June 2, 2016

Applicant's Petition for Board Review Before the Tennessee Board of Law Examiners

Daniel A. Horwitz
BEFORE THE TENNESSEE BOARD OF LAW EXAMINERS OF THE
TENNESSEE SUPREME COURT

Maximiliano Gabriel Gluzman, )

Petitioner, ) Case No. 16-P-04
)

v. ) Board Hearing Requested

Tennessee Board of Law Examiners, )

Respondent. )

PETITIONER’S BRIEF IN SUPPORT OF PETITION FOR BOARD REVIEW
OF DIRECTOR’S DENIAL OF PETITIONER’S APPLICATION TO SIT FOR
THE TENNESSEE BAR EXAM

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Introduction

Petitioner Maximiliano Gabriel Gluzman (Mr. Gluzman) is a 2015 graduate of Vanderbilt Law School, where he was awarded a Master of Laws (LL.M.) degree with a certificate in Law and Business. See Exhibit A. Notably, approximately 90% of Mr. Gluzman’s graded coursework at Vanderbilt pitted him against Vanderbilt’s JD students, who are indisputably among the most academically qualified law students in the entire country. Even so, and despite the additional fact that English is not his first language, Mr. Gluzman graduated with an almost unbelievable cumulative Grade Point Average (GPA) of 3.919, including a 4.0 GPA during his first semester. Id. Given his stellar academic performance, Mr. Gluzman was also placed on Vanderbilt’s Dean’s List during both semesters that he was enrolled. Id.

To those familiar with Mr. Gluzman’s sterling record of academic and professional achievement, his spectacular success at Vanderbilt Law School did not come as a surprise. Prior to attending Vanderbilt, Mr. Gluzman was a successful and highly regarded attorney in Argentina for more than a decade, where he had practiced law since 2001. Before that, Mr. Gluzman graduated with the foreign equivalent of a Bachelor of Arts (B.A.) degree in Legal Studies and a Juris Doctorate (J.D.) degree from Republica Argentina Universidad del Salvador, a highly selective university and law school in Buenos Aires, Argentina. See Exhibit B-1. Having subsequently married a U.S. citizen, however, and given his interest in practicing law in the United States, Mr. Gluzman decided to immigrate to Tennessee and obtain his LL.M. degree at Vanderbilt so that he could practice law near his wife’s business in Memphis.

Unfortunately, despite his thoroughly excellent academic and professional credentials, Mr. Gluzman’s efforts to practice law in Tennessee have been momentarily
derailed. Specifically, on February 5, 2016 – less than three weeks before he was scheduled to take the Tennessee bar exam – Mr. Gluzman received an unexpected email from the Executive Director of this Board stating that: “you are not eligible for the February 2016 Tennessee Bar Examination or subsequent examination in Tennessee absent additional education.” See Exhibit C.

Only one reason was provided for the Director’s initial determination that Mr. Gluzman is not eligible to sit for the Tennessee bar exam. Id. Specifically, she stated that “the equivalency evaluation required to be submitted to the Board shows that your . . . non-U.S. education is equivalent to a Bachelor’s Degree and a Master’s Degree in Law”—rather than a Bachelor’s Degree and a J.D. Id.

Significantly, however, this conclusion is both provably wrong and woefully misguided. In addition to inhibiting access to justice for Tennessee’s extensive immigrant and refugee population, if permitted to stand, the Board’s decision in this case will have significant detrimental effects on the U.S. economy, on Tennessee’s economy, and on the fiscal health of Tennessee law schools that rely on their LL.M. programs to generate revenue. See infra, pp. 13-18. Most importantly, however, the Board’s decision to deny Mr. Gluzman the opportunity to sit for the Tennessee bar exam conflicts with the straightforward requirements of Tennessee Supreme Court Rule 7, § 7.01, which Mr. Gluzman has plainly satisfied. See infra, pp. 4-13. With these concerns in mind, the Director’s initial determination to deny Mr. Gluzman the opportunity to sit for the Tennessee bar exam should be overturned by this Board for the following three reasons:

