

STATE OF NEW YORK
DEPARTMENT OF STATE
OFFICE OF ADMINISTRATIVE HEARINGS

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In the Matter of the Application of

ABDUL RASHID ZAFAR

DECISION

For a License as a Watch, Guard or
Patrol Agency

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The above noted matter came on for hearing before the undersigned, Roger Schneier, on May 1 and July 2, 1996.

The applicant, of 347 Fifth Avenue, Suite 310, New York, New York 10016, having been advised of his right to be represented by an attorney, appeared *pro se*.

The Division of Licensing Services (hereinafter "DLS") was represented by Supervising License Investigator William Schmitz.

ISSUE

The issue before the tribunal is whether the applicant has sufficient experience to qualify for a license as a watch, guard or patrol agency.

FINDINGS OF FACT

1) By application dated August 18, 1995 the applicant applied for a license as a watch, guard or patrol agency (State's Ex. 2). He bases his application on various types of experience, including that gained while an officer in the Pakistani army from October, 1968 until December, 1989, when he was discharged with the rank of major (App. Ex. A, D and E). During the periods of February, 1980 to May, 1984, and March, 1988 to March, 1989, he served in the Inter Services Intelligence, in which he was responsible for internal security in various parts of Pakistan, including anti-terrorism operations and the protection of Pakistani and foreign dignitaries and of government property (App. Ex. B and C). In addition, he worked as a security officer for Burns International Security Services (hereinafter "Burns"), a licensed watch, guard or patrol agency, from May 26, 1993 until November 1, 1993 (State's Ex. 3).

2) By letter dated September 6, 1995 the applicant was advised by DLS that proof of his experience was required, and by letter dated October 6, 1995 he was advised by DLS that it proposed to deny his application for want of sufficient qualifying experience. He was granted 6 months credit for his employment by Burns, and advised that he

could request an administrative review.¹ By letter dated October 30, 1995 the applicant requested an administrative review. By letter dated February 2, 1996 the applicant was advised that after such a review DLS continued to propose to deny his application, and that he could request an administrative hearing, which he did by letter dated February 19, 1996. Accordingly, notice of hearing was served on the applicant by certified mail received by him on March 12, 1996 (State's Ex. 1).

OPINION

I- As the person who requested the hearing, the burden is on the applicant to prove, by substantial evidence, that he has acquired the required experience. State Administrative Procedure Act (SAPA), §306[1]. Substantial evidence is that which a reasonable mind could accept as supporting a conclusion or ultimate fact. *Gray v Adduci*, 73 N.Y.2d 741, 536 N.Y.S.2d 40 (1988). "The question...is whether a conclusion or ultimate fact may be extracted reasonably--probatively and logically." *City of Utica Board of Water Supply v New York State Health Department*, 96 A.D.2d 710, 465 N.Y.S.2d 365, 366 (1983)(citations omitted).

II- Every applicant for a license as watch, guard or patrol agency must establish that he or she has been regularly employed, for a period of not less than two years, performing such duties or providing such services as described as those performed or furnished by a watch, guard or patrol agency in General Business Law (GBL) §71[2] as a sheriff, police officer in a city or county police department, or employee of an agency of the state, county or United States government, or licensed private investigator or watch, guard or patrol agency, or has had an equivalent position and experience. GBL §72[1].² Equivalent position and

¹ The applicant had not provided DLS with any proof of his experience in Pakistan. At the May 1, 1996 session of the hearing the applicant again did not present such proof. At that time the tribunal, acting on its own motion, adjourned the matter for two months to give the applicant the opportunity to obtain such proof and organize his testimony. Proof of the experience in Pakistan was finally submitted on July 2, 1996.

² " 'Watch, guard or patrol agency' shall mean and include the business of watch, guard or patrol agency and shall also mean and include, separately or collectively, the furnishing, for hire or reward, of watchmen or guards or private patrolmen or other persons to protect persons or property or to prevent the theft or the unlawful taking of goods, wares and merchandise, or to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, choses in action, notes or other valuable documents, papers, and articles of value, or to procure the return thereof or the performing of the service of such guard or other person for any of said purposes. The foregoing shall not be deemed to include the business of persons licensed by the industrial commissioner under the provisions of section twenty-four-a or subdivision three-b of section fifty of the workmen's compensation (continued...)

experience is defined as experience obtained in employment in a full-time position requiring, as its major and primary duty, performance of such services as are described in GBL §89-f[6]: protection of individuals and/or property from harm, theft or other unlawful activity; deterrence, observation, detection and/or reporting of incidents in order to prevent any unlawful or unauthorized activity including but not limited to unlawful or unauthorized intrusion or entry, larceny, vandalism, abuse, arson or trespass on property; street patrol service; response to but not installation or service of a security system alarm installed and/or used to prevent or detect unauthorized intrusion, robbery, burglary, theft, pilferage and other losses and/or to maintain security of a protected premises. Further, the employer, firm, organization, or governmental agency for which the applicant worked must have required the performance of such services in the course of its regular operations.

The applicant has both types of qualifying experience. From May 26, 1993 until November 1, 1993 he was employed by Burns performing the duties of a watch, guard or patrol agency, and DLS concedes that he is entitled to credit for that experience. As established in the hearing, he also has nearly five years of equivalent experience obtained as an officer in the Pakistani army. Since the statute makes no geographical reference as to where equivalent experience must be obtained, the applicant is entitled to credit for his experience in Pakistan. Cf. *Matter of the Application of Pillai*, 26 DOS 87.

CONCLUSIONS OF LAW

The applicant has established by substantial evidence that he has more than the two years of experience required to qualify for licensure as a watch, guard or patrol agency, and his application should be granted. GBL §72[1]; SAPA §306[1].

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT the application of Abdul Rashid Zafar for a license as a watch, guard or patrol is granted.

Roger Schneier
Administrative Law Judge

Dated:

²(...continued)

law or representing employers or groups of employers insured under the workmen's compensation law in the state insurance fund, nor persons engaged in the business of adjusters for insurance companies nor public adjusters licensed by the superintendent of insurance under the insurance law of this state." GBL §71[2].