Residency Appeal Committee – Petition Reviews: Independent Student

An Independent student must:
1. Provide objective evidence of continuous presence in Arizona for at least 12 months, and
2. Provide objective evidence of intent to be an Arizona resident for the same 12-month period, and,
3. Overcome the presumption that they are in Arizona primarily to be a student.

Reviewing an Independent Student petition
1. Read the decision summary – this is a summary of what was reviewed and why the petition was denied.
2. Read the petition and view supporting documentation – both can be accessed in PeopleSoft.
3. Read the student’s appeal – this should include the reasons why the student felt the initial decision was erroneous.
4. Review the relevant ABOR policies – these are referenced in the decision summary.
5. Prepare questions for the student – questions should be relevant, meaningful and tied to policy.

Understanding the Requirements:

Objective evidence of continuous presence in Arizona 12 months
1. Objective evidence typically includes bank statements, pay stubs or enrollment history – or some combination of these documents. Other items may add color to the narrative, but would be insufficient on their own, e.g., lease agreements, utility bills, travel receipts, date driver’s license obtained, etc.
2. The evidence provided must support the conclusion that the individual has maintained continuous presence in Arizona for at least 12 months.
3. Absences of 30 days or more are permissible if the student can provide evidence that he/she maintained domicile in Arizona during their absence and did not take any actions to establish domicile elsewhere.
4. Once domicile has been established, it is possible to maintain domicile in Arizona without physically being here, e.g., Arizona residents don’t lose their domicile when they go on vacation or when they attend school elsewhere.

Objective evidence of (demonstrated) intent for 12 months
1. Intent is the legal and customary things that would be expected of someone who established Arizona as their permanent home beyond the circumstance of being a student.
2. Intent includes financial dependence and the severance of all ties to their former state of residence; however, no one factor is determinative.
3. Intent is not based on a student’s statements about his/her plans for the future, but rather documented evidence of behavior in this regard historically, i.e., what was their purpose for coming to Arizona and how is this captured in the actions that have taken.
4. Declarations of future intent or a desire to remain in Arizona indefinitely are given no weight.
5. Intent is evaluated by the classification officer and the standard is a preponderance of the evidence, i.e., “more likely than not”.
6. Evidence indicating intent must exist at the beginning of and be maintained throughout the 12-month period of continuous presence needed to establish residency classification.
   a) Acts or events occurring after the start of this 12-month period may be considered as evidence of the lack of such intent, e.g., delaying an Arizona driver’s license or vehicle registration.
   b) Certain indicators of intent may be incidental to the circumstance of being a student, e.g., registering to vote in an upcoming election.
7. Financial Independence is a factor that often carries significant weight, but it not an absolute and cannot be determinative.
Student Presumption

1. It is presumed that a nonresident student’s presence in Arizona is primarily for the purpose of education and not to establish domicile and that decisions regarding domicile are generally made after the completion of an education and not before.
2. The student presumption informs our decisions regarding intent (and vice versa).
3. Overcoming the student presumption can be difficult, but not impossible.
   a) A presumption is a belief or premise thought to be true, but not known for certain.
   b) Individual circumstances will determine what is required to overcome the student presumption.
4. Students do not earn residency while attending any school in Arizona as a full-time student without objective evidence to the contrary.
5. Students overcome the student presumption by providing compelling documentation that supports the narrative they are not in Arizona primarily to be a student, or by not being a student.
6. Being a student often precludes an individual from overcoming this presumption because they are benefitting from things that are only available to them because they are students, e.g., on-campus housing, financial aid, student employment, etc.

Other factors to consider

1. Demographics: Age, marital status, date of marriage, previous military service, sources of support, employment, tax history, etc.
2. Student history: Self-reported residency from admission application, address on application, date of move to Arizona, full-time enrollment, etc.
3. Independence: while not defined in ABOR policy, a common-sense definition should prevail, e.g., “not dependent”.
4. Students often identify as independent and may not consider factors that suggest dependence on parents or others, e.g., housing, health insurance, tuition payment, etc.

Making your decision

Committee Review

1) As an appellate body, your task is to determine if the decision made by the classification officer was erroneous, which includes:
   a) Assessing whether or not the classification officer applied ABOR policies correctly.
   b) Determining whether or not the student met their burden of proof.
   c) Determining whether or not the correct standard of proof was applied.

Burden of Proof/Standard of Proof

1) The burden of proof belongs to the student. There is no obligation for ASU to prove non-resident status or to prove the student is a resident elsewhere.
2) The standard of proof is a preponderance of the evidence, i.e., the sum of the evidence supports the conclusion that the claim in question is more likely to be true than not.

Why independent petitions get denied

1. The student can’t overcome the student presumption; he/she is here primarily to be a student.
2. The student lacks indicators of intent to be an Arizona resident beyond the circumstance of being a student.
3. The student does not provide sufficient evidence of continuous presence in Arizona.
4. Requested documentation is missing, incomplete or not credible.
5. The student is dependent on someone else who is not an Arizona resident.
6. The documentation provided doesn’t support the narrative; their story doesn’t make sense.