

# **“WHAT’S A SUNDIAL IN THE SHADE?”: BRAIN WASTE AMONG REFUGEE PROFESSIONALS WHO ARE DENIED MEANINGFUL OPPORTUNITY FOR CREDENTIAL RECOGNITION**

## **ABSTRACT**

*By the end of 2016, an unprecedented 25.4 million refugees were forced from their homes, 16% of whom have resettled in the United States of America. Among them are thousands of highly-skilled professionals who may never return to their trained professions or find work that pays more than minimum wage. Refugees who are determined to continue their professions are advised to control their expectations: they are almost always placed in survival jobs and face significant challenges in practicing their professions, especially foreign credential recognition. Yet Article 19 of the 1951 Refugee Convention legally obligates the U.S. government to respect and uphold refugees’ fundamental right to practice liberal professions. Fulfillment of this duty requires the federal and state governments to adopt laws and systems that give refugees favorable treatment in both the exercise of professions and credential recognition—the two key considerations in Article 19.*

*Despite giving refugees some employment and employability services soon after arrival, the United States fails to substantively comply with Article 19. The freedom of refugees to practice their professions is severely undermined by a panoply of state and federal laws and policies, which make it difficult for refugee professionals to re-credential. Inconsistencies in state re-credentialing laws, federal “quick employment” objectives, and underfunding of employment services perpetuate the underemployment of highly-skilled refugees: there are engineers driving Uber, doctors washing dishes, and teachers cleaning houses. To de facto protect these refugees’ right of professional practice, this Comment proposes a national standard of treatment and credential recognition practices that will give refugees a more meaningful opportunity for re-credentialing.*

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## INTRODUCTION

Ahmed, an Iraqi refugee, is a baggage handler at the Wilmington Airport in Delaware, where he works 10-hour-long shifts loading and unloading cargo.<sup>1</sup> Back home, Ahmed was a physician—specifically, a pathologist—for over thirteen years. He was eager to resume his career in the United States, but his Iraqi medical degree is not valid in Delaware. To obtain a medical license, he would have to complete a foreign medical graduate certificate, a qualifying medical exam, and at least three years of post-graduate training, as well as submit a verification of his physician license directly from his Iraqi governorate, which had been ravaged by war.<sup>2</sup> There are limited resources to help Ahmed with his medical re-credentialing. With his cash assistance from the resettlement agency<sup>3</sup> running out, he was forced to accept the agency’s advice that re-credentialing was impractical and took the “appropriate[] offer of employment”<sup>4</sup> at the Wilmington Airport.

Ahmed represents a hidden class of refugees in America, a class whose size is unknown,<sup>5</sup> but comprises highly skilled and educated professionals who spent many years honing their craft and are denied “the simple dignity of doing the work [they] were trained to do.”<sup>6</sup> For example, 60% of Russian refugees who arrived in the United States between 2009 and 2011 had at least a Bachelor’s

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<sup>1</sup> Although fictional, these facts are loosely based on the real-life experiences of refugee professionals who resettle in the United States of America. See, e.g., Lindsay M. Harris, *From Surviving to Thriving? An Investigation of Asylee Integration in the United States*, 40 N.Y.U. REV. L. & SOC. CHANGE 29, 34 (2016); Amanda Peacher, *Despite Doctor Shortage, Refugee Physicians Face Big Hurdles to Practicing*, BOISE ST. PUBLIC RADIO (Apr. 30, 2018), <http://www.boisestatepublicradio.org/post/despite-doctor-shortage-refugee-physicians-face-big-hurdles-practicing#stream/0>.

<sup>2</sup> Nearly all foreign medical graduates, including refugees, who want to obtain a U.S. medical license must be certified by the Educational Commission for Foreign Medical Graduates. See *U.S. Medical Licensing Process: Re-licensing Refugee Doctors*, OFFICE OF REFUGEE RESETTLEMENT (June 18, 2012), <https://www.acf.hhs.gov/orr/resource/u-s-medical-licensing-process>.

<sup>3</sup> A voluntary resettlement agency (Volag) is a non-profit organization that helps incoming refugees transition to life in the United States. James Y. Xi, *Refugee Resettlement Federalism*, 69 STAN. L. REV. 1197, 1205 (2017); see also *Diplomacy in Action: The Reception and Placement Program*, U.S. DEP’T OF ST., <https://www.state.gov/j/prm/ra/receptionplacement/index.htm> (last visited Aug. 20, 2018) (explaining how resettlement agencies help to resettle refugees in the United States).

<sup>4</sup> See 45 C.F.R. § 400.75(a)(3) (2017) (federal regulations governing refugee employment in the United States expressly require refugees to accept any offers of employment that are “determined to be appropriate by the State agency or its designee”).

<sup>5</sup> See *infra* note 33 (explaining that the government collects only limited information on refugees’ educational levels prior to arrival in the United States).

<sup>6</sup> BRYCE LOO, RECOGNIZING REFUGEE QUALIFICATIONS: PRACTICAL TIPS FOR CREDENTIAL ASSESSMENT I (2016).

degree.<sup>7</sup> These refugee professionals are suffering because their foreign educational credentials—that is, their coursework, examinations, degrees, training and experience—are not being recognized in the states where they resettle.<sup>8</sup>

This problem is exacerbated because no national framework or regulatory standard exists for recognizing refugees' foreign credentials. Rather, each state legislature sets the requirements for refugees, or foreigners generally, to become re-credentialed or licensed to practice regulated professions within its jurisdiction.<sup>9</sup> The state regulatory bodies that administer re-credentialing laws are called professional “licensing and regulation boards.”<sup>10</sup> It is their regulations and practices for credential recognition that form one of the first and most formidable barriers to refugee professionals' workforce integration in the United States.<sup>11</sup>

Non-recognition of foreign credentials denies the legal right of refugees to practice liberal professions as enshrined in Article 19 of the Convention Relating to the Status of Refugees (1951 Refugee Convention)<sup>12</sup> and its Protocol Relating to the Status of Refugees (1967 Refugee Protocol).<sup>13</sup> The 1951 Refugee Convention codifies international refugee rights in Articles 2 through 34 that establish minimum standards of treatment for the assimilation of refugees who are entitled to claim the benefits of these rights.<sup>14</sup> Thus, “refugees are the holders of rights exercisable in relation to state parties to the [1951 Refugee Convention].”<sup>15</sup> By signing and ratifying the 1967 Refugee Protocol, the United States is legally obligated to grant refugees a catalogue of rights, including Article 19's right to practice liberal professions.<sup>16</sup> Notably, refugees' right to

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<sup>7</sup> RANDY CAPPS ET AL., MIGRATION POLICY INST., THE INTEGRATION OUTCOMES OF U.S. REFUGEES: SUCCESSES AND CHALLENGES 20 (2015).

<sup>8</sup> See LOO, *supra* note 6, at iii.

<sup>9</sup> *Recertification/Re-credentialing of Refugee Professionals*, OFFICE OF REFUGEE RESETTLEMENT (June 18, 2012), <https://www.acf.hhs.gov/orr/resource/recertification-re-credentialing-of-refugee-professionals>.

<sup>10</sup> Sandra K. Schneider, *The Policy Role of State Professional Licensing Agencies: Perceptions of Board Members*, 9 PUB. ADMIN. Q. 414, 414 (1986).

<sup>11</sup> LOO, *supra* note 6 (citing Emma Jacobs, *Refugees Who Seek to Build a New Life Through Work*, FIN. TIMES (Oct. 26, 2015), <https://www.ft.com/content/cc2c6078-719e-11e5-9b9e-690fdae72044>).

<sup>12</sup> United Nations Convention Relating to the Status of Refugees and Stateless Persons art. 19, July 28, 1951, 2545 U.N.T.S. 137.

<sup>13</sup> United Nations Protocol Relating to the Status of Refugees art. 1, Jan. 31, 1967, 8791 U.N.T.S. 267.

<sup>14</sup> U.N. High Comm'r for Refugees, *Convention and Protocol Relating to the Status of Refugees*, 3 (Dec. 2010).

<sup>15</sup> James C. Hathaway & Anne K. Cusick, *Refugee Rights Are Not Negotiable*, 14 GEO. IMMIGR. L.J. 481, 488 (2000); see also *id.* at 484–85 (“The essential theory underlying the Refugee Convention is a simple one: persons who are in fact refugees . . . are the holders of rights that may be invoked in relation to any state party.”).

<sup>16</sup> *Id.* at 488.

practice professions is separate from their right to engage in wage-earning employment (i.e., the right to work), which is protected under Article 17.<sup>17</sup> Specifically, Article 19 calls on the United States to protect the right of refugees to not only have their credentials recognized by having their special degrees recognized, but to also practice liberal professions.<sup>18</sup> These two considerations—credential recognition and exercise of liberal professions—are crucial to understanding and enforcing refugees’ right to professional practice, as distinct from their general right to work.

Although the United States formally recognizes refugees’ general right to work, a gap remains between the *de jure* and *de facto* enforcement of Article 19—that is, the legal right of refugees to practice liberal professions and their successful integration into U.S. professional labor markets. The federal government boasts high employment outcomes for refugees who are resettled in the United States.<sup>19</sup> However, it fails to address that many refugees never find matching employment<sup>20</sup> but are instead placed in low-paying, survival jobs like Ahmed. Recent studies have shown that refugees, regardless of educational level, are overrepresented in low-skilled jobs,<sup>21</sup> such as meatpacking, retail, and assembly-line factory work.<sup>22</sup> Images of refugee professionals working underpaid jobs are becoming more common in news and other areas of daily American life such that your Uber driver could be a human rights attorney and

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<sup>17</sup> United Nations Convention Relating to the Status of Refugees and Stateless Persons, *supra* note 12, at art. 17. One difference between Article 17’s right to work and Article 19’s right to practice liberal professions is the minimum standard of treatment for the assimilation of refugees. Under Article 17, refugees are entitled to “assimilation to the nationals of most-favored countries” whereas Article 19 grants refugees “treatment as favorable as possible [but] not less than . . . aliens generally in the same circumstances.” See JAMES C. HATHAWAY, *THE RIGHTS OF REFUGEES UNDER INTERNATIONAL LAW* 794–95 (2010) (arguing that Article 19 is a “clawback provision” that denies refugees the more generous protections of Article 17). *But see* Alice Edwards, *Gainful Employment, Article 19*, in *THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES AND ITS 1967 PROTOCOL: A COMMENTARY* 984–85 (Andreas Zimmerman et al. eds., 2011) (rejecting Hathaway’s argument that Article 19 is a “clawback provision”).

<sup>18</sup> United Nations Convention Relating to the Status of Refugees and Stateless Persons, *supra* note 12, at art. 19(1).

<sup>19</sup> For the most recent data on refugee employment rates, see *Fiscal Year 2014 Refugee Employment Entered Rates*, OFFICE OF REFUGEE RESETTLEMENT (Apr. 15, 2015), <https://www.acf.hhs.gov/orr/resource/fiscal-year-2014-refugee-employment-entered-rates>.

<sup>20</sup> The term “matching employment” is used in this Comment to mean work commensurate with a refugee’s skills, educational and professional level, and experience.

<sup>21</sup> MARIA VINCENZA DESIDERIO, TRANSATLANTIC COUNCIL ON MIGRATION, *INTEGRATING REFUGEES INTO HOST COUNTRY LABOR MARKETS: CHALLENGES AND POLICY OPTIONS* 1 (2016).

<sup>22</sup> See Christine Gouverneur, *Work Integration for Beneficiaries of International Protection: What Laws Work Best in the United States of America and in the Grand Duchy of Luxembourg?* 90, 129 (2017) (unpublished Legal Studies thesis) (on file with Harvard University’s DASH repository).

your school's janitor might be a civil engineer.<sup>23</sup> These discoveries, together with the patchwork of state re-credentialing regulations and practices, show that the United States may not comply, in practice, with Article 19 of the 1951 Refugee Convention.

Compliance with Article 19 necessitates adequate measures for refugee access to professions, starting with credential recognition. As a result, this Comment argues that the United States has a legal obligation to implement regulatory standards for credential recognition to give refugee professionals a meaningful opportunity for re-credentialing and to “exercise the only livelihood familiar to them.”<sup>24</sup> Refugees' right of professional practice, no less than the general right to work, is central to human dignity and survival. But without certain rights to credential recognition, their right to practice liberal professions is meaningless.

To that end, Part I of this Comment explains the binding authority of the 1951 Refugee Convention, as well the meaning of Article 19's right to practice liberal professions. Part II examines state authority over foreign credential recognition. Part III analyzes compliance with Article 19 at the federal level, delving into federal policies and funding practices that undermine refugees' freedom of professional practice. Part IV provides a complementary analysis of compliance at the state level by examining re-credentialing regulations and practices that disadvantage refugees. Finally, Part V proposes a national standard of treatment and a regulatory standard for credential recognition, which would give refugees a more meaningful opportunity for re-credentialing in fulfillment of their right to practice liberal professions.

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<sup>23</sup> See, e.g., Pamela Constable, *Driving Cabs Instead of Building Bridges, Iraqis Languish in the U.S.*, WASH. POST (June 25, 2008), <http://www.washingtonpost.com/wp-dyn/content/article/2008/06/24/AR2008062401661.html>; Ying Lu, *Exiles Invisible Barriers in the U.S. Job Market*, N.Y.U. JOURNALISM: ARTHUR L. CARTER JOURNALISM INST. (2015), <http://projects.newsdoc.org/thenewamericans/exiles-invisible-barriers-in-u-s-job-market/>; Stephen Magagnini, *Sacramento's Iraqi Refugees Community Continues to Grow*, MCCLATCHY D.C. BUREAU (2012), <https://www.mcclatchydc.com/news/nation-world/national/article24721696.html>; Daniel Moore, *Their Careers Uprooted, Migrants Seek New Start in Pittsburgh*, PITTSBURGH POST-GAZETTE (May 14, 2018), <http://www.post-gazette.com/business/career-workplace/2018/05/14/Refugees-immigrants-restarting-careers-Pittsburgh-workforce-underemployment/stories/201804120004>; Michael Nedelman, *Why Refugee Doctors Become Taxi Drivers*, CNN (Aug. 9, 2017, 10:10 AM), <https://www.cnn.com/2017/08/09/health/refugee-doctors-medical-training/index.html>.

<sup>24</sup> HATHAWAY, THE RIGHTS OF REFUGEES, *supra* note 17.