I. Because Mr. Gluzman’s foreign education is literally equivalent to the requirements of Rule 7, §§ 2.01 and 2.02;
II. Because, in the alternative, Mr. Gluzman’s foreign education is substantially equivalent to the requirements of Rule 7, §§ 2.01 and 2.02; and

III. Because Mr. Gluzman has made a prima facie showing that his education satisfies the requirements of Rule 7.

I. Mr. Gluzman’s foreign education is literally equivalent to the requirements of Rule 7, §§ 2.01 and 2.02

A. Mr. Gluzman’s foreign education has been deemed to be the equivalent of an American B.A. and J.D. by a qualified expert.

Tennessee Supreme Court Rule 7, § 7.01 provides that to be eligible for the Tennessee bar examination, an applicant who was educated abroad must satisfy this Board that his undergraduate and legal education were substantially equivalent to the requirements of Rule 7, §§ 2.01 and 2.02. These requirements, in turn, require that the applicant have earned the foreign equivalent of a U.S. Bachelor’s Degree and a Juris Doctorate while studying abroad. Fortunately for Mr. Gluzman, he has.

Appended to this brief as Exhibit B-1 is an expert evaluation of Mr. Gluzman’s foreign academic credential that was conducted by Dr. Jonatan Jelen on behalf of Morningside Evaluations. Morningside Evaluations is an organization of “professors, evaluators, translators, and project managers” who are, inter alia, members of “the Association of International Educators, the National Association of Graduate Admissions Professionals (NAGAP), the American Association of Collegiate Registrars and Admissions Officers (AACRAO), the Council for Global Immigration (CFGI, formerly ACIP), and the American Translators Association (ATA), among other organizations.” See Morningside Evaluations Expert Affiliations and Certifications, http://morningeval.com/quality-assurance-processes/ (last visited March 3, 2016 at
Dr. Jelen in particular, whose extensive CV is attached hereto as Exhibit B-2, is an Assistant Professor and the inaugural Director of the graduate program for Strategic Design and Management at Parsons School of Design, where he “regularly reviews the academic credentials of prospective applicants, transfer students, and prospective faculty” and “is relied upon to determine the academic equivalency of degrees and transcripts from educational systems outside the United States.” Id.

After conducting a thorough review of Mr. Gluzman’s foreign education, Dr. Jelen’s essential conclusion was as follows:

On the basis of the credibility of Republica Argentina Universidad del Salvador, and the hours of academic coursework, it is the judgment of Morningside Evaluations and Consulting that Maximiliano Gabriel Gluzman has attained the equivalent of a Bachelor of Arts degree in Legal Studies and a Juris Doctor degree from an accredited institution of higher education in the United States.

Exhibit B-1.

Dr. Jelen’s expert evaluation – which provides significant, affirmative evidence that Mr. Gluzman satisfies the criteria set forth in Rule 7 – militates in favor of permitting Mr. Gluzman to sit for the Tennessee Bar Exam. See, e.g., Application of Collins-Bazant, 578 N.W.2d 38, 44 (Neb. 1998) (stating that the “most important[]” factor in determining whether a foreign applicant is qualified to take the bar exam is whether “there is affirmative evidence in the record that [the applicant] received a legal education functionally equivalent to that available at an ABA-approved law school.”). Accordingly, this Board can confidently overturn the Executive Director’s initial denial of Mr. Gluzman’s application to take the Tennessee bar exam on the strength of Dr. Jelen’s evaluation alone.
B. *The substance of Mr. Gluzman’s foreign education is either equivalent to or more extensive than an American B.A. and J.D.*

