevented them from visiting
4 him overseas without his ex-wife's permission, shown in
5 Exhibit 12. There's just no way he could have had his
6 children overseas with him in Saudi Arabia in that
7 timeframe given the constraints of his custody
8 proceedings.

9 Regarding credit cards, Dr. Khan maintained that
10 a credit card with a Saudi bank shown in Exhibit 16, which
11 supports his non-California residency. Finally, Dr. Khan
12 did not spend any time in California in 2013 after he
13 moved to Saudi Arabia for any reason per his own
14 testimony. Since he spent all his time in 2013 overseas
15 after he moved and not in California, the number of days
16 category supports Dr. Khan's non-California residency.

17 If one looks at the Bragg factors, the totality
18 of the evidence in each of these three categories is
19 simply in favor of the Appellant. One more point on
20 Mazer. In Mazer, the Office of Tax Appeals concluded that
21 the Appellant was a California resident and domiciliary.
22 One point the panel focused on was the Appellant's purpose
23 in leaving deemed for employment purposes. I would like
24 to note that Respondent has conceded point 5 that the
25 purpose of Dr. Khan's leaving California was not for work

1 purposes. So Dr. Khan is not similarly situated as the
2 Appellant in Mazer.

3 While the Appellant in Mazer had a family who
4 stayed in California after they left, and that Appellant
5 left only for a temporary employment contract, the facts
6 here are clearly different. Dr. Khan was in the midst of
7 a divorce, and his employment contract overseas was
8 indefinite. While the Appellant in Mazer intended to
9 return to his family in California once the employment
10 contract ceased, there is nothing to suggest that Dr. Khan
11 intended to return to California on a permanent basis.

12 And, in fact, he has not return to his ex-spouse
13 and intend -- and instead has married a woman who he met
14 in Saudi Arabia. Therefore, per Mazer and the Bragg
15 factors, Dr. Khan did not maintain the closest connection
16 with California after he moved in 2013. Rather, he
17 maintained the closest connection with Saudi Arabia at
18 that point. At that point, he was no longer a California
19 resident.

20 To sum up, as I have stated, Dr. Khan became a
21 Saudi domiciliary after he moved. In any case, Dr. Khan
22 maintained the closest connection with Saudi Arabia after
23 he moved. Therefore, Dr. Khan did not remain a resident
24 of California throughout 2013. He ceased to be a
25 California resident after he moved and began his work

1 temporary or transitory purpose is a California resident.
2 Section 17014 also states that a person who is a resident
3 of California continues to be a resident of California,
4 even though temporarily absent from California. A
5 non-resident of California is a California domiciliary who
6 is absent from this state for other than a temporary
7 purpose.

8 Now, until now, Appellant had not challenged --
9 had not claimed that he changed his domicile. But
10 Appellant was a California domiciliary when he departed
11 California to work in Saudi Arabia, California domiciliary
12 while he worked in Saudi Arabia, and a California
13 domiciliary when he returned in 2015. A person's domicile
14 is where he has his most settled and permanent connection,
15 a place to which he has whenever absent the intention to
16 return.

17 Residence on the other hand is a place of some
18 permanency, more than a mere temporary stay. A changed
19 domicile, one must physically move then manifest an
20 intention to remain there permanently. A clear indication
21 that California was where Appellant is most settled and
22 had his permanent home is the undisputed fact that he was
23 a domiciliary of this state before departing to Saudi for
24 employment. And when the employment was completed shortly
25 thereafter, he returned immediately to California.

1 Also, Appellant maintained his California medical
2 license, his California driver's license. He never
3 surrendered them, and his Los Angeles voter registration.
4 Furthermore, and maybe the most important single item, is
5 that his children remained here. Appellant has not
6 demonstrated through any objective actions that he forever
7 abandoned California and made Saudi Arabia his permanent
8 home. He was not a Saudi Arabia domiciliary. Respondent
9 has no doubt that Appellant was a California domiciliary.

10 Now, Appellant contends that he became a
11 non-resident of California in June of 2013 because he left
12 the state. Respondent disputes this. Now, Appellant
13 bears the burden to prove by the preponderance of evidence
14 that his absence from the state from June 2013 to
15 December 2013 was for other than a temporary purpose.
16 This is a California domiciliary, which is my position.

17 As a preliminary matter, we should remember the
18 person can simultaneously be a resident of California for
19 income tax purposes, and be a resident of another state,
20 including Saudi Arabia, for income tax purposes.
21 Respondent has no position on whether Appellant is a
22 resident of Saudi Arabia for income tax purposes.