## I. FREEDOM OF PROFESSIONAL PRACTICE

The United States is the top refugee resettlement country in the world.<sup>25</sup> Over 3.2 million refugees have resettled in the United States since 1975,<sup>26</sup> and nearly eighty-five thousand refugees were admitted in fiscal year 2016 alone.<sup>27</sup> Out of the group of refugees resettled in America, thousands of professionals and other highly skilled workers are among them, though the exact number is unknown.<sup>28</sup> The skills and training of these refugee professionals remain mostly untapped because few can find full-time, matching employment soon after arrival in the United States.<sup>29</sup> To address this problem, this Part examines refugees' freedom of professional practice. Section A outlines the educational attainment levels of refugees before they resettle in the United States, and section B defines the fundamental right of refugees to engage in professional employment and the federal government's obligation to protect this right.

### A. Educational Levels of Refugees at Time of Arrival

Educational attainment is a key predictor of refugee integration and self-sufficiency.<sup>30</sup> Data on refugees' educational attainment is also crucial to debunk common myths about who refugees are—namely, that refugees are uneducated.<sup>31</sup> However, data sources that assess refugees' educational levels at arrival either have significant demographic gaps or have a sample size that is too small to be conclusive.<sup>32</sup> The State Department's refugee demographic profile is

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<sup>25</sup> U.N. High Comm'r for Refugees, Resettlement, <http://www.unhcr.org/en-us/resettlement.html> (last visited Aug. 20, 2018).

<sup>26</sup> *The Refugee Processing and Screening System*, U.S. DEP'T OF ST., <https://www.state.gov/documents/organization/266671.pdf> (last visited Aug. 20, 2018). The year 1975 marked the passage of the Indochina Migration and Refugee Assistance Act, which responded to the massive flight of Vietnamese, Cambodian, and Laotian refugees at the end of the Vietnam War. Indochina Migration and Refugee Assistance Act of 1975, Pub. L. No. 94-23, 89 Stat. 87 (codified at 22 U.S.C. § 2601 (2012)); George Rupp, *The Largest Refugee Resettlement Effort in American History*, INT'L RESCUE COMMITTEE (July 28, 2016), <https://www.rescue.org/article/largest-refugee-resettlement-effort-american-history>. In the first seven months after the passage of the Act, nearly 130,000 refugees were resettled in the United States. Phillip A. Hollman, *Refugee Resettlement in the United States*, in REFUGEES IN AMERICA IN THE 1990S: A REFERENCE HANDBOOK 11 (David Haines ed., 1996).

<sup>27</sup> *U.S. Refugee Admissions Program*, U.S. DEP'T OF ST., <https://www.state.gov/j/prm/ra/admissions/> (last visited Aug. 20, 2018).

<sup>28</sup> See *infra* Section I.A.

<sup>29</sup> See Gouverneur, *supra* note 22, at 122–23.

<sup>30</sup> See PEGGY HALPERN, REFUGEE ECONOMIC SELF-SUFFICIENCY: AN EXPLORATORY STUDY OF APPROACHES USED IN OFFICE OF REFUGEE RESETTLEMENT PROGRAMS 13 (2008).

<sup>31</sup> *4 Things You Didn't Know About Refugees*, WOMEN FOR WOMEN INT'L BLOG (June 13, 2017), <https://www.womenforwomen.org/blog/4-things-you-didn-t-know-about-refugees>.

<sup>32</sup> See DAVID DYSSEGAARD KALLICK & SILVA MATHEMA, CTR. FOR AM. PROGRESS, REFUGEE INTEGRATION IN THE UNITED STATES 43 (2016).

a case in point: complete education data reports are lacking even for the top refugee groups from Democratic Republic of the Congo, Iraq, and Syria.<sup>33</sup>

Although education data is limited, a fiscal year 2015 report to Congress (the Report on Resettlement) by the Office of Refugee Resettlement (ORR) shows that a significant number of refugees come to the United States with a wide range of educational attainment and skills.<sup>34</sup> An estimated two million highly skilled refugees and immigrants are currently living in the United States.<sup>35</sup> Many refugees have completed levels of education that equal or exceed their American and immigrant counterparts.<sup>36</sup> For instance, refugees entering the United States between 2009 and 2011 were equally likely as U.S. citizens to hold a university degree and more likely than other immigrants to have at least a high school diploma.<sup>37</sup> On average, “nearly 30% of refugees aged 25 or older arrive[d in the United States] with a bachelor’s degree or higher.”<sup>38</sup>

The Report on Resettlement confirms that many refugees attain high levels of education before coming to America.<sup>39</sup> The survey assessed the educational levels of 4,601 refugees who were sixteen years or older when they arrived in the United States between March 2010 and February 2015.<sup>40</sup> More than 445 (9.7%) refugees arriving in 2015 held a university degree and about 285 (6.2%) refugees had completed some form of technical school.<sup>41</sup> About 32 (0.7%) refugees in the sampled cohort held a medical degree at the time of arrival.<sup>42</sup>

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<sup>33</sup> *Interactive Reporting Tool: Admissions and Arrivals Data for Refugees*, REFUGEE PROCESSING CTR., <http://ireports.wrapsnet.org> (last visited Aug. 20, 2018) (reporting refugee arrival data by demographic profiles, such as nationality, education, and age); see CAPPS ET AL., *supra* note 7, at 13 n.33 (2015) (critiquing the lack of consistency of the education data recorded by the State Department); see also PHILLIP CONNOR, PEW RES. CTR., *U.S. RESETTLES FEWER REFUGEES, EVEN AS GLOBAL NUMBER OF DISPLACED PEOPLE GROWS 19* (2017) (noting that the interactive processing tool has a “high amount of missing data” on refugees’ education levels).

<sup>34</sup> OFF. OF REFUGEE RESETTLEMENT, *ANN. REP. TO CONGRESS: FISCAL YEAR 2016 28* (2016) [hereinafter *FISCAL YEAR 2016*].

<sup>35</sup> *About Us*, UPWARDLY GLOBAL, <https://www.upwardlyglobal.org/about-us/> (last visited Aug. 20, 2018); *Spotlight on Occupational Licensing Reforms*, IMPRINT (Apr. 25, 2018), <https://www.imprintproject.org/spotlight-on-occupational-licensing-reforms/>.

<sup>36</sup> CAPPS ET AL., *supra* note 7, at 19–20.

<sup>37</sup> *Id.* at 20. *But see* Nayla Rush, *Fact-Checking a Fact Sheet on Refugee Resettlement*, CTR. FOR IMMIGR. STUD. (Nov. 2015), <https://cis.org/sites/cis.org/files/rush-refugees-mpi.pdf> (arguing that data comparing refugees’ educational levels can be misleading due to differences in countries’ educational systems).

<sup>38</sup> HADYA ABDUL SATAR, UPWARDLY GLOBAL, *REFUGEES CONTRIBUTE: STRATEGIES FOR SKILLED REFUGEE INTEGRATION IN THE U.S.* 4 (2017).

<sup>39</sup> *FISCAL YEAR 2016*, *supra* note 34, at 27–28.

<sup>40</sup> *Id.* at 28.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*



This small survey group could skew the conclusions that may be drawn from the education data collected. However, the ORR verifies that the educational levels of refugees surveyed have remained somewhat consistent, dating back to 2005.<sup>43</sup> Highly educated refugees are frequently unemployed or significantly underemployed as house cleaners, caretakers, and store clerks due to various barriers to re-entry in their professions.<sup>44</sup>

### *B. A Right Enshrined in the Refugee Convention*

Freedom to participate in gainful employment is central to refugee integration. For many refugee professionals, gainful employment entails the privilege to practice their trained professions. Professional practice, however, is not merely a privilege, but a legal right protected under international law on a non-discriminatory basis.<sup>45</sup> This section will, first, discuss the source of refugees' right to practice liberal professions and, second, explain the United States' obligation to uphold this fundamental right.

A refugee in international law occupies a precarious legal space. She is governed, on the one hand, by a regime of international human rights principles and, on the other hand, by conflicting national laws and principles of both sovereignty and non-interference.<sup>46</sup> A global consensus exists, however, on the importance of protection for refugees who are forcibly displaced from their homes due to socio-political turmoil.<sup>47</sup> The 1951 Refugee Convention is the most widely ratified refugee treaty.<sup>48</sup> It is the key legal instrument that prescribes the rights of the displaced and the legal obligations of asylum states to protect

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<sup>43</sup> See FISCAL YEAR 2016, *supra* note 34 (estimating that refugees arriving between 2010 and 2015 have on average 9.4 years of education); OFF. OF REFUGEE RESETTLEMENT, ANN. REP. TO CONGRESS: FISCAL YEAR 2010 B-16 (2010) (estimating that refugees arriving between 2005 and 2010 have on average 9.8 years of education).

<sup>44</sup> See FAITH NIBBS, FORCED MIGRATION UPWARD MOBILITY PROJECT, MOVING INTO THE FASTLANE: UNDERSTANDING REFUGEE UPWARD MOBILITY IN THE CONTEXT OF RESETTLEMENT 22 (2016) (arguing that highly educated refugees are more likely to experience downward mobility in the United States).

<sup>45</sup> See United Nations Convention Relating to the Status of Refugees and Stateless Persons, *supra* note 12, at arts. 3, 19.

<sup>46</sup> GUY S. GOODWIN-GILL & JANE MCADAM, THE REFUGEE IN INTERNATIONAL LAW 1–2 (3d ed. 2007).

<sup>47</sup> See Volker Türk & Frances Nicholson, *Refugee Protection in International Law: An Overall Perspective*, in REFUGEE PROTECTION IN INTERNATIONAL LAW: UNHCR'S GLOBAL CONSULTATIONS ON INTERNATIONAL PROTECTION 3 (Erika Feller et al. eds., 2003).

<sup>48</sup> See Guy S. Goodwin-Gill, Convention Relating to the Status of Refugees, Protocol Relating to the Status of Refugees, U.N. Office of Legal Affairs 1 (2008), [http://legal.un.org/avl/pdf/ha/prsr/prsr\\_e.pdf](http://legal.un.org/avl/pdf/ha/prsr/prsr_e.pdf) [hereinafter Goodwin-Gill, *Convention Introduction*].

them.<sup>49</sup> Given that nearly 25.4 million people are currently living as refugees,<sup>50</sup> the 1951 Refugee Convention is as valuable today as when it was adopted over sixty-six years ago.

The international community recognized the need for a regime of laws to ensure adequate treatment of refugees in the aftermath of World War I.<sup>51</sup> On July 25, 1951, the final act of the 1951 Refugee Convention was approved by the Geneva Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons.<sup>52</sup> Representatives of twenty-six governments, including the United States, attended the Conference and made proposals for amending the initial draft of the Refugee Convention.<sup>53</sup> As a post-World War II instrument, the 1951 Refugee Convention was originally intended as a solution for the thousands of people who were fleeing Nazism and Communism.<sup>54</sup> Hence, refugee status was limited to people who were forcibly displaced because of events occurring in Europe prior to January 1, 1951.<sup>55</sup> These limitations were removed in the 1967 Refugee Protocol.<sup>56</sup>

Even though the United States played a major role in drafting the 1951 Refugee Convention, it never acceded to the final act; instead, it accepted the legal obligations by ratifying the 1967 Refugee Protocol.<sup>57</sup> As one of only four countries that have acceded only to the 1967 Refugee Protocol, the United States is bound by the agreement “to apply . . . the Convention to refugees defined in [A]rticle 1 thereof, as if the [geographic and temporal limitations] were omitted.”<sup>58</sup> The United States was allowed to declare reservations upon accession to the 1967 Refugee Protocol.<sup>59</sup> It did so only with respect to the

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<sup>49</sup> *Id.*

<sup>50</sup> U.N. High Comm’r for Refugees, *Figures at a Glance* (June 19, 2018), <http://www.unhcr.org/en-us/figures-at-a-glance.html>.

<sup>51</sup> U.N. High Comm’r for Refugees, *The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol*, 1 (Sept. 2011).

<sup>52</sup> Goodwin-Gill, *Convention Introduction*, *supra* note 48, at 2.

<sup>53</sup> U.N. General Assembly, Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, *Report on Credentials*, U.N. Doc. A/CONF.2/87 (July 17, 1951); *see also* U.N. General Assembly, Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, *Rules of Procedure*, U.N. Doc. A/CONF.2/3/Rev.1 (July 2, 1951) (explaining the procedures for making proposals and voting).

<sup>54</sup> Erika Feller, *The Evolution of the International Refugee Protection Regime*, 5 WASH. U.J.L. & POL’Y 129, 131 (2001).

<sup>55</sup> United Nations Convention Relating to the Status of Refugees and Stateless Persons, *supra* note 12, at art. 1.

<sup>56</sup> Feller, *supra* note 54.

<sup>57</sup> *See* Goodwin-Gill, *Convention Introduction*, *supra* note 48, at 7.

<sup>58</sup> *Id.*

<sup>59</sup> United Nations Convention Relating to the Status of Refugees and Stateless Persons, *supra* note 12, at art. 42 (excluding reservations to articles 1, 3, 4, 16(1), 33, and 36–46).

application of Article 24 (regarding labor legislation and social security) and Article 29 (regarding fiscal charges) of the 1951 Refugee Convention.<sup>60</sup> Thus, the United States is obliged to apply all other provisions of the 1951 Refugee Convention, including, and especially relevant for this Comment, the right to practice liberal professions.

### C. *Defining the Right to Practice Liberal Professions*

Several international, national, and regional instruments prescribe refugees' work-related rights, but the right to practice liberal professions is distinctively enshrined in the 1951 Refugee Convention.<sup>61</sup> Article 19 of the Convention outlines the right to practice liberal professions, as well as signatory states' obligation to uphold the right:

Each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practising a *liberal profession*, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally *in the same circumstances*.<sup>62</sup>

This provision ensures that refugees can engage in liberal professions if they are lawful residents of their host countries and have the appropriate credentials for professional practice. However, the meaning and ambit of the expression "liberal professions" as intended in the 1951 Refugee Convention is far from self-evident.

Ambiguity as to the meaning of liberal professions can be resolved by the Vienna Convention on the Law of Treaties (VCLT), which is considered the "indispensable starting point" for international treaty interpretation.<sup>63</sup> The VCLT directs that international agreements must be "interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and *in the light of its object and purpose*."<sup>64</sup> For Article 19 of the 1951 Refugee Convention, this means the right to practice liberal professions

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<sup>60</sup> Hathaway & Cusick, *supra* note 15, at 483 n.11.

<sup>61</sup> See Fifth Colloquium Participants, *The Michigan Guidelines on the Right to Work*, 31 MICH. J. INT'L L. 293, 293–97 (2010).