Crucially, the *substance* of Mr. Gluzman’s legal education heavily bolsters the conclusion that he has satisfied the requirements of Rule 7 as well. In comparable cases, for example, similar Boards and State Supreme Courts seeking to determine whether a foreign applicant’s academic credentials are substantially equivalent to an American legal education have routinely focused on whether the applicant has taken certain “core courses deemed minimally necessary to be a properly-trained attorney”—such as “civil procedure, contracts, constitutional law, criminal law, evidence, family law, torts, professional responsibility, property, and trusts and estates.” *In re Brown*, 270 Neb. 891, 901 (2006) (internal citations and quotations omitted). With this consideration bearing heavily in mind, foreign applicants are commonly – and reasonably – denied the opportunity to sit for U.S. bar exams on the basis that they have not completed certain legal courses that are typical of the coursework that is required to obtain an American Juris Doctorate degree. *See, e.g., Jia v. Bd. of Bar Examiners*, 696 N.E.2d 131, 137 (Mass. 1998) (“Of the core courses typically required of a juris doctor candidate, the petitioner successfully completed only one, contracts.”); *In re Paniagua de Aponte*, 364 S.W.3d 176, 181 (Ky. 2012) (“The Applicant’s course work, which focused on international and business law subjects, was doubly narrow, and was thus unlikely to give her a sense of American law as a whole. The only course she took that appears to fall into the core of American legal education, in the sense of being a subject of the bar exam, was her course on corporations.”).

In stark contrast to such applicants, however, Mr. Gluzman’s education most certainly *does* “include[] exposure to a range of foundational substantive areas of law.” *In
re Brown, 270 Neb. at 901. With respect to the aforementioned foundational subjects such as “civil procedure, contracts, constitutional law, criminal law, evidence, family law, torts, professional responsibility, property, and trusts and estates,” for example, see id., Mr. Gluzman has taken courses in all of them. See Exhibit D. In fact, in many regards, Mr. Gluzman’s coursework was actually much more extensive than that required of American JD students. See id. Accordingly, the conclusion that Mr. Gluzman’s foreign education is merely equivalent to an American B.A. and J.D. can properly be characterized as an understatement.

Of note, the contrast between Mr. Gluzman’s academic record and that of other foreign applicants becomes even more apparent when one considers the fact that Mr. Gluzman supplemented his foreign coursework with a Vanderbilt Law School LL.M. degree, for which he completed courses in American Contracts, American Corporate Governance, American Corporations and Business Entities, American Federal Tax Law, American Professional Responsibility, American Securities Regulation, American Mergers and Acquisitions, and a general course on American Law. See Exhibit A. By any reasonable metric, when combined with his foreign studies, this record of academic achievement is at least equivalent to a typical U.S. legal education. See, e.g., Osakwe v. Bd. of Bar Examiners, 858 N.E.2d 1077, 1083 (Mass. 2006) ("A review of Osakwe’s transcripts reveals that he has taken a wide array of courses, many of them offered as part of the core curriculum at ABA-approved law schools. His transcript from the University of Nigeria shows courses in property, torts, contracts, evidence, constitutional law, land law, equity, jurisprudence, company law, international law, and commercial law. . . Osakwe has [] shown that he has sufficient education in and exposure to American law to satisfy our ‘particular’ analysis under S.J.C. Rule 3:01, § 3.4."); Application of Schlittner,
As such, Mr. Gluzman’s foreign academic record is equivalent to a U.S. legal education, and it qualifies him to sit for the Tennessee bar exam. He should be permitted to do so as a result.

