



Supreme Court of California
350 McAllister Street, San Francisco, CA 94102-4797
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NEWS RELEASE

Contact: [Teresa Ruano](mailto:Teresa.Ruano@courts.ca.gov), 415-865-7740

FOR IMMEDIATE RELEASE

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California Supreme Court Admits Undocumented Immigrant to State Bar

In a decision filed today, the California Supreme Court granted a motion filed by the Committee of Bar Examiners of the State Bar of California to admit Sergio C. Garcia, an undocumented immigrant, to the State Bar, granting Garcia a license to practice law in California. The court's decision was unanimous and was authored by Chief Justice Tani Cantil-Sakauye. Justice Ming Chin also filed a short concurring opinion.

The court's decision was based in part on a new statute, passed by the California Legislature in September 2013 and signed by the Governor on October 5, 2013, that explicitly authorizes the court to admit to the State Bar an applicant who is not lawfully present in the United States and who has fulfilled the requirements to practice law. The new California statute — Business and Professions Code section 6064, subdivision (b) — became effective on January 1, 2014.

Sergio Garcia, the applicant in the case before the court, was born in Mexico in 1977, and was brought to California, without inspection or documentation by immigration officials, when he was 17 months old. He lived in California until he was nine years old, was brought back to Mexico by his parents for a number of years, and then returned with his parents to California, again without inspection or documentation, when he was 17 years old. Soon thereafter, on November 18, 1994, Garcia's father, who had obtained lawful permanent resident status, filed an immigration visa petition on Garcia's behalf; the visa petition was accepted by federal immigration officials in January 1995. Under federal immigration law, the visa petition provides Garcia with a basis for adjustment of his immigration status to that of a lawful permanent resident when an immigration visa number becomes available, but, under current federal law, the number of available immigration visas that may be issued each year is limited and is based upon an applicant's country of origin. Because the backlog of persons of Mexican origin who are seeking immigrant visas is so large, as of the date of the court's opinion — more than 19 years after Garcia's visa petition was filed — a visa number still has not become available for Garcia and may not become available for many years.

Garcia has lived in California since 1994. During this time, he graduated from high school, attended Butte College, California State University at Chico, and Cal Northern School of Law. He received his law degree from Cal Northern School of Law in May 2009, and took and passed the 2009 California bar examination. In his State Bar application, Garcia indicated that he is not a United States citizen and that his immigration status is “Pending.” The Committee of Bar Examiners conducted an extensive investigation of Garcia’s background, employment history, and past activities, received numerous reference letters supporting his application and attesting to his outstanding moral character and significant contributions to the community, and determined that Garcia possessed the requisite good moral character to qualify for admission to the State Bar. The Committee submitted Garcia’s name to the Supreme Court for admission to the State Bar, and at the same time brought to the court’s attention the fact that Garcia does not have legal immigration status in the United States. The Committee stated that its motion to admit Garcia to the State Bar presented a matter of first impression, noting that it was unaware of any jurisdiction that has ever knowingly admitted an undocumented immigrant to the practice of law.

In response to the Committee’s motion, the Supreme Court issued an order directing the Committee to show cause before the court why its motion should be granted. The order set forth a number of issues to be addressed in briefs to be filed with the court, including several questions relating to the relevance, proper interpretation, and significance of a federal statute — section 1621 of title 8 of the United States Code — that generally restricts an undocumented immigrant’s eligibility to obtain a professional license, but that also contains a subsection that expressly authorizes a state to render an undocumented immigrant eligible to obtain a professional license through the enactment of a state law meeting specified requirements.

Briefs addressing the questions posed by the court were filed by the Committee of Bar Examiners, counsel for Garcia, and by numerous amici curiae, including the California Attorney General and the United States Department of Justice. The court held oral argument in this matter on September 4, 2013, and the questioning by the court focused largely on the proper interpretation and effect of the relevant federal statute, 8 U.S.C. section 1621.

