



THE UNIVERSITY OF
TENNESSEE
KNOXVILLE

November 14, 2016

SENT VIA FEDERAL EXPRESS

TRACKING NO.: 7777 0350 8210

Lisa Perlen, Executive Director
TN Board of Law Examiners
511 Union Street
Suite 525
Nashville, TN 37219

Re: Maximiliano Gabriel Gluzman v. Tennessee Board of Law Examiners
No: 16-P-04

Dear Ms. Perlen:

Please find a ***Petition for Relief*** enclosed for filing in the above matter. We also request that a file-stamped copy of the Petition be returned to this office. We have enclosed an additional copy of the Petition, as well as a return label and envelope.

Thank you for your assistance in this matter.

Sincerely,

Melanie D. Wilson
Dean and Lindsay Young Distinguished Professor of Law

Office of the Dean
College of Law

1505 W. Cumberland Avenue Knoxville, TN 37996-1810
865-974-2521 fax 865-974-6595 law.utk.edu

BIG ORANGE. BIG IDEAS.®

Flagship Campus of the University of Tennessee System 

BEFORE THE TENNESSEE BOARD OF LAW EXAMINERS

Maximiliano Gabriel Gluzman,)	
Petitioner,)	No.: 16-P-04
)	
v.)	
)	
Tennessee Board of Law Examiners,)	
Respondent.)	

PETITION FOR RELIEF

The University of Tennessee College of Law recently established an LL.M. degree designed so that foreign-educated lawyers who are eligible to be admitted to practice or who are admitted to practice in their foreign jurisdictions may gain the education needed to become eligible to sit for the bar exam in Tennessee (as well as other states with similar admission requirements). Vanderbilt Law School offers a similar LL.M. degree to foreign-educated lawyers. By an Order dated October 13, 2016, the Tennessee Board of Law Examiners (“the Board”) appears to declare that a foreign-educated lawyer seeking admission under Tennessee Supreme Court Rule 7, § 7.01 must have received at least two degrees prior to receiving an LL.M. in the U.S.: (1) a degree equivalent to a U.S. Bachelor’s degree or higher and (2) a post-secondary Juris Doctorate degree. Order Denying Petition to Reconsider Denial of Eligibility, In re: Maximiliano Gabriel Gluzman, Case No. 16-p-4 (hereinafter “Order”).

Because any interpretation of § 7.01 that requires two separate foreign degrees prior to receiving an LL.M. degree negatively impacts both the University of Tennessee College of Law and Vanderbilt Law School, the law schools are aggrieved by this decision within the meaning of § 13.02 and respectfully petition the Board to reconsider any such interpretation of § 7.01. Specifically, the Board should reconsider any *per se* rule requiring receipt of two degrees prior to

the receipt of an LL.M. degree. In support of its Petition, the law schools respectfully offer as follows:

I. The Special Bar Admission Rules Regarding Foreign-Educated Lawyers

The underlying purpose of all bar admission rules is to ensure that bar applicants possess the requisite knowledge and skill to provide competent legal services within a state upon admission to the bar. Therefore, by their nature, bar admission rules exist to protect the public. See Jia v. Board of Bar Examiners, 696 N.E.2d 131, 139 (Mass. 1998) (“The scrutiny of each applicant's qualifications is delegated to the board to ensure that we admit to practice here only those applicants who are versed in our legal rules so that the public may rely on appropriately trained professionals to protect their interests.”); People v. Adams, 243 P.3d 256, 266 (Colo. 2010) (“The purpose of the bar and our admission requirements is to protect the public from incompetent legal advice and representation.”); Shortz v. Farrell, 193 A. 20, 24 (Pa. 1937) (explaining that the purpose of admission rules is “to assure to the public adequate protection in the pursuit of justice”). Foreign-educated lawyers who seek admission to the bar in a U.S. state present special concerns for courts given the potential differences in an applicant’s educational and professional background. States have taken a variety of approaches in their attempts to ensure that foreign-educated lawyers possess the requisite knowledge and skill to provide legal services to clients.

A. Practice-Focused Admission Rules

Some states focus on a foreign educated lawyer’s practice experience as a prerequisite to taking the state bar exam. These states either require a minimum number of years of active practice or establish a pathway to admission based on practice experience and completion of an LL.M. degree. For example, Wisconsin permits a foreign-educated lawyer to sit for the bar

examination if the applicant received a legal education from a country whose jurisprudence is based on the principles of English common law, is a member of good standing in the bar of his or her home country, and was substantially engaged in the practice of law in a common-law jurisdiction for three of the preceding ten years. Wis. Sup. Ct. R. 40.05. Receipt of an LL.M. degree is not required. In Pennsylvania, a lawyer who is a member in good standing in the bar of another country, has been engaged in the practice of law for three of the five preceding years, and who has completed an LL.M. degree in the U.S. is eligible to sit for the bar. Pa. Bar Admission Rules R. 205.