II. Mr. Gluzman’s foreign education is substantially equivalent to the requirements of Rule 7, §§ 2.01 and 2.02

It is undisputed in this case that Mr. Gluzman received a “Titulo de Abogado” (Title of Attorney) degree in Argentina prior to receiving an LL.M. degree from Vanderbilt Law School in 2015. As noted above, after comparing his foreign education with its American equivalent, Mr. Gluzman’s expert foreign credential evaluator also concluded that Mr. Gluzman’s education was “the equivalent of a Bachelor of Arts degree in Legal Studies and a Juris Doctor degree from an accredited institution of higher education in the United States.” See Exhibit B-1. In contrast, however, the unsigned evaluation report relied on by the Board – whose author is unstated, and thus, whose credentials are unknown – concluded that Mr. Gluzman’s foreign education was equivalent to a “Bachelor’s and master’s degree from a regionally accredited institution” with a “Major/Specialization [in] Law.” See Exhibit E. There is no doubt, however, that

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1 The conclusions reached by the foreign credential evaluation service relied on by the Board have been disregarded in published cases. See, e.g., Sunshine Rehab Servs., Inc. v. U.S. Citizenship & Immigration Servs., No. 09-13605, 2010 WL 3325442, at *3 (E.D. Mich. Aug. 20, 2010).
Mr. Gluzman’s Argentinian education provided him with the credentials necessary to practice law in that country, which he did successfully for more than ten years.

Even assuming, purely for the sake of argument, that Mr. Gluzman’s education is truly the equivalent of a U.S. “Bachelor’s and master’s degree from a regionally accredited institution” with a “Major/Specialization [in] Law” – rather than the equivalent of an American B.A and J.D., as his own expert concluded, see Exhibit B-1 – the Board’s decision to deny Mr. Gluzman the opportunity to take the Tennessee bar exam would still be in error. Specifically, even if the Board’s report is the more accurate evaluation of the two, Mr. Gluzman’s foreign education would nonetheless be the substantial equivalent of an American B.A. and J.D., which is all that Rule 7, § 7.01 requires.

As world-renowned legal scholar and Vanderbilt Law School Professor Daniel Gervais – himself a foreign-educated (Canadian) lawyer, see Exhibit F-2 – explains in his affidavit in support of Mr. Gluzman’s application:

Legal education [abroad] is different than in the United States. The programs typically take between five and seven years. Students spend much more time than the typical US law student on subjects such as legal history, philosophy, etc. in addition to learning subjects such as Contracts, Torts, Property, Procedure, Criminal Law, etc.

... .

If the current average approach in the United States (a typically four-year undergraduate degree and three years of law school) is considered the only acceptable path, based on my knowledge and study of the worldwide situation, only the following foreign nationals may hope to qualify [to practice law in Tennessee] after completing an LLM: students from nine Canadian provinces, a few Australian students, and a few Japanese students.

In other words, requiring the exact same total number of years and/or credits as in the average US approach basically eliminates students from the vast majority of countries
around the world from the opportunity to take the Bar exam in the State of Tennessee.

**Exhibit F-1, ¶¶ 7, 16-17.**

Ultimately, Professor Gervais also concludes that based on Mr. Gluzman’s record of academic achievement abroad: “In my opinion, Maximiliano Gluzman’s undergraduate education and legal education . . . are substantially equivalent to an undergraduate education and legal education in the United States.” *Id.* at ¶ 21.

It is this reality that compels the conclusion that Mr. Gluzman’s foreign education satisfies the criteria of Rule 7. As Professor Gervais explains, a finding that Mr. Gluzman is not qualified to take the Tennessee bar exam solely because his foreign degree is not a precise reflection of the seven-year undergraduate/JD model that is customarily – though not consistently² – utilized in the United States would similarly exclude the overwhelming majority of foreign-qualified attorneys in the entire world. *Id.* at ¶ 17. *Cf. In re Yisa*, 297 S.W.3d 573, 573 (Ky. 2009) (“The LL.B. degree is the most commonly awarded law degree outside the United States.”). Thus, such a conclusion would render Rule 7 substantively illusory and practically meaningless for nearly every foreign attorney on the planet—

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² Notably, not all U.S. law programs – or even law programs in Tennessee – require compliance with this seven-year model. See, e.g., *University of Tennessee program allows students to earn bachelor’s, law degrees in 6 years*, ABC Channel 6 (Jan. 8, 2016, 4:25PM), available at http://wate.com/2016/01/08/university-of-tennessee-program-allows-students-to-earn-bachelors-law-degrees-in-6-years/ (reporting that: “Undergraduate students at the University of Tennessee will now be able to earn a bachelor's degree and a law degree in just six years, one less than usually required, under a new program.”).
excluding only those “students from nine Canadian provinces, a few Australian students, and a few Japanese students.” See Exhibit F-1, ¶ 16.

