

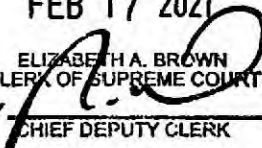
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

THE STATE OF NEVADA
DEPARTMENT OF MOTOR VEHICLES,
Appellant,
vs.
JORDAN CHRISTOPHERSON,
Respondent.

No. 80887-COA

FILED

FEB 17 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

The State of Nevada Department of Motor Vehicles (NV DMV) appeals from a district court order granting a petition for judicial review. Eighth Judicial District Court, Clark County; Richard Scotti, Judge.

In 2000, Jordan Christopherson was convicted of driving under the influence (DUI) in Utah, resulting in the revocation of his Utah driver's license.¹ Christopherson later testified that at the time of the initial DUI conviction, he was homeless and living in his car. Consequently, he was cited several more times for moving and non-moving violations, with each extending his license revocation² an additional year.³ Due to these citations, the state of Utah revoked Christopherson's license until 2032.

Christopherson moved to Las Vegas, Nevada, several years ago, where he found employment with Ahern Rentals. In an effort to further his

¹We do not recount the facts except as necessary to our disposition.

²We note that the administrative law judge used the terms "revocation" or "suspension" to describe the status of Christopherson's Utah driver's license. The distinction is immaterial to the resolution of issues before us, but for consistency, we generally use the term "revocation" in this order.

³In total, after the initial DUI conviction, Christopherson was cited 24 more times.

career, he applied for a commercial driver's license (CDL) in Nevada. Due to the revocation of his Utah driver's license, NV DMV denied Christopherson's CDL application. Christopherson then appealed to an administrative law judge (ALJ) who determined that NV DMV's actions were consistent with NAC 483.825(3), which states that NV DMV will not issue a CDL to a person "[w]hose driver's license is revoked, suspended or subject to disqualification." The ALJ further determined that NV DMV did not have the authority under its regulations to rescind or disregard the revocation of Christopherson's Utah driver's license. Subsequently, Christopherson petitioned the district court for review. The district court reversed the ALJ's decision, concluding that NV DMV violated Christopherson's equal protection rights because he was treated differently due to his poor social economic status. This appeal followed.

On appeal, NV DMV argues (1) that the district court erroneously concluded that NV DMV violated Christopherson's equal protection rights and (2) that the ALJ's determination was reasonable and supported by substantial evidence. Christopherson argues that the district court properly determined that his constitutional rights were violated, and that the district court properly instructed NV DMV to grant him a Nevada driver's license and a CDL. We agree with NV DMV.⁴

An appellate court's role in reviewing an administrative agency's decision is identical to that of the district court. *Elizondo v. Hood Mach., Inc.*, 129 Nev. 780, 784, 312 P.3d 479, 482 (2013); *State Tax Comm'n*

⁴To the extent that NV DMV argues additional issues on appeal, including that the district court improperly reweighed the evidence considered by the ALJ in reaching its decision, we need not reach such issues in light of our disposition.

v. Am. Home Shield of Nev., Inc., 127 Nev. 382, 385-86, 254 P.3d 601, 603 (2011). Although a reviewing court is free to decide purely legal questions without deference to an agency determination, the agency's conclusions of law, which will necessarily be closely related to the agency's view of the facts, are entitled to deference, and will not be disturbed if they are supported by substantial evidence. *State, Dep't of Motor Vehicles v. Torres*, 105 Nev. 558, 560-61, 779 P.2d 959, 961 (1989). And "[w]hile not controlling, an agency's interpretation of a statute is persuasive when the statute is one the agency administers." *Nev. Pub. Emps. Ret. Bd. v. Smith*, 129 Nev. 618, 625, 310 P.3d 560, 565 (2013) (internal quotation marks and citation omitted).

First, the NV DMV argues that the district court erred in concluding that denying Christopherson a commercial driver's license violated his equal protection rights.