Two days later, on September 6, 2013, an unrelated bill then pending in the California Legislature was amended in its entirety and replaced by a new provision — adding Business and Professions Code section 6064, subdivision (b) — that authorized 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. The newly amended bill was quickly passed by overwhelming majorities in the state Senate and state Assembly and was signed into law by the Governor on October 5, 2013. Under the California Constitution, the new statute became effective on January 1, 2014.

After the new California legislation was signed into law, the California Supreme Court directed the parties and interested amici curiae to file supplemental briefs addressing the effect of the new statute on the present case.

In today's decision, the California Supreme Court explained that in light of the new California legislation, it did not need to determine whether an undocumented immigrant was ineligible to obtain a law license by virtue of the provisions of 8 U.S.C. section 1621, subsections (a) and (c) that preclude an undocumented immigrant from obtaining "any . . . professional license . . . provided by an agency of a State or local government or by appropriated funds of a State or local government." The court noted that a separate subsection of the federal statute in question — 8 U.S.C. section 1621, subsection (d) — explicitly authorizes a state to provide that an undocumented immigrant, who would otherwise be ineligible to obtain a professional license under that federal statute, is eligible to obtain such a license "through the enactment of a State law . . . which affirmatively provides for such eligibility." Because the newly enacted California legislation explicitly authorizes a State Bar applicant "who is not lawfully present in the United States" to obtain a law license, the court held that the new California statute satisfies the requirements of 8 U.S.C. section 1621, subsection (d), and thus removed any obstacle to Garcia's admission to the State Bar that may have been posed by other provisions of that federal statute.

After concluding that the new California statute removed any federal statutory barrier to Garcia's admission to the State Bar, the court observed that the new state legislation did not fully resolve the legal issues presented by the Committee's motion, because the court still had to determine, as a matter of state law, whether there is any reason why undocumented immigrants, in general, should not be admitted to the State Bar, or whether there is any reason, specific to Garcia himself, that he should not be admitted to the State Bar.

On the first state law issue, the court explained that although the new California statute reflects that the Legislature and the Governor have concluded that there is no state law or state public policy that justifies denying undocumented immigrants, as a class, the opportunity to obtain admission to the State Bar, under the California Constitution, it is the California Supreme Court, rather than the Legislature or Governor, that possesses the ultimate authority, and bears the ultimate responsibility, to resolve questions of general policy relating to admission to the State Bar. The court then reviewed a number of general objections to the admission of undocumented immigrants to the State Bar that had been raised in one of the amicus curiae briefs filed in the case, and explained why it concluded that those objections lack merit and that there is no state law or state public policy that would justify precluding undocumented immigrants, as a class, from obtaining a law license in California.

On the second state law issue, relating to the qualifications of Garcia himself, the court reviewed the facts contained in the record relating to Garcia's history and moral character. The court noted that the record indicated that, during his years in California since returning to this state at age 17, Garcia has gone to college, completed law school, passed the bar examination, and has been a diligent and trusted worker who has made significant contributions to his community. The opinion quoted from a number of the letters of reference that had been submitted to the Committee of Bar Examiners in support of Garcia's admission, including a passage from an attorney for whom Garcia worked as an unpaid intern during law school stating that "I know

with absolute certainty that Mr. Garcia [is] among the most honest, forthright, and moral individuals I have ever met.” The court concluded that from its review of the record it agreed with the Committee of Bar Examiners’ determination that Garcia met his burden of demonstrating that he possesses the requisite good moral character to qualify for a law license.

Accordingly, the court granted the Committee’s motion to admit Garcia to the State Bar.

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The Supreme Court of California is the state’s highest court and its decisions are binding on all other California state courts. The court’s primary role is to decide matters of statewide importance and to maintain uniformity in the law throughout California by reviewing matters from the six districts of the California Courts of Appeal and the fifty-eight county superior courts (the trial courts). Among its other duties, the court also decides all capital appeals and related matters and reviews both attorney and judicial disciplinary matters.