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IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

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Deputy

IN RE SERGIO C. GARCIA ON ADMISSION

SUPPLEMENTAL BRIEF OF THE COMMITTEE OF BAR EXAMINERS OF THE
STATE BAR OF CALIFORNIA RE: MOTION FOR ADMISSION OF SERGIO C.
GARCIA TO THE STATE BAR OF CALIFORNIA

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I. INTRODUCTION

On October 5, 2013, the Governor signed, and the Secretary of State filed, Assembly Bill No. 1024 (2013-2014 Regular Session) (Stats. 2013, ch. 573).¹ Effective January 1, 2014, AB 1024 will add new subdivision (b) to section 6064 of the Business and Professions Code, to read:

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.

On October 16, 2013, the Supreme Court issued an order requesting that the parties file a supplemental brief addressing the effect of the recently enacted legislation on this proceeding.

The Committee of Bar Examiners (“Committee”) submits that AB 1024 satisfies the requirements of 8 U.S.C. Section 1621(d) by expressly providing that this Court may issue a law license to any qualified applicant, *regardless of their immigration status*. AB 1024 is intended to apply to this and other proceedings for bar admissions and this Court should grant the Committee’s motion for the admission of Applicant Sergio C. Garcia after the new legislation becomes effective on January 1, 2014.

II. DISCUSSION

A. AB 1024 Provides For The Eligibility Of An Undocumented Immigrant To Receive A Law License And Is Applicable To This Proceeding.

¹ Hereinafter, “AB 1024.”

AB 1024 has resolved the question in this proceeding of whether Section 1621 precludes this Court from issuing an order admitting an undocumented immigrant to the State Bar.

The position of the Committee has been that law licenses issued by this Court do not fall within the definition of “public benefits” under Section 1621,² but even if they did, this Court under its inherent authority over attorney admissions could adopt an exemption under Section 1621(d).³ However, in light of the passage of AB 1024, there is no longer a need to decide these issues.

On September 6, 2013, two days after this matter was argued and submitted, the Latino Legislative Caucus introduced legislation to amend Business and Professions Code section 6064 to provide that when the Committee has certified 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....” On September 11, 2013, the Legislature passed AB 1024 with votes of 29 to 5 by the Senate and 62 to 4 by the Assembly. On October 5, 2013, AB 1024 was approved by the Governor and chaptered by the Secretary of State.

² Section 1621(a) provides that an alien not lawfully present in the United States “is not eligible for any State or local public benefit.” A “public benefit” as defined in Section 1621(c) includes a “professional license ... provided by an agency of a State ... or by appropriated funds of a State.”

³ Section 1621(d) states: “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.”

AB 1024 meets the requirements of Section 1621(d) and constitutes an “enactment of a State law” that “affirmatively provides for ... eligibility” of an undocumented immigrant to receive a law license. In *Martinez v. Regents of the University of California* (2010) 50 Cal.4th 1277, 1295 [117 Cal.Rptr.3d 359, 241 P.3d 855], this Court found that a law with language similar to AB 1024 was sufficient under Section 1621(d) to exempt undocumented immigrant students from the payment of nonresident tuition in California's colleges and universities.

Moreover, the legislative history of AB 1024 makes abundantly clear that the Legislature intended the statute to apply to this proceeding and other pending applications for bar admissions.⁴ As noted by both houses of the Legislature, in vetting and adopting AB 1024:

The Supreme Court is currently considering Sergio Garcia for admission to practice law in the State of California.... However, given his immigration status, it is an open question whether the Supreme Court can admit Mr. Garcia to practice law. To clarify the issue, this bill would expressly provide that the Supreme Court may admit an applicant who is not lawfully present in the United States as an attorney at law in all 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.⁵

⁴ This Court may consider this, as well as other extrinsic sources, which provide “a clear and unavoidable implication” of the Legislature’s intended application and effect of a law on pending matters. (*McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 475 [20 Cal.Rptr.3d 428, 99 P.3d 1015].)

⁵ Sen. Com. on Judiciary, Analysis of Assem. Bill No. 1024 (2013-2014 Reg. Sess.) as amended Sept. 6, 2013, p. 2; see also, Assem. Com. on Judiciary, Analysis of Assem. Bill No. 1024 (2013-2014 Reg. Sess.) as amended Sept. 6, 2013, p. 2; Sen. Rules Com., Off. of Sen. Floor Analysis, 3d reading analysis of Assem. Bill No. 1024 (2013-2014 Reg. Sess.) as amended Sept. 6, 2013, pp. 3-4; Assem. Floor Analysis, concurrence in Senate amendments of Assem. Bill No. 1024 (2013-2014 Reg. Sess.) as amended Sept. 6, 2013, p. 2.

* * *

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.⁶

B. AB 1024 Does Not Encroach On This Court's Inherent Authority Over Attorney Admissions.

AB 1024 does not purport to issue a law license and therefore does not materially impair this Court's inherent authority. (See *In Re Attorney Discipline System* (1998) 19 Cal.4th 582, 602-603 [79 Cal.Rptr.2d 836, 967 P.2d 49]; see also *Obrien v. Jones* (2000) 23 Cal.4th 48, 49 [96 Cal.Rptr.2d 205, 999 P.2d 95].) Instead it provides only for the *eligibility* of an undocumented immigrant to receive a law license if all other qualifications for bar admission are met. AB 1024 "explicitly authorize[s] the Supreme Court to admit an applicant who is not lawfully present in the United States," but does not "modify or displace any requirement for admission to practice law." (Sen. Com. on Judiciary, Analysis of Assem. Bill No. 1024 (2013-2014 Reg. Sess.) as amended Sept. 6, 2013, pp. 1, 4.) This Court remains the only entity with powers to admit an attorney to practice law in California.

