

IN THE SUPREME COURT OF FLORIDA

FILED
THOMAS D. HALL

2011 DEC 13 PM 2:11

CLERK, SUPREME COURT

Florida Board Of Bar Examiners)
Re: Question as to Whether Undocumented)
Immigrants Are Eligible for Admission to)
The Florida Bar)

Case No. SC11-____
BY _____

Petition for Advisory Opinion

The Florida Board of Bar Examiners petitions the Court for an advisory opinion to the question set forth below that will direct the board as to the admissibility of a current bar applicant and of future similarly-situated applicants to The Florida Bar.

Jurisdiction

The Court has jurisdiction of this matter. Art.V, § 15, Fla. Const. *See also In re Questions of Law Certified by the Florida Board of Bar Examiners*, 183 So. 2d 688 (Fla. 1966); *In re Question of Law Certified by the Florida Board of Bar Examiners*, 265 So. 2d 1 (Fla. 1972); *In re Florida Board of Bar Examiners Re: Question as to whether their Employees are State Employees*, 268 So. 2d 371 (Fla. 1972); *In re Questions of Law Certified by the Florida Board of Bar Examiners*, 278 So. 2d 266 (Fla. 1973); *In re Florida Board of Bar Examiners in re Questions of Law Certified*, 350 So. 2d 1072 (Fla. 1977); *In re Florida Board of Bar Examiners. In re*

Certified Question (Chapter 77-63 Laws of Florida) Admission of Exams to Blind and Deaf, 353 So. 2d 98 (Fla. 1977); *In re Florida Board of Bar Examiners. In re Certified Question Felony Convictions Federal Youth Corrections Act*, 361 So. 2d 424 (Fla. 1978); *Florida Board of Bar Examiners re Interpretation of Article I, Section 14d of the Rules of the Supreme Court Relating to Admissions to the Bar*, 581 So. 2d 895 (Fla. 1991).

Question

Are undocumented immigrants eligible for admission to The Florida Bar?

Background

In January 2008, the board adopted a policy by which the board required information from bar applicants pertaining to their citizenship or immigration status. In considering this issue, the board had before it information regarding a decision from Georgia.

In that case, a Georgia bar applicant sued the Georgia Office of Bar Admissions alleging that the Fitness Board's practice of requiring certain immigration documentation from non-citizens and "all foreign-born applicants" is violative of the Supremacy and Equal Protection Clauses as well as his substantive due process rights. In finding in favor of the Georgia bar examiners, the federal district judge reasoned:

It is Plaintiff's contention that Defendants, by requiring additional documentation from non-citizen and "foreign-born" applicants (including "a copy of front and back of Permanent Resident Card, [a] copy of citizenship page from passport, a copy of USCIS Form I-485 (Application to Register Permanent Residence or to Adjust Status), and [a] Notice of Action form issued by INS"), but not demanding such documentation from applicants who purport to be United States citizens, have established a facially discriminatory state policy subject to strict scrutiny.

* * *

Defendants in this case seek documentation designed to uncover both the citizenship status of all foreign born applicants (including those who purport to be United States citizens), as well as the temporal duration of lawful residency for applicants who are not citizens of the United States. While Plaintiff insists that access to the entire universe of documentation Defendants seek is not invariably necessary to ascertain the fact and duration of lawful residency, all the documents requested by Defendants clearly pertain to such attributes. What is more, Defendants emphasize, persuasively, that seeking piecemeal verification of lawful residency from outside sources, such as the Immigration and Naturalization Service, is a complex and time-consuming process—one that has the potential to substantially and detrimentally prolong the Bar's determination of an applicant's fitness to sit for a particular bar exam.

In light of the foregoing, the Court concludes that the practices challenged by Plaintiff here are not violative of the Equal Protection Clause.

Godoy v. The Office of Bar Admissions, the Board to Determine fitness of Bar Applicants, CIVIL ACTION NO.1:05-CV-0675-RWS (N.D. Ga. July 24, 2006).

Reproduced below is the current requirement in this area for Florida bar applicants as listed under Step 4 of the Checklist to File a Bar Application:

7. Proof of citizenship

- If you are a citizen of the United States, submit with your Bar Application a certified copy of your birth certificate, or provide a photocopy of your certificate of

naturalization, or certificate of citizenship for submission to the United States Citizenship and Immigration Services for verification of authenticity.

- If you are not a citizen of the United States, provide a photocopy of the immigration document that documents your status for submission to the United States Citizenship and Immigration Services for verification of authenticity.
- For more information on how to obtain documents to prove citizenship or immigration status, read *Must I provide documentation of my U.S. citizenship or immigration status?* in our FAQ.

<http://www.floridabarexam.org/> at Checklist to File a Bar Application.

The checklist requirement is further explained on the board's website. That explanation is reproduced below.

Must I provide documentation of my U.S. citizenship or immigration status?

Yes, all applicants are required to document their citizenship or immigration status.

