

PRESIDENTS' ALLIANCE | ON HIGHER EDUCATION
AND IMMIGRATION



NISKANEN
C E N T E R



EXPANDING ELIGIBILITY FOR PROFESSIONAL AND OCCUPATIONAL LICENSING FOR IMMIGRANTS

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I. Executive Summary

This report¹ provides an overview of the need to expand professional, business, and commercial licenses (also known as “occupational licenses”) to various work-authorized immigrants. The report provides an overview of occupational licensing generally; the federal and state government’s prohibitions on licensing for certain noncitizens; the growing demand for licensure among work authorized-immigrants; and recommendations for Congress and state legislatures. Key tolines include:

1. Congress should enact legislation rescinding federal and state prohibitions on professional, commercial, and business licenses to certain immigrants, including:
 - a. Deferred Action for Childhood Arrivals (DACA) recipients;
 - b. Temporary Protected Status (TPS) holders;
 - c. Deferred Enforced Departure (DED) recipients; and
 - d. All immigrants with an employment authorization document (EAD).
2. Congress should enact legislation that affirmatively prohibits the denial of federal and state professional, commercial, and business licenses based on immigration status.
3. State legislatures, agencies, and licensing boards should implement legislation, regulations, or policies that prohibit the denial of professional, commercial, and business licenses based on immigration status.
4. Congress should authorize and appropriate funding to encourage states to pass laws expanding licenses to all immigrants, regardless of status; and reciprocity and portability laws for state licensing schemes that do not exclude immigrants.
5. States should examine and update occupational licensing laws and regulations to ensure immigrants and refugees are not disproportionately impacted by occupational licensing law.

II. Background

A. Professional, Commercial, and Business Licenses¹

Professional, commercial, and business licenses (also known as “occupational licenses”) represent the licensure framework required for an individual working in a specific field or career.² This licensure represents a credential that the federal, state, or local government issues to an individual seeking to be employed in certain fields, and usually requires that an individual satisfy state-specific educational, training, testing and other requirements.³ Nearly one in four jobs require some sort of license to practice.⁴ Over 1,100 different occupations require a license and approximately 25 percent of all workers nationwide are required to obtain a license in order to work in their occupations.⁵ Notably, the vast majority of all licenses are approved and issued at the state and local level, meaning that these jurisdictions have significant authority to set licensure frameworks.

For example, professional fields—ranging from finance, health, law, medicine, education, engineering, and more—each of which have dozens or hundreds of sub-professions, require some form of licensing. In addition to generally applicable licensing requirements that must be met by all applicants, immigrants face a patchwork of *additional* eligibility requirements (and bars) based on their specific immigration status, discussed below.

B. Federal Government and Licensing

Under federal law, non-qualified immigrants are ineligible for a variety of federal and state public benefits, including professional and commercial licenses.⁶ Additionally, many states bar lawful permanent resident (LPR) status holders from obtaining professional licensure in select fields.⁷ Qualified immigrants are defined as LPR holders, asylee holders, refugees, and certain other categories of immigrants.⁸ Qualified immigrants are eligible for a litany of different federal and state public benefits, including grants, contracts, licensure, benefits, welfare, housing, postsecondary education, health, and other benefits.⁹ Importantly, whether an immigrant is a “qualified immigrant” for the purposes of federal and state benefits is unrelated to that individual’s qualifications to be eligible for licensure—“qualified” is merely an immigration term of art unrelated to an individual’s skill set.

Non-qualified immigrants include undocumented immigrants, DACA recipients, and TPS and DED holders, all of whom are excluded from these types of licenses.¹⁰ State-level licensure is generally unavailable unless a state passes legislation, engages in

¹ This document was last updated September 26, 2019 with the inclusion of additional research and sources.

regulatory rulemaking, or issues policy guidance affirmatively stating that a non-qualified immigrant is eligible.¹¹ For example, the Florida State Supreme Court, relying on this provision of federal law, issued a decision stating that undocumented immigrants were not eligible for bar admission, e.g., a law license.¹² To do so, the court stated, would require the state to pass an affirmative law, which it later did.¹³

