

FFL Acceptance of Driver's Licenses Issued Without Proof of Lawful Residency

Some states issue driver's licenses to residences unable to provide satisfactory proof that their residency is legal. For example, California provides that the Department of Motor Vehicles "shall issue an original driver's license to a person who is unable to submit satisfactory proof that the applicant's presence in the United States is authorized under federal law if he or she meets all other qualifications for licensure and provides satisfactory proof to the department of his or her identity and California residency."<sup>70</sup> These licenses "are identified by the statement FEDERAL LIMITS APPLY in bold on the front of the license and a notice on the back that states This card is not acceptable for official federal purposes. This license is issued only as a license to drive a motor vehicle. It does not establish eligibility for employment, voter registration, or public benefits."<sup>71</sup> The ATF has determined that an FFL "may not transfer firearms or ammunition to the person, even if the person answered 'no' to question 11.k. on ATF Form 4473."<sup>72</sup> The ATF explains that these limited California driver licenses are "only issued to a person who cannot provide proof of lawful presence in the United States; given this fact, a FFL has a reasonable cause to believe a potential transferee in possession of an AB driver license is illegally or unlawfully in the United States and prohibited from receiving or possessing firearms or ammunition."<sup>73</sup>

Limited Nonimmigrant Visa Exceptions

The exceptions provided under 18 U.S.C. Section 922(y)(2) for aliens with nonimmigrant visas override the restrictions under 18 U.S.C. Section 922(d)(5) for the sale or disposition of firearms or ammunition to aliens and the restrictions under 18 U.S.C. Section 922(g)(5)(B) making it illegal for aliens to ship, transport, or possess firearms or ammunition.<sup>74</sup> The regulations also provide that the nonimmigrant visa

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<sup>69</sup>(...continued)

employee of the United States designated under regulations prescribed under authority contained in this chapter [Chapter 12, beginning at 8 U.S.C. § 1101], for the purpose of issuing immigrant or nonimmigrant visas or, when used in subchapter III [Issuance of Entry Documents, beginning at 8 U.S.C. § 1201], for the purpose of adjudicating nationality." (8 U.S.C. § 1101(a)(9).)

<sup>70</sup> CA Vehicle Code, § 12801.9(a).

<sup>71</sup> ATF Open Letter to All California Federal Firearm Licensees, 6/30/2016.

<sup>72</sup> ATF Open Letter to All California Federal Firearm Licensees, 6/30/2016. Question 11.k. is now question 12.b. under the October 2016 revision of ATF Form 4473 and asks "Are you an alien illegally or unlawfully in the United States?"

<sup>73</sup> ATF Open Letter to All California Federal Firearm Licensees, 6/30/2016.

<sup>74</sup> 18 U.S.C. § 922(u)(2).