This absurd result could not realistically have been what our Supreme Court intended when it adopted Tennessee Supreme Court Rule 7, § 7.01, and it should be rejected accordingly. See State v. Flemming, 19 S.W.3d 195, 197 (Tenn. 2000) (“we will not apply a particular interpretation to a statute if that interpretation would yield an absurd result.”). See also, In re Yisa, 297 S.W.3d at 577 (“Obviously, foreign applicants are not necessarily required to obtain a J.D., nor are they expected to have exactly the same legal education as they would have received at an American law school. If this were the rule, it would render SCR 2.014(3) completely meaningless.”). Simply stated, pursuant to familiar rules of statutory construction, Rule § 7.01 should not be interpreted in a manner that reads its provisions out of existence. See, e.g., Midwestern Gas Transmission Co. v. Dunn, No. M200500824COAR3CV, 2006 WL 464113, at *7 (Tenn. Ct. App. Feb. 24, 2006) (“if the statute does not convey a temporary right of entry to companies with the power of eminent domain, then it does nothing at all. We decline the property owners’ invitation to read [the statute] out of existence under the guise of ‘statutory interpretation.’”).

Notwithstanding the Director’s conclusion to the contrary, what matters for purposes of § 7.01 – indeed, the only thing that matters – is whether the substance of an applicant’s foreign education is substantially equivalent to a U.S. legal education. And plainly, the substance of Mr. Gluzman’s foreign education was substantially equivalent to a U.S. legal education. See, e.g., Exhibit B-1 (concluding that Mr. Gluzman’s foreign education was “the equivalent of a Bachelor of Arts degree in Legal Studies and a Juris Doctor degree from an accredited institution of higher education in the United States,”);
Exhibit F-1 (concluding that: “In my opinion, Maximiliano Gluzman’s undergraduate education and legal education . . . are substantially equivalent to an undergraduate education and legal education in the United States.”); Exhibit G (stating that: “I firmly believe with every fiber in my being that Mr. Gluzman is qualified to sit for the Tennessee Bar Exam.”); Exhibit D (detailing Mr. Gluzman’s extensive academic curriculum and exposure to core legal courses).3 Cf. In re O’Siochain, 842 N.W.2d 763, 770 (Neb. 2014) (“Based on a de novo review, we conclude that O’Siochain [who, completed a 4–year Irish law and business program,] has met his burden of proving his law school education and experience were functionally equivalent to the education received at an ABA-approved law school and that as a result, a waiver of the educational qualifications requirement of § 3–105(A)(1)(b) is appropriate.”).

Additionally, lest there be any lingering doubt about either Mr. Gluzman’s academic qualifications or his substantive knowledge of American law, all such concerns are easily put to rest both by his demonstrated mastery of American law at Vanderbilt Law School, see Exhibit A, and by the glowing recommendations that he has received from his American law professors. See Exhibit F-1 (“Mr. Gluzman was a student of mine during his studies at Vanderbilt. He was one of the very best LLM students. He is a mature, serious, hard-working law student with significant experience as a lawyer in Argentina.”); Exhibit G (“Maximiliano Gluzman was one of my very best students . . . . I

3 Differences in the temporal length of Mr. Gluzman’s course of study, for example – as compared with the substance of what he studied – are easily explained “by the fact that Argentinean students often study more hours than US students per semester” as well as per credit hour, including continuing study for the same coursework during the summer without any reflected adjustment in credit hours. See Exhibit F-1.
firmly believe with every fiber in my being that Mr. Gluzman is qualified to sit for the Tennessee Bar Exam.”). In sum, Mr. Gluzman’s foreign education was substantially equivalent to the requirements of Rule 7, §§ 2.01 and 2.02, and he is qualified to sit for the Tennessee bar exam as a result.

