

**Matter of Islam v New York City Taxi and Limousine
Commn.**

2008 NY Slip Op 33326(U)

December 5, 2008

Supreme Court, New York County

Docket Number: 111754/08

Judge: Emily Jane Goodman

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SCANNED ON 12/12/2008
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK I.A.S. PART 17

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In the Matter of the Application of
MOFIZUL ISLAM,

Petitioner,

Index No. 111754/08

For a Judgment Pursuant to Article 78 of the Civil
Practice Law and Rules.

NEW YORK CITY TAXI AND LIMOUSINE
COMMISSION and MATTHEW W. DAUS,
Chair of the New York City Taxi and Limousine
Commission,

Respondents.

-----X
EMILY JANE GOODMAN, J.S.C.:

This Article 78 proceeding results from the third and most recent denial of a license for Petitioner to operate a vehicle for hire. Three Administrative Law Judges (ALJs) of the Taxi and Limousine Commission (TLC) have found Petitioner worthy of the license, but the application that is the subject of this proceeding has been denied by the Respondent Commissioner/Chair, Matthew W. Daus, who, it is claimed, acted arbitrarily and capriciously. There is no suggestion that Mr. Islam's ethnic, religious or geographical background has played any role.

Petitioner had held a license from 1991-2001 but allowed it to expire, as explained below. In 2002, he obtained a new license which was terminated upon the discovery of a factual misstatement which led to a misdemeanor conviction in 2004. He has since re-applied, leading to this proceeding.

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 1418).

A conviction, particularly a misdemeanor, is not an automatic bar to obtaining a license, and consideration must be in accord with the New York State Correction Law, New York State's Human Rights Law and New York City Human Rights Law and this state's public policy of favoring the licensing and employment of suitable former offenders. In this case, the TLC Chair rejected the recommendation of the ALJ and determined that Petitioner is not "rehabilitated."

More specifically, Petitioner pled guilty to Attempting to Falsify Business Records, a Class A misdemeanor in 2004. The "false business record" refers to an application for a TLC license in which Petitioner said he had not previously had such a license. A license was issued, but revoked in 2002, upon TLC's discovery of Petitioner's misstatement of facts in that application. Petitioner admitted that in 1991 he fled his home, Bangladesh, and entered this country with a false identity, and that he had obtained a TLC license with that identity.

Still, in 2001, the United States Immigration and Naturalization Service (INS) found Petitioner to be a desirable and appropriate person to possess a "green card," i.e., to permanently live and work in the United States. Thus, notwithstanding the circumstances of Petitioner's entry into the country, the federal government, i.e., the INS, not only did not deport him, but granted him permanent status to remain in this country.

Upon being granted his permanent resident status in his true name, he applied for a new TLC license in his true name without revealing the existence of the original license,

and was approved. However, upon discovering that he had held a previous license in the other name, the Commissioner/Chair revoked the new license and caused Petitioner to be arrested and criminally prosecuted, resulting in the misdemeanor conviction.

While ALJs who had the opportunity to see and question Petitioner and evaluate his credibility, found that "The applicant has clearly demonstrated that he has been completely rehabilitated," the Commissioner/Chair denied the applications and overruled the most recent ALJ, concluding in a brief letter, "I see little evidence of rehabilitation and find that you cannot be trusted at this time to deal with the public and the Taxi and Limousine Commission in an honest and forthright manner."

All violations of law must be taken seriously, but it must also be noted that the conviction was for a misdemeanor and not a felony. Still, the question is whether in this case, the disqualification from employment because of the conviction, and/or its underlying facts which have previously been adjudicated, was arbitrary, capricious, and/or an abuse of discretionary powers.

In light of strong public policy and law which require that foreclosing public employment based on criminal record be closely scrutinized, we must analyze the TLC's compliance with the statutory factors.

Under state law enacted to establish reasonable procedures to prevent unfair discrimination against former criminal offenders in regard to licenses and employment, the following specific factors must be considered:

- (a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.
 - (b) The specific duties and responsibilities necessarily related to the license or employment sought.
 - (c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.
 - (d) The time which has elapsed since the occurrence of the criminal offense or offenses.
 - (e) The age of the person at the time of the occurrence of the criminal offense or offenses.
 - (f) The seriousness of the offense or offenses.
 - (g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.
 - (h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.
- Correction Law Art. 23-A § 753.¹

In light of this state's strong public policy in favor of employability,

“Providing a former offender a fair opportunity for a job is a matter of basic human fairness, as well as one of the surest ways to reduce crime.”

Gov. Hugh L Carey on approving L.1976 c 931
(now Correction Law supra)

and further, in light of Commissioner/Chair's failure to give due consideration and analysis to the factors set out by statute, but instead merely to track and restate their language, it cannot be said that the Respondent has complied with the statute. A review of the statutory factors follows.

