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FILE NO. S-747

REGISTRATION AND EDUCATION:
Constitutionality of citizenship
requirements contained in the
various licensing acts

Dr. Dean Barringer
Director
Department of Registration
and Education
Springfield, Illinois

Dear Dr. Barringer:

This is to acknowledge receipt of your recent letter. In that letter, you state that the Department of Registration and Education has the responsibility of enforcing 26 statutes that require applicants to meet certain citizenship requirements prior to receiving a license to practice certain occupations and professions. You then ask my opinion as to the constitutionality of these requirements in light of recent United States Supreme Court decisions

concerning citizenship requirements.

In order to discuss your question, it is necessary to briefly summarize the common elements of the various licensing statutes under the jurisdiction of your Department. In order to obtain a license to practice any of the regulated occupations or professions, the applicant must prove to the Department that he has the education, training, experience and moral character required by the statute regulating the field he wishes to enter. In addition, the applicant must pass an examination prescribed by the Department covering the particular field he wishes to enter. For certain occupations, there are also health and age requirements. As stated in your letter, the applicant must also establish that he meets the citizenship requirement set out in his field's regulatory statute. See, e.g., Registered Architects, Ill. Rev. Stat. 1973, ch. 10 1/2, par. 5; Registered Barbers, Ill. Rev. Stat. 1973, ch. 16 3/4, par. 14.47.

It is well established that the State may exercise its police power to regulate professions and occupations where the services rendered by those engaged are so closely related to

public health, welfare and the general good of the people, that regulation is deemed necessary to protect such interest. (Dent v. West Virginia, 129 U.S. 114 (1888); Lasdon v. Hallihan, 377 Ill. 227.) But where the State's police power is invoked to regulate a legitimate occupation or profession, the restraint imposed must be reasonably related to the end sought to be attained. Kline v. Department of Registration and Education, 412 Ill. 75, cert. den., 344 U.S. 855 (1951).

Any person residing within the State of Illinois is guaranteed equal protection of the law under both the fourteenth amendment of the United States Constitution and section 2 of article I of the 1970 Illinois Constitution. It has been long settled that the term "person" encompasses lawfully admitted resident aliens as well as United States citizens. Takahashi v. Fish and Game Commission, 334 U.S. 410, 419 (1948); Yick Wo v. Hopkins, 118 U.S. 356 (1885).

Under the traditional view of equal protection, states are not denied the power to treat different classes of persons in different ways. However, any classification must be reasonable and must have a substantial relationship to the object of the legislation. (Reed v. Reed, 404 U.S. 71 (1971).) This is also

true in the areas of social and economic welfare. (Dandridge v. Williams, 397 U.S. 471, 487 (1970).) But, it has been established that classifications based on alienage like those based on race or nationality are inherently suspect and are subject to close judicial scrutiny. Aliens as a class are a prime example of a discreet and insular minority for whom heightened judicial solicitude is appropriate. (Graham v. Richardson, 403 U.S. 365, 372-373 (1971).) The power of a state to apply restrictive laws exclusively to its alien residents is confined within limits. Takahashi v. Fish and Game Commission, 334 U.S. 410, 420 (1948).

When a state adopts a suspect classification, it bears a heavy burden of justification to uphold the constitutionality of such a classification. (McLaughlin v. Florida, 379 U.S. 184, 196 (1964).) In order to justify the use of a suspect classification, a state must show that its interest is both constitutionally permissible and substantial and that the use of the classification is necessary to the accomplishment of its purpose. In re Griffiths, 93 S. Ct. 2851, 2855 (1973); Loving v. Virginia, 388 U.S. 1, 11 (1967); see, also, Purdy & Fitzpatrick v. State, 71 Cal. 2d 566, 456 P. 2d 645 (1969).

The United States Supreme Court has had two occasions recently to examine alienage as a bar to holding a state or local civil service position or to the admission of the practice of a profession. In Sugarman v. Dougall, 93 S. Ct. 2842 (1973), the Court ruled unconstitutional, as a denial of equal protection of the law, a flat ban of employment of aliens in the competitive class of the civil service of the state and local governments of New York. While the court recognized that in an appropriately defined class of positions, such as elective and high non-elective posts, citizenship might bear a rational relationship to a position held, it ruled that a flat ban on employment of aliens had little, if any, relationship to any legitimate state interest.

In a case more directly related to your question, the United States Supreme Court examined a citizenship requirement as a prerequisite for admission to the practice of law in Connecticut. The court observed that a lawyer's high responsibilities hardly involved matters of state policy or acts of such unique responsibility as to entrust them only to citizens. Since the committee acting on behalf of the State of Connecticut did not justify the use of a suspect classification by showing that a citizenship requirement was necessary to

advance the state's legitimate interest in the qualifications of those admitted to the practice of law, the court invalidated the requirement as a violation of the equal protection clause of the fourteenth amendment. In re Griffiths, 93 S. Ct. 2851 (1973); see, also, Raffaelle v. Committee of Bar Examiners, 7 Cal. 3d 288, 496 P. 2d 1264 (1972).

