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Transnational Legal Practice

MARK E. WOJCIK*

This article is on a selected development in transnational legal practice during 2013.¹

I. Allowing Undocumented Aliens to Practice Law in the United States

During 2013, courts in California, Florida, and New York faced the question of whether an undocumented alien living in the United States could be licensed to practice law in a U.S. jurisdiction.² The most prominent of these cases was that of Sergio C. Garcia, a thirty-six year-old graduate of a law school in California who had passed the California bar exam.³ Just after the end of 2013, the California Supreme Court granted a motion to allow him to practice law in California,⁴ even though no law firm could lawfully employ him.⁵

As part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996,⁶ Congress enacted a federal law providing that undocumented aliens not falling within certain exceptions are ineligible to receive “any State or local public benefit.”⁷ A “benefit,” as used in the statute, was defined to include “any . . . professional license . . . provided by an agency of a State or local government.”⁸ But the statute contained an exception that allowed states to enact statutes and affirmatively allow undocumented aliens to obtain benefits that would otherwise be denied.⁹

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1. For developments outside the United States relating to transnational legal practice during 2012, *see* Laurel S. Terry, *Transnational Legal Practice (International)*, 47 INT’L LAW. 485 (2013). For developments in United States relating to transnational legal practice during 2012, *see* Laurel S. Terry, *Transnational Legal Practice (United States)*, 47 INT’L LAW. 499 (2013). For earlier developments, *see* Laurel S. Terry, Carole Silver & Ellyn S. Rosen, *Transnational Legal Practice 2009*, 44 INT’L LAW. 563 (2010).

2. *See* Alejandro Lazo, *Illegal Immigrant Allowed to Practice Law, California Court Rules*, WALL ST. J., Jan. 3, 2014, at A3, *available at* <http://online.wsj.com/news/articles/SB10001424052702303640604579296861779330646>.

3. *Id.*

4. *See In re Garcia*, 315 P.3d 117, 121 (Cal. 2014).

5. Lazo, *supra* note 2, at A3.

6. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 411, 110 Stat. 2105, 2268 (1996).

7. 8 U.S.C. § 1621(a) (1998).

8. *Id.* § 1621(c).

9. *Id.* § 1621(d).

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In the case before the California Supreme Court, Sergio Garcia, a man born in Mexico, was brought to California when he was seventeen months old.¹⁰ He lived there until he was nine years old, when he and his parents returned to Mexico.¹¹ He and his parents returned to California when he was seventeen, and his father obtained lawful permanent resident status.¹² Garcia graduated high school, college, and law school in California, and he took and passed the July 2009 California Bar Exam.¹³ On his application to determine moral character, Garcia said that he was not a U.S. citizen and that his immigration status was “pending.”¹⁴ The Committee of Bar Examiners conducted an investigation of his character and determined that he had “the requisite good moral character to qualify for admission to the State Bar.”¹⁵ Upon submitting his name for admission to the California bar, the Committee alerted the California Supreme Court to the fact that Garcia did “not have legal immigration status in the United States.”¹⁶ The Committee stated that it was a case of first impression on whether the Court could “knowingly admit[] an undocumented alien to the practice of law.”¹⁷

Oral argument on the issue was held on September 4, 2013.¹⁸ And just two days after that argument, the California state legislature amended a pending bill to specifically authorize the California Supreme Court 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.’”¹⁹ The bill quickly passed both chambers of the California legislature and the Governor of California signed the measure into law on October 5, 2013.²⁰

The statute allowing aliens to be admitted to the practice of law in California entered into effect on January 1, 2014.²¹ And, given the change in California law specifically allowing the admission to practice, the California Supreme Court, on January 2, 2014, granted the motion to allow Sergio Garcia to be admitted to the practice of law in California.²² Mr. Garcia will be able to be retained as an attorney in California, but because of U.S. immigration laws, he cannot be employed by a law firm.²³ Because he can open his own law office, the California Supreme Court found that any employment restrictions imposed by federal immigration law would not “justify precluding undocumented immi-

10. *In re Garcia*, 315 P.3d 117, 121 (Cal. 2014).

11. *Id.*

12. *Id.* Because of the large backlog in the number of petitions filed from Mexico for adjustment of status for an alien relative, a visa number was still not available even nineteen years after Garcia’s visa petition was filed. *Id.* at 121–22.

13. *Id.* at 122; see also Lazo, *supra* note 2, at A3.

14. *In re Garcia*, 315 P.3d at 122; see also Lazo, *supra* note 2, at A3.

15. *In re Garcia*, 315 P.3d at 122.

16. *Id.* at 123.

17. *Id.*

18. *Id.*

19. *Id.* at 123–24 (quoting Assemb. B. 1024, Reg. Sess. (Cal. 2013)). The relevant legislation, as enacted, provides in full, “[u]pon 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.” CAL. BUS. & PROF. CODE § 6064(b) (2013).

20. *In re Garcia*, 315 P.3d 117, 124 (Cal. 2014).

21. *Id.*

22. *Id.*; Lazo, *supra* note 2, at A3.

23. *In re Garcia*, 315 P.3d at 131; Lazo, *supra* note 2, at A3.

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grants, as a class, from obtaining a law license in California.²⁴ At least one other applicant in California will already benefit from the court's ruling.²⁵

24. *In re Garcia*, 315 P.3d at 133; Lazo, *supra* note 2, at A3.

25. Lazo, *supra* note 2, at A3.

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