

CLINICAL LAW PROGRAM

IN SUPPORT OF HOUSE BILL 193

To: House Judiciary Committee
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I am a student attorney at the University of Maryland Francis King Carey School of Law's Clinical Law Program. I am also business immigration professional with 4 years of experience. I submit written testimony in support of House Bill 193, on behalf of myself and Matthew Gorman, because amending the Probation Before Judgment ("PBJ") bill would ensure that the visas used by foreign students and professional immigrants -- here to support the US economy, build scientific knowledge, and advance US interests at home and abroad--, are not inadvertently stripped away because of a one-time, minor mistake.

As currently written, the Maryland Probation Before Judgement Statute, Crim. Pro. Section 6-220, constitutes a conviction under federal immigration law.¹ As a result, if a non-citizen resident of Maryland obtains a PBJ, a non-citizen may be deemed "inadmissible," or ineligible to obtain or maintain a visa or gain admission to the United States.² This is because there are certain criminal convictions that trigger one of the grounds of inadmissibility under 8 U.S.C. §1182(a)(2)(A)(i).

8 U.S.C. §1182(a)(2)(A)(i) states that:

- (i) In general . . . any alien **convicted of, or who admits having committed, or who admits committing acts** which constitute the essential elements of-
- (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or
 - (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of title 21),

is inadmissible. (Emphasis added)

As a result, a non-citizen resident of Maryland who is present in the United States through a non-immigrant visa status, such as a student visa, intracompany transferee visa,³ specialty occupation visa,⁴ extraordinary ability visa,⁵ could commit a minor non-

¹ See U.S. v. Medina, 718 F.3d 364 (4th Cir. 2013).

² 8 U.S.C. §1182(a).

³ The intracompany transferee visa, or L-1 visa, allows a company to transfer an executive, manager, or other employee with specialized knowledge to its U.S. subsidiary, affiliate, or parent company. See 8 U.S.C. §1101(a)(15)(L).

violent crime, avail themselves of the Probation Before Judgment process, but when they next depart the United States, they would not be allowed to re-enter the United States with their current visa, and they would need to obtain a discretionary waiver, not guaranteed in order to obtain a new visa. This discretionary waiver is just that, purely discretionary.⁶ Consideration of the waiver involves the reviewing officer weighing social and humanitarian factors against adverse factors, such as the criminal conviction someone has obtained because their criminal record shows a Maryland PBJ under the current statute.⁷

For example, consider a non-citizen Maryland resident is in the United States on a J-1 visa to complete their medical residency at a Maryland-based medical school.⁸ The doctor has a lapse in judgement that results in being charged with possession of a controlled substance. They accept a PBJ, appropriate and routinely offered for a first-time, minor offense. The doctor goes on and complete their residency and then a fellowship. As a result of their medical training, the doctor receives an offer of employment from a US hospital. In order to begin working as a physician at this hospital and comply with U.S. immigration law, procedurally, the doctor would first need to depart the United States, obtain a different non-immigrant visa, and then return to the United States and seek admission with their new non-immigrant visa status. Because the Maryland PBJ from several years earlier renders the non-citizen physician inadmissible, once they leave the United States, they cannot simply obtain a new visa and return to the United States to begin working as a physician. This results in an incalculable loss to the US employer, and the community they would be serving, because the foreign national physician has particular skills and talent that cannot be replicated.

Additionally, as currently written, the PBJ statute has deportation consequences for foreign nationals working and living in the United States. For example, a foreign national employee who entered the United States on a nonimmigrant visa and became a lawful permanent resident after being sponsored for permanent resident status by their US employer, would be placed in deportation proceedings if they commit a minor, non-violent drug possession offense and accept a Maryland PBJ. This takes the decision

⁴ The specialty occupation visa, or H-1B visa, allows U.S. companies to hire highly educated foreign nationals to work for them. U.S. Citizenship and Immigration Services, “H-1B Specialty Occupations, DOD Cooperative Research and Development Project Workers and Fashion Models,” updated May 18, 2022, <https://www.uscis.gov/working-united-states/temporary-workers/h-1b-specialty-occupations-dod-cooperative-research-and-development-project-workers-and-fashion-models>.

⁵ The extraordinary ability visa, or O-1 visa, is available to foreign nationals with extraordinary ability in the sciences, arts, education, business, or athletics “which has been demonstrated by sustained national or international acclaim . . . whose achievements have been recognized in the field through extensive documentation.” 8 U.S.C. §1101(a)(15)(O)(i).

⁶ 8 U.S.C. §1182(d)(3)(A).

⁷ USCIS Policy Manual, Volume 9, Part A. Waiver Policies and Procedures, Ch. 5 Discretion. <https://www.uscis.gov/policy-manual/volume-9-part-a-chapter-5>.

⁸ The J-1 visa, also called the exchange visitor visa, is available for foreign national “student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill” who is coming to the United States to participate in a Department of State supervised program. 8 U.S.C. §1101(a)(15)(J).

regarding what a US employer should do about an employee issue, out of the employer's hands.

Amending the PBJ statute will make it easier for the United States and US companies to retain foreign talent.

I therefore support HB 193, which amends the Maryland PBJ statute and makes available a disposition that would preserve intellectual resources critical to Maryland and U.S. economy, and respectfully urge a favorable report.