

SUPREME COURT COPY

S202512
IN THE SUPREME COURT OF CALIFORNIA

In Re Sergio C. Garcia On Admission
Bar Miscellaneous 4186

MOTION TO VACATE SUBMISSION
DUE TO PENDING LEGISLATION

REQUEST FOR JUDICIAL NOTICE

PROOF OF SERVICE

SUPREME COURT
FILED

SEP 23 2013

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IN THE SUPREME COURT OF CALIFORNIA

**In Re Sergio C. Garcia On Admission
Bar Miscellaneous 4186**

**MOTION TO VACATE SUBMISSION
DUE TO PENDING LEGISLATION**

SUMMARY

Applicant Sergio C. Garcia moves the Court for an Order vacating submission of this matter, pending action by the Governor on Assembly Bill 1024, which was passed by the California legislature on September 13, 2013. The relevant language of that bill was amended into the legislation two days after oral argument and submission of this matter. The bill is intended to qualify under 8 USC 1621(d), so as to permit this court to admit an undocumented immigrant to the practice of law.

MOTION

Applicant Sergio Garcia moves this Court for an order vacating the submission of this case, which submission occurred on September 4, 2013, at the close of oral argument.

In accord with Rule 8.524(h)(2), the following timetable is proposed:

October 16, 2013: Counsel to inform this court if AB 1024 was enacted into law or vetoed.

October 31, 2013: The Court to resubmit the case or make other orders as necessary.

AUTHORITIES

Rule 8.524 of the California Rules of Court provides that this Court “may vacate submission only by an order stating the Court’s reasons and setting a timetable for resubmission.” Rule 8.524(h)(2). This Court has exercised its inherent power to vacate submission in the interests of justice, even prior to the present California Rules of Court. See, e.g., *Southern Pac. R. Co. v. Arnold*, 112 P. 133 (1910).

The interests of justice weigh in favor of vacating the submission. The briefs and oral argument in this case indicate that if 8 USC

1621(c) prohibits this court from admitting an undocumented immigrant to the practice of law, the state may pass an affirmative law under 8 USC 1621(d) that permits the court to admit an otherwise qualified applicant, even if he or she is undocumented.

Two days after the oral argument in this case, an otherwise unrelated bill in the legislature was amended with language from 8 USC 1621(d). That bill is AB 1024. The relevant language of AB 1024 would amend Bus & Prof 6064 to read as follows:

“(b) Upon certification by the examining committee that an applicant who is not lawfully present in the United States has fulfilled the requirements for admission to practice law, the Supreme Court may admit that applicant as an attorney at law in all the courts of this state and may direct an order to be entered upon its records to that effect.” (emphasis added)

By way of comparison, the relevant language of 8 USC 1621(b) reads:

“A State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible under subsection (a) of this section only through the enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility.” (emphasis added)

Applicant requests that this court take judicial notice of the bill, as passed by the legislature and sent to the governor. Exhibit I.¹

¹ This Court has taken Judicial Notice of Applicant Exhibits A through H. We begin with the next letter in sequence.

AB 1024 is specifically intended to comply with 8 USC 1621(d). See Exhibit J, the staff report from the Assembly Judiciary Committee. Among other statements, that report recites at page 2:

“This provision would therefore satisfy the requirements of 8 U.S.C. §1621(a), to the extent that 8 U.S.C. §1621(a) is applicable.”

The Legislature adjourned on September 13, 2013. Therefore, the bill must be enacted or vetoed no later than Sunday, October 13, 2013. California Constitution, Article IV, §10. If not vetoed, it would become law on January 1, 2014. *Ibid.*²

The record in this matter shows that Mr. Garcia has met all requirements to be admitted to practice law. The only possible impediment in the record is his immigration status.

FISHKIN & SLATTER LLP

By: 

JEROME FISHKIN

Attorneys for Applicant Sergio C. Garcia

² AB 1024 may also be tracked at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1024&search_keywords=

REQUEST FOR JUDICIAL NOTICE

Applicant requests that this Court take judicial notice of the following exhibits:

Exhibit I: Assembly Bill 1024, Legislative Session of 2013, as passed by the Assembly and the Senate on September 12, 2013.

Exhibit J: September 12, 2013, Report of Staff Attorney Kevin Baker to the Assembly Judiciary Committee, analyzing AB 1024.

Counsel certifies that each of the documents is a true and correct copy of the item described.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 20, 2013, at Walnut Creek, California.

A handwritten signature in black ink, appearing to read "Jerome Fishkin", is written over a horizontal line. The signature is stylized and cursive.