<sup>62</sup> United Nations Convention Relating to the Status of Refugees and Stateless Persons, *supra* note 12 (emphasis added).

<sup>63</sup> ANTHONY AUST, MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW, VIENNA CONVENTION ON THE LAW OF TREATIES (1969) (June 2006 ed.).

<sup>64</sup> Vienna Convention on the Law of Treaties art. 31, *opened for signature* May 23, 1969, 1155 U.N.T.S. 331, 340 (entered into force Jan. 27, 1980) (emphasis added).

should be interpreted to extend the protection of international law to “assure refugees the widest possible exercise of these fundamental rights and freedoms.”<sup>65</sup> If applying this general rule would yield an obscure interpretation of Article 19, the VCLT permits use of “supplementary means of interpretation.”<sup>66</sup>

This section examines the meaning of “liberal professions” using two main supplementary means of interpretation: *travaux préparatoires*<sup>67</sup> and scholarly commentaries to the 1951 Refugee Convention. Reliance on these supplementary means is especially necessary because “liberal professions” is not defined in the 1951 Refugee Convention and has many different meanings in different communities.<sup>68</sup>

The *travaux préparatoires* suggest a broad definition of liberal professions. The expression was first introduced in Article 15 of the UN Secretary-General’s preliminary draft of the 1951 Refugee Convention.<sup>69</sup> The Secretary-General proposed that liberal professions are “the most highly regulated of all” professions, comprising at least “qualified and experienced scientists, engineers, architects, and doctors holding diplomas.”<sup>70</sup> In addition to the Secretary-General’s list, a state representative referred to attorneys as members of liberal professions,<sup>71</sup> but otherwise did not provide any guidance on defining the term.<sup>72</sup>

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<sup>65</sup> United Nations Convention Relating to the Status of Refugees and Stateless Persons, *supra* note 12, at pmbl.

<sup>66</sup> Vienna Convention on the Law of Treaties, *supra* note 58, at art. 32. The supplementary means of interpretation explicitly contemplated in the VCLT are the *travaux préparatoires* (or preparatory works) of a treaty and the circumstances of a treaty’s conclusion (historical background). *Id.*; Makane Moïse Mbengue, *Rules of Interpretation (Article 32 of the Vienna Convention on the Law of Treaties)*, 31 ISCID REV. 388, 389–92 (2016) (providing a detailed definition for *travaux préparatoires* and circumstances of conclusion).

<sup>67</sup> *Travaux préparatoires* is any written material created during negotiation and before conclusion of a treaty. Mbengue, *supra* note 66, at 390.

<sup>68</sup> PAUL WEIS, THE REFUGEE CONVENTION, 1951: THE TRAVAUX PRÉPARATOIRES ANALYSED WITH A COMMENTARY BY DR. PAUL WEIS 113 (1990), <http://www.refworld.org/docid/53e1dd114.html> (last visited Aug. 20, 2018).

<sup>69</sup> For a copy of the preliminary draft, see U.N. Econ. & Soc. Council, *Ad Hoc Committee on Statelessness and Related Problems, Status of Refugees and Stateless Persons—Memorandum by the Secretary-General*, E/AC.32/2 (Jan. 3, 1950).

<sup>70</sup> *Id.*

<sup>71</sup> In discussing the scope of liberal professions, Belgian representative Mr. Cuvelier used lawyers as an example to emphasize the two main considerations of Article 19. For statements of Mr. Cuvelier, see U.N. Econ. & Soc. Council, *Ad Hoc Committee on Statelessness and Related Problems, First Session: Summary Record of the Thirteenth Meeting Held at Lake Success, New York, on Thursday, 26 January 1950, at 11 AM*, E/AC.32/SR.13 (Feb. 6, 1950).

<sup>72</sup> See *id.* (“Mr. Cuvelier (Belgium) agreed that the form of words was vague, but thought it should remain so. . . . The Chairman also thought it was impossible to adopt a more definite formula.”).

The main limitation of the definition of liberal professions conceived in the *travaux préparatoires* is its imprecision. Merely defining liberal professions as the “most highly regulated of all” leaves Article 19 open to interpretation because the international community does not agree on any single list of top regulated occupations.<sup>73</sup> As a result, scholarly commentaries to the 1951 Refugee Convention are helpful to cure the definitional gap in the *travaux préparatoires*. In these commentaries, various scholars have suggested a more universal interpretation of the expression liberal professions.

Two notable scholars of refugee protection law—Paul Weis and Atle Grahl-Madsen—emphasize the characteristics of liberal professionals in their own commentaries to Article 19 of the 1951 Refugee Convention.<sup>74</sup> They describe the attributes of liberal professionals to make inferences about the liberal professions themselves. Weis construes liberal professionals as people who “work[] on their own account” and “possess certain qualifications or a special license.”<sup>75</sup> In comparison, Grahl-Madsen interprets liberal professionals as people who (1) “act on [their] own, not as an agent of the State or as a salaried employee”; and (2) “possess certain qualifications, normally confirmed by a diploma from a university, or a similar institution, or a license from a State agency, a chartered society or some other legally competent body.”<sup>76</sup> Using these characteristics, one can conclude that liberal professions are those vocations that are practiced in an independent capacity on the basis of relevant educational qualifications.<sup>77</sup>

Another definition of “liberal professions” adopted in many countries emphasizes the crucial services that these occupations provide to the public. For instance, the European Commission’s Charter for Liberal Professions prescribes a common definition for liberal professions, which highlights not only the characteristics of liberal professions, but the values shared by liberal

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<sup>73</sup> WEIS, *supra* note 68.

<sup>74</sup> Weis and Grahl-Madsen agree on a list of seven liberal professions—architects, engineers, dentists, physicians, veterinarians, lawyers, and accountants—but ultimately disagree on the scope of the term liberal professions. HATHAWAY, *supra* note 24, at 797–98 n.331. While Weis would include artists and pharmacists, Grahl-Madsen would add only salaried assistants to the list of liberal professionals. *Id.*

<sup>75</sup> WEIS, *supra* note 68.

<sup>76</sup> Atle Grahl-Madsen, *Commentary on the Refugee Convention, 1951: Articles 2-11, 13-37* (Oct. 1997), <http://www.refworld.org/docid/4785ee9d2.html>. Grahl-Madsen interprets “liberal professions” more broadly than Weis, which would allow a larger group of refugees to have access to the fundamental right to practice their trained professions.

<sup>77</sup> Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the Recognition of Professional Qualifications, 2005 O.J. (L 255) 1, 11 (confirming that liberal professions require professional qualifications and are practiced in an independent capacity).

professionals.<sup>78</sup> First, it describes liberal professions as occupations that are “of a marked intellectual character, require a high level qualification . . . subject to clear and strict professional regulation” and “always involve[] a large measure of independence in the accomplishment of the professional activities.”<sup>79</sup> Second, the Charter suggests several principles or values shared by all liberal professions, including (1) service to the common good; (2) relationship of trust and confidentiality with clients; (3) high quality, knowledge-based services; (5) professional ethos; and (4) autonomy.<sup>80</sup>

The Charter’s definition should be instructive in understanding refugees’ right to practice liberal professions.<sup>81</sup> It is far more comprehensive than any of the interpretations in the *travaux préparatoires* or scholarly commentaries to the 1951 Refugee Convention. The Charter’s definition would actually include the agreed upon list of liberal professions plus many others,<sup>82</sup> such as pharmacists, accountants, and notaries. This broad interpretation of liberal professions is necessary to facilitate wide protection for refugees as intended by the 1951 Refugee Convention.<sup>83</sup> Thus, this Comment adopts the Charter’s more comprehensive definition of “liberal professions.”

To benefit from this broad definition and claim the protections of Article 19, refugees must first demonstrate that they are qualified liberal professionals. This requires refugees to prove that they have the appropriate credentials to be licensed to practice liberal professions in the United States. As discussed in Part II below, refugees can verify their credentials for practice through the process of foreign credential recognition.

## II. FOREIGN CREDENTIAL RECOGNITION

Part II explores the main obstacle preventing refugees from accessing liberal professions in the United States: re-credentialing. Each state plus the District of Columbia has its own laws and practices that require refugees to become re-

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<sup>78</sup> See *About ECEC: Charter for Liberal Professions*, EUROPEAN COUNCIL OF ENGRS CHAMBERS, <http://www.ecec.net/about-ecec/charter-for-liberal-professions/> (last visited Aug. 20, 2018).

<sup>79</sup> *Id.* The Charter’s definition of “liberal professions” was adopted from the decision of the European Court of Justice in *Urbing-Adam v. Administration de l’Enregistrement et des Domaines*, 2001 E.C.R. I-7467, I-7495–96.

<sup>80</sup> *Id.*

<sup>81</sup> HATHAWAY, *supra* note 24, at 798 (stating that the *Urbing-Adam* definition, which was adopted by the Charter, should be instructive).

<sup>82</sup> See *supra* note 74 and accompanying text.

<sup>83</sup> Fifth Colloquium Participants, *supra* note 61, at 297 (“Human rights treaties require a dynamic interpretation in light of changing circumstances, and a liberal interpretation that best protects the individual rights-bearer.”).

credentialed before obtaining licenses to practice liberal professions in the respective jurisdiction.<sup>84</sup>

In each state, credential recognition poses a significant challenge for refugees because professional licensing boards may either reject foreign qualifications, or require them to be translated and evaluated for their U.S. equivalence.<sup>85</sup> Refugees who cannot afford credential evaluation services or provide documentary evidence of their qualifications and training are repeatedly relegated to low-skilled, low-paying “survival jobs”<sup>86</sup>—a loss not only for the affected refugees, but also the U.S. economy.<sup>87</sup> Re-credentialing is, therefore, the foundation for exercising refugees’ right to practice liberal professions in the United States.

#### A. *What is Re-credentialing?*

For refugee professionals, re-credentialing is the process whereby the foreign qualifications, training, and experience of a licensed or certified professional are evaluated, verified, and re-established for admittance to a regulated profession. Re-credentialing gives refugees an opportunity to continue practicing their chosen professions in the United States, but the concept of credentialing is not unique to refugee professionals. It applies to any person who practices a regulated profession; that is, an occupation which requires a license or certificate for employment in that field.<sup>88</sup> Re-credentialing ultimately boils down to “the transfer of . . . qualifications recognized in one country to another.”<sup>89</sup>

To start the re-credentialing process, refugee professionals must show that they are “job ready.”<sup>90</sup> Job readiness includes demonstrable résumé writing and interviewing skills, computer literacy, English language competency, familiarity with standardized tests, and knowledge of the professional jargon.<sup>91</sup> The majority of refugee professionals will be required to take additional courses and exams or undergo a practical learning experience (e.g., an internship) to

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<sup>84</sup> *Recertification/Re-credentialing of Refugee Professionals*, *supra* note 9.

<sup>85</sup> *Id.*

<sup>86</sup> See Harris, *supra* note 1, at 56–61 (discussing employment and re-credentialing as major barriers to asylee integration in the United States).

<sup>87</sup> SATAR, *supra* note 38, at 13–15; see also KALLICK & MATHEMA, *supra* note 32, at 42 (“When refugees succeed, the communities they live in do better, and the U.S. economy grows.”).

<sup>88</sup> WES Glob. Talent Bridge, *Regulated and Non-Regulated Professions*, WES ADVISOR BLOG (Sept. 23, 2016), <https://www.wes.org/advisor-blog/regulated-and-non-regulated-professions>.

<sup>89</sup> Harris, *supra* note 1, at 59.

<sup>90</sup> *Recertification/Re-credentialing of Refugee Professionals*, *supra* note 9.

<sup>91</sup> *Id.*

successfully transfer their qualifications and skills to the United States.<sup>92</sup> There may well be additional requirements for transferring refugees' foreign credentials; however, those requirements are set by various state legislatures and agencies, convoluting the entire re-credentialing process for refugees.

### *B. State Authority over Foreign Credential Recognition*

The U.S. authorities responsible for recognizing foreign qualifications are state legislatures and state professional licensing boards.<sup>93</sup> Every state has plenary authority over education and related activities within its jurisdiction,<sup>94</sup> including the credentialing standards for the regulated professions.<sup>95</sup> State legislatures regulate over 800 occupations;<sup>96</sup> they set the guidelines for professional licensing and issue licenses for employment in all regulated professions.<sup>97</sup> Most states, however, delegate some of this responsibility to professional licensing boards in their state occupation codes.<sup>98</sup> Professional licensing boards are regulatory bodies that have the power to administer statutory guidelines for professional licensing and “monitor the quality of services these practitioners provide to the public.”<sup>99</sup> Boards also help to set the credentialing requirements (e.g., minimum acceptable passing scores for exams) for U.S. and foreign educated individuals who want to practice regulated professions.<sup>100</sup> Some professional licensing boards are authorized under their state occupation codes to determine whether foreign-educated individuals meet the statutory requirements for professional licensing.<sup>101</sup>

One main component of a state licensing board's credential recognition process is credential evaluations. To verify foreign qualifications, state licensing agencies require certain documents, such as transcripts and degrees, to be evaluated by either a general or specialized non-governmental education evaluation service.<sup>102</sup> Evaluation services create their own metrics to determine

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<sup>92</sup> *Id.*

<sup>93</sup> See *Professional Licensure*, U.S. DEP'T OF EDUC., <https://sites.ed.gov/international/professional-licensure/> (last visited Aug. 20, 2018).

<sup>94</sup> See *United States v. Lopez*, 514 U.S. 549, 564 (1995) (finding that “education [is an area] where States historically have been sovereign.”).

<sup>95</sup> *Professional Licensure*, *supra* note 93.

<sup>96</sup> Schneider, *supra* note 10.

<sup>97</sup> *Professional Licensure*, *supra* note 93.

<sup>98</sup> See Schneider, *supra* note 10.

<sup>99</sup> *Id.* at 414–15.

<sup>100</sup> *Id.* at 417.

<sup>101</sup> See, e.g., MD. CODE ANN., BUS. OCC. & PROF. § 14-311 (West 2003); MISS. CODE ANN. § 73-25-23 (West Supp. 2017).