The United States Constitution forbids an enactment that "den[ies] . . . any person . . . equal protection of the laws." U.S. Const. amend. XIV, § 1. Likewise, the Nevada Constitution requires that all laws be "general and of uniform operation throughout the State." Nev. Const. art. 4, § 21. At the center of the right to equal protection is the idea that all people who are similarly situated are entitled to equal treatment under the law. *Gaines v. State*, 116 Nev. 359, 371, 998 P.2d 166, 173 (2000). In determining whether a statute treats similarly situated persons disparately, the court must determine what level of scrutiny the legislation receives, and examine the legislation under the appropriate level of scrutiny. *Id.* In order to evoke strict scrutiny, either a suspect class or fundamental right must be involved. *Id.* However, "[w]hen a suspect class or fundamental right is not involved, different classifications are

permissible, so long as they are reasonable.” *In re Candelaria*, 126 Nev. 408, 417, 245 P.3d 518, 523 (2010); *see also Zamora v. Price*, 125 Nev. 388, 396, 213 P.3d 490, 495 (2009) (applying rational basis review where the challenged statute did not affect a fundamental right or involve a suspect class).

Here, it appears that the district court applied some level of heightened scrutiny when it concluded that NV DMV discriminated against Christopherson based on his socioeconomic status and that it “would be a constitutional violation to deny him a [CDL].” But socioeconomic status is not a suspect classification, nor is driving a fundamental right. *See San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 29 (1973) (“[T]his Court has never heretofore held that wealth discrimination alone provides an adequate basis for invoking strict scrutiny.”); *see also Williams v. State*, 118 Nev. 536, 542, 50 P.3d 1116, 1120 (2002) (“[W]e have previously held that there is no constitutional right to drive; rather, driving is a privilege.”). Therefore, to the extent that the district court considered Christopherson’s argument that he was denied equal protection, it should have done so under rational basis review.⁵

Applying the appropriate level of scrutiny, we conclude that Christopherson’s claim is unavailing. This is so because Christopherson failed to demonstrate that the statutes and DMV regulations in question were not rationally related to a legitimate governmental purpose, nor did

⁵We note that Christopherson did not raise his equal protection claim in his petition for review, but instead orally made the argument at a hearing regarding the petition. Although NV DMV requested the district court to strike the argument as it was not raised in the petition or briefed, we nevertheless address it on appeal, because the equal protection argument was properly presented before the ALJ, thus preserving the issue.

he establish that he was treated differently than similarly situated persons. *See Peck v. Zipf*, 133 Nev. 890, 895, 407 P.3d 775, 780 (2017) (“Statutes are presumed to be valid, and the challenger bears the burden of showing that a statute is unconstitutional. In order to meet that burden, the challenger must make a clear showing of invalidity.” (quoting *Tam v. Eighth Judicial Dist. Court*, 131 Nev. 792, 796, 358 P.3d 234, 237-38 (2015))). Accordingly, the district court erred when it concluded that denying Christopherson’s application for a CDL violated his equal protection rights.

Second, we conclude that the ALJ’s determination that NV DMV followed the law and properly applied its regulations is supported by substantial evidence. NAC 483.825(3) provides that NV DMV will not issue a CDL to a person, such as Christopherson, “[w]hose driver’s license is revoked, suspended or subject to disqualification.”⁶ Pursuant to NRS 483.495(2), NV DMV is directed to establish regulations “[s]et[ting] forth the circumstances under which the Administrator may, for good cause shown, rescind the revocation, suspension or cancellation of a license, or shorten the period for the suspension of a license.” NAC 483.480 provides five circumstances for which NV DMV may rescind the revocation of a license for good cause.⁷

⁶Notably, NAC 483.825(3) is not limited to a *Nevada* driver’s license. Instead, the regulation states, in broad terms, that NV DMV will not issue a CDL to any person “[w]hose *driver’s license* is revoked, suspended or subject to disqualification.” NAC 483.825(3) (emphasis added).

