

MVA's Rules On Licensing Of Immigrants Draw Scrutiny; Attorney General's Opinion Embraced by Both Sides

The Washington Post

October 12, 2003 Sunday, Final Edition

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The Washington Post
washingtonpost.com

Section: Metro; C01

Length: 1246 words

Byline: Nurith C. Aizenman, Washington Post Staff Writer

Body

The question was simple: Is it legal for Maryland officials to deny a driver's s license to illegal immigrants?

The reply was complicated: No, wrote state Attorney General J. Joseph Curran Jr. (D), the Motor Vehicle Administration cannot require applicants to prove that they are in the country legally as a condition of getting a driver's s license. But yes, Curran added, the MVA can require applicants to prove their identity with immigration documents "when other satisfactory identification is unavailable."

MVA officials say that Curran's s opinion endorses their current policy, which requires foreign-born applicants to prove their identity with a range of documents that only legal immigrants can get, such as a foreign passport with a valid visa stamp or a green card. "It clarifies and reinforces that . . . we are permitted to require the proofs of identity that we do, if someone doesn't have a U.S. birth certificate," said MVA spokesman Buel Young.

But Del. Ana Sol Gutierrez (D-Montgomery), who submitted the question to Curran, contends that his response validates her view: that by effectively barring illegal immigrants from getting a license, the MVA is violating state law.

Now Gutierrez and her allies are hoping to use the attorney general's opinion -- issued with scant public notice last month -- as a new weapon in their long-running battle to open Maryland driver's s licenses to illegal immigrants.

One idea under consideration by the Maryland Latino Coalition for Justice, an association of immigrant advocacy groups, is to file a class-action suit against the MVA on behalf of illegal immigrants who were denied licenses, Gutierrez said. "Speaking through the Latino press, I've asked people to come forward, and I have received letters from a sufficient number of individuals," she said.

Another option, Gutierrez said, would be to persuade members of a soon-to-be-convened state task force to recommend alternative documents that illegal immigrants could use to prove their identity, such as foreign passports without a visa stamp, or out-of-state licenses.

"I am delighted with it," Gutierrez said of Curran's s finding. "It clearly establishes that there is no legal basis for denying a driver's s license because of someone's inability to prove legal residency."

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The issue is being debated across the nation. More than 20 states, joined in the spring by Virginia, have laws explicitly prohibiting illegal immigrants from getting a license. Proponents of such measures say they are needed to discourage further illegal immigration and to prevent terrorists from easily obtaining what has in practice become a national identification card -- enabling the bearer to open bank accounts, cash checks, rent cars and hotel rooms and fly on airplanes.

Meanwhile, at least a dozen states, joined last month by California, have taken the opposite tack, adopting laws intended to allow illegal immigrants to obtain driver's licenses. In these states, the prevailing argument is that most illegal immigrants are vital contributors to the economy, doing jobs that legal residents won't accept, and that their presence is a fact of life that it is safer to acknowledge than to ignore.

Even in states where the issue was presumed settled, it remains politically charged. During the lead-up to Tuesday's recall election in California, for instance, Republican Arnold Schwarzenegger criticized the man he ousted, Gov. Gray Davis (D), for signing the driver's license law last month. And an exit poll conducted for The Washington Post by Edison Media Research and Mitofsky International found that 70 percent of the state's voters said they opposed the driver's license law -- with the percentage even higher among people who voted to recall Davis.

During Maryland's most recent legislative session, Gutierrez and other lawmakers initially proposed a bill that would have granted illegal immigrants broad access to driver's licenses. But they voted to scale back after it became clear that the original measure probably would fail.

The new version, which was passed and signed into law by Gov. Robert L. Ehrlich Jr. (R) in the spring, established the task force to study the issue. Made up of members appointed by the governor, the state Senate and the House of Delegates -- including Gutierrez -- the panel is expected to begin its work this year.

Still, immigrant advocates in Maryland say that even under current law, the MVA does not have the authority to prohibit the state's estimated 56,000 illegal immigrant residents from getting driver's licenses.

At first glance, Curran appeared to agree, noting in his opinion that neither federal nor state law limits licenses to U.S. citizens and lawfully present immigrants. As a result, Curran wrote, "an applicant's inability to prove lawful presence in the United States is not itself grounds for denial of a license," and "the MVA may not deny a license to an individual because he or she is unable to prove lawful presence in this country."

Whether that is what the MVA is currently doing remains in contention, however.

Under the agency's policy, applicants who lack a U.S. birth certificate must prove their age and identity with (in addition to several other backup documents) a valid immigration document or a passport with a visa or stamp proving they were lawfully admitted to the country.

The MVA's Young said the reason is not because these are documents that only a legal immigrant would have access to, but rather because they are documents that have already been vetted or issued by the federal government. "Federal entities have better resources than the MVA to determine the person's identity," he said.

To be sure, Young acknowledged, requiring the documents "might effectively lead an applicant to prove their lawful presence, but that's not what we're asking."

Gutierrez rejected that argument. "When a practice excludes a whole class of people, it's not an accident. It's by intent," she said.

Furthermore, she said, the MVA could choose to accept a range of other proofs of identity that illegal immigrants might have. The MVA's own regulations, as opposed to the agency's actual practices, allow foreign-born applicants to prove identity with two primary documents or one primary and two secondary documents from a list that contains many items potentially available to illegal immigrants. Examples include an out-of-state or international driver's license, certified school records, a taxpayer identification card, a rental agreement and utility or telephone bills.

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The fact that the **MVA's** practice is more restrictive than its regulations could spell trouble for the agency. "As a **general rule**, an agency's actions could be open to challenge if they are not in accordance with their regulations," said Robert N. McDonald, chief counsel for **opinions** and advice in the **attorney general s** office.

Most important, to show that it has not violated state law, "the agency would have to be able to justify that [the documents it requests of foreign-born applicants] are the only documents that they think can show identification," McDonald said.

He declined to comment on whether the **MVA's** practice violates the law, however. "We were not asked to look into that," he said.

Noting that Curran had simply laid out what the law requires, McDonald said, "It's up to the agency to assess if their practices are in accordance with the **opinion**."

Staff researcher Margaret Smith contributed to this report.

Classification

Language: ENGLISH

Publication-Type: Newspaper

Subject: PASSPORTS & VISAS (92%); IMMIGRATION (92%); DRIVERS **LICENSES** (90%); **LICENSES** & PERMITS (90%); SUITS & CLAIMS (90%); US STATE GOVERNMENT (90%); ILLEGAL **IMMIGRANTS** (89%); EDITORIALS & **OPINIONS** (89%); US STATE IMMIGRATION LAW (78%); NATIONAL IDENTITY CARDS (78%); IMMIGRATION LAW (78%); LITIGATION (78%); **ATTORNEYS GENERAL** (77%); LETTERS & COMMENTS (70%); CLASS ACTIONS (63%); ASSOCIATIONS & ORGANIZATIONS (63%); TERRORISM (50%)

Industry: DRIVERS **LICENSES** (90%); HOTELS & MOTELS (60%)

Geographic: MARYLAND, USA (93%)

Load-Date: October 12, 2003