<sup>102</sup> *Recertification/Re-credentialing of Refugee Professionals*, *supra* note 9.



the equivalency of refugees' foreign educational programs, degrees, and grades.<sup>103</sup> The services can be very expensive, particularly for refugees who have insufficient documentary evidence of their educational qualifications.<sup>104</sup> In these cases, the credential evaluation services must attempt to verify the refugees' educational background,<sup>105</sup> a task subject to bias due to a lack of national standards for verifying foreign credentials.<sup>106</sup>

The practice of using unregulated credential evaluation services to verify foreign credentials started about fifty years ago.<sup>107</sup> Between World War I and 1970, the U.S. federal government directly administered credential evaluations.<sup>108</sup> Free evaluations of foreign educational credentials were conducted by the Foreign Credential Evaluation Service (FCES), an agency operating under the umbrella of the Office of Education (which later became the U.S. Department of Education).<sup>109</sup> In 1969, the FCES conducted around 20,000 credential evaluations.<sup>110</sup> Since the FCES was terminated, private credential evaluation services have formed to replace it.<sup>111</sup> They fulfill the continuing need of employers, universities, and state licensing boards for evaluations of foreign credentials.<sup>112</sup> Their services are indispensable for state licensing agencies, which receive applications for licensure from foreign trained and educated nationals, such as refugees.<sup>113</sup>

Credential evaluation and recognition therefore enables refugees to exercise their right of professional practice. However, "systemic barriers, particularly entrenched attitudes towards immigrants and refugees, . . . [affect] skills

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<sup>103</sup> See Shauna-Marie Kerr, *Credential Evaluation and Credential Recognition: What Is the Difference?*, WES ADVISOR BLOG (June 28, 2017), <https://www.wes.org/advisor-blog/difference-between-credential-evaluation-and-credential-recognition/>.

<sup>104</sup> See *Recognition of Foreign Qualifications*, U.S. DEP'T OF EDUC., U.S. NETWORK FOR EDUC. INFO., <https://www2.ed.gov/about/offices/list/ous/international/usnei/us/edlite-visitus-forrecog.html> (last modified Feb. 26, 2008) (explaining that the cost of credential evaluations may vary depending on factors such as the "complexity of the analysis").

<sup>105</sup> See LOO, *supra* note 6, at 3.

<sup>106</sup> See Sophia J. Lowe, *Best Practices: Strategies and Processes to Obtain Authentic International Educational Credentials*, WENR (July 1, 2012), <https://wenr.wes.org/2012/07/wenr-junejuly-2012-best-practices-strategies-and-processes-to-obtain-authentic-international-educational-credentials> ("[O]rganizations and institutions relying on their own standards and methodology . . . can sometimes be perceived as having processes for credential assessment and recognition that are biased and unfair.").

<sup>107</sup> See JAMES S. FREY, EDUC. CREDENTIAL EVALUATORS, INC., *EVALUATING FOREIGN EDUCATIONAL CREDENTIALS IN THE UNITED STATES: PERSPECTIVES ON THE HISTORY OF THE PROFESSION* 18 (2014).

<sup>108</sup> *Id.* at 7.

<sup>109</sup> *Id.* at 6–7, 18–19.

<sup>110</sup> *Id.* at 7.

<sup>111</sup> *Id.* at 18.

<sup>112</sup> See *id.*

<sup>113</sup> See *id.*

recognition [and] need[] to be addressed more broadly by civil society.”<sup>114</sup> Thus, whether refugees can truly enforce their right of professional practice depends on the actions the United States takes to consistently uphold its legal obligations under Article 19.

### III. FEDERAL LAWS AND POLICIES ON REFUGEE EMPLOYMENT

Following the U.S. accession to the 1967 Refugee Protocol, the American government took steps to comply with the international regime of refugee rights. Passage of the Refugee Act of 1980<sup>115</sup> signaled that the United States intended to acknowledge its legal obligations under international refugee law.<sup>116</sup> Accordingly, each of the 3.2 million<sup>117</sup> refugees who has been admitted into the country has been authorized by the U.S. government to work upon arrival.<sup>118</sup> They have the right to work indefinitely and obtain social security cards without employment restrictions.<sup>119</sup> However, mere work authorization does not guarantee refugees favorable treatment in exercising their right to practice liberal professions. Likewise, consent to the 1951 Refugee Convention, by itself, is no indication that the United States obeys international refugee rights law.<sup>120</sup>

This Part assesses the federal government’s compliance with its legal obligations under Article 19 of the 1951 Refugee Convention. It examines key federal policies and regulations on refugee employment, as well as federal funding practices for employment assistance programs that undermine the freedom of professional practice.

#### A. Competing “Quick Employment” Policies

Self-sufficiency is the cornerstone of U.S refugee resettlement policy. In exchange for resettlement, refugees are expected to become economically self-sufficient as quickly as possible.<sup>121</sup> In marked contrast, the re-credentialing

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<sup>114</sup> *Submission by World Education Services to the United National Global Compact on Migration with Respect to the 6th Informal Thematic Session*, WES, [https://refugeesmigrants.un.org/sites/default/files/stocktaking\\_wes.pdf](https://refugeesmigrants.un.org/sites/default/files/stocktaking_wes.pdf) (last visited Aug. 20, 2018).

<sup>115</sup> Pub. L. No. 96-212, § 101, 94 Stat. 102 (1980) (codified at 8 U.S.C. §§ 1521–24 (2012)).

<sup>116</sup> Hathaway & Cusick, *supra* note 15, at 487–88.

<sup>117</sup> *The Refugee Processing and Screening System*, *supra* note 26.

<sup>118</sup> *Refugees and Asylees Have the Right to Work*, DEP’T OF JUSTICE, OFFICE OF SPECIAL COUNSEL, <https://lincoln.ne.gov/city/attorn/human/pdf/2013-civil-conf/refugee.pdf> (last visited Aug. 20, 2018).

<sup>119</sup> *Id.*

<sup>120</sup> Andrew T. Guzman, *A Compliance-Based Theory of International Law*, 90 CALIF. L. REV. 1823, 1833–34 (“Consent, by itself, [is no] incentive to obey the law.”).

<sup>121</sup> MARGARET SILVER & BARBARA ADELMAN, SPRING INST. FOR INT’L STUDIES, PROJECT STAR: RE-CREDENTIALING AND JOB-UPGRADING FOR REFUGEE PROFESSIONALS I (1997–1998).

process for refugees who want to engage in professional practice is time-consuming and can take many years depending on the vocation, state licensing guidelines, and the individual refugee's case.<sup>122</sup> As a result, federally-funded resettlement assistance programs endorse "quick employment" policies and deemphasize re-credentialing as a strategy for promoting refugee employment.<sup>123</sup>

To help refugees achieve economic self-sufficiency, the federal government funds several employment assistance programs through the ORR,<sup>124</sup> an agency in the Department of Health and Human Services (DHHS).<sup>125</sup> ORR awards grants to states that promise to use the funds to support refugee assistance programs that "promote employment and economic self-sufficiency as quickly as possible."<sup>126</sup> These programs provide refugees with various employment and employability services designed to enable refugees to find work and improve their work skills.<sup>127</sup> Examples of refugee employment and employability services include case management, vocational training, English language instruction, on-the-job-training, translation or interpreter aids, and skills recertification (or re-credentialing).<sup>128</sup> Despite the wide range of employment-related services, most government resources are invested in rapid placement of refugees into entry-level positions or survival jobs.<sup>129</sup> This one-size-fits-all approach to refugee employment greatly disadvantages refugee professionals who, in spite of their experience and expertise, typically enter the U.S. workforce as low-level workers.

ORR regulations specify highly restrictive criteria for refugees to obtain employment and employability services, such as re-credentialing.<sup>130</sup> These criteria often prevent skilled refugees from expending time and resources on their professional re-credentialing, which ultimately encumbers their exercise of

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<sup>122</sup> *Recertification/Re-credentialing of Refugee Professionals*, *supra* note 9 (noting that the length of the re-credentialing process varies).

<sup>123</sup> Anastasia Brown & Todd Scribner, *Unfulfilled Promises, Future Possibilities: The Refugee Resettlement System in the United States*, 2 J. ON MIGRATION & HUM. SECURITY 101, 106 (2014).

<sup>124</sup> The ORR administers the Refugee Resettlement Program, which has two main objectives: first, to effectively resettle refugees, and second, to help refugees achieve self-sufficiency as quickly as possible. 45 C.F.R. § 400.1(b) (2017).

<sup>125</sup> FISCAL YEAR 2016, *supra* note 34, at 5.

<sup>126</sup> 45 C.F.R. § 400.5(b) (2017).

<sup>127</sup> *Id.* § 400.71.

<sup>128</sup> *Id.* § 400.154.

<sup>129</sup> Brown & Scribner, *supra* note 123; *see* SATAR, *supra* note 38, at 4 ("[T]he U.S. government emphasizes that refugees reach early economic self-sufficiency through low-skilled employment, also known as 'survival jobs.'").

<sup>130</sup> *See* 45 C.F.R. § 400.75.

liberal professions.<sup>131</sup> One main restraint on refugees' exercise of professions is the ORR regulations for participating in federally funded employability service programs. Participation requires refugees to "[a]ccept at any time, from any source, an offer of employment, as determined to be appropriate by the State agency or its designee."<sup>132</sup> Refusal to accept an "appropriate" offer of employment could cause suspension or termination of a refugee's cash assistance (RCA)<sup>133</sup>—a high-demand, ORR resettlement assistance program.

The requirement that refugees must either accept any appropriate offer of employment or be penalized undermines the freedom of professional practice. The ORR regulations stress that "appropriate employment" involves tasks that refugees are capable of performing on a regular basis, without impairing their physical or mental health.<sup>134</sup> Hence, employment may be appropriate even though it is entirely unrelated to the refugee's professional skills, training, or experience.<sup>135</sup> Using physical ability—rather than criteria like expertise or training—to define appropriate employment compels refugee professionals to forego the exercise of professions and accept virtually any job that they can physically execute.<sup>136</sup> Even the most highly skilled and educated refugees are compelled to accept any available job just to avoid unemployment and remain eligible for RCA.<sup>137</sup> Overall, these ORR regulations for accepting offers of employment suggest that the federal government is complicit in denying refugee professionals the exercise of their chosen professions.

The federal emphasis on "as quick as possible" employment impedes, or at least delays, qualified refugees' access to professional practice. Employment specialists who assist refugees in finding their first jobs must ensure that refugees obtain a job placement within the first few months of arrival and before

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<sup>131</sup> SATAR, *supra* note 38, at 17–18.

<sup>132</sup> 45 C.F.R. § 400.75(a)(3).

<sup>133</sup> *See* 45 C.F.R. § 400.77.

<sup>134</sup> 45 C.F.R. § 400.81(a)(2). *See generally* 45 C.F.R. § 400.81(a)(1)–(10) (outlining ten criteria for determining what is appropriate employment).

<sup>135</sup> *See* Harris, *supra* note 1, at 85–86 (arguing that the Refugee Act should be revised to define "appropriate employment").

<sup>136</sup> *See generally* Willa Frej & Rowaida Abdelaziz, 'I'll Take Any Job': Syrian Refugees Struggle to Find Work in America, NEWS DEEPLY (Apr. 17, 2017), <https://www.newsdeeply.com/refugees/articles/2017/04/17/ill-take-any-job-syrian-refugees-struggle-to-find-work-in-america>.

<sup>137</sup> *Id.* It is not uncommon for highly skilled refugees to "resign[] themselves to not working" and become "dependent on welfare—which sometimes offers more money per month than a minimum-wage job." *Id.* In addition, some refugees do not seek employment because of their poor health, family responsibilities, or ongoing schooling and training. *See* FISCAL YEAR 2016, *supra* note 34, at 27 (explaining additional reasons for refugees not seeking employment).

RCA funding runs out.<sup>138</sup> As a result, “refugees’ integration into employment is dictated by economic needs[,]” not qualifications, skills, or experience.<sup>139</sup> The time constraints incentivize employment specialists to give refugees the most immediately available job placements—often low-wage, entry-level positions.<sup>140</sup> These placements might be temporary, seasonal, or part-time so long as federal objectives for obtaining the earliest possible employment are met.<sup>141</sup>

While some employment specialists try to consider refugees’ qualifications and skill sets in the job-search process, their hands are mostly tied by federal policy favoring quick employment. For instance, in a fall 2016 interview, California’s State Refugee Coordinator explained that refugee professionals have difficulty finding matching employment within the first few months:

[E]ven professionals cannot be hired for positions comparable to their qualifications, because there are no matching jobs available. Sometimes, refugees need to take any job, because they can’t simply wait for the appropriate or desirable doctor’s or nursing position to come up. *Their qualifications are very important, but not always practicable/practical.*<sup>142</sup>

Because of the time constraints on finding matching employment, refugees are most commonly placed in initial jobs throughout hospitality, meatpacking, restaurant, retail, housekeeping, and manufacturing industries.<sup>143</sup> Despite their qualifications, some refugee professionals may never find a matching job.<sup>144</sup>

### *B. Underfunding Refugee Employment Services*

Federally sponsored employment programs are too frequently underfunded to provide refugee professionals with the individualized support that they need to break into the professional job market.<sup>145</sup> Refugee cash and medical services,

<sup>138</sup> Although refugees are eligible for employment assistance for five years, employment services are usually provided to new arrivals only within the first eight months. HALPERN, *supra* note 30, at 62–64.

<sup>139</sup> Gouverneur, *supra* note 22, at 92.

<sup>140</sup> *Id.*

<sup>141</sup> 45 C.F.R. § 400.81(a)(7) (2011).

<sup>142</sup> Gouverneur, *supra* note 22, at 122–23 (emphasis added).

<sup>143</sup> See Trevor Fleck, Finding Employment: Factors Influencing Self-Sufficiency Rates in the Office of Refugee Resettlement’s Matching Grant Program (Mar. 23, 2012) (unpublished M.P.A. paper, University of North Carolina at Chapel Hill).

<sup>144</sup> Gouverneur, *supra* note 22, at 129 (“Employment services are funded to help finding a first job—the matching job will eventually be found further down the road . . .”) (statement of the Director of Workforce Development, MA Office for Refugees and Immigrants).

<sup>145</sup> See Brown & Scribner, *supra* note 123, at 107.

while essential, consistently account for a much greater amount of the ORR annual budget in comparison to employment assistance.<sup>146</sup> In 2017, the federal government appropriated \$2.1 billion to ORR assistance programs.<sup>147</sup> A total of \$490 million was allocated to transitional cash and medical services—more than two times the budget for employment assistance and other social services combined.<sup>148</sup> The federal government’s failure to adequately fund employment services has a corrosive impact on employment service agencies’ ability to hire employment specialists and dedicate more resources to help refugees find employment on an individual, case-by-case basis.<sup>149</sup>

Refugee professionals are affected by funding constraints on federally sponsored employment programs because re-credentialing services are underprovided nationwide.<sup>150</sup> Highly skilled refugees depend on re-credentialing services to help launch them above entry-level positions in the professional job market. These re-credentialing services “require[] an individualized approach that provides the refugee[s] with resources and options.”<sup>151</sup> Because so many employment service providers lack sufficient resources, they often fail to provide re-credentialing support to refugee professionals. For instance, only twenty-two of 102 voluntary resettlement agencies participating in the 2010 ORR Matching Grant Program<sup>152</sup> provided refugee professionals with certification or re-certification (re-credentialing) support to increase their employment outcomes.<sup>153</sup> Overall, skills re-certification was one of the least used strategies to promote refugee employment—it ranked twelfth out of thirteen possible survey responses.<sup>154</sup> This underutilization of re-credentialing services to help find matching employment for refugee professionals is one direct consequence of federal funding practices for ORR employment assistance programs. Increased ORR funding for employment and other social services would enable more refugee employment programs to

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<sup>146</sup> See ANDORRA BRUNO, CONG. RESEARCH SERV., RL31269, REFUGEE ADMISSIONS AND RESETTLEMENT POLICY 10–11 (2017).

