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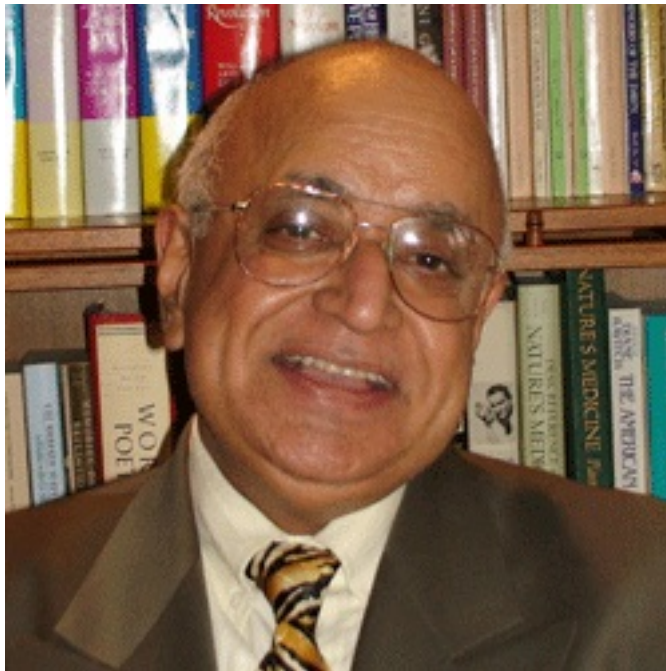
NY State Law Violates Pharmacists' Rights, Rules Court

By PARIMAL M. ROHIT

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A federal court ruled Sept. 29 that a New York state law improperly relied on the immigration status of pharmacists seeking licenses to practice within the state. Non-immigrant pharmacists waiting for backlogged immigration papers will now be able to practice in New York rather than going to other states.

In his 30-page ruling, United States District Judge Richard J. Holwell said New York's practice of requiring pharmacists to be legal permanent residents in order to be licensed to work in that profession within the state was a violation of rights under the Equal Protection Clause.



The federal court in Manhattan has struck down a New York law that prevented non-immigrant aliens, (such as) those without a green card or U.S. citizenship, from being licensed as pharmacists in New York, attorney Krishnan Chittur, who argued in federal court on behalf of the pharmacist plaintiffs (most of whom were of Indian descent), told India-West.

The decision was announced last week by Judge Holwell in Manhattan's United States District Court, Southern District of New York, after a two-year battle between a group of pharmacists and the New York State Department of Education.

As stated in court documents, about 26 non-legal permanent resident aliens, otherwise known as work visa immigrants, filed a federal suit against the state of New York on Aug. 11, 2008,

contending that New York's licensing requirement that they be at least permanent citizens was unlawfully discriminatory.

The federal lawsuit, which was filed by Chittur on behalf of 26 plaintiffs, challenged New York State Education Law section 6805(1)(6), which, according to the Second Amended Complaint, requires a permanent residence or U.S. citizenship for obtaining a license as a pharmacist in New York.

In the second amended complaint, Chittur stated that the state law was harmful in three ways: it interfered with an individual's right to pursue a chosen profession; it interfered with an individual's right to interstate travel; and it discriminated against immigrant aliens.

Practically speaking, Chittur said delays by the federal government in processing immigration paperwork allowed the New York statute to have a discriminatory effect on the plaintiffs.

Each of the plaintiffs was authorized to work in the United States under an H-1B visa or other temporary worker status under federal law in accordance with the North American Free Trade Agreement. However, with the temporary work visas set to expire, the plaintiffs all sought to gain legal permanent status in the United States.

Chittur said the federal government's delay in processing the immigration paperwork of the plaintiffs meant each of them suffered undue harm under the New York statute.

These were people who wanted to live and work in New York, but they were compelled to go to other states, such as Rhode Island, Connecticut, Maryland, etc. Chittur told India-West. It was a tremendous hardship on them, but to no fault of their own. The federal government was backlogged in processing their paperwork.

The state of New York argued that the challenged licensing requirement was necessary to protect the health and safety of (New York) residents by monitoring, regulating and enforcing compliance with professional disciplinary rules and ensuring the availability of malpractice actions against pharmacists where appropriate.

Holwell disagreed with the state's contentions. Preventing non-legal permanent resident immigrants from gaining a pharmacy license within the state, he ruled, was not substantially related to New York's objective of protecting the health and safety of New York residents.

The state's justification for the law demonstrates by itself that its discriminatory means are not substantially related to its governmental objectives, Holwell ruled. The federal government decides which aliens may enter and with what restrictions, and the states decide which individuals have the professional competence and qualifications to obtain pharmacy and other licenses.

Last week's decision was reached prior to a full trial, as both parties filed a motion for summary judgment. Under a summary judgment, a court may determine the outcome of a case without a full trial because there are no questions of material fact and, in applying the law to the undisputed facts, one party is unequivocally entitled to a judgment in its favor.

In this case, Holwell agreed with Chittur that there were no questions of material fact and the plaintiffs were clearly entitled to a favorable judgment as a matter of law.

Accordingly, the state of New York may no longer consider immigration status when determining licensing for pharmacists.

Assistant attorney general Antoinette Blanchette represented the defendants and was unavailable for comment.