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July 30, 2008

Ronald D. Leonhardt, Clerk
City Clerk
City Hall, Room 205

Rebecca Grill, Manager
License Division
City Hall, Room 105

Re: Your request of July 3, 2008 as to the applicability of
8 U.S.C. § 1621(a) and (c)(1) and licenses
issued by the City of Milwaukee

Dear Mr. Leonhardt and Ms. Grill:

In the above-referenced letter you propound nine questions, which are:

1. Does this apply to all licenses and permits administered and issued by the License Division, including bike licenses, temporary bartender licenses and those who are exempted from the direct seller ordinance per MCO 95-1-2-b?
2. Does this apply to all natural persons listed on license applications, including individuals, partners, members, corporate officers, stockholders and directors?
3. In addition to all new applicants, does this apply to all currently licensed/permitted individuals?
4. What type of documentation is sufficient to prove that a person is a citizen, qualified resident or immigrant? Is presentation of a

Wisconsin Driver's License sufficient for proof of citizenship or legal residency in the United States?

5. If a person is a qualified resident for a limited period of time, is the license period for which a license is issued dependent upon that limited time period; or may an application be rejected if that limited period of time is less than the normal license term?
6. How should the Milwaukee Code of Ordinances that relates to the administration and issuance of licenses by the City Clerk and the Common Council be amended to reflect the requirements under the federal law and qualifications for licenses?
7. For those applicants of which proof of legal residency may be required, does this proof need to be submitted one time or is recertification required upon renewal of the application?
8. If an applicant no longer meets the legal residency requirements, what, if any property rights are afforded to them?
9. What steps should the City Clerk's License Division take to insure legal compliance with the law?

8 U.S.C. § 1621(a) and (c)(1)(A) and (B) provides:

§ 1621. Aliens who are not qualified aliens or nonimmigrants ineligible for State and local public benefits

(a) **In general.** Notwithstanding any other provision of law and except as provided in subsections (b) and (d), an alien who is not—
(1) a qualified alien (as defined in section 431 [8 USCS § 1641]),
(2) a nonimmigrant under the Immigration and Nationality Act, or
(3) an alien who is paroled into the United States under section 212(d)(5) of such Act [8 USCS § 1 182(d)(5)] for less than one year, is not eligible for any State or local public benefit (as defined in subsection (c)).

(b) **Exceptions.** Subsection (a) shall not apply with respect to the following State or local public benefits:

- (1) Assistance for health care items and services that are necessary for the treatment of an emergency medical condition (as defined in section 1903(v)(3) of the Social Security Act [42 USCS § 1396b(v)(3)] of the alien involved and are not related to an organ transplant procedure.
- (2) Short-term, non-cash, in-kind emergency disaster relief.
- (3) Public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a

communicable disease.

(4) Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which (A) deliver in-kind services at the community level, including through public or private nonprofit agencies; (B) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (C) are necessary for the protection of life or safety.

(c) **State or local public benefit defined.** (1) Except as provided in paragraphs (2) and (3), for purposes of this subtitle [8 USCS §§ 1621 et seq.] the term "State or local public benefit" means—

(A) 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; and

(B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.

You point out to us that on October 25, 2007 the Hon. J.B. Van Hollen, Attorney General of the State of Wisconsin issued an opinion letter to Ms. Celia Jackson, Secretary of the Department of Regulation & Licensing concluding that 8 U.S.C. § 1621 (c) required, and no state law exempted, aliens lawfully in the United States to present evidence that they are eligible to obtain the license or credential being sought from the Department of Regulation & Licensing. In relevant portion the Attorney General of Wisconsin stated:

"So requiring an applicant to provide evidence of legal immigration status simply adds one more qualification to the list of those the applicant must establish to obtain the license or credential...However, I recommend that DLR verify the immigration status of all applicants for state professional licenses and credentials to be certain that it is not issuing them in violation of federal law."

We note that in his opinion, the Attorney General specifically noted that it was the obligation of the applicant to supply evidence of legal presence in the United States. We have seen some press coverage relating to the fact that there is a belief that having applicant sign sworn statements that they are legally present within the United States will suffice for compliance with the Attorney General's opinion. We, however, are of the view that when the Attorney General advised the Department of Regulation and licensing to obtain evidence of that the applicant in

is the United States legally, he was referring to bona fide copies of immigration documents indicating the individual's status.

With that background we are pleased to be able to respond.

