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Recent Developments: *Alavez v. Motor Vehicle Admin.*: The Maryland Motor Vehicle Administration May Not Issue a Maryland Driver's License to an Individual Whose License to Drive Has Been Revoked or Is Currently Suspended in Another State, Even Though the Revocation or Suspension Is Permanent in the Other State

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RECENT DEVELOPMENT

ALAVEZ V. MOTOR VEHICLE ADMIN.: THE MARYLAND MOTOR VEHICLE ADMINISTRATION MAY NOT ISSUE A MARYLAND DRIVER'S LICENSE TO AN INDIVIDUAL WHOSE LICENSE TO DRIVE HAS BEEN REVOKED OR IS CURRENTLY SUSPENDED IN ANOTHER STATE, EVEN THOUGH THE REVOCATION OR SUSPENSION IS PERMANENT IN THE OTHER STATE.

By: Sarah Hale

The Court of Appeals of Maryland held that the Maryland Motor Vehicle Administration ("MVA") may not issue a Maryland driver's license to an individual whose license to drive has been revoked or is currently suspended in another state, even though the revocation or suspension is permanent in the other state. *Alavez v. Motor Vehicle Admin.*, 402 Md. 727, 939 A.2d 139 (2008). The Court further reaffirmed its holding in *Gwin v. Motor Vehicle Administration*, 385 Md. 440, 869 A.2d 822 (2005), that the statute governing this law is to be construed in accordance with its plain meaning. *Alavez*, 402 Md. at 729, 939 A.2d at 140.

In 1988, Ramiro Silba Alavez ("Alavez"), a citizen of Mexico, came to the United States illegally and took up residence in California. He obtained a valid driver's license in California and, two years later, obtained a valid driver's license in Virginia. He claimed he applied for a driver's license in New Jersey in 1991, but was denied because he was an illegal immigrant.

In New Jersey, an applicant for a driver's license must provide satisfactory proof that his presence in the United States is authorized under federal law. The New Jersey Motor Vehicle Commission ("NJMVC") records indicate that Alavez received a commercial and non-commercial driver's license in 1987, which was before he emigrated to the United States. At that time, New Jersey was unaware that Alavez failed to surrender his Virginia license. When Alavez's New Jersey licenses expired in 1991, they were "withdrawn" because he had misrepresented facts on his driver's license application. Alavez

continued to drive in New Jersey, and in 1995 his licenses were again suspended.

In December 2002, Alavez surrendered his Virginia license when he was issued a Maryland driver's license. In January 2003, the MVA notified Alavez that his license would be cancelled because of his suspension in New Jersey. The MVA notified Alavez that, in order to avoid cancellation, Alavez needed to provide documentation that his driving privilege had been restored in New Jersey, but he never did this. NJMVC informed Alavez that unless he could provide proof that his presence in the United States was authorized pursuant to federal law, he would not be able to restore his driving privileges in New Jersey.

Alavez then requested an administrative hearing, rather than seeking immediate judicial review as the MVA suggested. The Administrative Law Judge ("ALJ"), at the Office of Administrative Hearings, found that New Jersey's suspension remained in effect because Alavez could not take the necessary steps to remove it. The ALJ concluded that the statute at issue, section 16-103.1 of the Transportation Article of the Maryland Code ("section 16-103.1"), was not discretionary and precluded the MVA from issuing a Maryland license during the New Jersey suspension. Furthermore, the ALJ determined that if there was any issue regarding Alavez's due process rights, it arose from the New Jersey statutes. Alavez appealed the ruling, but the Circuit Court for Baltimore County affirmed the ALJ's ruling. The Court of Appeals of Maryland granted certiorari to consider whether the MVA erred in canceling the Maryland license and subsequently affirmed the circuit court.

The Court of Appeals of Maryland clarified that it was not addressing the issue of whether Maryland should issue driver's licenses to illegal aliens or whether New Jersey's policy on this issue was fair. *Alavez*, 402 Md. at 734, 939 A.2d at 143. Rather, the Court addressed whether section 16-103.1 was intended to apply only to "out-of-state revocations, suspensions, refusals, or cancellations based on conduct" that would lead to the same result in Maryland. *Alavez*, 402 Md. at 734, 939 A.2d at 143. The Court also considered whether section 16-103.1 violated Alavez's substantive due process and equal protection rights under Article 24 of the Maryland Declaration of Rights. *Alavez*, 402 Md. at 734, 939 A.2d at 143.