III. Mr. Gluzman has made a prima facie showing that his education satisfies the requirements of Rule 7.

Based on the affidavits and significant documentary evidence appended to this brief, it can hardly be disputed that Mr. Gluzman has made a prima facie showing that his foreign education satisfies the requirements of Rule 7. See, e.g., Exhibit B-1 (concluding that Mr. Gluzman’s foreign education was “the equivalent of a Bachelor of Arts degree in Legal Studies and a Juris Doctor degree from an accredited institution of higher education in the United States,”); Exhibit F-1 (“In my opinion, Maximiliano Gluzman’s undergraduate education and legal education . . . are substantially equivalent to an undergraduate education and legal education in the United States.”). Having done so, this body should adopt a rebuttable presumption that Mr. Gluzman has satisfied the requirements of Rule 7, and the burden should shift to the Board to prove that Mr. Gluzman is not eligible to sit for the Tennessee bar exam thereafter.

Notably, such a burden-shifting framework is commonplace under Tennessee law. See, e.g. Gossett v. Tractor Supply Co., 320 S.W.3d 777, 780 (Tenn. 2010) (“If an employee proves a prima facie case of discrimination or retaliation, the employee creates a rebuttable presumption that the employer unlawfully discriminated or retaliated

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4 This Board may consider such evidence pursuant to Tennessee Supreme Court Rule 7, § 13.02(c)(i).
against him or her. The burden of production [then] shifts to the employer to articulate a legitimate and nondiscriminatory or nonretaliatory reason for the action.”) (internal citation omitted); *Chorost v. Chorost*, No. M2000-00251-COA-R3CV, 2003 WL 21392065, at *6 (Tenn. Ct. App. June 17, 2003) (“Once an obligor parent makes out a prima facie case for modifying his or her child support, the burden shifts to the custodial parent to prove that the requested modification is not warranted by the guidelines.”); *State v. Mathias*, 687 S.W.2d 296, 298 (Tenn. Crim. App. 1985) (“In order to rely upon the defense of entrapment, the defendant must make out a prima facie case of entrapment, whereupon the burden shifts to the state to show beyond a reasonable doubt that the defendant had the predisposition to commit the crime.”); *Altman v. Altman*, 181 S.W.3d 676, 682 (Tenn. Ct. App. 2005) (“The party claiming that dissipation has occurred has the burden of persuasion and the initial burden of production. After the party alleging dissipation establishes a prima facie case that marital funds have been dissipated, the burden shifts to the party who spent the money to present evidence sufficient to show that the challenged expenditures were appropriate.”); *State ex rel. Dep’t of Soc. Servs. v. Wright*, 736 S.W.2d 84, 85 (Tenn. 1987) (“T.C.A. § 36–5–219(b) . . . states that a duly certified URESA petition ‘shall create a presumption of the truthfulness of the facts alleged therein and prima facie evidence of the liability of the respondent and shall shift the burden of proof to such respondent.’”); *State ex rel. Johnson v. Newman*, No. E201402510COAR3CV, 2015 WL 5602021, at *2 (Tenn. Ct. App. Sept. 23, 2015) (“To find civil contempt in a case such as this, the petitioner must establish that the defendant has failed to comply with a court order. Once done, the burden then shifts to the defendant to prove inability to pay. If the defendant makes a prima facie case of inability to pay, the
burden will then shift to the petitioner to show that the respondent has the ability to pay.”)
(internal citations omitted).

Moreover, in addition to being utilized with regularity, see id., public policy necessitates adopting such a burden-shifting framework in Rule 7 cases for at least four separate reasons.