23 At issue today is whether the evidence
24 demonstrates that Appellant's absence from California is
25 for other than a temporary purpose. The evidence shows

1 that Appellant went to Saudi Arabia for employment
2 purposes. First, Appellant's authorization to be in Saudi
3 was his residency permit, which is only valid as long as
4 he was employed by the sponsor, Magrabi Hospital. He was
5 not allowed to be in Saudi for reasons independent of his
6 employment.

7 Appellant's Saudi medical license expired in
8 May 2014, and his work visa expired in August 2014. He
9 returned to California in July or August of 2014, as his
10 authorization to live and work in Saudi expired. There is
11 no objective evidence such a work visa, a medical license,
12 or an employment contract indicating that Appellant return
13 to Saudi Arabia after April of 2014. We only have witness
14 declarations and statements made to OTA more than five
15 years after Appellant returned to California.

16 Second, Appellant tells us in reply brief, he
17 returned to California when, in his words, the work
18 situation had changed and hence, I needed to move back to
19 California. If the Appellant was allowed to be in Saudi
20 Arabia for reasons unrelated to his employment there, he
21 would not need to return to California when his work
22 situation changed.

23 Now, a California domiciliary who is absent for
24 employment purposes can still be considered a
25 non-resident. Under California safe harbor provision, a

1 California domiciliary who is absent from the state under
2 an employment-related contract for at least 546
3 consecutive days with a return to the state of no more
4 than 45 days, is considered to be absent for other than a
5 temporary purpose.

6 Resuming Appellant began work abroad on
7 June 1st, 2013, and returned to California
8 June 30th, 2014, he was absent 403 consecutive days. If
9 he returned on July 31st, he would only be absent 434
10 consecutive days, which is short of the threshold. And
11 even if Appellant were employed abroad for at least 546
12 consecutive days, he reported on his 2014 income tax
13 return a return to the state for 58 days, which exceeds
14 the 45-day allowance.

15 These statutory thresholds provide guidance to
16 determine whether an absence for employment purposes is
17 lengthy enough to be consider an absence for other than a
18 temporary purpose. Taxpayer's failure to meet safe harbor
19 provision does not end our analysis.

20 OTA's pending precedential opinion in Appeal of
21 Mazer states that it's particularly relevant in a
22 residency case to examine whether a taxpayer who was
23 absent for employment purposes has substantially severed
24 his California connections in taking steps to establish
25 significant connection with this new place; or whether, on

1 the other hand, the taxpayer maintained his California
2 connections in readiness for return.

3 The Mazer opinion also recognizes the appeal of
4 Bragg, the long-established Board of Equalization opinion,
5 the case that identified connections that are helpful to
6 consider when analyzing whether a taxpayer's absence from
7 the State is for other than a temporary purpose. A very
8 significant connection to the State is Appellant's
9 maintenance of his California medical license, which is a
10 Bragg factor.

11 Evidence demonstrate that he maintained his
12 connection to California in readiness for a return to the
13 State. Appellant tells us in his reply brief that he
14 maintained his California medical license while he was
15 abroad in order to return and practice medicine in
16 California. Appellant returned to California in July or
17 August 2014 and earned \$34,101 from California Laser Eye
18 Associates.

19 Furthermore, Appellant's California medical
20 license was important enough that he even appeared in
21 family court in 2014 telephonically to challenge his
22 threatened suspension. So not only did he maintain his
23 California medical license, but he exercised his
24 privileges to practice in this state while simultaneously
25 claiming that he was permanently absent from California.

1 Now, Appellant tells us in his reply brief that
2 he maintained his California driver's license while abroad
3 for his use while driving in this state. Appellant's
4 presentation, in his statement a few minutes ago,
5 Appellant's representative said that there's a -- seemed
6 to imply that Appellant surrendered his driver's license.
7 That is not the case, according to California DMV records.
8 And this is backed up by Appellant's own statements in his
9 reply brief that he maintained his California driver's
10 license.

11 Appellant's own words inform us that he
12 maintained this connection to California in readiness to
13 return to the state. This is another connection to
14 California that Appellant maintained in readiness for his
15 return to this state, demonstrating that his absence from
16 this state was not for other than a temporary purpose.