In recent years, Congress engaged in a variety of bipartisan efforts to expand access to licenses to non-qualified immigrants. During the Senate Judiciary markup of S.744, the Border Security, Economic Opportunity, and Immigration Reform Act of 2013, the committee, by voice vote and without controversy, adopted an amendment that would prohibit the federal government and states from denying licenses based on immigration status to any individual who held an EAD.¹⁴ The KIDS Act of 2014, then-House Majority Leader Eric Cantor’s legislation, to provide relief to immigrant youth, contained similar provisions.¹⁵ Most recently, H.R.6, the Dream and Promise Act of 2019 contained language re-affirming that conditional permanent residents (CPRs) would be eligible for licenses.¹⁶

C. States and Licensing

U.S. licensing and certification processes are often overly restrictive and time-consuming, and in many cases both the certification requirements and the professions that require licenses differ significantly from state to state. As a result, many states are exploring ways to reduce or streamline licensing barriers for all workers, including immigrants. Some states enacted legislation or policies that remove immigration status as an eligibility requirement for certain occupations. At least twelve states—Arkansas, California, Florida, Illinois, Indiana, Minnesota, Nebraska, Nevada, South Dakota, Utah, West Virginia and Wyoming—enacted legislation to reduce barriers for immigrants, including DACA recipients, to obtain licenses.¹⁷ Other states undertook administrative or regulatory action.¹⁸

California expanded licenses to all undocumented immigrants;¹⁹ Florida and Illinois expanded access to law licenses for DACA recipients, while Wyoming rescinded that U.S. citizenship be a requirement for bar admission;²⁰ Nebraska expanded access to all occupational licenses for DACA recipients;²¹ Indiana expanded occupational licensing in over 70 professions for DACA recipients;²² and New York, through the Board of Regents, expanded professional licenses and teacher certifications to DACA recipients.²³ In 2019, Arkansas extended access to nursing licenses to DACA recipients.²⁴ South Carolina is currently considering bipartisan legislation that would expand access to licenses to DACA recipients.²⁵ Like National Conference of State Legislatures (NCSL), CLINIC also tracks the states that expanded occupational licenses to different classes of immigrants, including outlining the benefits for such expansions, including boosting a state's

economy, allowing immigrants to satisfy the demand for jobs, allowing states to benefit from educational investments in immigrant workers, and promoting economic self-sufficiency.²⁶ For a comprehensive overview of citizenship requirements for various occupations across the states, including doctors, nurses, attorneys, and teachers & educators; and an analysis of the changing requirements in light of DACA, see *Within You Without You: Undocumented Lawyers, DACA, and Occupational Licensing* by Professor Michael A. Olivas.²⁷

While there is not a significant existing framework for license portability and reciprocities for immigrants, in recent years the U.S. Department of Labor, with partners, has expressed interest in expanding these concepts, generally.²⁸ Thus, another option for states to lift licensing requirements is to affirmatively recognize licenses granted to immigrants in other states through reciprocity schemes.

D. Growing Demand for Licensure for Immigrants

Through prosecutorial discretion, DACA provides both protection from deportation and an EAD, which grants authorization to be lawfully employed.²⁹ Through statute, TPS and DED similarly provide an EAD.³⁰ While undocumented immigrants without an EAD cannot lawfully be employed, they can still operate as independent contractors and can do so in fields that require licensing. However, as a result of federal and state licensing prohibitions, DACA recipients, TPS and DED holders, and undocumented immigrants are generally prohibited nationwide from obtaining occupational licenses, though, as discussed above, some states carved out exceptions.

This prohibition is particularly problematic and illogical for DACA, TPS, and DED recipients, who are authorized to lawfully remain in the United States, and lawfully be employed, and yet are still excluded from a variety of employment opportunities due to licensing prohibitions. That includes TPS holders who have some college or a college degree.

According to the NCSL, IMPRINT, and the National Skills Coalition, many other employment-authorized immigrants also face barriers to occupational licensing, including individuals with credentials earned outside the United States. More than 1.9 million immigrants and refugees—talented individuals who arrive in the United States having already completed extensive education, job training, or work experience—are unemployed or underemployed, owing to a variety of factors, one of which is the cumbersome licensing processes that create barriers.³¹ Licensing requirements that prevent all qualified immigrants from finding employment in their chosen professions affect not only the immigrant workers themselves, but also communities, which need their talents; not to mention lost state and federal tax revenue as a result of these talented individuals' underemployment.

