

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MOHAMMAD NASAR ULLAH KHAN, M.D. : CIVIL ACTION
: :
v. : :
: :
EDUCATIONAL COMMISSION FOR : NO. 00-1701
FOREIGN MEDICAL GRADUATES :

MEMORANDUM & ORDER

J.M. KELLY, J.

NOVEMBER 30, 2000

Presently before the Court is the Motion of Defendant, Educational Commission for Foreign Medical Graduates ("ECFMG"), to dismiss the Complaint of Plaintiff, Mohammad Nasar Ullah Khan, M.D. ("Khan"). A liberal reading of Khan's pro se Complaint reveals that he is suing ECFMG because it refused to permanently revalidate his ECFMG certificate, which allows him to pursue post-graduate medical education in the United States. Khan apparently brings his lawsuit under four federal statutes: (1) the Educational Opportunities Act of 1974, 20 U.S.C. § 1701 (1994); (2) the General Education Provisions Act, 20 U.S.C. § 1221; (3) Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000c-2000c-9; and (4) as a violation of his civil rights under 42 U.S.C. § 1983.

BACKGROUND

Khan is a graduate of a foreign medical school. ECFMG certifies foreign medical school graduates for post-graduate medical training in the United States. Khan has previously commenced actions in this Court as a result of his inability to secure a graduate training position in 1996. The facts pleaded and of record in those previous complaints help to supplement the sparsely pleaded facts in the instant Complaint. In 1996, Kahn was denied admission to a program at Morehouse School of Medicine because his nonimmigrant status with the Immigration and Naturalization Service ("INS") had expired. Khan alleged that an INS processing error was responsible for the expiration of his nonimmigrant status. In settlement of a previous case, the INS retroactively extended Khan's nonimmigrant status. Khan then accepted a position as a Research Fellow in the Vascular Surgery Department of Temple University. Khan then requested ECFMG to permanently validate his ECFMG Certificate. ECFMG denied Khan's request because his position as a Research Fellow does not qualify as an accredited residency; ECFMG rules require foreign medical graduates to take an English test every two years until the graduate has entered an accredited medical program.¹ Khan now asserts that the two year policy and the specific denial of

¹ ECFMG administered an English test until 1999. Now a foreign medical graduate must take the Test of English as a Foreign Language, more commonly known as the TOEFL.

his request for permanent revalidation of his nonimmigrant status violated his rights.²

DISCUSSION

In considering whether to dismiss a complaint for failing to state a claim upon which relief can be granted, the court must consider only those facts alleged in the complaint and must accept those facts as true. Hishon v. King & Spalding, 467 U.S. 69, 73 (1983). Moreover, the complaint is viewed in the light most favorable to the plaintiff. Tunnell v. Wiley, 514 F.2d 971, 975 n.6 (3d Cir. 1975). In addition to these expansive parameters, the threshold a plaintiff must meet to satisfy pleading requirements is exceedingly low: a court may dismiss a complaint only if the plaintiff can prove no set of facts that would entitle the plaintiff to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

The purpose of the Equal Educational Opportunities Act of 1974 is "to ensure that all children enrolled in public schools are entitled to equal educational opportunity without regard to race, color, sex, or national origin." 20 U.S.C. § 1701(a)(1). Because nothing in Khan's Complaint indicates that he is either a child or enrolled in a public school, this statute is inapplicable to his claim which must be dismissed. The

²Khan apparently also wants the Court to revamp fifty years of policy concerning the training of foreign medical graduates and the provision of medical services in the Third World. The Court is unequipped in many ways to handle this request and therefore declines to do so.

General Educational Provisions Act applies to "each applicable program of the Department of Education." 20 U.S.C. § 1221. As Khan has made no allegation that ECFMG is in some way a program of the Department of Education, this claim must also be dismissed. Title IV of the Civil Rights Act applies to the desegregation of public schools and public colleges. 42 U.S.C. § 2000c. Khan has not alleged that ECFMG is a public school or public college. Consequently, Title IV does not apply to Khan's claims and this claim must be dismissed. In order to bring suit under 42 U.S.C. § 1983, a plaintiff must allege that a person acting under color of state law deprived him of his constitutional rights, Arment v. Commonwealth Nat'l Bank, 505 F. Supp. 911, 912-913 (E.D. Pa 1981), or rights secured by a federal statute, 42 U.S.C. § 1983. As the federal statutes asserted by Khan are inapplicable to his claim, Khan has failed to state a claim under § 1983. In addition, Khan's Complaint fails to allege that ECFMG was acting under the color of state law. Accordingly, Khan's § 1983 claim must also be dismissed.

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O R D E R

AND NOW, this 30th day of November, 2000, upon consideration of the Motion to Dismiss of Defendant, Educational Commission for Foreign Graduates, the Response of Plaintiff, Mohammad Nasar Ullah Khan, M.D., and the Replies thereto filed by the parties, it is ORDERED that the Motion to Dismiss is GRANTED. The Complaint of Mohammad Nasar Ullah Khan, M.D. against Educational Commission for Foreign Graduates is DISMISSED.

The Clerk of Court is to mark this matter as CLOSED.

BY THE COURT

JAMES MCGIRR KELLY, J.