An examination of statutes to which you refer indicates that while the State of Illinois has a substantial interest in insuring that applicants for licenses to practice regulated occupations and professions have the required qualifications and moral character necessary to protect the public interest, it does not appear that there is any substantial state interest advanced by requiring these applicants to fulfill any type of citizenship requirement. Such citizenship requirements are not rationally related to the applicant's qualifications to practice a given occupation or profession. Without disparaging the various occupations and professions regulated by your Department, it is apparent that if citizenship requirements cannot be justified for employment in a state civil service or for admission to the practice of law, such requirements cannot be justified as a prerequisite for licensing for

other occupations and professions. Both state employment and the practice of law are more intimately related to the functions of state government than employment in a private occupation or practice of another profession.

It should be noted that this opinion is addressed only to the question of citizenship requirements as a prerequisite for licensing. Citizenship as a prerequisite to membership on licensing boards presents a different question, since the various licensing boards carry out state-wide duties in establishing occupational and professional standards and in aiding in enforcement of the provisions of the various licensing statutes. Since there presently is no question presented as to citizenship requirements for licensing board membership, I will reserve judgment on that matter until a concrete factual situation arises concerning such requirements.

There is an additional reason why the citizenship requirements under the various licensing statutes would not withstand constitutional scrutiny. Acting under article I, section 8, clause 4 of the United States Constitution, the national government has broad power in determining what aliens

shall be admitted to the United States, the period they may remain, regulation of their conduct before naturalization and terms and conditions of their naturalization. (Graham v. Richardson, 403 U.S. 365, 378 (1971).) States can neither add nor take away conditions lawfully imposed by Congress on resident aliens. Takahashi v. Fish and Game Commission, 334 U.S. 410, 419 (1948).

The Immigration and Naturalization Act of 1952 (8 U.S.C.A., sec. 1101 et seq. (1970)) provides a comprehensive scheme for dealing with the admission of aliens who seek to enter the American labor market. Prior to the admission of an alien who is neither the immediate relative of a United States citizen or of a resident alien, the Secretary of Labor of the United States must certify that there is a need for the type of labor that the alien will perform at his destination, and that the employment of such an alien will not adversely affect the wages and working conditions of workers in the United States who are similarly employed. (8 U.S.C.A., sec. 1182(a), (1970).) Indeed there are even preferences in admissions granted to aliens who can perform specifically needed skilled and unskilled labor or for aliens with professional or scientific

training. (8 U.S.C.A., sec. 1153(a), (6), (3) (1970).) Even if the Secretary of Labor certifies that there is a need for an alien's labor in a field covered by an Illinois regulatory statute, the lawfully admitted alien would still be forbidden to practice his occupation or profession since he would not be able to satisfy Illinois citizenship requirements in order to obtain the necessary license to practice his occupation or profession. There is a great potential conflict between the citizenship requirements of the Illinois regulatory statutes and the preempted Federal field of regulating immigration and naturalization. The assertion of authority to deny aliens the opportunity to earn a living would be tantamount to the assertion of the right to deny them entrance into a state, since in most cases an alien could not live where he could not work. State laws which substantially encroach upon the exercise of Federal authority to regulate immigration and naturalization cannot stand. Traux v. Raich, 239 U.S. 33, 42 (1915); see, also, Purdy & Fitzpatrick v. State, 71 Cal. 2d 566, 456 P. 2d 645 (1969).

In summary, it is my opinion that the citizenship requirements of the various Illinois licensing statutes violate the lawfully admitted resident alien's right to equal protection

of the law guaranteed under both the fourteenth amendment of the United States Constitution and section 2 of article I of the 1970 Illinois Constitution. It would also appear that such requirements would be invalid due to their potential conflict with the authority of Congress to regulate the immigration and naturalization of aliens. In view of the conflict between the citizenship requirements contained in the Illinois licensing statutes and the constitutional rights of resident aliens, I would recommend that the Department of Registration and Education cease to enforce these provisions until the General Assembly has an opportunity to examine the problem and take appropriate action to amend the various licensing acts. Although the General Assembly could not constitutionally reimpose a flat citizenship requirement as a prerequisite to obtaining a license to practice any of the various regulated professions and occupations, this opinion should not be interpreted as holding that no requirement could be imposed based upon proof of lawful admission to the United States or upon the type of visa held by the alien applicant.

Very truly yours,

ATTORNEY GENERAL