

10-2238
MOTOR VEHICLE
09-01-2010

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>MOTOR VEHICLE ENFORCEMENT DIVISION, UTAH STATE TAX COMMISSION,</p> <p style="text-align: center;">Respondent.</p>	<p style="text-align: center;">INITIAL HEARING ORDER</p> <p>Appeal No. 10-2238</p> <p>Tax Type: Salesperson License</p> <p>Judge: Phan</p>
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Presiding:

Jane Phan, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
For Respondent: RESPONDENT REP. 1, Assistant Director, Motor Vehicle Enforcement Division
RESPONDENT REP. 2, Director, Motor Vehicle Enforcement Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Sec. 59-1-502.5, on August 26, 2010. Petitioner (the Applicant) is appealing the denial of his application for a motor vehicle salesperson license. The license was denied by letter from the Motor Vehicle Enforcement Division (the "Division") dated July 8, 2010. The Division denied the license due to his answer regarding criminal convictions within the last 10 years on the application form.

APPLICABLE LAW

(2)(a) If the administrator finds that there is a reasonable cause to deny, suspend, or revoke a license issued under this chapter, the administrator shall deny, suspend, or revoke the license. (b) Reasonable cause for denial, suspension, or revocation of a license includes . . . (vi) making a false statement on any application for a license under this chapter or for special license plates; (vii) a violation of any state or federal law involving motor vehicles; (viii) a violation of any state or federal law regarding controlled substances; (ix) charges filed with any county attorney, district attorney, or U.S. attorney in any court of competent jurisdiction for a violation of any state or federal law involving motor vehicles; (x) a violation of any state or federal law

involving fraud; or (xi) a violation of any state or federal law involving a registerable sex offense under Section 77-27-21.5. . . (Utah Code Sec. 41-3-209(2)).

Except as provided in Subsection (4) or when exempted by federal law, an agency or political subdivision of the state shall verify the lawful presence in the United States of an individual at least 18 years of age who applies for: (a) a state or local public benefit as defined in 8 U.S.C. Sec. 1621 . . . (Portion of Senate Bill 81 now codified at Utah Code Sec. 63G-11-104(2).)

An agency or political subdivision required to verify the lawful presence in the United States of an applicant under this section shall require the applicant to certify under penalty of perjury that: (a) the applicant is a United States citizen; or (b) the applicant is: (i) a qualified alien as defined in 8 U.S.C. Sec. 1641; and (ii) lawfully present in the United States. (Portion of S.B. 81 now codified at Utah Code Sec. 63G-11-104(5).)

“State or local public benefit” defined (1) Except as provided in paragraphs (2) and (3), for purposes of this subchapter the term “state or local public benefit” means (A) any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government; and (B) any retirement, welfare, health, disability, public or assisted housing . . . (U.S.C. Sec. 1621(c).)

DISCUSSION

The Applicant had filled out a Motor Vehicle Salesperson Application and submitted it to the Division on or around May 11, 2010. Question 3 on that form asks if the applicant had any felony or misdemeanor convictions during the past 10 years. The Applicant had checked “yes” and listed “Unlawful sex with a minor 09-08-06 Class B Misdemeanor.” When the application was reviewed, the Division was unable to verify whether or not the Applicant has been convicted of a crime that was a registerable sex offense and denied the license pursuant to Utah Code Sec. 41-3-209.

Prior to the hearing the Division was able to verify that the Applicant had been convicted of a misdemeanor and that it had not been a registerable sex offense. The Applicant explained that he had been sentenced to six months probation which he served in 2007. He was no longer on probation and he had not been required to register as a sex offender. He also explained that the offense occurred when he was eighteen and the victim had been his girlfriend for some time before his eighteenth birthday. Further, they are still together and have children together. He asked for the license so that he could support his family.

At the hearing the Division’s representative stated that they would no longer deny the license on the basis of the criminal conviction because it was not a registerable sex offense. However, he explained that they

Appeal No. 10-2238

could not issue the license at this time because the Applicant had not completed the Motor Vehicle Salesperson Application regarding his residency status. The Division explained that since S.B. 81 was passed in 2008, any applicant is required to either verify that they are a U.S. citizen or provide information that they qualify under 8 U.S.C. 1641 and are present in the U.S. lawfully. The Applicant had not completed that portion of the application form. It was the Division's position that once the Applicant was able to provide the appropriate verification he could apply again for the license. The Applicant was not able to provide the verification at the hearing.

Upon review of the parties' positions in this matter, the Division may not issue the license at this time. Utah Code Sec. 63G-11-104(2) prohibits the Division from issuing the license to the Applicant unless he can provide the verification of his residency status. Under that provision neither the Division, nor the Commission can issue a professional or commercial license to the Applicant without this verification.

Jane Phan
Administrative Law Judge

DECISION AND ORDER

Based on the forgoing, the Commission finds there is no basis for the Division to grant the license until a completed application with the proper verification has been submitted. It is so ordered.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2010.

Appeal No. 10-2238

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

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