First, as the Tennessee Supreme Court has explained: “This State has an interest in ensuring that its citizens have access to employment and the ability to earn a livelihood . . . .” Yardley v. Hosp. Housekeeping Sys., LLC, 470 S.W.3d 800, 806 (Tenn. 2015). Consequently, this Board must err on the side of permitting qualified lawyers to practice law in Tennessee, rather than prohibiting them from doing so.

Second, “foreign-educated lawyers [can] do great things for both America and their home countries,” and “business for the American legal services sector can grow by opening American law practice to more foreign-educated lawyers, and can thereby place the American market squarely in the stream of global commerce into which just about every other American business sector has entered.” Jeffrey A. Van Detta, A Bridge to the Practicing Bar of Foreign Nations: Online American Legal Studies Programs As Forums for the Rule of Law and As Pipelines to Bar-Qualifying LL.M. Programs in the United States, 10 South Carolina J. Int’l L. & Bus. 63, 67-68 (Fall 2013). Similarly, introducing more foreign-educated attorneys into the legal industry significantly benefits Tennessee’s economy. See Exhibit F-1 (“On information and belief, Tennessee law firms and companies who have hired foreign-trained lawyers have greatly benefited and continue to benefit from hiring those students, as Tennessee increasingly becomes a global hub for international business.”). Further, Tennessee law schools – including Vanderbilt Law School – generate significant revenue from LL.M. programs, which
educated foreign attorneys pursue with the expectation that they will be permitted to take the Tennessee bar exam after graduating. See id. (“Over the past nine years (since 2007), on information and belief a total of 13 foreign students with an LLM degree from Vanderbilt University Law School applied for admission to the Tennessee Bar. All but one [was] successful (not counting Mr. Gluzman). This means 1.4 students per year on average.”). Consequently, reasonable, predictable standards that permit foreign applicants who have made a credible showing that they are qualified to practice law in Tennessee are essential to promoting the economic well-being of the country, the state, and Tennessee’s law schools.

Third, denying a foreign-educated bar applicant who has made a credible showing that he is qualified to practice law in Tennessee the opportunity even to sit for the Tennessee bar exam gives rise to serious concerns about raw economic protectionism that may violate both the United States Constitution and the Tennessee Constitution. See, e.g., *Craigmiles v. Giles*, 312 F.3d 220, 224 (6th Cir. 2002) (invalidating protectionist statute under the 14th Amendment’s Due Process clause because “protecting a discrete interest group from economic competition is not a legitimate governmental purpose.”); *Consumers Gasoline Stations v. City of Pulaski*, 292 S.W.2d 735, 737 (Tenn. 1956) (“Although [a] city may have the right to regulate [a] business, it does not have the right to exclude certain persons from engaging in the business while allowing others to do so. . . . Being discriminatory in nature[, such a law] clearly violates Article I, Section 8 of the Constitution of Tennessee.”). See also Andrew M. Perlman, *A Bar Against Competition: The Unconstitutionality of Admission Rules for Out-of-State Lawyers*, 18 GEO. J. LEGAL ETHICS 135 (2004) (arguing that protectionism inherent in foreign bar admission requirements violates Article IV’s Privileges and Immunities Clause, the Fourteenth
Amendment’s Privileges or Immunities Clause, and the Dormant Commerce Clause). Accordingly, adopting the commonplace burden-shifting framework used elsewhere throughout Tennessee law that would steer this Board clear of such constitutional concerns is worthwhile and appropriate.