JEROME FISHKIN

Attorney for Applicant Sergio C. Garcia





California.
LEGISLATIVE INFORMATION

AB-1024 Attorneys: admission to practice. (2013-2014)

SECTION 1. Section 6064 of the Business and Professions Code is amended to read:

6064. (a) Upon certification by the examining committee that the applicant has fulfilled the requirements for admission to practice law, the Supreme Court may admit ~~such~~ *the* applicant as an attorney at law in all the courts of this ~~State~~ *state* and may direct an order to be entered upon its records to that effect. A certificate of admission thereupon shall be given to the applicant by the clerk of the court.

(b) Upon certification by the examining committee that an applicant who is not lawfully present in the United States has fulfilled the requirements for admission to practice law, the Supreme Court may admit that applicant as an attorney at law in all the courts of this state and may direct an order to be entered upon its records to that effect. A certificate of admission thereupon shall be given to the applicant by the clerk of the court.



Date of Hearing: September 12, 2013

ASSEMBLY COMMITTEE ON JUDICIARY
Bob Wieckowski, Chair
AB 1024 (Gonzalez) – As Amended: September 6, 2013

FOR CONCURRENCE

SUBJECT: ATTORNEYS: ADMISSION TO PRACTICE

KEY ISSUE: SHOULD THE LEGISLATURE ENACT ADDITIONAL STATUTORY AUTHORIZATION TO MAKE CLEAR THAT UNDOCUMENTED IMMIGRANTS WHO OTHERWISE SATISFY THE REQUIREMENTS FOR ADMISSION TO PRACTICE LAW MAY BE ADMITTED?

SYNOPSIS

This bill is a direct response to an admission application by Sergio Garcia currently pending at the California State Supreme Court. Federal law requires enactment of a state law affirmatively providing eligibility for public benefits to undocumented immigrants if the public benefit consists of a grant, contract, loan, professional license, or commercial license, and the public benefit is provided by an agency of a State or local government or by appropriated funds of a State or local government. This bill would ensure that the required law affirmatively provides the required eligibility, assuming that admission to the State Bar by the California Supreme Court is a public benefit provided by a state agency or by appropriated funds so as to trigger the obligation to enact a state law, and further assuming that such a law has not already been enacted. According to supporters, there are currently many bright, young individuals who have worked hard to progress in their education and have met the rigorous requirements for obtaining a law degree and a license to practice law, but due to their immigration status may be unable to fulfill their dreams. Insofar as existing law is not adequate to authorize his admission, this bill would provide the required statutory approval.

SUMMARY: Provides that upon certification by the examining committee of the State Bar that an applicant who is not lawfully present in the United States has fulfilled the requirements for admission to practice law, the Supreme Court may admit that applicant as an attorney at law in all the courts of this state and may direct an order to be entered upon its records to that effect.

EXISTING LAW:

- 1) Prohibits, under the federal Personal Responsibility and Work Opportunity Reconciliation Act, certain categories of individuals not lawfully present in the United States from receiving specified public benefits, including “any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government.” (8 U.S.C. Sec. 1621(c).)
- 2) Provides, under federal law, that a state may render “an alien who is not lawfully present in the United States . . . eligible for any State or local public benefit for which such alien would otherwise be ineligible . . . through the enactment of a State law after the date of the

enactment of this Act which affirmatively provides for such eligibility.” (8 U.S.C. Sec. 1621(d).)

- 3) Establishes, under the State Bar Act, qualifications for individuals who seek to be certified to the Supreme Court for admission and a license to practice law. Among other things, applicants to the State Bar must: 1) be at least 18 years old; 2) be of good moral character; 3) have received a juris doctor (J.D.) degree or otherwise studied law diligently and in good faith, as specified; 4) have passed a prescribed examination in professional responsibility or legal ethics; and 5) have passed the general bar examination before they can be certified for admission. (Bus. & Prof. Code Sec. 6060.)
- 4) States that upon certification by the examining committee that an applicant has fulfilled the requirements for admission to practice law, the Supreme Court may admit such applicant as an attorney at law in all the courts of this state and may direct an order to be entered upon its records to that effect. (Bus. & Prof. Code Sec. 6064.)
- 5) States that every person on his admission shall take an oath to support the Constitution of the United States and the Constitution of the State of California, and faithfully to discharge the duties of any attorney at law to the best of his knowledge and ability. (Bus. & Prof. Code Sec. 6067.)

