

EQUAL ACCESS TO IDENTIFICATION DOCUMENTATION

Issue

Should the State Bar of Michigan adopt a position calling for the support of equal access to identification documentation?

Synopsis

All federal courts, many state administrative buildings and some state court buildings require proof of identity for admittance – typically a state-issued driver's license or ID. Michigan's notary law mandates that Notary Publics determine the identity of individuals for whom they notarize signatures on documents. Some local law enforcement agencies even report employing a higher level of scrutiny of non-citizen crime victims who cannot present adequate proof of identity upon request.

Access to justice must include the free and equal access to buildings where justice is administered, whether one is an applicant for a public benefit, or a witness or litigant in an adjudicatory proceeding. All individuals should similarly have an equal ability to obtain vital documents and public services, such as police protection, without being subjected to higher scrutiny, delays or denials due to their "lack of ID."

Background

In Michigan, the documentary requirements imposed by the Secretary of State to obtain a state-issued photo ID are the same as required for applying for a driver's license. These requirements include presenting documentation of: (1) a valid Social Security number or proof of ineligibility; (2) legal presence in the United States; (3) identity verification; and (4) Michigan residency.

Non-citizens are often denied state-issued photo IDs because of extra-legal limitations on the acceptable immigration documents required by the Secretary of State to prove "legal presence," even though the Legislature adopted a broad definition of "legal presence" in amending the Motor Vehicle Code in 2008. As a result, several categories of "legally present" non-citizens are denied a state-issued photo ID, although they can prove their identity and Michigan residency to the satisfaction of the state's ID requirements.

The following are the most common categories of proof omitted from the Secretary of State list of acceptable documents to prove "lawful presence":

- The list requires that a Legal Permanent Resident (green-card holder) submit a card that was issued after December 1997. However, hundreds of thousands of legal residents nationwide possess a currently-valid green card that was issued before December 1997.
- The list omits documents that an immigrant granted humanitarian relief would possess. The federal immigration agency, USCIS, grants "Deferred Action" status to a battered immigrant who has been approved under the Violence Against Women Act. USCIS has also granted Deferred Action status to immigrant victims of serious crimes who are awaiting adjudication of their visa requests. The MSOS list contains no provision for proving Deferred Action status.
- Immigrants granted asylum and refugee status often flee their country without important documents, including passports. The U.S. government has recognized the bona fide nature of their claims and granted them legal status, but the MSOS list does not contain documents that they would have been given by the U.S. government.

- The MSOS does not permit “the beneficiary of an approved immigrant visa petition” to obtain a driver’s license. The federal government has reviewed and approved a petition filed on their behalf, but the MSOS simply excludes them from consideration, despite the state legislature explicitly designating this category of immigrants as being eligible for a license.
- Any other legal immigrant whose situation does not fall within the parameters set by the MSOS will face obstacles in trying to obtain a license. Other examples of these immigrants are immigrants granted relief in Immigration Court, and immigrants whose visa or I-94 expired but who timely submitted another application which automatically extends their status

A subcommittee of the State Bar’s Justice Policy Initiative (JPI) was formed to review this issue. After its recommendations were affirmed by JPI, it offers the following proposed positions for a position on the issue of identification and access to justice:

- A. The SOS should promulgate an administrative rule reflecting the Legislative definition of “legal presence” so that eligible non-citizens may obtain state-issued photo IDs documenting their identity.

Opposition

None known.

Prior Action by Representative Assembly

None known.

Fiscal and Staffing Impact on State Bar of Michigan

None known.

STATE BAR OF MICHIGAN POSITION By vote of the Representative Assembly on September 30, 2010

Should the Representative Assembly adopt the above resolution to support equal access to identification documentation?

(a) Yes

or

(b) No