

STATE OF NEW YORK  
LIQUOR AUTHORITY

TO: All applicants for licenses and permits and agency staff

SUBJECT: Eligibility to hold a license or permit- citizenship

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On April 22, 2014, the Members of the Authority approved Advisory #2014-18, providing guidance with respect to the citizenship requirements for holding a license or permit to traffic in alcoholic beverages. Subdivision 3 of section 126 of the Alcoholic Beverage Control Law states that a person who is neither a citizen of the United States or lawfully admitted to the United States for permanent residence may not traffic in alcoholic beverages.

As explained in Advisory #2014-18, the United States is a party to numerous treaties with other nations that allow citizens of the those nations to engage in commerce and trade in the United States. As noted in that Advisory, pursuant to the "Supremacy Clause" found in Article Six of the United States Constitution, these treaties supersede state law to the extent that the state law is inconsistent with the provisions of the treaties.

The New York State Attorney General has issued a number of opinions stating that subdivision 3 of section 126 of the Alcoholic Beverage Control Law could not prevent a citizen of a nation with a reciprocal trade agreement with the United States from obtaining a license to traffic in alcoholic beverages. Accordingly, for many years the Authority maintained a list of "reciprocal trade countries" for purposes of determining whether a citizen of another country was eligible for a license.

However, over time it became apparent that the "reciprocal trade countries" list did not accurately set forth the nations that had such treaties with the United States. In response, the Authority issued Advisory #2014-18, directing applicants and agency staff to a list of treaty countries maintained by the United States Department of State. While the list of treaty countries referenced "E-1" and "E-2" visas, it was not intended to exclude other visas. In practice, a citizen from a country on the list of reciprocal treaty countries was eligible to obtain a license to traffic in alcoholic beverages, regardless of whether they held an "E-1" or "E-2" visa.

Accordingly, Advisory #2014-18 is hereby rescinded and, effective immediately, the following individuals are deemed to qualify for a license under subdivision 3 of section 126 of the Alcoholic Beverage Control Law:

- A citizen of the United States;
- An alien lawfully admitted for permanent residence in the United States;
- Foreign nationals from reciprocal treaty countries set forth in a list maintained by the U.S Department of State. That list may be found at

<http://travel.state.gov/content/visas/en/fees/treaty.html>

- Foreign nationals from any other country who can satisfy the Authority that his/her country has a treaty with the United States that permits citizens of both countries to engage in trade with and/or work in each other's country on a reciprocal basis.

Please note that a citizen of another nation that qualifies under this Advisory is not required to be physically present in the United States to obtain a license. However, if such an individual intends to work at the licensed premises, it will be necessary for the person to demonstrate that he/she has the appropriate visa to enter and work in the United States. Please also note that a citizen of another nation, as with all applicants, must also meet all other requirements to be eligible to hold the license being sought.