B. Education-Focused Rules

In some states, the fact that a foreign-educated lawyer has obtained an LL.M. degree from an accredited U.S. law school is sufficient to permit the lawyer to sit for a bar examination. See Rules Governing Admission to the Alabama State Bar R. IV(B)(2)(d); Wisconsin Sup. Ct. R. 40.055(2).

The more common approach is to focus on whether the entirety of a foreign lawyer's legal education – including the lawyer's first law degree and an LL.M. degree – is equivalent or substantially equivalent to that of a U.S. lawyer. For example, in New Hampshire, a foreign-educated lawyer who has received a legal education in a country whose jurisprudence is based on English common law and who has completed an LL.M. degree is deemed to have received an education that is substantially equivalent in substance to that received by a lawyer educated in the U.S. Rules of the Supreme Court of the State of New Hampshire R. 42. In New York, a foreign-educated lawyer may sit for the bar exam based on a foreign legal education substantially equivalent to a U.S. legal education, without having to complete an LL.M. degree. Alternatively, if the applicant's foreign legal education is not substantially equivalent to the education received

at an ABA-accredited law school, the applicant may cure any educational deficiencies through completion of an approved LL.M. degree. N.Y. Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law § 520.6(b)(1). Other states take a similar approach. See Maine Bar Admission Rules R. 11(A)(a)(3) & Maine Board of Bar Examiners Regulations for Determining Equivalence of Foreign Legal Education (establishing that a lawyer who received legal education in an English-speaking, common-law-based country and who completed an approved LL.M. degree has received the substantially equivalent education necessary to permit the applicant to sit for the bar examination), available at <http://mainebarexaminers.org/foreign-legal-education/>; Rules Governing Admission to the Bar of Maryland R. 19-201(b)(2) & Board Rule 7 (permitting a foreign-educated lawyer to sit for the bar examination upon a certification that the lawyer's original legal education combined with that of approved additional instruction in U.S. law is the equivalent of an LL.B or J.D. degree).

C. Hybrid Approaches

Some states have adopted a hybrid approach that establishes different paths for admission based upon the nature of the lawyer's original legal education, practice experience, and completion of an LL.M. degree. For example, Texas establishes essentially four tracks for possible admission by a foreign educated lawyer, briefly summarized as follows:

- (1) an applicant who received a legal education that is substantially equivalent in terms of duration to that of a U.S. law school from an accredited school in a country whose jurisprudence is based on the principles of English common law and who has been engaged in the practice of law for three of the preceding five years is eligible to sit for the bar examination without having to pursue an LL.M. degree;
- (2) an applicant who received a legal education that was at least two years in duration from an accredited school in a country whose jurisprudence is based on the principles of English common law is eligible to sit for the bar if the applicant completes an approved LL.M degree;

(3) an applicant who is authorized to practice law in a foreign jurisdiction whose jurisprudence is based on the principles of English common law but who does not satisfy the other requirements listed above is eligible to sit for the bar examination if the applicant completes an approved LL.M. degree; or

(4) an applicant who received a legal education that is substantially equivalent in terms of duration to that of a U.S. law school at an accredited school in a country whose jurisprudence is not based on the principles of English common law is eligible to sit for the bar examination if the applicant is authorized to practice law in the other country and has completed an approved LL.M. degree.

Tex. R. Governing Admission to the Bar of Texas R. XIII.

Michigan has adopted a totality of the circumstances approach that takes into account a lawyer's original legal education, practice experience, and LL.M. degree. In Michigan, the Board of Law Examiners "may in its discretion permit applicants who do not possess a JD degree from an ABA-approved law school to take the examination based upon factors including, but not limited to, relevant legal education, such as an LL.M. degree from a reputable and qualified law school, and experience that otherwise qualifies the applicant to take the examination." Rules for the Mich. Board of Law Examiners R. 2(B).

D. Tennessee

Article VII of Supreme Court Rule 7 contains the educational requirements for foreign-educated lawyers. Section 7.01 provides that notwithstanding the requirements of § 2.01 (which requires a U.S.-educated lawyer to have a bachelor's or higher degree and a law degree from an accredited school), an applicant who has completed a course of study in and graduated from an accredited law school in a foreign country may be eligible to sit for the bar examination if the applicant satisfies the Board "that his or her undergraduate education and legal education were substantially equivalent to the requirements of this Rule." Tenn. Sup. Ct. R. 7, §7.01(a). In addition, § 7.01 requires that the applicant must have received an LL.M. degree from a Tennessee law school approved by the Board or by an ABA-accredited law school. Id. §7.01(b).