- 1. Does this apply to all licenses and permits administered and issued by the License Division, including bike licenses, temporary bartender licenses and those who are exempted from the direct seller ordinance per MCO 95-1-2-b?**

It is clear from a reading of 8 U.S.C. § 1621(c)(1)(A) and (B) that the license in question must be either a "professional license" or a "commercial license." Thus, any license which is used by an individual to engage in a profession or a commercial activity is the type of license at issue. Since most of the licenses issued by the City of Milwaukee and the License Division involve the use for a commercial or a professional endeavor, we believe that 8 U.S.C. § 1621(c)(1) (A) and (B) would apply to most of the licenses issued by the License Division. In the event a bicycle license is used on a commercial endeavor (for example, a bicycle license issued to courier services), we believe that would apply as well. If the license in question is simply issued to an individual for the purposes of pleasure riding on a bicycle, we do not believe 8 U.S.C. § 1621 (c)(1)(A) and (B) would apply, since it is not a license that is being used for "professional" or "commercial" purposes. Finally, this would apply to all licenses issued by the City of Milwaukee for "professional" or "commercial" purposes. For example, it would apply to licenses issued to food dealers and retailers by the Commissioner of Health and to licenses for hotel, motels, and rooming houses issued by the Commissioner of Neighborhood Services.

- 2. Does this apply to all natural persons listed on license applications, including individuals, partners, members, corporate officers, stockholders and directors?**

It is our understanding that in the case of corporations, limited liability companies and limited liability partnerships, the license is granted and issued in the name of the entity with an agent of the entity making the application. We do not believe 8 U.S.C. § 1621 (c)(1)(A) and (B) would apply to all persons listed on license applications such as stockholders and directors and even officers of such entities, because the entity is obviously a creature of state law and has residence in the state of incorporation. We do believe, however the prohibitions of 8 U.S.C. § 1621 (c)(1) (A) and (B) would apply to the agent of such an entity, since the agent is the individual who actually applies for and receives the license on behalf of the entity once it is granted and issued, and, of course, is a natural person. We do, however, believe 8 U.S.C. §1621 (c)(1)(A) and (B) would apply to individuals such as individual partners (as distinct from a limited liability company or a limited

liability partnership), since the partnership would have no separate existence apart from the partners.

3. In addition to all new applicants, does this apply to all currently licensed/permitted individuals?

Title 8 U.S.C. § 1621 (c) (1) (A) and (B) took effect on August 22, 1996 and was amended in 1997. Since most of the licenses administered by the Office of the City Clerk are one and two years licenses, we believe that 8 U.S.C. § 1621 (c)(1)(A) and (B) applies to all currently licensed/permitted individuals.

4. What type of documentation is sufficient to prove that a person is a citizen, qualified resident or immigrant? Is presentation of a Wisconsin Driver's License sufficient for proof of citizenship or legal residency in the United States?

Obviously if someone is a natural born citizen of the United States the easiest way to prove their citizenship is to present a certified copy of the birth certificate. Because of the availability of high quality photocopies, the relative ease with which copies can be altered from the originals, we do not believe ordinary photocopies will be sufficient for you to meet the obligations imposed by Federal Law and the opinion of the Attorney General. Further for documentation purposes we believe that you should keep the original certified copies in your files. We are reliably informed that passports are not sufficient in that they can be issued in the name of an "also known as."

A review of 8 U.S.C. reveals that there are certificates of citizenship that may be issued by the Attorney General of the United States. (8 U.S.C. § 1433 [usually applicable to children of at least one parent who is a United States citizen, but born outside of the United States]); a certificate of naturalized citizenship (8 U.S.C. § 1443(e) and 8 U.S.C. § 1449).

We note that 2007 Wisconsin Act 20 became effective on October 27, 2007 and requires proof of legal alien status for the issuance of a Wisconsin Operator's (Driver's License) Permit. However, TRANS § 102.15 (3m) of the Wisconsin Administrative Code is the implementation for ensuring that applicants for Wisconsin Operators' Permits are in fact in the United States legally. The current version does contain a list of measures by which the Wisconsin Department of Transportation ensures that applicants for Wisconsin Operators' Permits are in fact eligible for licensure, to include providing proof of legal alien status. We note, however, that the current version of TRANS § 102.15 (3m) was enacted before the current version of Wis. Stat. § 343.14 (2) (es), and has not been updated since the effective date of Wis. Stat. § 343.14 (2) (es). As a consequence, until TRANS 102.15 (3m) is so changed, using Wisconsin Operators' Permits for proof of legal alien residency will be problematic.

Were that not the case, we are of the opinion that any documents authorized by Wis. Stat. § 343.14 (2) (es) to be used for the issuance of an Operator's Permit could be relied upon your office to assist in making the determination of whether or not the applicant was in the United States legally. These include: a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into the United States, an approved application for asylum in the United States, entry into the United States on refugee status, a pending application for asylum in the United States, a pending or approved application for temporary protected status in the United States, an approved deferred action status, and a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or a conditional permanent resident status in the United States. (Wis. Stat. § 343.14 (2) (es) 1. 7.)