⁷The five circumstances include: (1) incorrect information included on a driver’s license with the information being corrected by NV DMV, (2) convictions which have been subsequently amended to an offense which does not warrant revocation, (3) law enforcement officer’s statements which have been subsequently amended to an offense that does not warrant revocation, (4) law enforcement officer’s statements that were subsequently

The ALJ concluded that although the director of NV DMV has discretion to rescind revocations for good cause, this discretion is limited to the circumstances that are set forth by the agency in NAC 483.480. We agree with the ALJ's conclusion and interpretation. Therefore, when Christopherson did not meet the circumstances set forth in the NAC, which he acknowledged, NV DMV did not have the authority to consider rescinding the Utah revocation of his license under Nevada law.⁸ Thus, the ALJ's decision that NV DMV properly applied its regulations when denying Christopherson's application for a CDL was both reasonable under the law and supported by substantial evidence.

Finally, we conclude that the ALJ correctly concluded that NV DMV did not have the authority to either rescind or disregard Christopherson's Utah convictions.⁹ NRS 483.920, entitled "[e]ffect of

amended by a "conviction order from the court finding that the license was incorrectly revoked," and (5) incorrect revocations resulting from identity theft. NAC 483.480(1), (3).

⁸We note that even if Christopherson had demonstrated one of the five circumstances demonstrating good cause, NV DMV would have the discretion as to whether to rescind his revocation or not. While NRS 483.495(2) requires NV DMV to promulgate regulations for situations where NV DMV "*may*, for good cause shown, rescind the revocation," the statute does not mandate the DMV to rescind a revocation when a person demonstrates that they fall under one of the circumstances provided by regulation. (Emphasis added.) Rather, the term "may" in the statute denotes a discretionary action and leaves the ultimate decision to NV DMV. *See State of Nev. Emps. Ass'n Inc. v. Daines*, 108 Nev. 15, 19, 824 P.2d 276, 278 (1992) ("This court has stated that in statutes, 'may' is permissive . . .").

⁹We note that NV DMV also argued that by disregarding the Utah convictions, interstate compacts and policies would be undermined. However, in light of our disposition and recognition that NRS 483.920

convictions entered in other states,” provides that NV DMV “shall give full faith and credit to all convictions entered in another state and treat them for the purpose of imposing penalties . . . as if they were entered in this State.” This statute references the Full Faith and Credit Clause of the United States Constitution.

The United States Constitution provides that “Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.” U.S. Const. art. IV, § 1. “The purpose of the Full Faith and Credit Clause was to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation” *See Donlan v. State*, 127 Nev. 143, 145, 249 P.3d 1231, 1233 (2011) (internal quotations omitted).

Here, the ALJ properly found that NV DMV did not have the authority to reach out and either rescind or disregard Christopherson’s Utah convictions. *See Donlan*, 127 Nev. at 146, 249 P.3d at 1233 (determining that the “full faith and credit clause cannot be used by one state to interfere impermissibly with the exclusive affairs of another”). Therefore, the ALJ correctly decided that NV DMV properly considered Christopherson’s Utah convictions when denying his application for a CDL.

Thus, we conclude that the district court did not have a sufficient basis for reversing the ALJ’s determination. *See* NRS 233B.135(3)(a), (d) (providing that the reviewing court cannot substitute its judgment for that of the agency absent a constitutional violation or an error of law). Accordingly, we

requires Nevada to recognize Christopherson’s license revocation in Utah, we need not address the effect of other compacts or policies.

ORDER the judgment of the district court REVERSED AND
REMAND this matter to the district court with instructions to deny
Christopherson's petition for review.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Linda Marie Bell, Chief Judge, Eighth Judicial District Court
Department 2, Eighth Judicial District Court
Attorney General/Carson City
Attorney General/Las Vegas
Mueller & Associates
Eighth District Court Clerk