In terms of DACA, many immigrant youth are pursuing careers in professional fields where licensing is mandatory, including law, medicine, and engineering. In a recent survey of over one thousand TheDream.US scholars, primarily made up of DACA recipients, 57 percent of respondents indicated they intended to go into a profession where licensing was a requirement, including a large number who expressed interest in nursing.³² The existence of the Dream Bar Association, a bar association representing undocumented and DACA law students and lawyers, and a variety of anecdotal stories of immigrant students seeking to enter the field of law, demonstrates the growing demand for licensing in the legal field. Approximately 62 medical schools have affirmatively indicated they accept DACA recipients, with 11 more accepting DACA recipients on a “case-by-case” basis.³³ Access to licensing is also one of the top legislative priorities for United We Dream, the largest immigrant youth-led organization in the nation.³⁴

Beyond law and medicine, the existence of licensing requirements in nearly one thousand different provisions, including low to middle-skill professions, means that DACA, TPS, and DED recipients face a variety of licensing hurdles to be able to fully utilize their EAD.

III. Recommendations³⁵

A. Repeal Federal Prohibition on Licensure

Congress should enact legislation rescinding the federal and state prohibition on professional and commercial licenses to non-qualified immigrants. We recommend that Congress amend 8 U.S.C. § 1611(c)(1) as follows:

(A) any grant, contract, or loan ~~professional license, or commercial license~~ provided by an agency of the United States or by appropriated funds of the United States; and

B. Repeal State Prohibition on Licensure

Congress should enact legislation rescinding the state prohibition on professional, and commercial licenses to non-qualified immigrants. We recommend that Congress amend 8 U.S.C. § 1621(c)(1) as follows:

(A) any grant, contract, or loan ~~professional license, or commercial license~~ by an agency of a State or local government or by appropriated funds of a State or local government; and

C. Prohibit Denial of Federal and State Licenses Based on Immigration Status

Congress, through its constitutional authority to regulate immigration, should enact legislation that prohibits both the federal government and states from denying licensure based on immigration status to an immigrant who is otherwise qualified and who holds an EAD. We recommend Congress the following language, identical to S.744:

Notwithstanding any other law, an individual who is authorized to be employed in the United States may not be denied a professional, commercial, or business license on the basis of his or her immigration status.

For consistency across immigration statuses, Congress can also consider the above language without the “who is authorized to be employed,” to expand this protection to *all* immigrants, regardless of immigration status.

D. Licensing and Legislative Protections for Immigrant Youth, TPS and DED Recipients

As stated above, many forms of immigration relief legislation grant CPR status to applicants, a qualified immigrant status that enables individuals to apply for and receive occupational licenses. As also discussed above, there is a pressing need for potential applicants and applicants with pending applications to access licensing before obtaining CPR status. We recommend that Congress enact legislation with the following language:

Notwithstanding any other law, for the purposes of professional, commercial, and business licenses, individuals with Deferred Action for Childhood Arrivals, Temporary Protected Status under Section 244 of the Immigration and Nationality Act (8 U.S.C. 1254a(b)), a grant of Deferred Enforced Departure, or an employment authorization document obtained under this Act, shall not be denied a professional, commercial, or business license on the basis of their immigration status.

For legislation that provides an interim immigration status that is a non-qualified status (e.g., most non-CPR statuses and all newly created statuses), Congress should enact legislation with the following language:

Notwithstanding any other law, an individual who is granted [NAME OF STATUS] under this Act, shall not be denied a professional, commercial, or business license on the basis of his or her immigration status.