Until TRANS § 102.15 (3m) is changed to reflect the changes to Chapter 343 by Wis. Stat. § 343.14 (2) (es) we are not so certain that mere reliance on a Wisconsin Operators' Permit solves your problem; and even then only for those Operators Permits issued after the effective date of any amendments to TRANS § 102.15 (3m), an event that has yet to occur.

The documentation for the majority of aliens lawfully residing in the United States appears to be Alien Registration Receipt Card ("Green Card") which is also known as and Immigration and Naturalization Service (INS) Form I-551. It is issued to immigrants who are permanent resident aliens with no restrictions. There are also preliminary documents or indicators that evidence the classification which include a stamp in their passport stating "processed for I-551," and INS Form I-181, memorandum of Creation of Record for Lawful Permanent Residence.

Our research has also come up with a Conditional Resident Alien Card. It is like an I-551, but bears an expiration date. Please note our discussion in answer to the fifth question you posed regarding issuance of licenses that will not expire before the expiration date of the legal permission for an alien to be in the United States.

However those not holding a "Green Card" will have a visa. For your information, the following are the classifications of visas that we have been able to discern:

- "A" Visa – Held by governmental officials of other countries
- "B" Visa – Held by visitors for business ("B-1") or pleasure ("B-2") (for such things as a vacation, health services, marriage with intended departure, and short educational courses)
- "C" Visa – Held by persons in transit through the United States to another country
- "D" Visa – Held by crewmembers of foreign flag vessels or aircraft
- "E" Visa – Held by persons who by treaty are permitted to carry on a trade in the United States

- “F” Visa – Held by foreign academic students and their spouses and children
- “F1” Visa – Held by academic students seeking optional practical training in an occupation directly related to their area of study (can include students offered off campus employment under the sponsorship of a qualifying international organization)
- “G” Visa – Held by alien representatives to international organizations such as the United Nations or the Red Cross or Red Crescent
- “H” Visa – Held by persons in particular areas of professional employment
- “H-1A” – Held by professional nurses
- “H-1B” – Held by specialty occupations such as journalists, writers, fashion designers, etc
- “H-2A” – Held by temporary agricultural workers
- “H-2B” – Held by other temporary workers skilled or unskilled
- “H-3” – Held by temporary worker seeking non-medical self-improvement training
- “H-4” – Held by family members accompanying “H” workers and professionals
- “I” Visa – Held by representatives of foreign media
- “J” Visa – Held by persons in exchange programs and their spouses and children
- “K” Visa – Held by fianc’e or fianc’ee of a U.S. citizen, but the marriage must occur within 90 days of entry into the United States
- “K3” Visa – Held by the spouse of a United States citizen awaiting the issuance of an immigrant visa
- “K4” Visa – Held by the children of a spouse of a United States Citizen awaiting the issuance of an immigrant visa
- “L” Visa – Held by employees of foreign affiliates of United States companies
- “M” Visa – Held by foreign student (vocational) and their spouses and children
- “N” Visa – Held by the parent or child of certain special immigrants
- “O” Visa – Held by persons with “extraordinary ability” in the sciences, arts, education, business or athletics
- “O-1A” – Held by “stars” in sciences, arts, education, business or athletics
- “O-B” – Held by “stars” in film or television
- “O-2” – Held by persons accompanying “stars” to a particular event
- “O-3” – Held by family members accompanying a “star”
- “P” Visa – Held by foreign athletes, artists, and entertainers
- “Q” Visa – Held by [participants in international business and cultural exchange programs
- “R” Visa – Held by ministers and other religious professionals
- “S” Visa – Held by persons with critical information concerning a criminal organization

- “TN” Visa – held by Canadian or Mexican professionals entering the United States to work under the North American Free Trade Agreement
- “T” Visa – Held by victims of sex or slavery trafficking
- “U” Visa – Held by victims of physical or mental abuse resulting from certain criminal activities
- “V” Visa – Held by spouses or children of lawful permanent aliens awaiting the issuance of an immigration visa

It is obvious that some of the visas set forth above would preclude any kind of employment while in the United States. We have been able to determine that the following individuals holding the following visa classifications would be eligible to work in the United States:

- Foreign nationals who have filed an application for adjustment of status to lawful permanent resident alien (Green Card)*
- Spouses of “E” and “L” visa holders
- Spouses and children of “J” visa holders
- “F-1” students seeking optional practical training in an occupation **directly** related to their area of studies*
- “M-1” student seeking employment for practical training following completion of studies
- “F-1” students offered off campus employment under the sponsorship of a qualifying international organization*
- “F-1,” “M-1” and “J-1” student seeking off-campus employment because of severe economic hardship*
- Spouses and children of foreign government diplomats, officials and NATO personnel
- “K-1” fiance’s and fiance’ees of United States citizens, or “K-2” dependents
- Personal or domestic servants of employers who enter the United States as a nonimmigrant under a “B,” “E,” “F,” “H,” “I,” “J,” or “L” visa
- “B-1” nonimmigrant domestic servants of United States citizens
- “B-1” nonimmigrant employees of foreign airlines
- Foreign national granted status under the Family Unity Protection program*
- Foreign national who have been granted asylum in the United States*
- Foreign nationals who have filed a complete application for asylum or withholding of deportation or removal*

* It may be helpful to contact the Immigration and Naturalization Service or the sponsoring international organization for specific advice on any given situation.