17 Another significant connection to California was
18 his children, whom he visited. The state wherein the
19 taxpayer's children reside as a Bragg factor demonstrating
20 a connection to this state. Appellant also maintained his
21 active California voter registration, which is a Bragg
22 factor and indicates maintaining connections to this state
23 even while absent.

24 Now, Appellant claimed California resident status
25 on his 2013 using his parents' San Dimas address. He

1 filed as a California non-resident in 2014 and returned to
2 filing as a California resident in tax years 2015, 2016,
3 and 2017. He has not filed his 2018 return yet, so we
4 will see. His state of residence claimed by Appellant on
5 his returns is a Bragg factor. And in this case,
6 Appellant claimed he was a California resident with a
7 California address during every year but 2014. Appellant
8 used this address on his tax returns, his driver's
9 license, and his voter registration.

10 And finally, Appellant lived in his parents' San
11 Dimas house prior to his June departure to Saudi according
12 to his father's declaration and testimony today.
13 Appellant's evidence indicates he returned to San Dimas at
14 the conclusion of his employment in Saudi Arabia.
15 Appellant tells us in his opening brief that he moved out
16 of a rental in 2012 -- he said that today -- but he lived
17 in San Dimas at least five months before departing to
18 Saudi Arabia at the end of May.

19 Appellant returned to California in July or
20 August 2014 through January 2015. Appellant did not rent
21 his own place until 2016, according to his Exhibit 14.
22 Thus, the evidence points to his return to San Dimas at
23 the conclusion of his employment in Saudi Arabia.
24 Appellant's severed some connections with California, but
25 these are the sort of connections that are easily

1 reestablished. He moved out of an apartment, which would
2 be normal for a single person going abroad for a year.

3 He emptied a storage locker. The discarding of
4 replaceable household goods is consistent with going
5 abroad for a year. He sold a vehicle, which meant he did
6 not have to store it here while abroad. While he was in
7 Southern California practicing medicine during 2014 and
8 appearing before family court, he must have had access to
9 another vehicle; maybe a family member.

10 Meanwhile the connections the Appellant
11 established in Saudi do not prove he was absent from
12 California for other than a temporary purpose. He rented
13 but did not purchase a house. He obtained a Saudi
14 driver's license, which he needed to drive. He purchased
15 a vehicle, which he needed for transportation. A dwelling
16 and vehicle are basic items that he would need anyway.
17 They are not a significant connection to Saudi Arabia.

18 Appellant make much of the size of the rented
19 house and the size of his vehicle in his briefs contending
20 that he aspire to marry and start a family in Saudi
21 Arabia. He contends that this proves that he was absent
22 permanently. However, he did not marry, and did not start
23 a family in Saudi Arabia. None of this actually happened.

24 What actually happened was his extended family
25 arrived in 2014 and lived with him in the large house.

1 Appellant needed a large house and a large vehicle in
2 anticipation of a family visit in the spring of 2014.
3 While Appellant met and maybe he became engaged to his
4 current wife while employed in Saudi Arabia, but Appellant
5 returned to California leaving her there. The couple did
6 not marry until this year in California.

7 Now, Appellant contends that he went to Saudi
8 intending to marry and raise a family, but he returned to
9 California shortly after meeting Nour Alnajjar. Appellant
10 did not demonstrate through his actions intention to marry
11 and raise a family in Saudi.

12 Now, in OTA's pending precedential decision in
13 the Appeal of Mazer recognizes that the connections the
14 taxpayer maintains with this state measure the benefits
15 and protections the taxpayer receives through laws and
16 government of California. Regulation Section 17014
17 explains that residency is intended to identify persons
18 who are physically in the state enjoying the benefit and
19 protections of its laws and government.

20 Appellant practiced medicine while physically
21 present in the state during 2013 and 2014. He benefited
22 from California's advance economy and medical
23 infrastructure. In addition, Appellant was protected by
24 the laws in this state, including while civil courts while
25 practicing medicine. Appellant also benefited from the

1 use of California motorways when he drove here with a
2 California driver's license. And was protected by public
3 safety agencies, insurance, and civil courts, if he was
4 involved in a crash.

5 Appellant's voting rights were protected by
6 California law while he maintained absentee ballot
7 registration in Los Angeles. Appellant also benefited
8 from the laws and government of California with
9 dissolution of his marriage and determination of parental
10 custody of his children. He made at least two personal
11 court appearances in this state. Appellant also appeared
12 in court in 2014 to challenge a pending suspension of his
13 California medical license.