This makes Tennessee one of the few states in the country to require that a foreign-educated applicant must attain both (1) a legal education that is “substantially equivalent” to that of a U.S.-educated lawyer *and* (2) an LL.M. degree from a U.S. law school.¹ Unlike most states that emphasize a lawyer’s education in establishing eligibility requirements for foreign-educated lawyers to take the bar exam, Tennessee does not treat an LL.M. degree as “curing” any deficiencies in the lawyer’s original education, thereby rendering the lawyer’s education substantially equivalent to that of a U.S.-educated lawyer. Instead, a foreign applicant must attain an LL.M. degree from an accredited U.S. law school in addition to the applicant’s original, substantially equivalent education.²

II. The Board’s Interpretation of § 7.01 is Unduly Restrictive

The Board’s Interpretation of § 7.01’s already highly restrictive approach is problematic in several respects and effectively operates to exclude lawyers from most of the world from being eligible to sit for the Tennessee bar exam.

Section 7.01 requires that an applicant “satisfy the Board that his or her undergraduate education and legal education were substantially equivalent to the requirements of this Rule.” In its October 13, 2016 Order denying the application of a foreign-educated lawyer, the Board applied an interpretation of § 7.01 that could be read to require an applicant who has received a legal education in another country to have obtained *two* separate degrees prior to receiving an LL.M. from a law school in the United States: a Bachelor’s Degree or higher *and* a post-

¹ West Virginia also takes this approach. W. Va. Rules for the Admission to the Practice of Law R. 3.0(4).

² The only reported Tennessee Supreme Court decision involving this rule is Chong v. Tennessee Board of Law Examiners, 481 S.W.3d 609 (Tenn. 2015), which rejected a foreign-educated applicant’s request to take the bar exam, despite his foreign education being substantially equivalent to American education, because his American LL.M. degree from Regent University was not completed “in residence” in accordance with the rule. Id. at 613.

secondary Juris Doctorate degree or equivalent. Order at 1-2. Specifically, the Board emphasized in its Order that a foreign-educated applicant has “the burden of proof to persuade the Board that the Applicant’s foreign education is substantially equivalent to the education required of applicants educated in the United States, to wit: a Bachelor’s Degree or higher *and* a post-secondary Juris Doctorate degree,” Order at 1 (emphasis in original). In a footnote, the Board also refers to the rule for foreign-educated applicants as “requir[ing] two degrees.”³ Id. n.1 In addition, the Board’s recently updated website advises that an applicant’s foreign education “must include a degree that is equivalent to a Bachelor’s degree or higher *followed by* a degree that is equivalent to a Juris Doctorate degree.” <http://www.tnble.org/tnlaw/first-time/how-to-apply> (emphasis added).

The most obvious problem with any interpretation of § 7.01 that requires two separate foreign degrees is that nothing in the language of § 7.01 actually requires such an interpretation. The rule simply requires that the undergraduate and legal *education* the lawyer received be substantially equivalent to the education U.S.-educated lawyers receive. Nothing about the language of the actual rule requires that a lawyer obtain separate *degrees* as part of that education. Indeed, the rule regarding lawyers educated in the U.S. itself recognizes that two degrees are not always required. That rule expressly provides that the Board, in its discretion, “may waive the requirement of a degree from an accredited undergraduate school if the applicant has graduated from either: (1) a law school accredited by the American Bar Association

³ As part of the Petitioner’s Brief in Support of a Petition for Board Review in the above-referenced matter, the director of Vanderbilt’s LL.M. program submitted an affidavit. According to the affidavit, 13 students who received their LL.M. degree from Vanderbilt applied for admission to the Tennessee Bar since 2007 and prior to the matter in question. All but one of those students were successful. See Exhibit A. Most lawyers in the world do not possess two pre-LL.M. degrees (see discussion infra). In light of this, it is unclear whether the Board has changed its interpretation of the Rule.

(hereafter “ABA”) or (2) a Tennessee law school approved by the Board.” Tenn. Sup. Ct. R. 7, § 2.01(b).

An additional problem with any interpretation of § 7.01 that requires two separate foreign degrees is that it is inconsistent with the system of legal education present throughout most of the world. The norm throughout most of the world is that lawyers receive their legal education as part of their undergraduate education. See Mary C. Daly, The Dichotomy Between Standards and Rules: A New Way of Understanding the Differences in Perceptions of Lawyer Codes of Conduct Between U.S. and Foreign Lawyers, 32 Vand. J. Transnat'l L. 1117, 1145 (1999) (“The legal education of almost all foreign lawyers begins at the university level, where law is taught as an undergraduate major.”). British barristers, for example, routinely receive their legal education as part of a program of undergraduate study, followed by a period of apprenticeship. Marilyn J. Berger, A Comparative Study of British Barristers and American Legal Practice and Education, 5 N.W. J. Int'l L. & Bus. 540, 564-65 (1983). There are only a handful of countries that routinely require lawyers to receive their legal education separate from their undergraduate education.