- Foreign nationals in refugee status
- Foreign nationals paroled as refugees
- Foreign nationals under temporary protected status
- Citizens of Micronesia or the Marshall Islands or Palau admitted to the United States as a citizen of the Micronesia or Marshall Islands
- Foreign nationals who have applied for suspension of deportation
- Foreign nationals who were paroled into the United States for emergency reasons or reasons strictly in the public interest
- Deportable foreign national granted voluntary departure, with an evidence establishing economic necessity to work
- Foreign national on "V" nonimmigrant status
- Foreign nationals admitted as a parent ("N-8") or dependent child ("N-9") of an alien granted permanent residence
- Foreign nationals on "T-2," "T-3," or "T-4" nonimmigrant status

5. If a person is a qualified resident for a limited period of time, is the license period for which a license is issued dependent upon that limited time period; or may an application be rejected if that limited period of time is less than the normal license term?

By operation of federal law, the eligibility for the individual to hold a license is only for the period of time that the individual is allowed to be in the United States as a legal alien. If that time period expires prior to the expiration of the term of the license, we believe the legal ability of the individual to hold the license would expire during the term of the license. In that eventuality one of two things would have to occur: (1) the individual would have to show proof that an application for an extension of the legal status had been made and was likely to be granted; or (2) the City Clerk would have to initiate revocation proceedings on and after the expiration date of the legal status of the alien. We believe that it would be expensive, time consuming, and unduly burdensome for the City Clerk to monitor the date of expiration of the legal status of each of the aliens to who licenses had been granted. Therefore we believe that it is entirely appropriate to deny licensure of a license that would itself expire after the expiration of the legal status of the alien.

6. How should the Milwaukee Code of Ordinances that relates to the administration and issuance of licenses by the City Clerk and the

Common Council be amended to reflect the requirements under the federal law and qualifications for licenses?

Because of Federal Law, the supremacy of the Congress of the United States to control immigration into the United States, and the supremacy of the Congress of the United States to determine what aliens may do while in the United States, the requirements we specify above are already part of the law. However, for a variety of administrative purposes to ease the burden of the bureaucracy to administer the granting and issuance of such licenses, it would be helpful if in each case of each license specifying qualifications to hold a license, the qualifications for licensing should reference 8 U.S.C. § 1621(a) and (c)(1)(A) and (B). Further, we believe that in the qualifications there should be a specification that states if the expiration of the legal alien status will occur before the expiration of the term of the license, the Clerk may refuse to process the application because of the expense and time required and which will not result in a license being validly held through to its expiration.

- 7. For those applicants of which proof of legal residency may be required, does this proof need to be submitted one time or is recertification required upon renewal of the application?**

We believe that the proof of qualification for the licenses should be submitted at the time of initial application and/or renewal. The reason why is because any time the individual fails to meet legal alien status, even though the license may have been initially granted and issued, no renewal of the license may be had if legal alien status is lost. Because an individual is entitled to a hearing on the question of renewal, the individual should be noticed that the renewal may be denied because of failure to comply with the requirement of legal alien status.

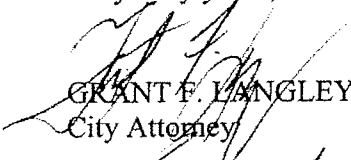
- 8. If an applicant no longer meets the legal residency requirements, what, if any property rights are afforded to them?**

If an applicant fails to continue to meet the qualifications for licensure as required by 8 U.S.C. § 1621(a) and (c)(1)(A) and (B), we believe it would be appropriate to file a complaint seeking revocation of the license, and following the procedures of the ordinances for revocation of a license. In those cases where a renewal of the license may conveniently be timed with the loss of continuing qualifications for such licenses, we believe that notification to the individual along with a copy of whatever information the City may have regarding the lack of qualifications for renewal of the license would be sufficient.

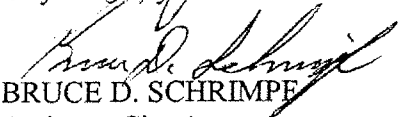
- 9. What steps should the City Clerk's License Division take to insure legal compliance with the law?**

We believe that following the above-referenced advice the Office of the City Clerk and any other license granting agency of City of Milwaukee Government will be in compliance with federal law on aliens and the ability of aliens legally in the United States to obtain licenses for professions and employment.

Very truly yours,



GRANT F. LANGLEY
City Attorney



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