FISCAL EFFECT: Unknown

COMMENTS: The author explains the bill as follows:

There are currently bright, young individuals, who have worked hard to progress in their education and have met the rigorous requirements for obtaining a law degree and a legal license, including passing the California Bar Exam, but due to their immigration status are unable to fulfill their dream of becoming a licensed attorney. Sergio Garcia is one of those Dreamers who are currently unable to obtain a law license. Having passed the State Bar examination and fulfilled all other requirements, Mr. Garcia was routinely sworn into the legal profession in 2011. Two weeks later his license was rescinded on the basis that the Personal Responsibility and Work Opportunity Reconciliation Act passed by Congress in 1996 prohibits undocumented immigrants from receiving professional licenses with the use of public funds, unless state law explicitly overrides it.

AB 1024 is a direct response to an admission application currently pending at the California State Supreme Court. AB 1024 would make explicit the intent of this legislature that all individuals who meet the state law qualifications for the practice of law in California be affirmatively eligible to apply for and obtain a law license regardless of their citizenship or immigration status. Specifically, AB 1024 permits the State Supreme Court to admit as an attorney any applicant who is certified by the examining committee as having fulfilled the requirements for admission to practice law, notwithstanding their undocumented status. This provision would therefore satisfy the requirements of 8 U.S.C. § 1621(a), to the extent that 8 U.S.C. § 1621(a) is applicable.

The bill does not create any authorization for employment in the United States nor does it modify or displace any requirement for admission to practice law.

Need For The Bill. The federal Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), Pub. L. No. 104-193, 110 Stat. 2105 prohibits certain categories of individuals not lawfully present in the United States from receiving certain public benefits, including “any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government.” (8 U.S.C. Section 1621(c).) PRWORA provides that a state may render “an alien who is not lawfully present in the United States . . . eligible for any State or local public benefit for which such alien would otherwise be ineligible . . . through the enactment of a State law after the date of the enactment of this Act [Aug. 22, 1996] which affirmatively provides for such eligibility.” (8 U.S.C. Section 1621(d).) Consistent with that provision, this bill seeks to expressly extend eligibility to obtain a license to practice law to individuals who are not lawfully present in the United States.

Federal law thus requires enactment of a state law affirmatively providing eligibility if two conditions are met: (1) the public benefit consists of a grant, contract, loan, professional license, or commercial license, and (2) the public benefit is provided by an agency of a State or local government or by appropriated funds of a State or local government. Assuming that admission to the State Bar by the California Supreme Court is a public benefit provided by a state agency or by appropriated funds so as to trigger the obligation to enact a state law, and further assuming that such a law has not already been enacted, this bill would ensure that the required law affirmatively provides the required eligibility.

The Supreme Court has not rendered a decision whether Sergio Garcia's immigration status precludes his eligibility for admission to practice law. (*In re Sergio C. Garcia on Admission*, S202512, May 15, 2012.) Mr. Garcia has reportedly been unlawfully present in the United States for approximately 20 years, and is currently petitioning the Federal government for an immigrant visa. During his time in the United States, Mr. Garcia has apparently graduated from law school, passed the California Bar Exam, and has been found by the Committee of Bar Examiners to have met all the necessary requirements for admission to practice law in the State of California. However, given his immigration status, it may be uncertain whether the Supreme Court can admit Mr. Garcia consistently with federal law. Indeed, the U.S. Department of Justice has filed an amicus brief in the Garcia case opining that 8 U.S.C. Section 1621 precludes issuance of a law license to Mr. Garcia, but also noting that federal law allows California to enact a law making undocumented immigrants eligible for this public benefit.

Although many eminent individuals and institutions, including the State Bar, have argued in the *Garcia* case that existing law should be sufficient, this bill seeks to further clarify the question by expressly providing that the Supreme Court may admit an applicant who is not lawfully present in the United States as an attorney at law in the courts of this state upon certification by the State Bar examining committee that the applicant has fulfilled the requirements for admission to practice law.

Regulation of the Legal Profession. The State Bar Act, codified at Business and Professions Code Section 6000, *et seq.*, sets out a comprehensive framework for regulating the practice of law and the admission of attorneys in the State of California. Among other things, the act requires individuals applying for membership in the State Bar to be at least 18 years old, to be of good moral character, to have received a juris doctor (J.D.) degree or otherwise studied law diligently and in good faith (as specified), to have passed a prescribed examination in professional responsibility or legal ethics, and to have passed the general bar examination. (*See*

Bus. & Prof. Code Sec. 6060.) A license to practice law in the State of California serves as recognition that the licensed individual has attained the education, demonstrated the knowledge, and evidenced the good moral character necessary to serve competently as an attorney in California's legal marketplace. (See *In re Martin* (1962) 58 Cal.2d 133, 139 (noting the "implied representation of competency made by the licensing of [an] attorney".))