14 In conclusion, Appellant maintained significant
15 connections with California even as he claimed to be
16 absent for other than a temporary purpose. His hold on
17 significant connections with California, including
18 practicing medicine, his children's presence, maintaining
19 a driver's license, and voter registration, fail to
20 demonstrate that Appellant's absence from this state was
21 for other than a temporary purpose. Appellant was a
22 California residence during all of 2013.

23 Thank you.

24 JUDGE MARGOLIS: Thank you, Mr. Miller.

25 Before you do your reply, Mr. Hallock, I have one

1 question for you, Mr. Miller.

2 About Dr. Khan's maintaining his California
3 medical license, is there anything in the record to show
4 that the maintenance of that license required some
5 activity by Dr. Khan during 2013, or was it just a passive
6 maintenance as far as the record goes? Do we know?

7 MR. MILLER: I do not know if there are fees
8 attached, like for the California bar. But there's a
9 status where one can essentially suspend the license for a
10 period of time. So one can affirmatively go in and
11 deactivate, make his license inactive for a period of
12 time.

13 JUDGE MARGOLIS: Okay.

14 MR. MILLER: Or if once they're not going to be
15 here, they can always withdrawal.

16 JUDGE MARGOLIS: Okay. Thank you.

17 Mr. Hallock, are you ready to provide us with
18 your reply -- you're rebuttal argument?

19 MR. HALLOCK: I am Your, Honor. May I start?

20 JUDGE MARGOLIS: Yes, you may.

21

22 REBUTTAL STATEMENT

23 MR. HALLOCK: All right. First of all, regarding
24 domicile, FTB -- Appellant has never conceded domicile.
25 FTB says in their brief that Appellant did not protest

1 this. And they seem to imply today that's a concession.
2 But there's nowhere in the record will it show that
3 Appellant conceded that issue. Nor would he knowingly
4 have done that with his knowledge of the law and the
5 issues. It just doesn't make sense.

6 Regarding the FTB's discussion of the ability of
7 the Appellant to have residency in multiple locations, I
8 just want to mention that in Mazer they say -- the OTA
9 states that the underlying theory of Section 17014
10 through 17016 is that the state which -- with which the
11 person has the closest connection during the taxable year
12 is the state of her residency. Which seems to be saying
13 that a closest connection is something that can usually be
14 found. And in this case, I think the facts definitely
15 show that the closest connection was with Saudi Arabia.

16 But any way getting to the evidence. Frankly,
17 the Franchise Tax Board has got nothing here. If you look
18 through their evidence, it consist of evidence showing
19 Dr. Khan maintained a California medical license, evidence
20 of Appellant's California divorce proceedings, voter
21 registration form, driving registration form, a whole
22 bunch of tax returns and income transcripts, most of which
23 are not from the year at issue, a few documents related to
24 this appeal, like the Notice of Proposed Assessment, a web
25 page about Saudi Arabia, and an FTB law summary. And

1 that's it.

2 All they have is evidence that Dr. Khan
3 maintained a California medical license, registered to
4 vote, how to divorce in California, and filed as a
5 resident in 2013. Concerning those tax filings, I've
6 explained that Dr. Khan and his accountant have stated
7 this was a mistake. And in the evidence there are letters
8 which show that. And Dr. Khan tried to fix this mistake.

9 Regarding the other years that FTB brings up, I
10 was under the impression that each tax year stands on its
11 own. And we've already stated that, you know, that he
12 returned in 2015. The issue here is 2013. And at that
13 point, you know, his intention was not to file as a
14 resident. I think that's clear.

15 Concerning his medical license, Dr. Khan had a
16 medical license in Saudi Arabia during this time, as I
17 stated. And I don't believe many doctors would
18 voluntarily contact their state's medical board just to
19 rescind their own license. I'm not an expert on this
20 area, but I believe it's the same price to keep the
21 license active as it is to deactivate it any way. So
22 there's not really an incentive for someone to deactivate
23 it.

24 Regarding voting, as I mentioned, Dr. Khan did
25 not vote in 2013. Any way regarding driver's license,

1 Respondent says that the Appellant has used the California
2 roads, but that would have happened only before he moved,
3 which was not at issue. We're not saying that he wasn't a
4 resident in the beginning of 2013 when he was driving.
5 We're saying he was not a resident after he moved. And
6 there's simply no way he could have been driving on those
7 roads at that time.

