



Tuesday, April 11, 2017

via USPS mail

Office of the Illinois Attorney General
Workplace Rights Bureau
James R. Thompson Center
100 W. Randolph St.
Chicago, IL. 60601

via USPS mail

Labor Law Unit, General Law Bureau
Office of the Illinois Attorney General
James R. Thompson Center
100 W. Randolph St.
Chicago, IL 60601

RE: Illinois' Law Reserving Plumbing Licenses for U.S. Citizens Is Unconstitutional

Dear Sir or Madam:

We write seeking to avoid litigation challenging the constitutionality of the Illinois law governing the licensing of plumbers. Our joint client, [REDACTED] wishes to apply for a plumber's license but would appear to be barred from doing so because he is not a citizen and does not want to commit to becoming a citizen. The governing Illinois law requires applicants for a plumbing license to be a "citizen of the United States" or declare "his or her intention to become a citizen." 225 ILCS 320/10.

Precedent and even an Attorney General opinion establishes that citizenship requirements for licensure fail to meet constitutional muster. In 1974 Ill. Atty. Gen. Op. S-747, your office concluded that the citizenship requirements contained in several Illinois licensing statutes violate a lawfully admitted resident alien's right to equal protection under both the Fourteenth Amendment and the Illinois Constitution's cognate guarantee. Ill. Art. 1, § 2. In addition, the Opinion finds the requirements invalid because of the exclusive authority that rests in Congress

to regulate the immigration and naturalization of aliens. The Opinion concluded that Illinois had no valid citizenship requirement to practice medicine.

In *Application of Griffiths*, 413 U.S. 717 (1973), the Supreme Court of the United States held that citizenship requirements in licensure laws unconstitutionally discriminate against resident aliens. In that case, employing strict scrutiny because the citizenship requirement made “explicit use of a suspect classification.” *Id.* at 725. It found equal protection violated and quoted with approval an observation from a century ago:

It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the (Fourteenth) Amendment to secure. (Citations omitted.) If this could be refused solely upon the ground of race or nationality, the prohibition of the denial to any person of the equal protection of the laws would be a barren form of words.

Id. at 720, quoting *Truax v. Raich*, 239 U.S. 33, 35 (1915) (parentheticals in original). It further noted that “[r]esident aliens, like citizens, pay taxes, support the economy, serve in the Armed Forces, and contribute in myriad other ways to our society. It is appropriate that a State bear a heavy burden when it deprives them of employment opportunities.” *Id.* at 722.

Courts have applied the reasoning of *Griffiths* to invalidate citizenship requirements for the office of notary public, *Bernal v. Fainter*, 467 U.S. 216 (1984); *Cheng v. State of Ill.*, 438 F. Supp. 917 (N.D. Ill. 1977); a license to work as a civil engineer, *Examining Bd. of Engineers, Architects & Surveyors v. Flores de Otero*, 426 U.S. 572 (1976); and a license to be a pharmacist, *Dandamudi v. Tisch*, 686 F.3d 66 (2d Cir. 2012), among other professions. Only when the requirement is attached to a “public function,” such as a police officer or public school teacher, has citizenship requirements been upheld. The plumbing profession plainly does not qualify for the public function exception.

Mr. ██████████ is otherwise eligible to work in Illinois pursuant to his Deferred Action for Childhood Arrivals (DACA) status, as evidenced by his employment authorization document (Form I-766) issued by the United States Citizenship and Immigration Services. *See* 8 C.F.R. §274a12(c)(14). As you know, DACA status provides a temporary deferral for people who came to the United States before their 16th birthday and have resided continuously in this country since June 15, 2007. To be eligible for DACA status, the individual also must not have been convicted of a felony, significant misdemeanor, or three or more other misdemeanors, and must not otherwise pose a threat to national security or public safety. Those with DACA status are eligible to work in the United States.

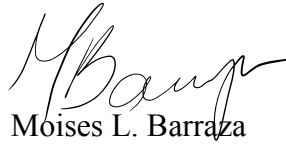
Because the sole obstacle to his application for a plumbing license is a citizenship requirement that is plainly unconstitutional, we seek your office's intervention to inform the State Board of Plumbing Examiners and any other relevant official so that Mr. [REDACTED] may seek a plumbing license without having to satisfy the citizenship requirement. We would be happy to discuss this further with your office or any person you designate for that task.

We would appreciate a timely response from your office in this important matter involving workers' rights in Illinois. Please kindly address your response to both of us.

Sincerely,



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