



U.S. Department of Justice

Civil Rights Division

*Voting Section - NWB.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530*

August 24, 2004

Honorable Donald H. Dwyer, Jr.
Maryland House of Delegates
213 Lowe House Office Building
Annapolis, Maryland 21401-1991

Dear Delegate Dwyer:

I am writing in response to your inquiry regarding the voter registration of non-citizens. In particular, you asked whether state departments of motor vehicles must ask foreign nationals whether they wish to register to vote at the time such individuals seek driver's licenses or state identification cards. As set forth below, there is clearly no such requirement.

Before articulating the rationale for our answer, it is important to note that the Department of Justice ordinarily states its formal positions with respect to the statutes it enforces only through case-by-case litigation. Nevertheless, the Department occasionally offers its general views on the manner in which it intends to enforce a particular statute or set of laws. Thus, while formal advisory opinions cannot be issued, we will attempt to answer the questions you have posed to the extent we can. It must be emphasized, however, that the opinions expressed herein are not binding.


As an initial matter, federal law, specifically 18 U.S.C. § 611, makes it a crime for a non-citizen to vote in an election where a candidate for federal office is on the ballot. Moreover, 18 U.S.C. § 1015(f) makes it a crime for someone to make a false claim of citizenship to register or vote in any election, whether it be federal, state or local. Similarly, 42 U.S.C. § 1973gg-10(2) criminalizes the knowing and willful submission of false information to election officials that is material under state law. And 18 U.S.C. § 911 renders it illegal to knowingly and willfully make a false assertion of U.S. citizenship.

In your letter, you indicate that certain state officials claim the Help America Vote Act of 2002 ("HAVA"), 42 U.S.C. § 15301 *et seq.*, somehow obligates them to ask non-citizens if they would like to register to vote. There is no foundation for this apparent claim. HAVA contains no provision that would require states to register non-citizens to vote. In fact, Section 303(b) of HAVA (codified at 42 U.S.C. § 15483(b)) requires that the federal mail-in voter registration form be amended to add a citizenship question as well as an explicit directive that non-citizens not complete the form. This form has already been amended by the Election Assistance Commission to reflect this requirement. Obviously, the intent here is to prevent individuals who are not citizens from registering to vote for federal elections.

Nor are we aware of any other federal law, including the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. § 1973gg *et seq.*, that would require a state to ask an individual who is not a United States citizen whether that person would like to register to vote. Indeed, as noted, there are a number of federal statutes that make it a federal crime for non-citizens to register or vote. In short, if a state chooses to issue driver's licenses to individuals who when applying indicate they are not U.S. citizens, the state is certainly not required to (and, in fact, should not) offer such an individual the right to register to vote for a federal election.

I trust this answers your questions.

Sincerely,



Joseph D. Rich
Chief
Voting Section