¹NYS Human Rights Law §296, Art 15 (15) and NYC Human Rights Law Administrative Code 8-107 (10) (a) also bar public job discrimination based on conviction alone, or a finding of lack of “good moral character,” based on a conviction, in violation of the Correction Law.

The duties and responsibilities of the job and license and Petitioner's fitness to perform.

Petitioner's misdeeds would obviously be extremely relevant to the job and license, if, for example, his single conviction was for driving while intoxicated or impaired by alcohol or drugs. But the misdemeanor here bears no direct relationship to the performance of driving a motor vehicle or his fitness to perform the task. Moreover, the submissions establish a good driving record. The Commissioner's denial letter does not set forth how the series of events would interfere with Petitioner's driving duties, and reflects no analysis of that. Moreover, the Commissioner's rejection does not state what act is the barrier and what analysis was conducted.

Time

Petitioner has never been in any trouble other than the issue here: that in 2002 he stated that he had not previously held a license; that was six years ago. The unlawful entry took place in 1991, 17 years ago and Petitioner's first TLC license was issued approximately at the same time. Petitioner admitted that to the federal government in 2001, seven years ago. It is his re-application to the TLC, when, in the words of one of the three approving ALJs, he "came clean" six years ago, that led to Respondent initiating the criminal prosecution which ended in 2004, four years ago.

Age:

Petitioner is 40 years of age.

The Seriousness

All criminal conduct must be taken seriously. Similarly justice demands that punishment fit the crime. The misdemeanor here, it must be noted, is not a crime in which anyone was injured or sustained any loss or can reasonably be expected to in the future. Neither the presiding Judge in Criminal Court nor the District Attorney saw fit to have Petitioner incarcerated or placed on probation. His sentence was payment of a fine of \$500 which ended the matter for the criminal justice system, but apparently not for the TLC. Nor did the United States government see fit to punish Petitioner for the original wrongdoing which, ostensibly, is not the basis of the denial.

Any information provided regarding applicant's rehabilitation and good conduct.

In addition to the strong favorable findings of the ALJs, it is undisputed that Petitioner has no other record of arrests or convictions. He supplied one letter from a fraternal organization, The Bangladesh Society, presumably comprised of individuals from his homeland, saying that he is of good moral character and participates in sports and cultural events (his actual testimony was that he participates in the planning). While the Commissioner/Chair, did mention the Society's letter, he ignored and disregarded the "good moral character" statement and dismissed the letter with "sports and culture are no evidence of rehabilitation."

Legitimate Interest

The Respondent's rejection letter is conclusory and does not discuss how the facts

here affect the public safety and welfare. Although Daus stated "I see little evidence of rehabilitation and find that you cannot be trusted at this time to deal with the public and the Taxi and Limousine Commission in an honest and forthright manner," he does not mention in what manner this would be so.

For Commissioner/Chair Daus, then, it must be asked, what would constitute rehabilitation of this individual? What constitutes rehabilitation and when an individual can be deemed sufficiently rehabilitated to drive a cab is a philosophical, political, legal question which is particularly vexing here, considering that New York State has granted licences to medical doctors and lawyers to practice in this state notwithstanding prior felony convictions for narcotics, robbery, weapons, and bail jumping. The Commissioner/Chair's decision that the false representations to his agency, undoubtedly a serious matter, apparently leads him to believe that Petitioner would be dishonest now and in the future, but he does say how this conclusion is reached. Daus' determination is especially interesting, since he, in his official capacity, as may have been his duty, was, in effect, the complainant leading to the arrest and criminal prosecution of Petitioner which ultimately led to the conviction, license revocation and instant denial, making it perhaps, difficult for Daus to see the applicant in a different light. Given that the INS, with full knowledge of the underlying facts granted Petitioner permanent residence, that three ALJs, all who have conducted examination of Petitioner, have found him to be a person deserving of a license to work as a driver, and that a Criminal Court Judge and the

District Attorney of New York County agreed that a fine was the proper punishment, one is forced to question whether Daus could ever consider this applicant acceptable to drive a vehicle for hire.


For all the foregoing reasons, the Court concludes that the agency failed to comply with the Correction Law and abused its discretion and acted in an arbitrary and capricious manner and must revisit the application (see Gallo v. OMRDD, 38 AD3d 984 [3rd Dept 2007] [decision denying application for employment as a bus driver based on conviction for assault vacated and remanded because all factors under Correction Law were not addressed]).

Accordingly, it is

ADJUDGED that the Petition granted, the decision of the Commissioner/Chair is vacated and the matter is remitted to the Taxi and Limousine Commission for further proceedings consistent with this Decision, Order and Judgment.

This constitutes the Decision, Order and Judgment of the Court.

Dated: December 5, 2008

ENTER: 

TSC
EMILY JANE GOODMAN

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).
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