<sup>147</sup> *Id.* at 10.

<sup>148</sup> *Id.* Refugee employment services make up the bulk of social services. See 45 C.F.R. § 400.154–56 (2011).

<sup>149</sup> Brown & Scribner, *supra* note 123, at 111.

<sup>150</sup> See *id.* at 107.

<sup>151</sup> HALPERN, *supra* note 30, at 43.

<sup>152</sup> The Matching Grant Program is a cooperative agreement between the ORR and nine national Volags to help refugees and other eligible populations become self-sufficient within 120 to 180 days of program eligibility. *About the Voluntary Agencies Matching Grant Program*, OFFICE OF REFUGEE RESETTLEMENT, <https://www.acf.hhs.gov/orr/programs/matching-grants/about> (last visited Aug. 20, 2018). The ORR “matches” each Volag’s fundraising by providing \$2 for every \$1 raised by the agency. *Id.*

<sup>153</sup> Fleck, *supra* note 143, at 2, 14.

<sup>154</sup> *Id.* at 14.

establish re-credentialing support to help qualified refugees access the professional job market.<sup>155</sup>

Although the United States technically upholds Article 19 by formally granting refugees the right to work, the federal government fails, in practice, to protect refugees' right to practice liberal professions. It may also be determined that the ORR regulations requiring refugees to accept any "appropriate" job, *or else*, violate the non-derogable core of any right to work<sup>156</sup>—that is, freedom to freely choose or accept employment.<sup>157</sup> Taken together, these observations show that the U.S. federal government is complicit in denying refugees the right to practice professions in violation of the 1951 Refugee Convention.

Failures at the federal level can be easily exploited by state governments, which sanction re-credentialing laws and practices that disadvantage refugees wishing to enforce their right of professional practice. The following Part critiques state re-credentialing laws and ultimately validates this deduction.

#### IV. A CRITIQUE OF STATE RE-CREDENTIALING LAWS

Because of the United States' decentralized credential recognition systems, no single body governs professional re-credentialing for refugees; re-credentialing laws differ from state to state, depending on the profession.<sup>158</sup> The abundance of different, sometimes overlapping, laws and practices for recognizing refugees' foreign credentials increases restrictions on their right to practice liberal professions.<sup>159</sup>

This Part analyzes common re-credentialing regulations and practices, which disadvantage refugees wishing to practice liberal professions. Section A considers general laws and practices, regardless of profession, which make re-credentialing especially arduous for refugees. Section B conducts a case study

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<sup>155</sup> See HALPERN, *supra* note 30 (noting that development of recertification initiatives could contribute to the overall goal of economic self-sufficiency).

<sup>156</sup> See HATHAWAY, *supra* note 24, at 741 ("Because in such a case, the refugee would effectively face a Hobson's choice—either take the available job at the pay offered, or forfeit the necessities of life—he or she would not be able in any meaningful sense freely [to] choose[] or accept[] the job offered.") (alterations in original).

<sup>157</sup> See Fifth Colloquium Participants, *supra* note 61, at 294. Though beyond the scope of this Comment, the freedom to choose and accept employment is treated as a fundamental right in various international instruments. *See id.*

<sup>158</sup> See *Recertification/Re-credentialing of Refugee Professionals*, *supra* note 9.

<sup>159</sup> See LINDA RABBEN, MIGRATION POLICY INST., CREDENTIAL RECOGNITION IN THE UNITED STATES FOR FOREIGN PROFESSIONALS 1 (2013).

of state medical re-credentialing systems,<sup>160</sup> highlighting specific laws and practices that disadvantage refugees.

### A. *Barriers to Re-credentialing*

Lack of a central authority governing foreign credential recognition creates inconsistencies, which ultimately disadvantage refugees wishing to resume their professions in the United States. The authority to recognize refugees' foreign credentials and grant licenses for professional practice is vested with each state board of professional licensing, the regulatory "gatekeepers" to professions.<sup>161</sup> No law or national body exists that compels all state professional licensing boards to consider or formally recognize foreign credentials using a uniform regulatory standard.<sup>162</sup> As a result, refugees' ability to re-credential is heavily dependent on the regulations within their individual state, allowing for (a) variable recognition practices among states,<sup>163</sup> (b) information deficit regarding the proper process for re-credentialing,<sup>164</sup> and (c) professional protectionism.<sup>165</sup> The vast differences among state re-credentialing regulations make it difficult for refugees to demonstrate that their foreign credentials are equivalent to American standards and should therefore be recognized.

Yet discord among state re-credentialing laws is only one—though perhaps the most visible—troubling practice for refugees when re-credentialing. Other state re-credentialing laws or practices that disadvantage refugees include (a) fragmentation of responsibility for credential evaluation and recognition; (b) requirements that a refugee, by virtue of her status, cannot fulfill; and (c) the non-recognition of foreign professional training or experience. The discussion below addresses each of these three re-credentialing laws and practices in turn.

#### 1. *Fragmentation of Responsibility for Credential Recognition*

Credential evaluation is an essential step for refugees to gain recognition of their foreign education.<sup>166</sup> In the United States, responsibility for evaluation and

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<sup>160</sup> The medical profession has some of the most stringent re-credentialing laws. Since a considerable number of refugee physicians are believed to be living in the United States, this case study will help highlight some of the barriers to professional medical practice that many refugee professionals face. *See id.* at 3 n.2.

<sup>161</sup> *Id.* at 2.

<sup>162</sup> *See id.*

<sup>163</sup> *See id.*

<sup>164</sup> Eleanor Ott, *The Labour Market Integration of Resettled Refugees*, PDES/2013/16, at 32 (Nov. 2013).

<sup>165</sup> LESLEYANNE HAWTHORNE, MIGRATION POLICY INST., *RECOGNIZING FOREIGN QUALIFICATIONS: EMERGING GLOBAL TRENDS* 3 (2013). Protectionism occurs when professional licensing bodies "have an interest in creating barriers to entry for outsiders who do not have the 'superior' credentials these bodies endorse." *Id.*

<sup>166</sup> *See Kerr, supra* note 103.



recognition is shared between state professional licensing boards and non-governmental credential evaluation services.<sup>167</sup> Many state licensing boards do not conduct their own evaluations of refugees' foreign credentials to make recognition decisions.<sup>168</sup> Instead, licensing boards tend to rely on independent evaluation services to analyze refugees' foreign education, measure it against American standards, and provide its American equivalency.<sup>169</sup>

Giving unregulated credential evaluation services so much responsibility in the recognition process disadvantages refugees wishing to practice liberal professions. First, some evaluation services charge high fees for a variety of services, such as translating and verifying foreign transcripts, which refugees need to gain recognition of their credentials.<sup>170</sup> However, the majority of refugees likely lack the financial resources or assistance to get these crucial services; they likely work low-wage jobs while trying to re-credential<sup>171</sup> and are already indebted for the cost of their transportation to the United States.<sup>172</sup> Second, because credential evaluation services are unregulated, they create their own standards and internal processes for assessing refugees' foreign credentials.<sup>173</sup> Some credential evaluation services provide stricter interpretations of foreign educational credentials, reducing the likelihood of finding American equivalency. Thus, an unfavorable credential evaluation could easily jeopardize refugees' chances for obtaining credential recognition.

Notably, credential evaluations are merely recommendations, which state licensing boards, or their non-governmental equivalents, take into advisement when making recognition decisions.<sup>174</sup> However, many licensing boards depend on and accept the recommendations of credential evaluation services, especially those that specialize in the profession.<sup>175</sup>

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<sup>167</sup> See *Recognition of Foreign Qualifications*, U.S. NETWORK FOR EDUC. INFO., *supra* note 104.

<sup>168</sup> *Id.*

<sup>169</sup> See *id.*; Kerr, *supra* note 103.

<sup>170</sup> See, e.g., *Educational Perspectives Fees*, EDUC. PERSP., <https://www.edperspective.org/credential-evaluation-fees.php> (last visited Aug. 20, 2018). The cost of credential evaluations may vary depending on the complexity of the analysis and amount of available documentation. *Recognition of Foreign Qualifications*, U.S. NETWORK FOR EDUC. INFO., *supra* note 104.

<sup>171</sup> See RABBEN, *supra* note 159, at 3.

<sup>172</sup> See *id.* at 6. When refugees are admitted for resettlement, many lack the financial resources to pay for their travel to the United States. Thus, the federal government funds an interest-free loan program through the International Organization for Migration, which covers all their transportation costs. Refugees must repay these travel loans shortly after they resettle. *Travel Loan Services*, U.S. COMMITTEE FOR REFUGEES & IMMIGRANTS, <http://www.uscripayments.org> (last visited Aug. 20, 2018).

<sup>173</sup> See Kerr, *supra* note 103.

<sup>174</sup> *Id.* at 4 (explaining that "credential evaluation services . . . do not have the authority to insist that [state licensing boards] have to accept the report that they provide").

<sup>175</sup> See *Recognition of Foreign Qualifications*, U.S. NETWORK FOR EDUC. INFO., *supra* note 104.

On the other hand, some professional licensing boards conduct their own foreign credential evaluations,<sup>176</sup> which often benefits refugees wishing to practice professions. Board evaluations ensure that licensed practitioners or experts in the professional field are assessing and making recognition decisions concerning refugees' foreign credentials.<sup>177</sup> They also streamline the re-credentialing process, eliminating a multiplicity of stakeholders and other complexities that may discourage refugees from seeking credential recognition.

## 2. *Insurmountable Credentialing Requirements*

Whether licensing boards or independent providers conduct evaluations, states sometimes impose insurmountable requirements on refugee professionals before formally recognizing their credentials. Those requirements violate the legal right of refugees to practice liberal professions free from any conditions that they would be incapable of fulfilling directly because of the circumstances that made them refugees.<sup>178</sup> Article 19 requires state legislatures and professional licensing boards "to exempt refugees from general requirements which the refugee's particular circumstances render effectively insurmountable."<sup>179</sup> Insurmountable requirements may include requiring a refugee to (a) submit original copies of educational credentials when the issuing institutions are permanently closed,<sup>180</sup> (b) provide evidence of license or registration to practice in a country of origin where "no system of professional regulation exists,"<sup>181</sup> and (c) present a certificate of nationality.<sup>182</sup>

Many state legislatures impose some of these insurmountable requirements on refugee professionals when re-credentialing. One of the most common requirements is that refugees submit original documentation of their degrees and qualifications directly from the issuing institutions.<sup>183</sup> The degree requirement must be waived for refugees who are unable to provide the requested

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<sup>176</sup> See *Recognition of Foreign Qualifications*, U.S. DEP'T OF EDUC., INT'L AFF. OFF., <https://sites.ed.gov/international/recognition-of-foreign-qualifications/> (last visited Aug. 20, 2018).

<sup>177</sup> See Schneider, *supra* note 10, at 415 ("[I]ndividuals who serve on [licensing] boards come primarily from the very occupations or professions being regulated. Since licensed practitioners know about and understand professional matters, they are considered to be uniquely equipped to administer licensing laws.").

<sup>178</sup> See HATHAWAY, *supra* note 24, at 788–89. See also Convention Relating to the Status of Refugees arts. 6, 19, Apr. 22, 1954, 189 U.N.T.S. 137.

<sup>179</sup> HATHAWAY, *supra* note 24, at 793.

<sup>180</sup> See LOO, *supra* note 6, at 3. See also Grahl-Madsen, *supra* note 76, at 15 (stating that a refugee must be allowed to prove her qualifications by other means when she is "unable to produce a certificate from the university in [her] country of origin where [she] graduated . . .").

<sup>181</sup> HATHAWAY, *supra* note 24, at 793.

<sup>182</sup> Grahl-Madsen, *supra* note 76.

<sup>183</sup> LOO, *supra* note 6, at 2.

documentation.<sup>184</sup> Waiver does not mean that refugees should be allowed to practice professions for which they are unqualified, but simply that they “must be allowed to prove [their] possession of the required academic degree by other means than the normally required diploma.”<sup>185</sup> Failure of state legislatures and professional licensing boards to uphold this right of refugees is a blatant violation of Article 19 of the 1951 Refugee Convention.

### 3. *Non-Recognition of Foreign Professional Training*

Another common re-credentialing practice that could violate Article 19 and disadvantage refugees wishing to practice professions is discounting years of their practical training or experience. Most state licensing regulations require refugees to acquire U.S. experience, regardless of how extensive their professional training abroad was:

[G]aining recognition for professional experience overseas is arguably the greatest barrier to professional practice. Employers frequently discount the value of overseas experience, and regulatory bodies often do not count it toward professional certification requirements. This means that experienced professionals may be required to return to entry-level positions to demonstrate their competence.<sup>186</sup>

Thus, refugee professionals who are unable or unwilling to redo a significant portion of their training in the United States will most likely be barred from professional practice. For those who are able to take this step, the number of challenges that they may face during the process is limitless. Most commonly, refugees have difficulty finding opportunities for re-training and resources to help them.<sup>187</sup>

If professional experience and training constitutes a significant part of a diploma, then refugees may have a right to have them recognized under Article 19.<sup>188</sup> Refugee law scholars have maintained that the meaning of “diploma” within the context of Article 19 should not be construed too narrowly, but includes “any degree, examination, admission, authorization, completion of course which is required for the exercise of a profession.”<sup>189</sup> In the United States,

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<sup>184</sup> See Grahl-Madsen, *supra* note 76.

<sup>185</sup> *Id.* See HATHAWAY, *supra* note 24, at 208.

<sup>186</sup> RABBEN, *supra* note 159; *see infra* notes 202–04.

<sup>187</sup> See RABBEN, *supra* note 159.