Fourth, “there is a significant community of émigrés . . . who need home-country trained lawyers admitted to practice in their adopted U.S. states.” Van Detta, supra, at 64. Additionally, given Middle Tennessee’s substantial immigrant and refugee population, there is an overwhelming need to increase the number of competent bilingual attorneys available to residents in Middle Tennessee in particular. See generally, Exhibit H (“there is an ever increasing shortage of attorneys who have the necessary skills to work with th[e immigrant] and refugee population. Bilingual, culturally competent attorneys are a critical component of access to justice for this growing segment of our community. Based on the data found in the recent census, immigrant communities in Tennessee and the Southeast have a greater level of need than immigrant communities in other parts of the U.S.”). Accordingly, ensuring that qualified foreign applicants like Mr. Gluzman are not unnecessarily prohibited from practicing law in Tennessee is essential to promoting access to justice for a significant proportion of Tennesseans. See id. (“We encourage you to consider seriously degrees and certifications from other countries before dismissing their merits. By counting these comparable recognitions as applicable and giving them their due credit, it resolves two issues: providing more qualified individuals to meet the growing need in the community, and allow[ing] talented, skilled individuals to practice in their field of study.”).

With these four considerations in mind, a burden-shifting framework is appropriate under circumstances where, as here, a foreign applicant has made a prima
facie showing that he is qualified to sit for the Tennessee bar exam. Under such circumstances, there should be a rebuttable presumption that the applicant satisfies the requirements of Rule 7, and the burden of production should then shift to the Board to prove that the applicant does not. Accordingly, pending additional proof offered by the Board that Mr. Gluzman is not eligible to sit for the Tennessee bar exam, the Director’s initial decision should be overturned, and Mr. Gluzman’s petition to sit for the Tennessee bar exam should be granted.

**Conclusion**

“Admission rules are intended to weed out unqualified applicants, not to prevent qualified applicants from taking the bar.” In re O’Siochain, 842 N.W.2d at 770 (internal citations and quotations omitted). By preventing one of the most experienced, qualified, and academically accomplished foreign attorneys ever to graduate from Vanderbilt Law School the opportunity even to sit for the Tennessee bar exam, however, the Director’s current decision to deny Mr. Gluzman the opportunity to practice law in Tennessee does just that.

Most importantly, though, the Board’s decision in this regard is unsupportable under the Tennessee Supreme Court’s own rules governing eligibility for three separate reasons. First, Mr. Gluzman’s foreign education is literally equivalent to the

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5 As in other states, “the Board does not have the authority to waive any of the Supreme Court Rules or grant exceptions to those Rules.” Papadima v. Bd. of Bar Examiners of Delaware Supreme Court, 947 A.2d 1122 (Del. 2008). However, by virtue of the fact that the Tennessee Supreme Court “has the plenary power to review the actions of the Board in interpreting and applying those rules,” see Chong v. Tennessee Bd. of Law Examiners, 2015 WL 8380856, at *1 (Tenn. Dec. 4, 2015), it has “inherent authority to waive []
requirements of Rule 7, §§ 2.01 and 2.02. Second, in the alternative, Mr. Gluzman’s foreign education is substantially equivalent to the requirements of Rule 7, §§ 2.01 and 2.02. Third, Mr. Gluzman has made a prima facie showing that he is qualified to take the bar exam under the requirements of Rule 7, and in response, at present, the Board has failed to muster sufficient evidence that he is not.

Accordingly, for the foregoing reasons, the Board’s initial determination to deny Mr. Gluzman the opportunity to sit for the Tennessee Bar Exam should be overturned.

Respectfully submitted,

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In re Murray, 821 N.W.2d 331, 334 (Minn. 2012). Accordingly, although such a claim would not be properly presented to this Board, for purposes of appeal, the Petitioner formally preserves the argument that if he is determined to be ineligible to take the bar exam under Tennessee Supreme Court Rule 7, § 7.01, then Rule § 7.01 should be waived in his case as a matter of equity.
CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of March, 2016, a copy of the foregoing was sent via certified mail, postage prepaid to the following:

BLE Administrator
Tennessee Board of Law Examiners
401 Church Street, Suite 2200
Nashville, TN 37219

Daniel A. Horwitz, BPR #032176