U.S. citizen:

If you are a U.S. citizen and were born in the U.S., the board will accept a certified copy of your birth certificate. You should obtain a certified copy of your birth certificate from the appropriate government office in the state where you were born. You can locate the appropriate office to contact by visiting the Vital Records website.

If you are a U.S. citizen who was born abroad, the board will accept a certified copy of a Certification of Birth (DS-1350) or a certified copy of the Consular Report of Birth Abroad (FS-240). For more information, visit the U.S. Department of State website.

The board does not accept hospital birth certificates, photocopies, notarized photocopies, or foreign birth certificates.

U.S. citizen via naturalization:

The board will accept a photocopy of your Certificate of Naturalization for submission to the United States Citizenship and Immigration Services (USCIS) for verification of authenticity.

Certified copies of a valid U.S. Passport record may also be submitted as proof of citizenship; however, this process can take 4-6 weeks. For more information, visit the U.S. Department of State website.

Not a citizen of the United States:

Provide a photocopy of the immigration document that documents your status for submission to the United States Citizenship and Immigration Services (USCIS) for verification of authenticity. The USCIS has indicated a copy of these documents may be made to the board for submission to USCIS, regardless of the statement prohibiting copying of these documents. For more information on how to obtain copies of immigration documents or duplication of these documents, visit the U.S. Citizenship and Immigration Services website.

<http://www.floridabarexam.org/> at Frequently Asked Questions

The board currently has before it an applicant who graduated from an ABA accredited law school and passed Florida's bar examination. This applicant has been and continues to be an undocumented immigrant since he and his parents emigrated over 15 years ago from Mexico to live in the United States. The board seeks the Court's opinion as to whether this applicant and any future similarly-situated applicants are eligible for admission to The Florida Bar.

Discussion of the Law

Florida Law

The question posed by the board is one of first impression in Florida.¹ The issue of immigration status, however, did come up in the case of *Florida Board of Bar Examiners re J.E.G.R.*, 725 So.2d 358 (Fla. 1998). There, the applicant had been found guilty of desertion from the U.S. Marine Corp Reserves prior to his unit being deployed for Operation Desert Storm.

Following the completion of its background investigation, the board ruled to file specifications and hold a formal hearing. After the formal hearing, the board recommended that *J.E.G.R.* be denied.

The applicant in *J.E.G.R.* was a citizen of El Salvador. In that U.S. federal law provided that an alien deserter during war time is permanently ineligible for U.S. citizenship, the board further recommended that the applicant be required to “take the necessary steps to restore his ... eligibility for citizenship before being authorized to practice law in Florida.” *Id.* at 359. In approving the board’s recommendation, the

¹ According to a recent report, the California Supreme Court will be considering the same issue and that it “could be the first such case in the United States,…” ABA Journal, “Can an Undocumented Immigrant Be Admitted to Practice? California Supreme Court Must Decide,” available online at: http://www.abajournal.com/news/article/can_an_undocumented_immigrant_be_admitted_to_practice_california_supreme_co/

Court reasoned:

Finally, we approve the Board's requirement that before J.E.G.R. may be admitted, he must establish or restore his eligibility for United States citizenship. The Rules of the Supreme Court Relating to Admissions to the Bar require applicants who have been convicted of a felony to have their civil rights restored before gaining admission to The Florida Bar. *See Fla. Bar Admiss. R. 2-13.3.* We feel that it would be unfair not to require J.E.G.R. to take similar steps in this case to establish his qualification for admission.

Id. at 360.

Immigration and Nationality Act

This federal act is explained in the following manner on the website of the U.S.

Citizenship and Immigration Service of the U.S. Department of Homeland Security:

The Immigration and Nationality Act, or INA, was created in 1952. Before the INA, a variety of statutes governed immigration law but were not organized in one location. The McCarran-Walter bill of 1952, Public Law No. 82-414, collected and codified many existing provisions and reorganized the structure of immigration law. The Act has been amended many times over the years, but is still the basic body of immigration law.

The INA is divided into titles, chapters, and sections. Although it stands alone as a body of law, the Act is also contained in the United States Code (U.S.C.). The code is a collection of all the laws of the United States. It is arranged in fifty subject titles by general alphabetic order. Title 8 of the U.S. Code is but one of the fifty titles and deals with "Aliens and Nationality". When browsing the INA or other statutes you will often see reference to the U.S. Code citation. For example, Section 208 of the INA deals with asylum, and is also contained in 8 U.S.C. 1158. Although it is correct to refer to a specific section by either its INA citation or its U.S. code, the INA citation is more commonly used.

