

Access to Occupational Licenses, Teacher Certifications and Bar Membership for NON-CITIZENS in New York

PROFESSOR JANET CALVO,
CUNY SCHOOL OF LAW



A NEW YORK AND NATIONAL ISSUE

Barrier for Dreamers

Exclusion from occupational and professional licenses and certifications

“I finished my degree... The only obstacle ...was actually getting a License....

Even though I have the education and I excelled”

LICENSING AND CERTIFICATION A **STATE** FUNCTION

- CRITERIA DIFFERS STATE TO STATE

NON-CITIZENS AND CITIZENS **MUST MEET QUALIFICATION REQUIREMENTS**

LEGISLATURE and AGENCIES SET REQUIREMENTS FOR NEW YORK LICENSES AND CERTIFICATIONS

- **EDUCATION**
- **EXPERIENCE**
- **RELEVANT EXAMINATIONS**
- MAY DIFFER FROM OTHER STATES

BOTTOM LINE ON IMMIGRANT STATUS REQUIREMENTS

*If no state legislative restrictions –

- **None** should be applied

* Legislative or Regulatory **restrictions can violate** STATE and federal **constitutions**.

- **13 restrictive NY statutes declared **unconstitutional by SECOND CIRCUIT**

*Members of the **executive** and **legislative** and judicial branches of state government have the **obligation** to assure compliance with the State and federal constitutions.

NEW YORK STATE

OVER **130 OCCUPATIONS** LICENSED OR CERTIFIED BY NEW YORK STATE

- REGULATED BY **STATE ADMINISTRATIVE DEPARTMENTS**
 - **E.G.** MOST OCCUPATIONS REGULATED BY THE **NY DEPARTMENT OF STATE** DO NOT HAVE LEGISLATION THAT RESTRICTS BASED ON IMMIGRANT STATUS
AND
 - THE NEW YORK DEPARTMENT OF STATE **DOES NOT IMPOSE RESTRICTIONS** ON THOSE OCCUPATIONS
 - ADDITIONALLY **LOCALITIES** REGULATE SOME

BAR MEMBERSHIP - Attorney

VARGAS CASE Second Dept.

“(W)e find **no rational basis** to conclude that Mr. Vargas’ **status** as an

undocumented immigrant **reflects adversely** on his

competence to practice law

in the State of New York.”

PROFESSIONS – BOARD OF REGENTS And NY DEPARTMENT OF EDUCATION

NO STATUTORY LIMITATIONS -- IMMIGRATION CATEGORY -- 29 PROFESSIONS

- | | | |
|--|--|---|
| 1. Acupuncturist | 12. Mental Health Practitioner | 22. Polysomnographic Technologist (authorization) |
| 2. Athletic Trainer | 13. Family Therapist | 23. Respiratory Therapist |
| 3. Audiologist | 14. Creative Arts Therapist | 24. Respiratory Technician |
| 4. Clinical Laboratory Technologist | 15. Psychoanalyst | 25. Social Worker Master |
| 5. Cytotechnologist | 16. Registered Nurse | 26. Clinical Social Worker |
| 6. Clinical Laboratory/Histological Technician | 17. Licensed Practical Nurse | 27. Speech Pathologist/Audiologist |
| 7. Dental Assistant | 18. Certification for Nurse Practitioners and Clinical Nurse Specialists | 28. Licensed Behavior Analyst |
| 8. Dietitian/Nutritionist | 19. Perfusionist permit | 29. Certified Behavior Analyst Assistant |
| 9. Medical Physicist | 20. Physical Therapist | |
| 10. Physician Assistant | 21. Physical Therapist Assistant | |
| 11. Specialist Assistant | | |

PROFESSIONS

BOARD OF REGENTS And NY DEPARTMENT OF EDUCATION

NO STATUTORY LIMITATIONS NO CITIZENSHIP REQUIRED

1. Interior Design
2. Architect
3. Occupational Therapist
4. Occupational Therapist Assistant
5. Ophthalmic Dispensing
6. Optometrist
7. Podiatrist
8. Psychologist
9. Certified Public Accountant

