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DRIVER LICENSES FOR UNDOCUMENTED IMMIGRANTS

By Christopher A. Kerosky, Esq.

On September 12, 2013, the California legislature passed bill AB60 that, if signed into law by the governor, will allow undocumented immigrants residing in California to obtain driver's licenses. Such permits will be issued only to authorize operation of motor vehicles and will not be accepted to establish eligibility for employment, voter registration, or public benefits.

Applicants will have to pass a driving test and provide a proof of identity and California residency to the Department of Motor Vehicles (DMV). Pursuant to the bill, the California DMV will be accepting consular identification cards, passports, birth certificates and other documents to establish the applicant's identity. Income tax returns, school transcripts, utility bills, and other documentation will be acceptable to prove California residency.

AB60 will help the police gain the trust of immigrant communities in California, which has been severely undermined by implementation of the Secure Communities (SCOM) program. SCOM is a Federal program of sharing fingerprints and arrest information between local law enforcement agencies (police departments and sheriff's offices) and the Department of Homeland Security. This program initially aspired to identify and deport the immigrants who presented the most significant threats to public safety. In practice, however, SCOM has targeted and put in deportation proceedings many non-criminal undocumented immigrants.

Currently, undocumented immigrants cannot obtain a driver's license in California but many of them have to drive a car to get to work and they do so without a license. When stopped by the police, they are charged with a violation of California Vehicle Code Section 12500 (unlawful to drive unless licensed). VC 12500 can be charged as an infraction or as a misdemeanor. If VC 12500 is charged as an infraction, the individual may go to traffic court and fight his case or pay the fine and not fear any immigration consequences.

On the other hand, when charged as a misdemeanor, VC 12500 requires the individual to appear in criminal court. Many undocumented immigrants wrongfully fear that they will get arrested at the courthouse and will be deported, so they choose not to go to their hearings. A failure to appear at a hearing further complicates things. If the undocumented immigrant lives in a California county that shares information with SCOM, the immigrant has higher chances of being arrested (and put in deportation proceedings after being transferred to Immigration) either after missing a hearing or after a misdemeanor conviction under VC 12500.

Once, and if, AB60 is implemented, undocumented immigrants will no longer have to fear an encounter with law enforcement and potential deportation after a low-level traffic offense. Undocumented immigrants will be able to purchase car insurance and register vehicles with their AB60 driver's licenses. Moreover, AB60 prohibits discriminating against individuals presenting driver's licenses obtained under the bill. As a result, when stopped for a traffic violation, undocumented immigrants with driver's licenses will be treated just like any other driver with a valid driver's license that will prevent further inquiries related to the driver's immigration status.

Among other benefits, undocumented immigrants with pending cases of VC12500 may be able to request time to obtain driver's licenses. Once they have received AB60 driver's licenses, they can have their cases dismissed and avoid a misdemeanor conviction on their record.

It is worthy to note that the above referenced legislation will have to be signed by Governor Brown and implemented by the Department of Motor Vehicles (DMV) before the beneficiaries of these measures can actually obtain driving permits. One more time, immigrants' communities will have to be patient to have access to a basic benefit that was terminated in 1994.

CHRISTOPHER A. KEROSKY of the law firm of KEROSKY PURVES & BOGUE has practiced law since 1984 and has been recognized as one of the top immigration lawyers in Northern California for the last seven years by San Francisco Magazine "Super Lawyers" edition (2006-2012). He graduated from University of California, Berkeley Law School and was a former counsel for the U.S. Department of Justice in Washington D.C.

WARNING: The foregoing is an article discussing legal issues. It is not intended to be a substitute for legal advice. We recommend that you get competent legal advice specific to your case. If you would like such advice from our office, call (415) 777-4445 (San Francisco); (916) 349-2900 (Sacramento) or (707) 433-2060 (Santa Rosa) (707) 376-1010 (Ukiah) or (707)244-2272 (Napa).

