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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ESTHEE VAN STADEN

CIVIL ACTION NO.

09-5827

v.

JUDGE:

SECT. B MAG. 2

EUGENE ST. MARTIN, M.D., in
his Official Capacity as Chairman of
the Louisiana State Board of
Practical Nurse Examiners

MAGISTRATE

COMPLAINT AND JURY DEMAND

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337, 1343(a). Plaintiff brings this action under 42 U.S.C. § 1983 to vindicate rights, *inter alia*, arising under the Supremacy Clause and the Fifth and Fourteenth Amendments to the United States Constitution. The complaint also seeks relief authorized by 28 U.S.C. §§ 2201-02 as well as prohibitory and mandatory injunctive relief.

2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because, *inter alia*, a substantial part of the events or omissions giving rise to the claim occurred in this district and because one or more of the defendants reside in this district.

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PARTIES

3. Plaintiff, Esthee van Staden, is a South Africa citizen authorized to work in the United States and has a pending I-485, Application to Adjust to Permanent Resident Status. In December 2006, plaintiff graduated at the top of her class with a 4.0 from North Harris Montgomery Community College District, an accredited nursing school in Texas. She passed the NCLEX-PN exam in Texas and received her Texas Vocational Nursing License in January 2007. Plaintiff moved from Texas to Louisiana in February 2007. She applied to the Louisiana State Board for Practical Nurses for licensure and was denied. Her Texas license is current and in good standing.

4. According to the website of the Louisiana State Board for Practical Nurses, defendant Eugene St. Martin, M.D. is the chairman of the Louisiana State Board for Practical Nurses, and, in that capacity, he is involved in enforcing the statutory rules for licensure of practical nurses, including the unconstitutional restriction to citizens only.

STATEMENT

5. LSA-R.S. 37:970 (the "statute") governs the qualification of applicants for licensure as practical nurses. Section (2) states that every applicant for a license to practice as a practical nurse in the State of Louisiana shall "be a citizen of the United States or have taken out his first citizenship papers." The first

citizenship papers are filed by filing immigration Form N-300 *Declaration of Intent to Become a U.S. Citizen*, for which plaintiff is not yet eligible. This statute was enacted in 1954 and amended in 1968.

6. A Declaration of Intent may only be filed by a permanent resident of the United States. The process of becoming a permanent resident begins by filing a Form I-485.

7. On July 26, 2007, plaintiff filed a Form I-485, Application to Adjust to Permanent Resident Status, which application is pending.

8. Plaintiff applied for licensure to the Louisiana State Board of Practical Nurse Examiners. Her application documents were returned to her, and she was told that she could file a Form N-300 and reapply. Plaintiff contacted Claire Doody Glaviano, Executive Director of the Louisiana State Board of Practical Nurse Examiners. Ms. Glaviano petitioned the Attorney General's Office for an opinion related to the validity, *vel non*, of citizenship requirements for practical nursing licensure. The Attorney General's Office instructed Ms. Glaviano to continue to enforce the existing state law.

9. Plaintiff is a trained practical nurse with an active license in good standing from the appropriate licensing agency in Texas. She wishes to work in Louisiana in the field in which she was trained and would be doing so but for the

unconstitutional restrictions imposed by the statutory bar against granting a license to any alien.

10. Plaintiff intends to stay in the United States permanently. However, she cannot file a Form N-300 until she becomes a permanent resident.

11. Plaintiff has applied for permanent resident status. Now she has to wait for the paperwork to be processed, which could take years.

12. Plaintiff satisfies all other requirements, including good moral character and successful completion of practical nursing training in an accredited school, for eligibility to be licensed as a practical nurse in Louisiana.

13. An actual controversy exists between Plaintiff and Defendant and Louisiana State Board of Practical Nurse Examiners as to whether or not it is constitutional to bar noncitizens from being licensed as practical nurses in Louisiana.

14. LSA-R.S. 37:920 governs qualifications for licensure of registered nurses. There is no citizenship requirement for registered nurses in Louisiana.

15. The Louisiana State Board of Practical Nurse Examiners, at all relevant times, was operating under color of state law when establishing rules for licensure of practical nurses in Louisiana. In like manner, Dr. St. Martin is so acting when he enforces these requirements, including the unconstitutional provisions thereof.

COUNT I--EQUAL PROTECTION

16. The allegations of ¶¶ 1 through 15 are incorporated as though fully set forth herein.

17. LSA R.S. 37:970(2) creates an arbitrary discrimination among potential applicants for the practical nursing licensure based solely on whether a person is a United States citizen or not. As such, the statute, which is enforced by defendant, violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and is subject to strict scrutiny.

18. There is no rational basis for the discriminatory treatment provided by LSA R.S. 37:970(2). There is no compelling governmental interest to justify the discrimination. LSA R.S. 37:970(2) is not narrowly tailored to serve any legitimate governmental interest.

19. It is arbitrary and unreasonable to refuse to permit aliens legally permitted to work from licensure, while allowing citizens to be licensed. The distinction between aliens who are lawfully in United States and are authorized to work, on the one hand, and citizens, on the other, is an inherently arbitrary distinction because it in no way relates to the character, fitness, or qualifications of an applicant to perform as a licensed practical nurse.

20. The actions of the Louisiana State Board for Practical Nurses in continuing to deny licensure as practical nurses to noncitizens have injured Plaintiff by denying her the opportunity to work as a practical nurse.

21. The actions of the Louisiana State Board for Practical Nurses in barring non-citizens from licensure, while permitting citizens to be licensed violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution within the meaning of 42 U.S.C. § 1983.