<sup>188</sup> Edwards, *supra* note 17, at 983–84 (“Contracting States are obliged to grant refugees . . . the right to have their diplomas recognized . . . .”); *see also* United Nations Convention Relating to the Status of Refugees and Stateless Persons, *supra* note 12.

<sup>189</sup> See Grahl-Madsen, *supra* note 76, at 46.

regulated professions often require applicants for licensure to complete formal training programs to obtain practical work experience.<sup>190</sup> This Comment contends that because such training and experience is required for admission or exercise of the profession, it constitutes the functional equivalent of a diploma and should be recognized and given effect to by state legislatures and licensing boards.<sup>191</sup> Thus, discounting years of refugees' professional training could contravene the broad protections intended by Article 19 of the 1951 Refugee Convention.

### *B. A Case Study of Select Medical Re-credentialing Laws*

Refugee medical professionals face a plethora of re-credentialing requirements that are understandably daunting. Policymakers' desire to maintain the quality of healthcare medical practitioners provide to the American public contributes to creating a highly exclusive, unduly expensive, and duplicative re-credentialing system that bars many foreign professionals from practicing medicine in the United States.<sup>192</sup> The path to practicing medicine is no easier for refugees who, despite having a unique right to practice liberal professions,<sup>193</sup> must satisfy the same requirements as all foreign professionals wishing to obtain a U.S. medical license.<sup>194</sup> Since refugees are assessed for medical licensure on equal footing as all other foreign medical graduates (FMGs),<sup>195</sup> they are required to complete the same seven steps to enter professional practice in the United States.<sup>196</sup> The three most intensive of those steps include the following:

1. Obtaining certification from the Educational Commission for Medical Graduates;
2. Completing one to three years of post-graduate medical training (residency); and

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<sup>190</sup> See *Working in the United States*, U.S. DEP'T OF EDUC., INT'L AFF. OFF., <https://sites.ed.gov/international/working-in-the-united-states/> (last visited Aug. 20, 2018).

<sup>191</sup> Cf. Edwards, *supra* note 17, at 983–84.

<sup>192</sup> See generally Christina Johnson, *A Second Chance at Practicing Medicine*, U.C. SAN DIEGO NEWS CTR. (May 29, 2014), [https://ucsdnews.ucsd.edu/feature/a\\_second\\_chance\\_at\\_practicing\\_medicine](https://ucsdnews.ucsd.edu/feature/a_second_chance_at_practicing_medicine).

<sup>193</sup> The inclusion of Article 19's right of professional practice in the 1951 Refugee Convention is a novelty among international laws and regimes for refugee protection. Edwards, *supra* note 17, at 983–84.

<sup>194</sup> See *U.S. Medical Licensing Process*, *supra* note 2.

<sup>195</sup> Another term for FMG is international medical graduate (IMG); state licensing statutes use either term. See, e.g., CAL. BUS. & PROF. CODE § 3537.10 (West 2018) (establishing a training program for IMGs); NEB. REV. STAT. ANN. § 38-2026 (2018) (citing most recent electronic version) (outlining medical licensing requirements for IMGs).

<sup>196</sup> *U.S. Medical Licensing Process*, *supra* note 2.

3. Passing a medical licensure exam, such as the U.S. Medical Licensing Exam.<sup>197</sup>

The entire medical re-credentialing process can take up to ten years and cost anywhere from \$4,000 up to \$15,000 for physicians.<sup>198</sup> The arduous time and financial commitments severely restricts the number of refugee medical professionals who are able or willing to become re-credentialed.<sup>199</sup> The process can be even more time-consuming and expensive when refugees' professional training and experience are discounted by state medical licensing boards.<sup>200</sup>

Non-recognition of refugees' professional training and/or experience is the norm during the medical re-credentialing process. Refugees with five, ten, or fifteen years of experience face the same age-old conundrum: getting state licensing boards to recognize their non-U.S. professional training as satisfactory for the residency requirement.<sup>201</sup> Nearly all states require refugee professionals to undergo accredited residency programs in the United States or Canada,<sup>202</sup> notwithstanding their years of professional training or experience.

A survey of the medical licensing statutes of the fifty states plus the District of Columbia confirms that refugees' years of medical training often go unrecognized. Twenty-eight states require refugees to complete at least three years of residency in the United States or Canada.<sup>203</sup> Twenty-two states require

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<sup>197</sup> See *id.*

<sup>198</sup> ORR NAT'L CONSULTATION, WORLD EDUC. SERVS., *PATHWAYS TO SUCCESS FOR HIGHLY SKILLED REFUGEES* 18 (2012); *Recertification/Re-credentialing of Refugee Professionals*, *supra* note 9; see also Megan Burks, *For Refugee Doctors, Journey Back to Practicing Medicine Is the Longest*, VOICE OF SAN DIEGO (Sept. 26, 2013), <https://www.voiceofsandiego.org/topics/news/for-refugee-doctors-journey-back-to-practicing-medicine-is-the-longest/> (describing the journey of an Iraqi physician who spent nearly \$10,000 on her medical re-credentialing).

<sup>199</sup> See LOO, *supra* note 6, at 21.

<sup>200</sup> Sometimes refugees may even be required to attend a U.S. medical school before resuming their professional practice. To view the timeline for medical re-credentialing and related expenses, see *U.S. Medical Licensing Process*, *supra* note 2.

<sup>201</sup> See *infra* note 265 and accompanying text.

<sup>202</sup> See *infra* note 203; see, e.g., IND. CODE ANN. § 25-22.5-3-2(a)(2) (West 2010) (requiring a minimum of two years training in the U.S. or Canada); MINN. STAT. ANN. § 147.037(d) (West 2017) (requiring two years of clinical training in U.S. or Canada); S.C. CODE ANN. § 40-47-32(B)(2) (2018) (citing most recent electronic version) (requiring minimum of three years training in the U.S. or Canada).

<sup>203</sup> SISKIND SUSSER, P.C., *Chart of Physician Licensing Requirements by State*, <http://www.visalaw.com/wp-content/uploads/2014/10/physicianchart.pdf> (last visited Aug. 20, 2018); see, e.g., ALASKA STAT. ANN. § 08.64.225(a)(2) (2018) (most recent electronic version cited); ARK. CODE ANN. § 17-95-403(b)(3)(A) (West Supp. 2018); DEL. CODE ANN. tit. 24, § 1720(b)(2) (West Supp. 2018); MONT. ADMIN. R. 24.156.607(1) (West 2014); TENN. CODE ANN. § 63-6-207(a)(2) (West Supp. 2018).

refugees to complete at least two years of residency instead.<sup>204</sup> One state requires refugees to complete a year of residency in an approved program.<sup>205</sup> A few state licensing boards will waive all or a portion of the post-graduate training requirements provided that other conditions are satisfied.<sup>206</sup> However, even these alternative policies are protectionist and, therefore, impose an extra credentialing burden on refugees.

Given the overwhelming need for refugees to obtain further post-graduate training, their chances of practicing medical professions in the United States are significantly lowered. Obtaining a residency position is the greatest obstacle for refugee medical professionals because placements are highly competitive and have limited available openings.<sup>207</sup> Refugees must compete against American medical students, as well as other immigrants, to obtain a residency placement in the United States.<sup>208</sup> Obtaining a placement is no easy feat for refugee professionals who, recent studies confirm, are discriminated against in the residency selection process.<sup>209</sup> Discrimination against refugees occurs because the federal government subsidizes medical residencies and places a cap on the number of available placements annually.<sup>210</sup> This cap incentivizes residency programs to give preferential treatment to U.S. medical graduates over FMGs,

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<sup>204</sup> SISKIND SUSSER, P.C., *supra* note 203; *see, e.g.*, CAL. BUS. & PROF. CODE § 2096(b) (West 2018); CONN. GEN. STAT. ANN. § 20-10 (West 2008); IND. CODE ANN. § 25-22.5-3-2(a)(2) (West 2010); IOWA CODE ANN. § 148.3(1)(c) (West 2014); MD. CODE ANN., HEALTH OCC. § 14-308(b)(6)(i) (West 2008).

<sup>205</sup> VA. CODE ANN. § 54.1-2930 (West 2017).

<sup>206</sup> Waiver of all or part of the residency requirement is perhaps most commonly conditioned upon FMGs obtaining specialty certification in an area recognized by the American Board of Medical Specialists or the American Osteopathic Association. *See, e.g.*, 30-17 MISS. ADMIN. CODE R. 30-17-2605:1.1(D) (LexisNexis 2017) (requiring one year if FMGs are certified by specialty board). Additional waiver conditions include graduating from an approved foreign medical school and graduating on or before a certain date, ranging from fifteen to thirty-three years ago. *See, e.g.*, FLA. STAT. ANN. § 458.311(1)(f)(2) (West 2016) (requiring one year if FMGs graduated from school certified by World Health Organization); ME. REV. STAT. ANN. tit. 32, § 3271(2) (2017) (citing to most recent electronic version) (requiring one year if FMGs graduated accredited school before July 1, 1970); N.J. ADMIN. CODE § 13:35-3.11(j) (2011) (requiring one year if FMGs graduated after July 1, 1916 and before July 1, 1985); WASH. REV. CODE ANN. § 18.71.051(1)(b)(ii) (West 2009) (waiving residency requirement if IMGs are certified multiple sclerosis specialists). Some states will waive other licensure requirements (e.g., certified documents) when the applicant can demonstrate “extraordinary hardship.” *See, e.g.*, D.C. Mun. Regs. tit. 17, § 4603.8 (2018). These policies might advantage refugees who are otherwise unable to prove their professional credentials.

<sup>207</sup> *See* RABBEN, *supra* note 159, at 6.

<sup>208</sup> *Id.*

<sup>209</sup> Norman A. Desbiens & Humberto J. Vidaillet, *Discrimination Against International Medical Graduates in the United States Residency Program Selection Process*, 10 BMC MEDICAL EDUCATION 1, 3–5 (2010) (discussing biases that exist in residency selection against FMGs in favor of U.S. medical graduates).

<sup>210</sup> *See generally* Brian Wu, *Residency Caps: What Medical Students Should Know*, SDN (Jan. 24, 2017), <https://www.studentdoctor.net/2017/01/medical-students-know-fight-residency-caps/>.

such as refugees.<sup>211</sup> As a result, state re-credentialing laws that allow refugees to complete alternative forms of post-graduate training, such as clinical fellowships and hospital internships,<sup>212</sup> facilitate greater access to medical professions.

A few state medical licensing boards will make exceptions to residency requirements for refugees in certain circumstances.<sup>213</sup> For instance, in Rhode Island, medical licensing boards may exempt refugees from completing all the years of training required for residency if they have extensive professional training.<sup>214</sup> Similarly, in Arizona, medical licensing boards may exempt refugees if they have previously worked as a professor of medicine for three years.<sup>215</sup> States that make these exceptions provide refugees a more meaningful opportunity for re-credentialing by giving them credit for their foreign training and experience.

In addition to onerous residency requirements, some states impose other insurmountable requirements on refugees for medical re-credentialing. Insurmountable requirements in medical re-credentialing systems include (a) original or notarized documentation of foreign medical degrees and licenses,<sup>216</sup> (b) eligibility for licensure in countries of graduation,<sup>217</sup> and (c) verification of a medical license sent directly from the issuing institution.<sup>218</sup> As explained in section A above, these requirements are insurmountable if the individual refugee is incapable of fulfilling them for reasons related to her flight from the country of origin.<sup>219</sup> While the requirements might be permissible for other FMGs, they violate the special protections granted to refugee professionals wishing to practice liberal professions in the United States.

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<sup>211</sup> Desbiens & Vidaillet, *supra* note 209.

<sup>212</sup> State medical licensing boards that accept post-graduate internships and fellowships in lieu of residency include Arizona and Florida. *See, e.g.*, ARIZ. REV. STAT. ANN. § 32-1422(A)(2) (Supp. 2017) (accepting a one-year hospital internship or clinical fellowship); FLA. STAT. ANN. § 458.311(1)(f)(3) (West 2016) (accepting a two-year fellowship in a specialty area).

<sup>213</sup> *See, e.g.*, REV. STAT. ANN. §§ 32-1423, 1425 (waiving residency requirement if applicant graduated from unapproved medical school but has worked full-time as a professor in approved medical school for a total of thirty-six months); IND. CODE ANN. § 25-22.5-3-2 (West 2010) (allowing the medical board to waive the second year of residency).

<sup>214</sup> *See, e.g.*, 216-040 R.I. CODE R. § 05-1 (LexisNexis 2017) (granting FMGs twelve months of credit if they have completed at least three years of progressive international training).

<sup>215</sup> *See* REV. STAT. §§ 32-1423, 1425 (regarding refugees who graduated from unapproved medical schools).

<sup>216</sup> *See, e.g.*, MED. BD. OF CAL., LICENSE INFORMATION FOR INTERNATIONAL MEDICAL SCHOOL GRADUATES 4 (last revised July 2016).

<sup>217</sup> *See, e.g.*, SISKIND SUSSER, P.C., *supra* note 203.

<sup>218</sup> *Id.* at 3.

<sup>219</sup> *See supra* Section IV.A.

In recent years, some states have recognized the need to provide special measures for refugees when re-credentialing.<sup>220</sup> State governors of Maryland, Illinois, Massachusetts, New Jersey, and Washington have all created commissions to address issues of foreign credential recognition among foreign-trained professionals.<sup>221</sup> The Minnesota legislature also authorized the formation of a special program, the “Task Force on Foreign-Trained Physicians,” to address various barriers to practice among FMGs.<sup>222</sup> These initiatives help give refugees a fair opportunity to resume their medical professions and alleviate shortages of physicians.<sup>223</sup> Still, a majority of states are yet to implement similar initiatives for refugees.

The legal right of refugees to practice liberal professions should not hinge on geographic location, but it does. Analyzing state re-credentialing laws and practices reveals that refugees who live in certain states may have a better chance at having their credentials recognized for professional practice. One might argue that refugees have freedom of mobility and could just move to another state, which has more favorable re-credentialing laws and practices. However, the right to practice liberal professions is so inextricably linked to basic human rights and freedoms—the rights to life, equality, adequate standard of living, and fair wages<sup>224</sup>—that it should not depend on a refugee’s state of residence. Thus, the federal government should take steps to harmonize pathways for credential recognition and access to liberal professions.

## V. TOWARDS RECOGNIZING A RIGHT TO CREDENTIAL RECOGNITION

Credential recognition, though an essential element of the right to practice liberal professions, has attracted little attention from different levels of government in the United States.<sup>225</sup> The dearth of attention is atypical of other developed countries like Canada, which have implemented numerous measures

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<sup>220</sup> See RABBen, *supra* note 159, at 14. See generally NICHOLAS V. MONTALTO, A HISTORY AND ANALYSIS OF RECENT IMMIGRANT INTEGRATION INITIATIVES IN FIVE STATES 5 (2012) (studying immigrant integration initiatives among select states).