8 The FTB's contention -- I'm sorry. I heard a
9 beep. You're able -- is everyone able to hear me? Okay.
10 All right.

11 Anyway, the FTB's contention that Dr. Khan's
12 divorce and custody proceedings and the presence of his
13 children in California would show his residency is,
14 frankly, ridiculous. Frankly -- excuse me. First of all,
15 this divorce filed in January 2013 before Dr. Khan left.
16 And Dr. Khan was still a California resident when this
17 divorce was filed. We know he was a resident then. He
18 changed residency after he moved and established himself
19 overseas. It's unreasonable to expect him to switch these
20 divorce proceedings to Saudi courts at that time.

21 Also, I'm not sure of any law that says court
22 proceedings are dispositive or even relevant in these
23 cases. Regarding his children, we all know that the
24 courts in California would not have allowed Dr. Khan's
25 children to come with him to Saudi Arabia in the mist of

1 these divorce and custody proceedings.

2 Respondent has also brought up the fact that he
3 came back in 2014. That was a visit that he made to see
4 his children, and all the witnesses say he returned to
5 Saudi Arabia after the visit. He returned until 2015.
6 Nothing in the record show that he did not say otherwise.
7 So he returned to see his children and attend, you know,
8 to see his kids. And then he returned to his residence
9 and domicile of Saudi Arabia for the duration of 2014.
10 You know, anything that he did there is insignificant to
11 the amount that he did in Saudi Arabia during that year.

12 Meanwhile, ultimately, all the Bragg factors that
13 I've discussed are overwhelmingly in the Appellant's
14 favor. The Franchise Tax Board wants you to believe that
15 their few pieces of evidence show Dr. Khan just meant to
16 make a temporary stay in Saudi Arabia. However, we have
17 far more evidence which shows that Dr. Khan moved to Saudi
18 Arabia and lived there for the duration of the tax year
19 with the intention of living there indefinitely.

20 It seems to me that based on the most recent
21 precedent in *Mazer*, the Office of Tax Appeals must resolve
22 in favor of the Appellant. And with that, I conclude my
23 rebuttal.

24 Thank you, Your Honor.

25 JUDGE MARGOLIS: Okay. Thank you very much. I

1 have one -- this is not a question so much as a comment.
2 There is a -- there was some argument about a \$500 credit
3 in taxpayer's account that was apparently an overpayment
4 for the 2012 year that was claimed on his 2013 year,
5 according to -- I think that was footnote 31 in
6 Respondent's brief. We don't really deal with payments
7 and credits in the context of our decision. But I just
8 want to make sure that Respondent and Appellant's counsel
9 take that into account and the recomputation of any
10 penalty liability.

11 I'm not sure whether or not that payment would
12 be, you know, if that was in the account at the time the
13 tax return was due, I believe -- I'm not certain, that
14 might be -- that might reduce the amount of the penalty in
15 terms of how much of a deficiency there was. Again, we
16 don't have the information about the payments and the
17 credits in the account, but please be aware of that when
18 the final deficiency computation is made. That's all I'm
19 asking.

20 Mr. Miller, do you have a question?

21 MR. MILLER: Yes. This just goes back to one of
22 your earlier questions. You asked me about the medical
23 license. I've just been informed quickly, that it's
24 renewable every two years.

25 JUDGE MARGOLIS: Thank you.

1 MR. MILLER: Thank you.

2 JUDGE MARGOLIS: Okay. Is there anything else
3 from you, Mr. Hallock?

4 MR. HALLOCK: There is not, Your Honor.

5 JUDGE MARGOLIS: Okay. I want to thank you both
6 for presenting your arguments very well today, both sides
7 did. And I also want to thank you very much for your
8 prehearing cooperation regarding the exhibits and
9 stipulations of fact.

10 We'll take the matter -- we'll close the record
11 and take the matter under submission. And we will issue
12 our decision in this matter in 100 days Inshallah. So
13 thank you all very much, and this concludes this hearing.

14 (Proceedings adjourned at 12:33 p.m.)

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HEARING REPORTER'S CERTIFICATE

I, Ernalyne M. Alonzo, Hearing Reporter in and for the State of California, do hereby certify:

That the foregoing transcript of proceedings was taken before me at the time and place set forth, that the testimony and proceedings were reported stenographically by me and later transcribed by computer-aided transcription under my direction and supervision, that the foregoing is a true record of the testimony and proceedings taken at that time.

I further certify that I am in no way interested in the outcome of said action.

I have hereunto subscribed my name this 2nd day of November, 2020.

ERNALYN M. ALONZO
HEARING REPORTER