



# AMERICAN CIVIL LIBERTIES UNION FUND OF THE NATIONAL CAPITAL AREA

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BY MAIL AND FAX (202-442-9445)

Ms. Linda K. Argo  
Director, D.C. Department of Consumer and Regulatory Affairs  
941 North Capitol Street, NE  
Washington, DC 20002

**Re: Title 19 DCMR Chapter 12, "Sightseeing Guides"**

Dear Ms. Argo:

We have been contacted by a permanent United States resident holding foreign citizenship who was recently denied a license by your agency as a sightseeing guide because she is not a U.S. citizen. Citizenship is required for such a license under your agency's regulations, at 19 DCMR § 1201.2(b) and § 1202.11(b).

This regulation is unconstitutional. The Supreme Court has held that a government classification based on citizenship is inherently suspect and subject to strict judicial scrutiny. Laws limiting rights or privileges to U.S. citizens have been overturned in many cases, for example:

- *In re Griffiths*, 413 U.S. 717 (1973), striking down a Connecticut law allowing only citizens to practice law;
- *Sugarman v. Dougall*, 413 U.S. 634 (1973), striking down a New York statute barring legal aliens from its civil service;
- *Bernal v. Fainter*, 467 U.S. 216 (1984), striking down a Texas law allowing only citizens to be notary publics.

The courts have allowed states to exclude lawful resident aliens only from positions "intimately related to the process of democratic self-government," such as policy-making government or law enforcement jobs. *See Sugarman*, 413 U.S. at 647; *Bernal*, 467 U.S. at 220. Tour guides obviously do not fit in this narrow category; the requirements in Title 19 DCMR Chapter 12 could not survive a challenge in court.<sup>1</sup>

We look forward to hearing that you will promptly move to repeal this unlawful regulation.

Sincerely,

Fritz Mulhauser  
Staff Attorney

PS - Additionally, some or all of the physical requirements for a tour guide license, 19 DCMR § 1201.2(h) (sound physique, vision and hearing standards, and an absolute bar on those with heart conditions or epilepsy) may violate the Americans with Disabilities Act, 42 U.S.C. § 12132 (prohibiting discrimination based on disability) and equivalent provisions of the D.C. Human Rights Act. We suggest that you reexamine those provisions as well.

<sup>1</sup> The citizenship provisions may also violate the D.C. Human Rights Act, D.C. Code § 2-1402.73 (prohibiting discrimination based on national origin).