

Indian American Pharmacists Secure Legal Victory in New York

In a lawsuit brought by pharmacists from India, the federal court in Manhattan has struck down as unconstitutional a New York State requirement that pharmacists must be U.S. citizens or green card holders to be licensed in New York. In a decision of September 30, 2010, Judge Richard Holwell of the United States District Court for Southern District of New York found that this requirement violated the equal protection guarantee of the U.S. Constitution, and encroached upon the exclusive power of the federal government to regulate immigration.

The lawsuit was commenced in August 2008 by New York attorney Krishnan Chittur on behalf of seven Indian American pharmacists who were non-immigrants, with degrees from India as well as U.S. They were licensed in other States such as Maryland, Vermont, Connecticut and Maryland, but New York refused to license them only because they were not green card holders. They were all legal residents of the United States, with green card applications being processed by the U.S. government.

The pharmacists challenged the New York requirement on the ground that it unlawfully discriminated against aliens. They also claimed that it interfered with their constitutional right to pursue a chosen profession, and imposed an impermissible burden on interstate migration/travel. "The State of New York has no compelling interest, or, for that matter, even a rational basis for imposing this requirement," the Complaint asserted. Further, immigration was the exclusive province of the federal government, and their immigration status under federal law had no bearing on their competence as pharmacists.

Soon after the lawsuit was commenced, the Attorney General of New York agreed to grant each plaintiff a "limited license" while the Court considered the legal challenges. While the case was pending, twenty-four other pharmacists joined the lawsuit. Each of them was a lawful resident and otherwise entitled to be licensed as a pharmacist in New York but for this provision.

New York sought to justify the requirement, arguing that it was meant 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." The Court rejected this justification, calling the question not even "close". Further, he observed, if every State emulated New York in this respect, "they would write H1-B and TN status out of the United States Code." "By declaring that plaintiffs may not practice pharmacy, New York law unmistakably imposes additional burdens not contemplated by Congress and thus unconstitutionally encroaches upon the federal immigration power," he wrote.

"We are delighted with the decision," said Chittur. "This requirement imposed tremendous hardship upon pharmacists who wanted to work here, but had to move or commute to other States. It simply drove pharmacists and their families away, and prevented them from contributing

to New York's tax base. The Court reaffirmed that non-immigrants have the same rights as citizens with respect to pursuing their calling," he said.

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