COUNT II--DUE PROCESS

22. The allegations of ¶¶ 1 through 21 are incorporated as though fully set forth herein.

23. The actions of the Louisiana State Board for Practical Nurses in prohibiting non-citizens from obtaining a practical nursing license deprives Plaintiff and other similarly situated aliens the freedom to obtain employment or other business as a practical nurse.

24. While states can require potential applicants for practical nursing licensure to meet reasonable standards, such as proficiency in nursing and good moral character, the Due Process Clause of the Fourteenth Amendment to the United States Constitution requires that the standards must have a rational connection to the applicant's' fitness, capacity, or qualifications to be a practical nurse.

25. The fact that a person lawfully residing and lawfully able to work in the United States is not a citizen has no rational relationship with fitness or ability or any other qualification for performing the duties of a practical nurse.

26. The actions of the Louisiana State Board for Practical Nurses in barring noncitizens from licensure as practical nurses in Louisiana violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution, within the meaning of 42 U.S.C. § 1983.

COUNT III--SUPREMACY CLAUSE

27. The allegations of ¶¶ 1 through 26 are incorporated as though fully set forth herein.

28. Congress has established a comprehensive statutory scheme to govern the treatment of aliens and immigrants in the United States. See 8 U.S.C. § 1101 *et seq.* The actions of the Louisiana State Board of Practical Nurse Examiners are incompatible with the comprehensive statutory scheme established by Congress because such actions impose burdens on aliens that are not imposed by federal law, and are thus in violation of the Supremacy Clause of Article VI of the United States Constitution.

30. The actions of the Louisiana State Board for Practical Nurses in barring non-citizens from licensure as practical nurses in Louisiana violates the

Supremacy Clause of Article VI of the United States Constitution and are actionable under 42 U.S.C. § 1983.

COUNT IV – RIGHT TO TRAVEL

31. The allegations of ¶¶ 1 through 30 are incorporated as though fully set forth herein.

32. The right to travel is a fundamental constitutional right. Fundamental rights are protected under the due process clause and the equal protection clause. Under the due process clause, the compelling state interest test will be applied if the classification penalizes a person who exercises her right of interstate migration. Under the Equal Protection clause, the law must burden a fundamental right in order to apply the compelling state interest test.

33. Plaintiff exercised her right to travel from Texas to Louisiana. She has been penalized in Louisiana because she is unable to obtain licensure as a practical nurse, even though she is licensed in Texas. Because Plaintiff has been refused licensure, she is unable to work in the profession for which she was trained. This is a penalty. Since a penalty exists, the compelling state interest test should be applied. In order to satisfy this test, the burden is on the proponent of the statute or regulation to demonstrate that it serves a compelling state interest, that the compelling state interest is narrowly drawn, and there is no less restrictive means to achieve the compelling state interest.

34. There is no compelling state interest in preventing qualified persons from obtaining practical nursing licenses simply because they are not citizens of the United States. Plaintiff meets all requirements for licensure except for citizenship. The citizenship of a person has no rational relationship to that person's ability to perform the duties of his or her occupation.

35. The actions of the Louisiana State Board for Practical Nurses in barring non-citizens from licensure as practical nurses in Louisiana violates the fundamental right to travel which is protected under the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution within the meaning of 42 U.S.C. § 1983.

COUNT V – DORMANT COMMERCE CLAUSE

36. The allegations of ¶¶ 1 through 36 are incorporated as though fully set forth herein.

37. Art. I. § 8, cl. 3 empowers Congress “[t]o regulate Commerce ... among the several states.” This clause is referred to as the “dormant commerce clause.” The purpose of this clause is to prevent the balkanization of the United States by applying a strict scrutiny analysis to the laws of any one state that prevents the commerce of another state from equal access to the markets and commerce of the state whose laws are being challenged. Section 2 of the statute

unlawfully discriminates in favor of citizens of Louisiana, contrary to the dormant commerce clause.

41. The actions of the Louisiana State Board for Practical Nurses in barring aliens from licensure as practical nurses in Louisiana violate the Dormant Commerce Clause of Article 1 Section 8 of the United States Constitution within the meaning of 42 U.S.C. § 1983.

WHEREFORE, Plaintiff demands that this Court:

(a) Adjudge and Declare that the actions, policies, and practices of the Louisiana State Board for Practical Nurses as described herein violate the Equal Protection Clause of the Fourteenth Amendment, the Due Process Clause of the Fourteenth Amendment, the Supremacy Clause of Article VI of the Constitution, the Fundamental Right to Travel, and the Dormant Commerce Clause.

(b) Issue a judgment declaring that the Louisiana State Board for Practical Nurses must allow aliens lawfully residing in the United States to obtain licensure as practical nurses in Louisiana, subject to compliance with all other requirements of LSA R.S. 37:970;

(c) Declare that LSA-R.S. 37:970, insofar it denies licensing to noncitizens, is unconstitutional;

(d) Issue a preliminary and, after due proceedings, a permanent injunction prohibiting Eugene St. Martin, M.D., in his Official Capacity as Chairman of the

Louisiana State Board of Practical Nurse Examiners from enforcing the citizenship-only requirement of LSA-R.S. 37:970 and ordering that plaintiff's application for licensure be granted.

(d) Award Plaintiff her costs and attorneys fees pursuant to 42 U.S.C. § 1988 and grant such other and further relief as this Court deems just and proper.

Dated: August 19, 2009.

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