E. Re-licensing and Re-certification for Foreign-trained Immigrants and Refugees

States should examine—and update where necessary—occupational licensing laws and regulations to ensure immigrants and refugees are not disproportionately impacted by occupational licensing laws. A model of this work can be found in the consortium³⁶ of fifteen states that received federal funding in 2015-2019 from the U.S. Department of Labor to focus on populations disproportionately impacted by occupational licensing requirements, including work-authorized immigrants, individuals with criminal records, members of the military, veterans and their spouses, as well as dislocated workers. The project has received bipartisan support and is coordinated by the NCSL,³⁷ the National Governors Association,³⁸ and the Council of State Governments.³⁹

¹ For questions regarding this report, please contact jose@presidentsalliance.org.

² Suzanne Hultin, *The National Occupational Licensing Database*, National Conference of State Legislatures, June 19, 2019, www.ncsl.org/research/labor-and-employment/occupational-licensing-statute-database.aspx [hereinafter “NCSL Licensing Database”]. While the federal and state license prohibitions speak to professional and commercial licenses, some states also include “business” license in relevant legislation. For completeness, we recommend any future legislative language include all three variations for completeness.

³ *Id.*

⁴ *Id.*

⁵ *The State of Occupational Licensing: Research, State Policies and Trends*, National Conference of State Legislatures, Oct. 11, 2017, www.ncsl.org/Portals/1/HTML_LargeReports/occupationallicensing_final.htm.

⁶ 8 U.S.C. §§ 1611, 1621 (West 2019); 8 U.S.C. § 1621 (West 2019).

⁷ Email Interview with Kristie De Peña, Director of Immigration & Senior Counsel, Niskanen Center (July 25, 2019) (on file with author).

⁸ 8 U.S.C. § 1641 (West 2019).

⁹ 8 U.S.C. §§ 1611, 1621 (West 2019).

¹⁰ Undocumented immigrants are noncitizens who have no authorization to remain in the United States. TPS is an immigration protection granted by the federal government to noncitizens who cannot be safely returned to their home country. DED is an immigration protection granted by the President to noncitizens who cannot be safely returned to their home country. *See Temporary Protected Status: Comprehensive*

Backgrounder, Catholic Legal Immigration Network, Inc., (Jan. 7, 2019), <http://www.cliniclegal.org/resources/temporary-protected-status-comprehensive-backgrounder>.

¹¹ 8 U.S.C. § 1621 (West 2019).

¹² *Id.* Bar admission in states is also complex in that states can prohibit non-qualified immigrants from sitting for the bar and being admitted or allow sitting for the bar but then deny an immigrant on the character and fitness portion of the admission, e.g. as a result of an individual being in the country without authorization.

¹³ *Id.*

¹⁴ Border Security, Economic Opportunity, and Immigration Modernization Act, Hearing on S.744, Before the Comm. on the Judiciary, 113th Cong. 113-40 (2013) (committee report)

<https://www.govinfo.gov/content/pkg/CRPT-113srpt40/html/CRPT-113srpt40.htm> (“Senator Coons offered an amendment (Coons10-DAV13371) that provides that individuals authorized to work in the United States will not be denied professional, commercial, or business licenses because of their immigration status. The amendment was modified slightly by a second degree amendment (EAS13594) offered by Senator Coons and was adopted by a voice vote.”).

¹⁵ Interview with Nicole Gustafson, Senior Policy Advisor and Chief Legislative Counsel, Representative Eric Cantor, Majority leader (October 2013) (on file with author).

¹⁶ The Dream and Promise Act of 2019, H.R.6, 116th Cong. (2019), <https://www.congress.gov/bill/116th-congress/house-bill/6/text/ih>. Rep. Roybal-Allard struck this licensing language from subsequent versions on the legislation on the grounds that it was unneeded, as CPRs would *already* be eligible for state and federal public benefits (including licenses) as a result of their permanent resident status.

¹⁷ *Professional and Occupational Licenses for Immigrants*, National Conference of State Legislatures, Jan. 17, 2017, <http://www.ncsl.org/research/immigration/professional-and-occupational-licenses-for-immigrants.aspx> [hereinafter “NCSL Licenses for Immigrants”].

