



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF MOTOR VEHICLES
ADMINISTRATION OFFICE
600 New London Avenue
Cranston, RI 02920-3024
Phone: 401-462-4368
www.dmv.ri.gov

April 20, 2015

Steven Brown
Executive Director
American Civil Liberties Union
of Rhode Island
128 Dorrance Street
Suite 220
Providence, RI 02903

Re: Correspondence Regarding Danilo Saccoccio

Dear Mr. Brown,

The Division of Motor Vehicles (the "Division") is in receipt of your letter dated February 17, 2015 in which you have raised a concern regarding the administration of the written driver examination. While we understand the importance of a driver's license to an individual, it is the position of the Division that the administration of a translated written test to this class of Italian speaking persons is not required under the Civil Rights Act of 1964.

As I am sure you are aware, the Civil Rights Act of 1964 prohibits discrimination against individuals on the basis of race, color, or national origin. Not offering an Italian translation of the driver examination does not amount to discrimination based on race, color, or national origin. Many courts have found that discrimination based on language is not discrimination based on national origin as language is not an immutable characteristic.

Because the failure of the Division to translate the written driver examination into English does not amount to discrimination based on race, color, or national origin, the rational basis test applies. In this case, the failure of the Division to translate the test into Italian must be rationally related to a legitimate state interest.

In this case, the legitimate state interest is the ability of an agency to provide quality services to its customers in a timely manner subject to the financial constraints of a limited budget. Although it may be laudable for the Division (or any other state agency) to provide documents translated into numerous languages or to provide interpreter services, the practical ability of an agency to do such is limited.

In the case of the Division, a decision was made based on the last census study to have written examinations available in the top three spoken languages in this state - English, Spanish and Portuguese. This compromise sought to utilize limited funding and provide the most efficient services to the largest population possible.

The federal government has likewise made distinctions based on language skills that do not amount to discrimination based on race, color, or national origin. The Federal Motor Carrier Safety Administration has a requirement that commercial drivers “read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records.” 49 C.F.R. § 391.11 (b)(2).

Because the distinction based on language is not discrimination based on race, color, or national origin, the analysis and requirements of Executive Order 13166 do not apply to this situation, however the Division believes that in the event it ever were found to apply, the balancing test set forth in the Executive Order and DOJ Policy Guidance Document weighs in favor of the DMV’s current practice.

According to this guidance, the Division must undergo an individualized assessment that balances four factors. We look to the number or proportion of limited English proficiency (“LEP”) persons eligible to be served or likely to be encountered by a program or service, the frequency with which LEP individuals come in contact with the program, the nature and importance of the program or service provided by the Division to people’s lives, and the resources available to the Division as well the associated costs of implementation.

While the Division readily acknowledges the importance of a driver’s license, the issue remains that the other factors weigh heavily against the translation of the written test into Italian. To date, the Division is aware of only one other individual in the past five years who, through an attorney, informally inquired about the provision of an Italian translated test. Further bolstering this determination is the census data used by the Division. This demographic information was a central factor in determining which languages were used for our licensing tests. The Division decided to translate the tests into the three most commonly spoken languages in Rhode Island according to the census. The two requests for the test to be translated into Italian evidence the scarcity of Italian speaking LEP persons in Rhode Island. On the other hand, the Portuguese and Spanish LEP populations were both high in terms of encounters with the Division and in terms of census data. As a result, those are two languages, aside from English, which the test has been translated into.

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The last factor which we must consider is the resources available to the Division and the costs to the Division. It is no secret that the Division's resources are quite limited. Being spread so thin, it would be prohibitively expensive for the Division to offer translations of the written test to anyone that requested it. Were we to set a precedent that anyone requesting a translation for the written test could obtain one at the expense of the Division, it would be overly burdensome to the state and would negatively impact the Division's ability to comply with its statutory mandates and provide efficient service to Rhode Islanders.

Sincerely,



Clare S. Sedlock,
Acting Administrator