⁶ Sen. Com. on Judiciary, Analysis of Assem. Bill No. 1024 (2013-2014 Reg. Sess.) as amended Sept. 6, 2013, p. 4.

C. This Court Need Not Address The Issues Raised In Its May 2012 Order In Light Of AB 1024.

With the enactment of AB 1024, this Court no longer needs to resolve the question of whether Section 1621 preempts this Court's authority to grant the motion for admission.⁷ The Committee believes AB 1024 squarely addresses Questions 1 and 2 in this Court's May 16, 2012 Order to Show Cause.⁸

This Court, however, asked three additional questions in its Order to Show Cause relating to the granting of a law license to an undocumented immigrant:

- Does the issuance of a license to practice law impliedly represent that the licensee may be legally employed as an attorney?
- If licensed, what are the legal and public policy limitations, if any, on an undocumented immigrant's ability to practice law?
- What, if any, other concerns arise with a grant of this application?

(May 16, 2012 Order to Show to Cause, Questions 3, 4, and 5.)

⁷ When an issue in a case is moot or academic as a result of changed circumstances, it simply is no longer subject to review and will not be considered by the court. A court will not undertake to determine an abstract question of law when no substantial rights can be affected by the decision. (Witkin, 9 Cal. Proc. (5th ed. 2008) Appeal, § 326, p. 375.) Also, the question is not "capable of repetition" and evading review. (Cf. *Conservatorship of Wendland* (2001) 26 Cal.4th 519, 524 fn. 1 [110 Cal.Rptr.2d 412, 28 P.3d 151].)

⁸ Question 1 in this Court's Order was: "Does 8 U.S.C. section 1621, subdivision (c) apply and preclude this court's admission of an undocumented immigrant to the State Bar of California? Does any other statute, regulation, or authority preclude the admission?" Question 2 was: "Is there any state legislation that provides — as specifically authorized by 8 U.S.C. section 1621, subdivision (d) — that undocumented immigrants are eligible for professional licenses in fields such as law, medicine, or other professions, and, if not, what significance, if any, should be given to the absence of such legislation?" (May 16, 2012 Order to Show to Cause, Questions 1 and 2.)

With respect to the work issue raised by this Court (Question 3), as explained in the Committee's Opening Brief, the issue of licensure is separate and distinct from employment. While federal law creates certain limitations on employment, Mr. Garcia would be bound to abide by federal law in this area and adhere to the same legal and ethical obligations of every attorney to assure protection of his clients and the public.⁹

With respect to the policy issues raised by this Court (Questions 4 and 5), the federal statutory scheme under Section 1621, itself, respects states' rights and permits states to grant professional licenses to undocumented immigrants so long as they satisfy Section 1621(d), and the State of California has now exercised its option to extend law licenses to undocumented immigrants. Both the federal and state governments have expressed their policies favoring inclusion in this regard, rather than exclusion, and this Court need not delve into the soundness of those policies. (See e.g., *Martinez v. Regents of the University of California, supra*, 50 Cal. 4th at p. 1284 [In analyzing the Legislature's enactment of a law under Section 1621(d) to provide in-state tuition benefits to undocumented immigrants, this Court stated: "Whether the ... Legislature's exemption is good policy is not for us to say."].)

⁹ See Committee's Opening Brief, at pp. 19-37; see also Amicus Brief of the United States, at pp. 14-15 [stating that "...work authorization is distinct from licensure, and the only question relevant to this Court's inquiry is whether granting a law license would constitute authorization to work in the United States, which all parties agree it would not" and that "... if Mr. Garcia obtained a license he would continue to have an obligation to abide by all federal laws governing the performance of work by aliens."].

III. CONCLUSION

AB 1024 satisfies the requirements of Section 1621(d) and may be applied in this proceeding after January 1, 2014, its effective date. The Committee respectfully requests that at that time, this Court grant its motion and admit Mr. Garcia to the State Bar.

Dated: 15 Nov. 2013

Respectfully submitted,
OFFICE OF GENERAL COUNSEL
STATE BAR OF CALIFORNIA

By: Starr Babcock

Starr Babcock
ATTORNEYS FOR THE COMMITTEE
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Dated: November 15, 2013

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CERTIFICATION OF WORD COUNT

Pursuant to Rule 8.204(c)(1), California Rules of Court, the undersigned hereby certifies that this SUPPLEMENTAL BRIEF OF THE COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA RE: MOTION FOR ADMISSION OF SERGIO C. GARCIA TO THE STATE BAR OF CALIFORNIA contains 1,997 words, according to the word count generated by the computer program used to produce this document.

Dated: November 15, 2013

A handwritten signature in black ink, appearing to read "Starr Babcock", written over a horizontal line.

Starr Babcock, Esq.

PROOF OF SERVICE BY MAIL

I, Amanda Rosenfeld, hereby declare: I am over the age of eighteen years and not a party to the within above-entitled action, that I am employed by the City and County of San Francisco; that my business address is 180 Howard Street, San Francisco, California 94105.

On November 15, 2013, following ordinary business practice, I placed for collection and mailing at the offices of the State Bar of California, 180 Howard Street, San Francisco, California 94105, a copy of:

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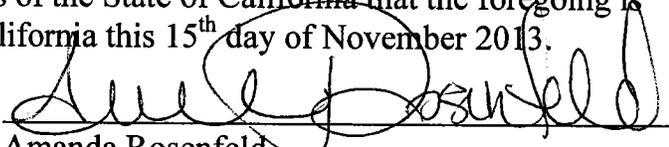
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California this 15th day of November 2013.


Amanda Rosenfeld