This bill would not disturb the existing framework for assessing the qualifications of applicants to the State Bar, nor would it impact the immigration and naturalization status of those seeking a license to practice law in the State of California. It merely clarifies that the Supreme Court may issue a law license to any qualified applicant, regardless of his or her immigration status.

Ability to Represent California Clients. Of course, admission to practice law is not a pathway to naturalization or tantamount to a work authorization. According to the Committee of Bar Examiners of the State of California, the Supreme Court "currently admits non-immigrant aliens to the practice of law in California without regard to their ability to be legally employed as attorneys." (Opening Brief of the Committee of Bar Examiners at 20-21, *In re Sergio C. Garcia on Admission*, S202512, May 15, 2012.) While these individuals may return home to their countries of origin, may remain here and attempt to adjust their status, or may seek lawful permanent residence after receiving their law licenses, the grant of a license provides no guarantee of a pathway to lawful employment in the United States.

Whether, and to what extent, a licensee wishes to use his or her California law license in future employment endeavors is left to the discretion of each licensed attorney, and it is the attorney's duty to ensure that his or her law license is used in compliance with all applicable laws and regulations. For example, there appears to be no prohibition against serving clients as a sole practitioner. Thus, even if a person admitted to practice law may be limited in their ability to be employed, or to perform certain work, these limitations would not necessarily preclude all possible uses of a law license.

Moral Character Requirement. In order to be certified to the Supreme Court for admission and a license to practice law, a person must, among other things, "be of a good moral character." (Bus. & Prof. Code Sec. 6060(b).) The Supreme Court interprets the moral character requirement as a question whether an applicant is "a fit and proper person to be permitted to practice law," and notes that "the answer to this usually turns upon whether he [or she] has committed or is likely to continue to commit acts of moral turpitude." (*March v. Committee of Bar Examiners* (1967) 67 Cal.2d 718, 720.)

Furthermore, the California Supreme Court has made clear that "every intentional violation of the law is not, ipso facto, grounds for excluding an individual from membership in the legal profession." (*Hallinan*, 65 Cal.2d at 459.) Accordingly, judgments about the moral fitness of applicants must be carried out on a case-by-case basis. These case-by-case assessments are currently conducted by the Committee of Bar Examiners during the application process, and this bill would not disturb that existing framework.

Attorney's Oath. Business and Professions Code Section 6067 requires every person on his or her admission to the State Bar to "take an oath to support the Constitution of the United States and the Constitution of the State of California, and faithfully to discharge the duties of any attorney at law to the best of his [or her] knowledge and ability." As with questions regarding the moral fitness of applicants to the State Bar, whether any particular candidate can honestly

and faithfully assent to this oath must be evaluated on a case-by-case basis. (*See Raffaelli v. Committee of Bar Examiners* (1972) 7 Cal.3d 288, 297 (“we cannot say that aliens as a class are incapable of honestly subscribing to this oath”).) According to the Committee of Bar Examiners of the State of California, the “attorney’s oath is a forward-looking obligation imposed on the individual at the time of his admission . . . The oath is not given to ‘aliens as a class’ but to attorneys as individuals,” and any applicant not lawfully present in the United States “will have to subscribe to it if . . . admitted.” (Opening Brief of the Committee of Bar Examiners at 32, *In re Sergio C. Garcia on Admission*, S202512, May 15, 2012.)

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union of California
American Friends Service Committee
California Attorney General’s Office
California Faculty Association
California Immigrant Policy Center
Catholic Charities CYO
Central American Resource Center
Chinese for Affirmative Action
Coalition for Humane Immigrant Rights of Los Angeles
Consumer Attorneys of California
Dolores Street Community Services
Educators for Fair Consideration
National Center for Lesbian Rights
Pangea Legal Services
Pomona College
United We Dream Network

Opposition

None on file

Analysis Prepared by: Kevin G. Baker / JUD. / (916) 319-2334

S202512
Garcia: Bar Misc. 4186

DECLARATION OF SERVICE BY MAIL

I am over the age of 18 years and I am not a party to the within cause. I am employed by Fishkin & Slatter, LLP, and my business address is 1575 Treat Blvd., Walnut Creek, CA 94598, County of Contra Costa. I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service, and that the correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business. On this day I served the

**MOTION TO VACATE SUBMISSION
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REQUEST FOR JUDICIAL NOTICE

PROOF OF SERVICE

by placing a true copy in a sealed envelope with postage fully prepaid, and placing the envelope for collection and mailing on this day, following ordinary business practices, in the County of Contra Costa, California, and addressed to:

SEE ATTACHMENT A

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on the date below at Walnut Creek, California.

DATE

PATRICIA HOEKWATER

ATTACHMENT A

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