¹⁸ *Id.*

¹⁹ *Id.* In certain cases, states, such as California, even implemented community-based programs that directly assist immigrants in applying for and obtaining occupational licenses. *Barriers to Work: Improving Access to Licensed Occupations for Immigrants with Work Authorization*, National Conference of State Legislature, July 17, 2018, www.ncsl.org/research/labor-and-employment/barriers-to-work-immigrants-with-work-authorization.aspx [hereinafter “NCSL Barriers to Work”].

²⁰ NCSL Licenses for Immigrants, *supra* note 17.

²¹ *Id.*

²² Tony Cook, *Dreamers can once again get licenses to work in 70 occupations in Indiana*, INDY STAR, March 21, 2018, <https://www.indystar.com/story/news/politics/2018/03/21/dreamers-can-once-again-get-licenses-work-70-occupations-indiana/447443002/>.

²³ MAYOR'S OFFICE OF IMMIGRANT AFFAIRS, NEW YORK CITY, English Español Deferred Action for Childhood Arrivals (DACA) (last accessed Aug. 16, 2019), <https://www1.nyc.gov/site/immigrants/help/legal-services/deferred-action.page>.

²⁴ NCSL Licenses for Immigrants, *supra* note 17.

²⁵ College Access and Workforce Development Act, H 3404, 123rd Session (2019), <https://www.scstatehouse.gov> (search for “3404” under Quick Search); College Access and Workforce Development Act, S 0431, 123rd Session (2019), <https://www.scstatehouse.gov> (search for “0431” under Quick Search).

²⁶ *Professional and Occupational Licenses for Immigrants*, CLINIC, Aug. 2019, <https://cliniclegal.org/resources/professional-licenses-undocumented-immigrants>.

²⁷ Olivas, Michael A., *Within You Without You: Undocumented Lawyers, DACA, and Occupational Licensing* (July 5, 2017), VALPARAISO UNIVERSITY LAW REVIEW, Vol. 52; U of Houston Law Center No. 2017-A-16. Available at SSRN: <https://ssrn.com/abstract=2997713>.

²⁸ NCSL Barriers to Work, *supra* note 19.

²⁹ Memorandum from Janet Napolitano, Secretary, U.S. Department of Homeland Security to David V. Aguilar, Acting Commissioner, U.S. Customs and Border Protection, et al. on Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children (June 15, 2012), available at <http://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>.

³⁰ 8 U.S.C. § 1254a (West 2019); U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF HOMELAND SECURITY, Deferred Enforced Departure (April 4, 2019), <https://www.uscis.gov/humanitarian/temporary-protected-status/deferred-enforced-departure>.

³¹ NCSL Barriers to Work, *supra* note 19.

³² 2018-2019 Scholar Survey, TheDream.US, Aug. 2019 (on file with author). The previous survey indicated that 66 percent of individuals were seeking professions that would ultimately require licensure. *See In Their Own Words - Higher Education, DACA, and TPS 8*, TheDream.US, Oct. 2018, available at <https://www.thedream.us/wp-content/uploads/2018/10/TheDream.US-In-Their-Own-Words-Report-Oct-2018-1-2.pdf> (“Similarly, a surprisingly large number of Scholars are studying to become nurses and expressed worry regarding the ability to enter their desired career path due to licensing concerns.”).

³³ *Medical School Policies on Deferred Action for Childhood Arrivals (DACA)*, Association of American Medical Colleges (2019), available at https://aamc-orange.global.ssl.fastly.net/production/media/filer_public/34/d9/34d992b9-50c0-4d20-958b-8b8bcc761830/daca_policies_march_2018-.pdf.

³⁴ Interview with Sanaa Abrar, Advocacy Director, United We Dream (March 2019) (on file with author).

³⁵ ~~Strikethrough~~ denote suggested deletions. Underline denotes suggested insertions.

³⁶ *Occupational Licensing Policy Learning Consortium*, National Conference of State Legislatures, Aug. 15, 2019, www.ncsl.org/research/labor-and-employment/request-for-applications.aspx.

³⁷ National Conference of State Legislatures (last accessed Sept. 18, 2019), www.ncsl.org.

³⁸ National Governors Association (last accessed Sept. 18, 2019), <https://www.nga.org/>.

³⁹ Council of State Governments (last accessed Sept. 18, 2019), <https://www.csg.org/>.