UNCONSTITUTIONAL LIMITATIONS

1. Chiropractor
2. Certified Shorthand Reporter
3. Dentist
4. Dental Hygienist
5. Engineer
6. Land Surveyor
7. Landscape Architect
8. Massage Therapist
9. Physician
10. Midwife
11. Pharmacist
12. Veterinarian
13. Veterinary Technician

AMENDMENT TO THE REGULATIONS OF THE
NYS COMMISSIONER OF EDUCATION FOR
PROFESSIONAL LICENSING
AND **TEACHER CERTIFICATION** *JUNE 2016*

“No **otherwise qualified alien** shall be precluded from obtaining a professional license...

if an individual is **not unlawfully present** in the United States,

including but not limited to individuals granted **Deferred Action for Childhood Arrivals....**

(INCLUDES PRUCOLS)

PRUCOL – PERMANENTLY RESIDING UNDER COLOR OF LAW

Noncitizen residing in US with knowledge and permission or acquiescence of USCIS/ICE

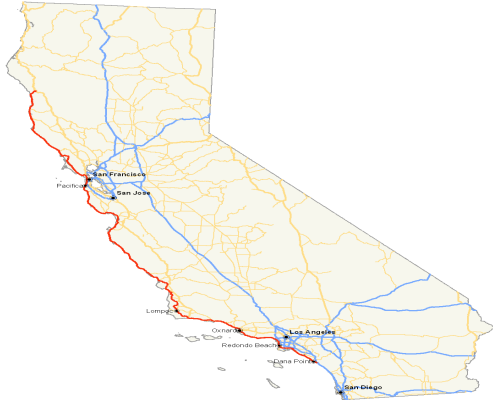
- **Deferred Action under DACA**
- **Deferred Action**
- ***Request for Deferred Action pending 6+ months, not denied**
- ***Applicants for any immigration benefit**
 - E.g. Applicants for Special Immigrant Juvenile Status
 - Asylum/Withholding under INA or CAT
 - Cancellation of Removal
 - Temporary Protected Status (TPS)
- **Temporary Protected Status (TPS)**
- **In valid *Nonimmigrant* Status**
 - E.g. T U visas (*F B H for licensing NOT UNLAWFULLY PRESENT)
- **Immediate Relatives with approved I-130**

PRUCOL – Others

- Approved Petition on and Pending Application for Green Card
- Granted withholding of removal under CAT (Convention Against Torture)
- Paroled for less than 1 year

- Order of supervision
- Deferred Enforced Departure
- Granted stays of deportation or removal
- Noncitizens Lawfully Present in American Samoa
- Citizens of Micronesia, Palau and Marshall Islands
- Temporary resident INA 210/245A
- Family Unity Beneficiary
- Noncitizens with continuous residence since on or before 1/1/1972
 - (registry aliens)
- Applicants for:
 - Record of Admission Under INA sec. 249 (registry alien)
 - Adjustment Under LIFE Act
 - Legalization Apps Under SAW and IRCA

CALIFORNIA



No entity.... shall deny licensure to an applicant based on his or her citizenship status or immigration status.

Court authorized to **admit as an attorney at law**

“an applicant who is not lawfully present in the United States [who] has fulfilled the requirements for admission to practice law...”

“The Legislature finds and declares that it is in the

best interests of the State of California

to provide persons who are not lawfully present in the United States with the state benefits provided by all licensing acts of entities within the department...”

FINANCING EDUCATION NY TAP

An applicant (a) must be a **citizen** of the United States, or (b) must be an alien lawfully admitted for **permanent residence** in the United States, or (c) must be an individual of a **class of refugees paroled** by the attorney general of the United States under his parole authority

- Education law 661 (3)

ANTIQUATED –DOES NOT REFLECT CURRENT
IMMIGRATION LAW

VIOLATES STATE CONSTITUTION

BENEFITS TO NEW YORK STATE

Multiple Empirical data on New York demonstrates that

Educating non-citizens and allowing them to **pursue the occupations**

for which they are **educated** **benefits** New York State economically

and through **contributing** to the state's

effective service to its residents

and its **social and cultural vitality**.

BEST INTERESTS OF NEW YORK STATE TO
WELCOME **DREAMERS** **ACHIEVERS** **CONTRIBUTORS**



CUNYDREAMers