<sup>221</sup> Nejdán Yildiz, *Skilled Immigrants and the Recognition of Foreign Credentials in the United States*, WENR (Dec. 1, 2009), <https://wenr.wes.org/2009/12/wenr-december-2009-feature>.

<sup>222</sup> See MINN. DEP’T OF HEALTH, TASK FORCE ON FOREIGN-TRAINED PHYSICIANS 1 (2015); see also Yende Anderson, *International Medical Graduate (IMG) Program*, MINN. DEP’T OF HEALTH, <http://www.health.state.mn.us/divs/orhpc/img/> (last updated Aug. 20, 2018) (describing Minnesota’s International Medical Graduate Program, which will allow refugees to provide primary care in rural areas).

<sup>223</sup> See MINN. DEP’T OF HEALTH, TASK FORCE, *supra* note 222, at 9.

<sup>224</sup> Fifth Colloquium Participants, *supra* note 61, at 293, 302.

<sup>225</sup> Only a few state governments have recognized the need to improve credential recognition practices to help integrate refugee and immigrant populations. See MONTALTO *supra* note 220.



to promote fair credential recognition practices for refugees, as well as non-refugee immigrants.<sup>226</sup> Unless the United States implements similar measures giving refugees a more meaningful opportunity to have their credentials recognized, their right to practice liberal professions is hollow.

This Part proposes that the United States should adopt a federal regulatory standard for the recognition of foreign credentials to harmonize state re-credentialing laws and encourage compliance—in practice—with Article 19 of the 1951 Refugee Convention. To this end, section A frames credential recognition as a legal and moral obligation that accrues public policy benefits over time. Sections B and C prescribe standards of treatment and credential recognition, respectively, which would improve refugees professionals' opportunities for successful re-credentialing. Refugees do not currently get any special treatment when re-credentialing,<sup>227</sup> but they should, as discussed below.

### A. *A Legal and Moral Obligation*

The right to practice liberal professions is ubiquitous, but it is not self-executing.<sup>228</sup> While the United States is legally bound to uphold this right under the 1951 Refugee Convention, actual enjoyment of the right is contingent on credential recognition. As a result, Article 19 entitles refugees to not only practice liberal professions but to have their professional credentials formally recognized.<sup>229</sup>

By reserving the freedom to practice liberal professions for individuals “who hold diplomas *recognized by the competent authorities*[,]”<sup>230</sup> Article 19

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<sup>226</sup> See, e.g., Hongxia Shan, *The Disjuncture of Learning and Recognition: Credential Assessment from the Standpoint of Chinese Immigrant Engineers in Canada*, 4 EUR. J. FOR RES. ON THE EDUC. & LEARNING OF ADULTS 189, 190–91 (2013) (describing a range of credential recognition initiatives implemented by the Canadian government between 2001 and 2013).

<sup>227</sup> Refugees must satisfy the same requirements as U.S. citizens for professional licensure and practice. See *supra* Part IV.

<sup>228</sup> See Guy S. Goodwin-Gill, *The International Law of Refugee Protection*, in THE OXFORD HANDBOOK OF REFUGEE AND FORCED MIGRATION STUDIES 36, 40 (Elena Fiddian-Qasmieh et al. eds., 2014) (“The 1951 Convention is not self-applying.”) [hereinafter Goodwin-Gill, *Refugee Protection*].

<sup>229</sup> Edwards, *supra* note 17, at 987 (“Contracting States are obliged to grant refugees and asylum seekers, who otherwise meet the requirements of Art[icle] 19, the right to have their diplomas recognized and to practice in the liberal professions. *This is not a discretionary provision, but a binding treaty obligation.*”) (emphasis added).

<sup>230</sup> United Nations Convention Relating to the Status of Refugees and Stateless Persons, *supra* note 12 (emphasis added). Although this clause functionally limits which refugees are entitled to claim the protection of Article 19, the 1951 Refugee Convention mandates Contracting States to apply the provision “without discrimination” and to “delimit the circumstances in which [countries] may deviate from [their] duties” to provide favorable treatment to refugees wishing to practice liberal professions. Hathaway & Cusick, *supra* note

obligates the U.S. government to make a positive effort to accept refugees' foreign qualifications. Good faith fulfillment of this obligation requires affirmative measures for refugee re-credentialing rather than mere work authorization.<sup>231</sup> “[I]t is important to recognize that even where [the United States has] lifted legal and administrative barriers, simply ensuring legal access to the job market is often not enough.”<sup>232</sup> Refugee professionals face so many challenges—in addition to credential recognition—when integrating into the U.S. workforce, that they are not even guaranteed to find *a* job, much less a matching job.<sup>233</sup> Thus, if favorable measures for refugee re-credentialing are not voluntarily implemented by the federal and state governments, the right to practice liberal professions will be denied in practice.

Federal regulatory standards for re-credentialing will accord refugee professionals the special legal protections that they deserve. Compared to the immigrant population at large, the United States owes a special duty to refugees. Refugees are, by definition, the most vulnerable of all immigrant groups.<sup>234</sup> They are forced to leave their homes “because of persecution or a well-founded fear of persecution.”<sup>235</sup> Without the legal protection of their own countries, refugee professionals fully depend on the United States, their country of refuge, to protect their fundamental rights, such as the right of professional practice.<sup>236</sup>

Despite their special protection needs, current state re-credentialing laws treat refugees no differently than their immigrant peers. Refugees and immigrants have to fulfill the same requirements for re-credentialing, albeit only refugees have the legal right to have their credentials recognized for practice in

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15, at 488–89; see HATHAWAY, *supra* note 24, at 792; see also Grahl-Madsen, *supra* note 76 (explaining when Contracting States must recognize refugees' credentials).

<sup>231</sup> See Guy S. Goodwin-Gill, *Refugee Protection*, *supra* note 228 (“Every [country] is obliged to implement its international obligations in good faith, which often means . . . setting up appropriate mechanisms so that those who should benefit are identified and treated accordingly.”).

<sup>232</sup> Rosa da Costa, *Rights of Refugees in the Context of Integration: Legal Standards and Recommendations*, 56, POLAS/2006/02 (June 2006).

<sup>233</sup> Common difficulties that refugees face in workforce integration include language barriers, lack of knowledge, and discrimination. See generally DESIDERIO, *supra* note 21, at 9–15 (discussing a host of challenges faced by refugees in the United States).

<sup>234</sup> Getting refugee status is not easy; compared to immigrants, refugees must meet more onerous standards. For a comparison of the legal definitions, see Gaia D. C. Oliver, *Immigrants and Refugees as Vulnerable Populations: Considerations for School-Based Centers* 8 (2016 (unpublished M.P.H. thesis) (on file with Wright State University CORE Scholar).

<sup>235</sup> A “well-founded fear of persecution” may be on account of race, nationality, religion, political opinion, or membership in a particular group. Immigration and Nationality Act (INA), 8 U.S.C. § 1101(a)(42) (2012).

<sup>236</sup> Fifth Colloquium Participants, *supra* note 61, at 294.

the liberal professions.<sup>237</sup> Failure to implement special measures for recognizing refugees' foreign credentials denies that refugees are *sui generis*<sup>238</sup>; they face more complex barriers to professional practice than most other immigrants, including significant emotional trauma, gaps in their career, and incomplete evidence of credentials.<sup>239</sup> As a result, the United States must take special care to incorporate measures for recognizing refugees' foreign credentials into state re-credentialing practices.<sup>240</sup>

Implementing regulatory standards for refugee re-credentialing is also sound public policy to prevent brain waste of valuable human capital. Brain waste refers to the gross underutilization of the skills in college-educated individuals who are either underemployed or unemployed.<sup>241</sup> Brain waste among refugee professionals living in the United States is alarming. Indeed, “[o]f all immigrant groups, refugees . . . have historically had the greatest difficulty finding and sustaining decent work.”<sup>242</sup> They are usually overrepresented in low-skilled jobs and underpaid; yet ironically, refugees are more likely to be overqualified for the work they perform.<sup>243</sup> Such brain waste among refugee professionals represents a serious loss to U.S. employers, as well as the state and national economies.<sup>244</sup> Improving refugees' opportunities for re-credentialing would help stop this egregious waste of human capital by making professional licensure and practice more accessible.

The value of academic credentials for professional employment in the United States cannot be overstated. Refugees automatically lose professional

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<sup>237</sup> See Edwards, *supra* 17, at 983–84, at 987. International law recognizes the right of “holders of qualifications . . . [to] have adequate access, upon request to the appropriate body, to an assessment of these qualifications.” Convention on the Recognition of Qualifications Concerning Higher Education in the European Region art III.1, Apr. 11, 1977, 2136 U.N.T.S. 37250 [hereinafter Lisbon Convention]. Many countries like Canada, which ratified the Lisbon Convention, treat recognition of foreign qualifications as a matter of right. See LOO, *supra* note 6, at 6, 21; see also *Chart of Signatories and Ratifications of Treaty 165*, COUNCIL OF EUR. TREATY OFF., <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/165/signatures?desktop=true> (last visited Aug. 20, 2018) (noting dates of signature and ratification). Despite signing the Lisbon Convention in 1997, the United States has not ratified the treaty, failing to nationally recognize a legal right to credential assessment and recognition. *Id.*

<sup>238</sup> In this context, *sui generis* means refugees are deserving of a unique category of legal protection. *Sui Generis*, BLACK'S LAW DICTIONARY (10th ed. 2014).

<sup>239</sup> See SATAR, *supra* note 38, at 18.

<sup>240</sup> See Fifth Colloquium Participants, *supra* note 61, 302–04 (discussing the obligations of Contracting States to fulfill refugees' rights to work).

<sup>241</sup> JEANNE BATALOVA ET AL., UNTAPPED TALENT: THE COSTS OF BRAIN WASTE AMONG HIGHLY SKILLED IMMIGRANTS IN THE UNITED STATES 1 (2016).

<sup>242</sup> DESIDERIO, *supra* note 21.

<sup>243</sup> *Id.*

<sup>244</sup> See SATAR, *supra* note 38, at 13–14.

employment opportunities when they cannot obtain recognition of their foreign credentials or training.<sup>245</sup> To begin remedying this underutilization of refugee skills, the U.S. government should recognize a national standard for the treatment of refugees wishing to practice professions.

*B. A Heightened Standard of Treatment for Refugees*

To facilitate regulatory standards for refugee re-credentialing, it might first be necessary to raise the standard of treatment for refugees wishing to enforce their right to practice professions under Article 19 of the 1951 Refugee Convention.<sup>246</sup> Raising the standard of treatment above the bare minimum proscribed by Article 19—that refugees receive treatment equal to “aliens generally in the same circumstances”<sup>247</sup>—makes good sense and extends refugees’ rights in relation to credential recognition and professional practice.<sup>248</sup> Under Article 19, the standard of treatment for refugees wishing to practice liberal professions has an upper and a lower limit: the United States can give refugees the most favorable treatment possible but not treatment less favorable than other aliens in general.<sup>249</sup> No provision in the 1951 Refugee Convention prohibits the United States from raising the baseline standard to ensure refugees’ right to practice liberal professions is upheld both in law and practice.<sup>250</sup> Thus, the federal government could raise the Article 19 standard of treatment to “most-favored foreigners,”<sup>251</sup> on its own discretion.

Assimilating refugee professionals to most-favored foreigners would automatically accord them greater privileges when re-credentialing. Most-favored foreigner treatment accords special employment privileges to non-U.S.

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<sup>245</sup> See MICHAEL FIX ET AL., TRANSATLANTIC COUNCIL ON MIGRATION, HOW ARE REFUGEES FARING? INTEGRATION AT U.S. AND STATE LEVELS 16 (2017) (citing restrictions on credential recognition as one important factor contributing to refugee underemployment).

<sup>246</sup> See da Costa, *supra* note 232, at 57 (arguing that the standard of treatment for refugees under Article 19 should be raised to give refugees a special dispensation from restrictions on employment).

<sup>247</sup> United Nations Convention Relating to the Status of Refugees and Stateless Persons, *supra* note 12.

<sup>248</sup> See da Costa, *supra* note 232, at 57.

<sup>249</sup> United Nations Convention Relating to the Status of Refugees and Stateless Persons, *supra* note 12.

<sup>250</sup> The drafters of the 1951 Refugee Convention specifically left open the door for contracting states to grant refugees greater or additional rights. See United Nations Convention Relating to the Status of Refugees and Stateless Persons, *supra* note 12, at art. 5 (“Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention.”).

<sup>251</sup> “Most-favored foreigner” is the standard of treatment for refugees with respect to their rights to freedom of non-political association (Article 15) and to engage in wage-earning employment (Article 17). See United Nations Convention Relating to the Status of Refugees and Stateless Persons, *supra* note 12, at arts. 15, 17(1).

citizens based on agreements with their home countries.<sup>252</sup> This heightened standard would give refugees “access to at least those professional opportunities open to the citizens of partner and other closely affiliated countries.”<sup>253</sup> Such arrangements are common in U.S. regulated professions, which have mutual recognition agreements (MRAs) recognizing the equivalence of foreign credentials for professional practice in some or all states.<sup>254</sup> Through MRAs, most-favored foreigners can enter professional practice in the United States without having to completely re-credential.<sup>255</sup> Raising the Article 19 standard of treatment to most-favored foreigners would therefore promote more flexibility in the re-credentialing laws and practices that currently inhibit refugee professionals from exercising their chosen professions.

### C. “Equivalence Plus”: A Regulatory Standard for Credential Recognition

Since the admission of refugees is a federal decision, implementing standards for the recognition of refugees’ foreign credentials ought to entail some federal responsibility.<sup>256</sup> From the late nineteenth century, the Supreme Court has upheld the federal government’s plenary power over immigration and immigration-related policy.<sup>257</sup> This authority makes the U.S. government ideally positioned to implement national standards for the recognition of refugees’ foreign credentials in fulfillment of its legal and moral obligations under the 1951 Refugee Convention. National standards are crucial to the de facto protection of refugee rights with regard to credential recognition given the fragmentation of recognition laws and practices across the various states.<sup>258</sup>

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<sup>252</sup> See HATHAWAY, *supra* note 24, at 230; Fifth Colloquium Participants, *supra* note 61, at 298–99 (discussing how treaties among countries can grant refugees greater access to the labor market under the most-favored foreigner standard).