The result of any interpretation of § 7.01 that imposes a two-degree requirement on foreign applicants is that the typical foreign-educated lawyer could receive a legal education based on common law principles in his or her home country, complete an apprenticeship, be a member in good standing in the bar of his or her home country, practice for many years, invest the time and money necessary to complete an LL.M. program in the U.S., excel in that program, and *still* not be eligible to sit for the Tennessee bar examination because the lawyer did not receive a law degree separate and apart from the lawyer’s undergraduate degree.

No doubt, the Tennessee Supreme Court was aware of the system of legal education employed throughout the world and had that knowledge when it adopted its rule pertaining to foreign-educated bar applicants. In light of this understanding, there is no reason to believe that the Court intended to adopt a rule requiring two separate foreign degrees. Such a rule would, with limited exceptions, effectively preclude lawyers from virtually every other country in the world from being eligible to sit for the Tennessee bar examination, *even after* those lawyers have completed an LL.M. degree focusing on U.S. law from an ABA-approved law school.

As the Nebraska Supreme Court has put it well, “admission rules [are] intended to ‘weed’ out unqualified applicants, not to prevent qualified applicants from taking the bar.” In re Application of Gluckselig, 697 N.W.2d 686, 691 (Neb. 2005). Section 7.01 should not be interpreted in a way that weeds out qualified applicants. As the rules in other states illustrate, the Board can effectively further its legitimate interest in protecting the public from incompetent legal advice and representation in a less restrictive manner than requiring all applicants to possess (1) a degree equivalent to a U.S. Bachelor’s degree or higher, (2) a post-secondary Juris Doctorate degree, and (3) an LL.M.⁴ It bears emphasizing that in virtually every state (including Tennessee), a foreign-educated applicant is required to pass the bar exam before the applicant

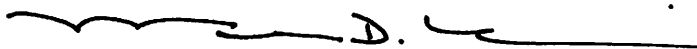
⁴ Among other requirements, §7.01(b) requires an LL.M. program to “prepare[] students for admission to the Bar and for effective and responsible participation in the United States legal profession.” The Master of Laws (LL.M.) in United States Business Law at the University of Tennessee College of Law involves a demanding course of study, requiring a total of at least 24 credit hours. Students are required to take a course on legal research, analysis, and writing as well as Professional Responsibility and a general course on American law called Structure and Operation of the American Legal System. Students are also required to take two subjects – Business Associations and Secured Transactions – which are routinely tested on the Tennessee bar exam. Finally, students are required to take several courses related to U.S. business law (*e.g.*, Fundamentals of Federal Income Tax). See <http://law.utk.edu/academics/llm/>. Likewise, Vanderbilt Law School’s LL.M. degree requires students to take a minimum of 24 credit hours, including two LL.M.-specific courses: Life of the Law and Introduction to Legal Research, Writing and Analysis in the United States. In all of their other courses, they are jointly enrolled with J.D. students in conventional law school classes.

can be admitted to the bar. Thus, the bar exam itself serves as a means of helping to ensure that a foreign lawyer is familiar with U.S. and Tennessee legal principles.

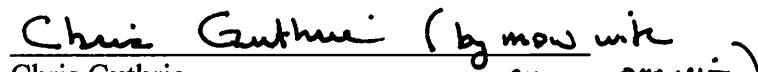
III. The Board Should Clarify its Interpretation of § 7.01 to Make Clear that an Applicant Is Not Required to Possess Two Degrees Prior to Attaining an LL.M.

In light of the substantial problems associated with the Board's apparent interpretation, the Board should reconsider any such interpretation of § 7.01 to clarify that a foreign-educated applicant must only demonstrate that the applicant's prior education is substantially equivalent to that of a U.S.-educated lawyer, and that the applicant need not necessarily have earned two separate degrees in another country.

Respectfully submitted,



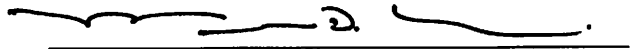
Melanie D. Wilson
Dean, University of Tennessee College of
Law


Chris Guthrie (by now with
express permission)
Dean, Vanderbilt Law School

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of November, 2016, a copy of the foregoing was sent via Federal Express, postage prepaid, to the following:

Lisa Perlen, Executive Director
TN Board of Law Examiners
511 Union Street, Suite 525
Nashville, TN 37219



Melanie D. Wilson, Dean
University of Tennessee College of Law