

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IN THE MATTER OF THE
APPLICATION OF HAILI CHEN,
Appellant,
vs.
NEVADA STATE BOARD OF
MASSAGE THERAPY,
Respondent.

No. 81371-COA

FILED

MAY 27 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Haili Chen appeals from a district court order denying her petition for judicial review. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

Chen applied to the Nevada State Board of Massage Therapy (Board) for a massage license.¹ The Board sent Chen a letter notifying her that the Board was going to consider her character and alleged misconduct at a public meeting. The letter stated the time and place of the meeting and said Chen could bring counsel and present evidence on her own behalf. The letter also stated it acted as notice and that it was provided under NRS 241.033.² Chen attended the meeting with her counsel. The Board held an open hearing regarding Chen's application at Chen's request and because the Board discussed alleged misconduct. After the hearing, the Board denied Chen's application. Chen then petitioned the district court for judicial review and the Board opposed.

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

²The Board's notice given pursuant to NRS 241.033 was necessary to comply with Nevada's open meeting laws.

The district court denied Chen's petition for judicial review for two reasons. First, it found that pursuant to *Private Investigator's Licensing Bd. v. Atherley*, 98 Nev. 514 , 654 P.2d 1019 (1982), that denial of an occupational license is not a contested case which would otherwise require a hearing. It also stated that while the Board may have a policy to review some applications at a Board meeting prior to making a decision regarding whether to grant or deny a license, many applications are administratively decided by the Board without reviewing the applications at a meeting. Second, it found that because "Chen's attendance at the meeting to determine whether to issue an occupational license was not 'required by law,' [it was] not a 'contested case.'" See NRS 233B.127 (an agency's determination to grant, deny, or review a license is not a "contested case" unless notice and opportunity for a hearing are *required by law*). It therefore dismissed the petition as unreviewable without addressing its merits.

On appeal, Chen argues that the district court erred because she and her counsel participated in a contested hearing, and therefore, even though the Board had discretion in deciding whether to issue her a license, she should still be entitled to judicial review of the Board's decision. We disagree.

We review this matter de novo because it involves statutory interpretation. *UMC Physicians' Bargaining Unit of Nev. Serv. Emps. Union v. Nev. Serv. Emps. Union/SEIU Local 1107, AFL-CIO*, 124 Nev. 84, 88, 178 P.3d 709, 712 (2008). The Administrative Procedures Act (APA) governs this matter because the proceeding involved a petition for judicial review of an administrative decision. *Washoe Cty. v. Otto*, 128 Nev. 424, 430, 282 P.3d 719, 724 (2012). However, not every administrative decision

is reviewable. *Atherley*, 98 Nev. at 515, 654 P.2d at 1019. Only decisions that are in “strict compliance with the statutory requirements” are reviewable by the district court. *Kame v. Emp’t Sec. Dep’t*, 105 Nev. 22, 25, 769 P.2d 66, 68 (1989). The statutory requirements governing the Board’s proceedings involving Chen are contained in NRS Chapter 640C.

NRS 640C.580 sets forth the requirements to obtain a license as a massage therapist in Nevada, but does not specifically provide that notice and an opportunity for a hearing are required before approving or denying a license. Additionally, NRS 622A.020(2) provides that “[a] final decision of a regulatory body approving or denying an application for issuance or renewal of a license is not a contested case for the purposes of this chapter.” While we recognize that NRS 640C.710 could be interpreted as requiring notice and an opportunity for a hearing before the Board can deny the issuance of a license in a disciplinary action, NRS 622A.130(2) provides that if there are conflicts with the statutory provisions governing occupational licensing pursuant to NRS Chapter 640C and those of NRS Chapter 622A, NRS Chapter 622A controls. Therefore, the provisions of NRS 622A.020(2) govern, and the Board’s final decision denying Chen’s application for a license, following a hearing Chen and her counsel were invited to, but not required to attend, does not rise to the level of a contested case. Thus, Chen is not entitled to judicial review. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Timothy C. Williams, District Judge
Kirk T. Kennedy
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk