



NYCLU

NEW YORK CIVIL LIBERTIES UNION

Nassau County Chapter

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March 15, 2011

Chief Karl E. Rugg
Hempstead Fire Department
75 Clinton St., P.O. Box 32
Hempstead, NY 11550

Debra Urbano-DiSalvo
Hempstead Village Attorney
99 Nichols Ct.
Hempstead, NY 11550

Re: Citizenship Requirement for Membership in the HFD

Dear Chief Rugger and Ms. Ubrano-DiSalvo,

On behalf of volunteer fire department applicant Oscar Parraga, we write to request that you amend the criteria for admission to the Hempstead Volunteer Fire Department (HVFD) to permit applications by non-citizens. Currently, Article VII of the Department's policies requires that an applicant for membership be "a citizen of the United States."

On December 23, 2010, Mr. Parraga filed an application for consideration as a volunteer fire fighter for HVFD. Because of his extensive experience in the fire protection industry, his prior work as a fire fighter in Ecuador, his passion for fire fighting, and his desire to feel more connected with the Hempstead community, he felt he would be an ideal candidate for the position. He was rejected by your department, however, on the basis of his citizenship status.

Because fire protection is a function so "traditionally associated with sovereignty" that its performance, constitutes state action, *Janusaitis v. Middlebury Volunteer Fire Dep't*, 607 F.2d 17, 22 (2d Cir. 1979), the HVFD must comply with all state and federal anti-discrimination laws, as well as the Equal Protection Clause of the 14th Amendment.¹

* State Board Member

¹ The State Legislature, by including volunteer fire departments under the umbrella of the State's anti-discrimination laws, has indicated that volunteer fire departments are to be treated on the same footing as non-volunteer departments. See N.Y. Exec. Law § 296(9)(a).

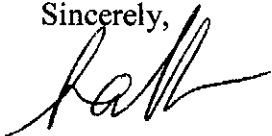
As a general matter, a state law/policy that discriminates on the basis of alienage (citizenship) can be sustained only if it can withstand strict judicial scrutiny. Strict scrutiny requires that the government assert a compelling interest for the law/policy which is narrowly tailored and is the least restrictive means for ensuring that interest. Under this standard, the Supreme Court has invalidated many restrictions on non-citizen participation in the public workforce. *See, e.g. Sugarman, supra; In re Griffiths*, 413 U.S. 717 (1973) (struck down state law excluding aliens from eligibility for membership in the State Bar); *Examining Board v. Flores de Otero*, 426 U.S. 572 (1976) (struck down state law that excluded aliens from the practice of civil engineering).

While the Supreme Court has recognized that citizenship requirements can be imposed in very limited circumstances, it has never permitted such a requirement for firefighters.

Excluding non-citizens such as Mr. Parraga from opportunities with the HVFD is unconstitutional as a matter of law and serves only to weaken the pool of eligible applicants for public service. Mr. Parraga is more than qualified to serve as a volunteer fire fighter and should not be denied the opportunity because he is a non-citizen. Indeed, even exclusive of constitutional concerns, the HVFD's policy is misguided because it eliminates a significant percentage of the 1/3 of all Hempstead residents who are foreign born.² Many of these individuals have lived in Hempstead for many years and are highly qualified to serve the public interest in your ranks. Continuing to discriminate against this class of persons without a rational basis not only isolates the immigrant community, but can produce distrust between public officials and the citizens they serve.

For the reasons provided above, the NYCLU requests that you amend your employment policy/practice to end discrimination against non-citizens in all HVFD positions so that Mr. Parraga and other non-citizens can have the opportunity to serve their community as volunteer firefighters. We would be happy to meet with you to discuss this matter further. In any event, we will follow up with you no later than the end of next week to inquire whether you are amenable to a meeting or to amending your policy.

Sincerely,



Samantha Fredrickson
Nassau Chapter Director



Andrew L. Kalloch
Kaufman Fellow

² 2000 Census Data, Available: <http://quickfacts.census.gov/qfd/states/36/3633139.html>.