In examining the first issue, the Court analyzed the legislative intent behind section 16-103.1. *Alavez*, 402 Md. at 734, 939 A.2d at 143. The Court found nothing ambiguous in the pertinent part of the statute, which states that the MVA: “may not issue a driver's license to an individual . . . [d]uring any period for which the individual's license to drive is revoked, suspended, refused, or canceled in this or any other state, unless the individual is eligible for a restricted license under § 16-113(e) of this subtitle.” *Alavez*, 402 Md. 735, 939 A.2d 143 (quoting MD CODE ANN., TRANSP. § 16-103.1 (West 2001)). The Court declined to add an exception to the statute that would permit the MVA to issue a valid license if the reason for the revocation, suspension, refusal, or cancellation out of state would warrant the same outcome in Maryland. *Id.* at 735, 939 A.2d at 143-44. The Maryland General Assembly did not create this exception, and the Court elected not to add words the Legislature did not intend to include. *Id.* at 735, 939 A.2d at 143-44.

The dissent argued that, in failing to create this exception, the majority used the public policy of other states to determine the outcome of cases under section 16-103.1, rather than Maryland public policy. *Alavez*, 402 Md. at 744-45, 939 A.2d at 149 (Eldridge, J., dissenting). The remedy suggested by the dissent was to remand the case to the MVA for a new determination. *Id.* at 740, 939 A.2d at 147 (Eldridge, J., dissenting). In doing so, *Alavez* would be treated the same way as any person in Maryland whose license was suspended for obtaining such a license by using false documents, as opposed to his current situation where he was given an indefinite suspension. *Id.* at 740, 939 A.2d at 146 (Eldridge, J., dissenting). However, the permitted exception in section 16-113(e) only allows the MVA to issue a driver's license when the applicant's license was suspended in another state for failing to comply with financial responsibility requirements. *Alavez*, 402 Md. at 736, 939 A.2d at 144 (majority opinion). A temporary driver's license may also be issued for ninety days when the violation in the other state would not have resulted in a violation in Maryland. *Id.* at 736, 939 A.2d at 144.

Article 24 of the Maryland Declaration of Rights ("Article 24") is the state counterpart to the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution. *Alavez*, 402 Md. at 737, 939 A.2d at 145. Article 24 provides that "no person ought to be disseized of his liberties or privileges or in any manner deprived of his life, liberty, or property "but by the judgment of his peers, or by the Law of the Land." *Alavez*, 402 Md. at 737, 939 A.2d

at 145. The dissent argued that the majority's broad construction of section 16-103.1, which makes a Maryland citizen's eligibility to obtain a driver's license dependent upon the laws of the state in which the person previously resided, presented serious constitutional issues and lacked a rational basis. *Alavez*, 402 Md. at 740, 939 A.2d at 146-47 (Eldridge, J., dissenting).

The majority, on the other hand, stated that at no time during the administrative hearing before the ALJ did Alavez raise any concerns regarding Article 24 or equal protection. *Alavez*, 402 Md. at 738, 939 A.2d at 145 (majority opinion). The Court also reiterated that this case was not about Alavez's status as an illegal alien, but the fact that he used forged documents to obtain a driver's license. *Id.* at 738, 939 A.2d at 145-46. The Court posited that Alavez was treated in the same manner as any other driver similarly suspended. *Id.* at 738, 939 A.2d at 146. Therefore, the Court determined that the reciprocity provisions in section 16-103.1 are constitutional. *Alavez*, 402 Md. at 739, 939 A.2d at 146.

This case could have a significant impact on issues of immigration law in Maryland. Even though the majority emphasizes that this is not a case about issuing driver's licenses to illegal aliens in Maryland, this decision will still impact illegal aliens who relocate to Maryland and wish to obtain driver's licenses. The problem of proving lawful presence in the United States is not unique to Ramiro Alavez or to Maryland. This case does not address the broader issue of how illegal aliens in the United States will be treated in the future. This is extremely important especially, in light of the upcoming 2008 Presidential Election.