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=f3829c7755cb9010VgnVCM10000045f3d6a1RCRD&vgnnextchannel=f3829c7755cb9010VgnVCM10000045f3d6a1RCRD>

Title 8 of the United States Code contains the following provisions that could impact an undocumented immigrant:

Title 8 U.S.C.:

§ 1227. Deportable aliens

(a) Classes of deportable aliens

Any alien (including an alien crewman) in and admitted to the United States shall, upon the order of the Attorney General, be removed if the alien is within one or more of the following classes of deportable aliens:

(1) Inadmissible at time of entry or of adjustment of status or violates status

(A) Inadmissible aliens

Any alien who at the time of entry or adjustment of status was within one or more of the classes of aliens inadmissible by the law existing at such time is deportable.

(B) Present in violation of law

Any alien who is present in the United States in violation of this chapter or any other law of the United States, or whose nonimmigrant visa (or other documentation authorizing admission into the United States as a nonimmigrant) has been revoked under section 1201 (i) of this title, is deportable.

§ 1324a. Unlawful employment of aliens

(a) Making employment of unauthorized aliens unlawful

(1) In general

It is unlawful for a person or other entity—

(A) to hire, or to recruit or refer for a fee, for employment in the United States an alien knowing the alien is an unauthorized alien (as defined in subsection (h)(3) of this section) with respect to such employment, or

(B)

(i) to hire for employment in the United States an individual without complying with the requirements of subsection (b) of this section or

(ii) if the person or entity is an agricultural association, agricultural employer, or farm labor contractor (as defined in section 1802 of title 29), to hire, or to recruit or refer for a fee, for employment in the United States an individual without complying with the requirements of subsection (b) of this section.

For the first offense, illegal entry into the United States is punishable by a fine or imprisonment “not more than 6 months, or both.” 18 U.S.C. § 1325. An undocumented immigrant’s continuing presence in the United States is a civil infraction that subjects the violator to deportation and fine. 18 U.S.C. § 1227. *See also* 18 U.S.C. § 1324d, Civil Penalties for Failure to Depart.

In addition to being an undocumented immigrant, the applicant now before the board has a related issue that arises from his immigration status. As reported on his sworn bar application filed with the board, the applicant does not have a social security number. As for the filing of federal income tax returns, the applicant reported to the board that he had not earned sufficient income to require the filing of a tax return.

Lastly, the applicant apparently announced his undocumented status in a public forum. As reported in news articles, the applicant addressed a House committee of the Florida legislature in April 2011 where he identified himself as “undocumented.”

<http://www.azcentral.com/news/articles/2011/04/14/20110414florida-immigration-law-arizona.html>

Request

The Florida Board of Bar Examiners requests the Court to issue an advisory opinion to the question set forth above that will direct the board as to how to handle Florida bar applicants who are undocumented immigrants.

The attorney representing the current applicant referenced in this petition is being served so that he can be fully advised of the action being taken by the board on his client's file.

Dated this 13th day of December, 2011.

Respectfully submitted,

Florida Board of Bar Examiners
Alan H. Aronson, Chair

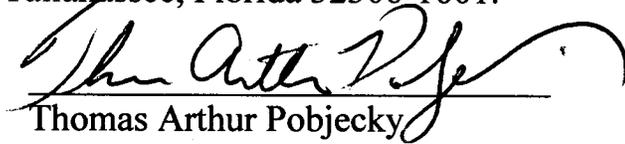
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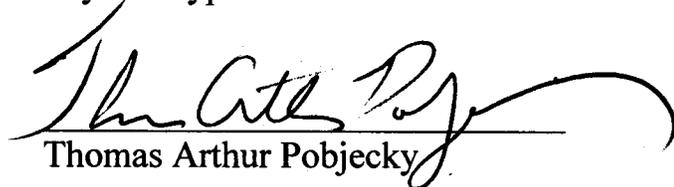
Certificate of Service

I hereby certify that a true and correct copy of the foregoing Petition has been served by U.S. Mail this 13th day of December, 2011 to Talbot D'Alemberte, Esquire, 506 West Pensacola Street, Tallahassee, Florida 32306-1601.


Thomas Arthur Pobjecky

Certificate of Type Size and Style

I hereby certify that the size and style of type used in this Petition are 14 Times New Roman.


Thomas Arthur Pobjecky

Florida Board of Bar Examiners

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December 13, 2011

Thomas D. Hall, Clerk
The Supreme Court of Florida
Office of the Clerk
500 South Duval Street
Tallahassee, FL 32399-1925

Dear Mr. Hall:

FBOBE Re: Question as to whether
Undocumented immigrants
Are eligible for admission to
The Florida Bar

Case No.: SC11-

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THOMAS D. HALL
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BY _____

Please accept the Florida Board of Bar Examiner's Petition for Advisory Opinion along with 7 copies.

Pursuant to the Court's Administrative Order No. AOSC04-84, the Board's Petition will be attached to an e-mail that will be sent this date to the following e-mail address: e-file@flcourts.org.

Sincerely,

Thomas Arthur Pobjecky
General Counsel

MC: Talbot D'Alemberte, Esq.

Enclosure: Petition for Advisory Opinion (original plus 7 copies)

TAP:tm