<sup>253</sup> *Id.* at 789.

<sup>254</sup> MRAs are common in the field of engineering. See generally HAWTHORNE, *supra* note 165, at 9 (discussing international agreements that govern the mutual recognition of engineering qualifications).

<sup>255</sup> See *id.* “[U]nder these agreements a person recognized in one country as reaching the agreed international standard of competence should only be minimally assessed prior to obtaining registration in another country that is also a signatory . . . .” *Id.*

<sup>256</sup> Refugees are admitted to the United States on international humanitarian grounds; thus, their successful resettlement and workforce integration depend, in part, on federal assistance. See BRUNO, *supra* note 146, at 9–10.

<sup>257</sup> *Arizona v. United States*, 567 U.S. 387, 394–95 (2012) (“The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens. This authority rests, in part, on the National Government’s constitutional power to establish a uniform Rule of Naturalization, and its inherent power as sovereign to control and conduct relations with foreign nations.”) (citations omitted).

<sup>258</sup> See KATE JASTRAM & MARILYN ACHIRON, *REFUGEE PROTECTION: A GUIDE TO INTERNATIONAL REFUGEE LAW* 16 (U.N. High Comm’r for Refugees & Inter-Parliamentary Union eds., 2001) (“The adoption of national refugee legislation that is based on international standards is key to strengthening asylum, [and] making protection more effective . . . .”).

Surprisingly little is known about how state professional licensing boards recognize refugees' foreign credentials. Even though their decisions are guided by expert comparability evaluations<sup>259</sup> and legislative statutes, licensing boards have a fair amount of autonomy to set their own standards for recognizing foreign credentials.<sup>260</sup> The lack of government oversight over recognition standards breeds discord among states' re-credentialing systems.<sup>261</sup> A refugee whose credentials are recognized in one state might not be recognized in another. To facilitate consistent protection of refugees' right to have their credentials recognized for professional practice, the U.S. government should adopt a regulatory standard for foreign credential recognition, which state licensing boards must implement.

Two credential recognition standards are commonly used by regulatory bodies in the United States: "equivalency" and "equivalency plus." Equivalency is a trademark of foreign credential recognition practices since it simplifies the process of matching foreign qualifications to U.S. requirements<sup>262</sup>: similar qualifications are recognized, and dissimilar qualifications are rejected.

The equivalency standard is frequently used by state licensing boards to assess the quality and level of refugees' foreign credentials in comparison to U.S. requirements.<sup>263</sup> The almost singular focus of this equivalency standard is "[t]he extent to which a degree or diploma earned abroad compares to a similar U.S. credential."<sup>264</sup> Thus, refugees' years of professional training and experience are frequently discounted when evaluated for equivalency.<sup>265</sup> This practice undermines refugees' right to have all of their credentials, including professional training, recognized. Regardless, state legislatures sanction licensing boards' use of an equivalency standard for recognizing refugees' credentials.<sup>266</sup>

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<sup>259</sup> See *supra* note 174 and accompanying text.

<sup>260</sup> See Schneider, *supra* note 10, at 415.

<sup>261</sup> RABBen, *supra* note 159, at 3 (critiquing the "vast patchwork" of state re-credentialing practices and actors).

<sup>262</sup> See LOO, *supra* note 6, at 20.

<sup>263</sup> GLOB. TALENT BRIDGE, WORLD EDUC. SERVS., CAREER PATHWAYS IN NURSING: USING YOUR FOREIGN EDUCATION IN THE UNITED STATES 9 (2017).

<sup>264</sup> *Id.* at 10.

<sup>265</sup> See RABBen, *supra* note 159, at 12 ("[Refugees] often face the old conundrum: You can't get a job without (U.S.) experience, and you can't get (U.S.) experience without a job."); *supra* Part IV.

<sup>266</sup> See, e.g., ARIZ. REV. STAT. ANN. § 32-1422(A)(1) (Supp. 2017) (requiring applicants to show they obtained medical education of "equivalent quality"); CAL. BUS. & PROF. CODE § 4999.40(c) (West 2018) (requiring applicants to demonstrate that they have an "equivalent" degree); TEX. OCC. CODE ANN. § 1001.311(b) (West 2012) (waiving any prerequisite for licensure if the applicant's credentials are "substantially equivalent").

“Equivalency plus” is a more complex recognition standard used by the U.S. Citizen and Immigration Services to assess the foreign credentials of applicants for H-1B<sup>267</sup> or “specialty occupation”<sup>268</sup> visas. To give recognition to foreign credentials, the equivalency plus standard considers “a combination of education, specialized training, and/or work experience in areas related to the specialty . . . .”<sup>269</sup> Work experience gained in a professional position is credited to determine U.S. education equivalence as follows:

1. three years of experience equal one year of college credit;
2. twelve years of experience equal a bachelor’s degree;
3. a bachelor’s degree plus five years of experience equal a master’s degree; and
4. a PhD has no substitute.<sup>270</sup>

Thus, foreign nationals who wish to practice a specialty occupation in the United States may have their credentials recognized by proving their expertise through a combination of educational qualifications and work experience.<sup>271</sup>

Compared to the equivalency standard used by state licensing boards, equivalency plus would give refugee professionals a more meaningful opportunity to have their credentials recognized. First, equivalency plus would allow refugees to prove their credentials and expertise by means other than or in addition to the originals of their foreign degrees, licenses, or certifications.<sup>272</sup> Since many refugees arrive in the United States with incomplete or limited proof

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<sup>267</sup> H-1B is a non-immigrant visa for “person[s] with permanent residence outside the United States, but wish[ing] to be in the [United States] on a temporary basis” for work in specialty occupations. *What is the Difference Between an Immigrant Visa vs. Non-immigrant Visa*, U.S. CUSTOMS & BORDER PROTECTION, [https://help.cbp.gov/app/answers/detail/a\\_id/72/~/~what-is-the-difference-between-an-immigrant-visa-vs.-nonimmigrant-visa-%3F](https://help.cbp.gov/app/answers/detail/a_id/72/~/~what-is-the-difference-between-an-immigrant-visa-vs.-nonimmigrant-visa-%3F) (last updated July 10, 2018). If successful, H-1B visa applicants receive legal status as non-immigrant workers. See *Temporary (Nonimmigrant) Workers*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/working-united-states/temporary-nonimmigrant-workers> (last updated Sept. 7, 2011).

<sup>268</sup> A specialty occupation “means an occupation which requires theoretical and practical application of a body of highly specialized knowledge . . . and which requires the attainment of a bachelor’s degree or higher in a specific specialty . . . .” 8 C.F.R. § 214.2(h)(4)(ii) (2018). Examples of specialty occupations include law, medicine, engineering, and accounting. *Id.*

<sup>269</sup> *Id.* § 214.2(h)(4)(iii)(D)(5).

<sup>270</sup> *Specialty Occupation as Described in VSC H-1B Guide*, U.S. CITIZENSHIP & IMMIGR. SERVS. 6, [https://www.uscis.gov/sites/default/files/USCIS/About%20Us/Electronic%20Reading%20Room/Policies\\_and\\_Manuals/H1-B\\_Training\\_Material\\_and\\_Guidance.pdf](https://www.uscis.gov/sites/default/files/USCIS/About%20Us/Electronic%20Reading%20Room/Policies_and_Manuals/H1-B_Training_Material_and_Guidance.pdf).

<sup>271</sup> See *id.* at 7. H-1B visa applicants may prove their expertise gained through work experience in several ways, including (a) professional publications, (b) membership in a foreign or U.S. professional association, (c) licensure or registration to practice in a foreign country, or (d) significant contributions to the specialty field. *Id.* Notably, since refugees are not non-immigrants, the H-1B (non-immigrant) visa standards do not apply when refugee professionals are re-credentialing.

<sup>272</sup> See 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(i)–(v).

of their foreign degrees,<sup>273</sup> the equivalency plus standard would facilitate alternative methods of credential assessment and recognition.<sup>274</sup>

Second, the equivalency plus standard would eliminate duplicative re-credentialing requirements such as internships. A common complaint among refugee professionals who do not re-credential in the United States is that re-credentialing requires them to redo a significant portion of their training or experience.<sup>275</sup> This process is time-consuming and significantly delays refugees' enjoyment of their fundamental freedom of professional practice.<sup>276</sup> The equivalency plus standard would ameliorate this problem by requiring state licensing boards to credit refugees for extensive years of professional experience and/or training.

Finally, adopting equivalency plus as the national regulatory standard for credential recognition would help create a coherent and transparent re-credentialing system for refugees. The existing patchwork of state re-credentialing laws and practices does a poor job of enforcing refugees' right to have their credentials recognized and to practice liberal professions.<sup>277</sup> Implementing the equivalency plus standard nationwide would not only signify progress in harmonizing credential recognition laws and practices, but also in enforcing Article 19 in practice.<sup>278</sup>

The benefits of the equivalency plus standard would accrue to refugees regardless of their resettlement state.<sup>279</sup> Refugees like Ahmed, the Iraqi doctor-turned-baggage-handler, could more easily transfer their foreign credentials and find work in their trained professions. Had equivalency plus been applied in Delaware, where Ahmed resettled, he may not have been advised that medical re-credentialing was "impractical"; the state medical licensing board could not have invalidated his Iraqi medical license so easily; and his thirteen years of professional experience as a pathologist and professor would have counted for something.<sup>280</sup> Perhaps Ahmed would still be required to take refresher exams to

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<sup>273</sup> See LOO, *supra* note 6, at 2 ("[S]tudent and professional refugees may arrive in a new host country with different levels of documentation and ability to prove their educational backgrounds.").

<sup>274</sup> But see *id.* at 3 (discussing the risks associated with "getting the [credential] evaluation wrong" when using alternative methods of assessment).

<sup>275</sup> See *supra* text accompanying notes 186–87.

<sup>276</sup> See *supra* text accompanying note 199.

<sup>277</sup> See Harris, *supra* note 1, at 98 (explaining that "the U.S. is not providing treatment as favourable as possible to refugees with diplomas" but instead "treats refugees as gap fillers for undocumented low-wage workers").

<sup>278</sup> See *supra* note 258 and accompanying text.

<sup>279</sup> See *supra* Part IV.

<sup>280</sup> See *supra* Introduction.



demonstrate his competency and obtain a U.S. medical license. But he would have a more meaningful opportunity to demonstrate his expertise and qualifications, launching him one step closer to exercising his right to practice liberal professions.

#### *D. Confronting Credentialing Concerns*

A strong objection to using equivalency plus as the regulatory standard for credential recognition is that it would increase potential for academic credential fraud. Fraud exists in various forms: fabricating academic documents, passing off documents from fake institutions, and purchasing degrees.<sup>281</sup> Allowing refugees to prove their credentials and competencies under the equivalency plus standard could make it easier for perpetrators of fraud to enter regulated professions in the United States.<sup>282</sup>

This Comment rejects this objection as fatally flawed because the lack of regulatory standards for credential recognition is the actual root cause of academic credential fraud.<sup>283</sup> As detailed in Part IV, gaps and fissures exist in U.S. re-credentialing laws because each state sets its own credential recognition standards.<sup>284</sup> Perpetrators of academic credential fraud exploit these fissures by targeting areas where recognition guidelines are wanting<sup>285</sup>:

Lack of a central authority can provide a ripe opportunity for forum shopping by fraud perpetrators. The United States bears the dubious honor of being the diploma mill fraud capital of the world. In part, this is because it is a federal system where states have primary jurisdiction over education. Like water seeking its lowest level, fraud flows to the states with weakest regulatory structures or enforcement efforts.<sup>286</sup>

Thus, the United States is particularly vulnerable to academic credential fraud because it lacks sufficient laws or guidelines for credential evaluation and recognition.<sup>287</sup> The equivalency plus standard could cure this weakness. As a regulatory standard, equivalency plus would combat academic credential fraud

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<sup>281</sup> Stefan Trines, *Academic Fraud, Corruption, and Implications for Credential Assessment*, WENR (Dec. 10, 2017), <https://wenr.wes.org/2017/12/academic-fraud-corruption-and-implications-for-credential-assessment>.

<sup>282</sup> See David Tobenkin, *Keeping It Honest*, INT'L EDUCATOR, Jan.–Feb. 2011, at 36 (“In perhaps its most serious form, [credential] fraud is used to gain admittance to professions such as nursing and medicine or to provide bogus degrees apparently from legitimate professional instruction programs.”).

<sup>283</sup> See Trines, *supra* note 281.

<sup>284</sup> See *supra* Part IV.

<sup>285</sup> See Trines, *supra* note 281.

<sup>286</sup> Tobenkin, *supra* note 282, at 38.

<sup>287</sup> See *id.*

by ensuring state licensing authorities abide by established guidelines for foreign credential recognition.<sup>288</sup> Its universal application would help eliminate fissures in and among state re-credentialing systems, ultimately reducing opportunities for “forum shopping by fraud perpetrators.”<sup>289</sup> Thus, using equivalency plus to assess refugee professionals’ foreign qualifications would give them fair opportunity to have their credentials recognized without risking the integrity of U.S. regulated professions.

### CONCLUSION

A sizeable number of refugee professionals never manage to re-credential and practice their professions in the United States, though the exact number is unknown. The United States is far behind other developed nations that have recognized the human capital in refugees and are implementing initiatives to harness the stock of knowledge and skills hidden in this population. The federal and state governments should take care not to treat refugee professionals as gap fillers for cheap, undocumented immigrant labor.<sup>290</sup> This is true especially because the United States accepted, without reservation, legal obligations to not only resettle refugees, but also protect their non-negotiable right to practice liberal professions.

For all the discussion on refugee resettlement, surprisingly little scholarly attention is paid to refugees’ right to practice liberal professions, which is interrelated with and indivisible from integration outcomes. This Comment endeavored to bridge this gap by calling attention to the failures of the United States to comply, in practice, with Article 19 of the 1951 Refugee Convention. De facto compliance requires the federal government to implement measures that give refugee professionals a more meaningful opportunity for re-credentialing—a key consideration under Article 19 and the most formidable barrier to exercising professions. Adopting “equivalence plus” as the regulatory standard for credential recognition and “most-favored foreigner” as the national

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<sup>288</sup> See Trines, *supra* note 281 (“[T]he solution involves robust processes for vetting . . . qualifications.”).

<sup>289</sup> Tobenkin, *supra* note 282, at 38.

<sup>290</sup> See Harris, *supra* note 1, at 98.

standard of treatment for refugees would bring the United States into conformance with its legal obligations under the 1951 Refugee Convention. If the United States fails to adopt these changes, the legal right to practice liberal professions is meaningless.

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