

present any views which it may have upon this question, and we are advised that it is in accord with the conclusions expressed in this Opinion.

Sincerely yours,

MELVIN R. SHUSTER  
*Deputy Attorney General*

VINCENT X. YAKOWICZ  
*Solicitor General*

ROBERT P. KANE  
*Attorney General*

---

OFFICIAL OPINION No. 75-13

*Fish Commission—Resident Fishing Licenses—Resident Alien—Citizenship Requirements.*

1. The citizenship requirements for a resident fishing license of Section 220 of the Fish Law of 1959, 30 P. S. § 220 should be treated as unconstitutional.
2. No application for a resident fishing license should be denied on the basis of alien status.

Harrisburg, Pa.  
April 7, 1975

Honorable Ralph W. Abele  
Executive Director  
Pennsylvania Fish Commission  
Harrisburg, Pennsylvania

Dear Mr. Abele:

We have received an inquiry from an alien resident concerning the constitutionality of the statutory requirement that resident aliens purchase more expensive "Non-Resident Fishing Licenses" rather than the less expensive "Resident Fishing License" available to citizen residents. The question presented is whether a resident alien may constitutionally be charged a higher fish license fee merely because of his non-citizen status.

It is our opinion and you are hereby advised that the citizenship requirements for a resident fishing license found in Section 220 of the Fish Law of 1959, 30 P. S. § 220, should be treated as unconstitutional. No applicant for a resident fishing license should be denied a license on the basis of his or her alien status.

Subsection (a) of Section 220 provides substantially as follows:

“. . . every person . . . upon application to any issuing agent within the Commonwealth, or to the Commission, and upon the establishment . . . that he has been a bona fide resident of this Commonwealth for a period of sixty days next preceding his application and was born in the United States, and in the case of naturalized foreign-born residents, the production of such applicant's naturalization papers, shall, upon the payment to the issuing agent or the Commission of a license fee of seven dollars fifty cents (\$7.50) . . . and in the event that the license is issued by an issuing agent, a fee of twenty-five cents (25¢) for the use of the issuing agent, be entitled to the license herein referred to as a 'resident fishing license.'" 30 P. S. § 220(a).

The application of a Pennsylvania resident-alien, qualifying in all other respects for a resident fishing license, would be denied on the basis of the failure of the applicant to meet citizenship qualifications. In order to obtain a license the applicant would be required to apply for a non-resident license, in accordance with Section 221(a) of the Act which provides in pertinent part:

"For the purposes of this article, every person . . . upon application to any issuing agent within the Commonwealth or to the Commission and the presentation of proof that he is an alien or a non-resident of this Commonwealth, shall, upon the payment to the issuing agent or the Commission of the sum of twelve dollars fifty cents (\$12.50), and in the event the license is issued by an issuing agent, the payment of twenty-five cents (25¢) for the use of the issuing agent, be entitled to the license herein referred to as a 'non-resident fishing license.'" 30 P. S. § 221(a).

The impact of the two quoted provisions of the Fish Law is that a resident alien must pay five dollars (\$5.00) more than a citizen resident for the same fishing rights. This results in unequal opportunity to share in the rights or privileges afforded by the grant of a fish license and is discriminatory as to resident aliens.

The Fourteenth Amendment provides, "[N]or shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." A resident alien has long been held to be a person within this amendment, *Truax v. Raich*, 239 U. S. 33 (1915); *Yick Wo v. Hopkins*, 118 U. S. 356 (1886). Recent Supreme Court decisions have made it clear that the constitutional rights of a resident alien<sup>1</sup> are abridged when he is discriminated against by the State unless the State has satisfied the heavy burden of showing that the discrimination

---

1. A State may validly classify non-residents of the State in a manner so as to require a reasonable additional license fee from them over the amount charged residents. The United States Supreme Court thus upheld a fee charged non-resident fishermen in *Haavik v. Alaska Packers Ass'n*, 263 U. S. 510 (1924).

is necessary to accomplish a permissible and compelling interest. *In Re Griffiths*, 413 U. S. 717 (1973); *Sugarman v. Dougall*, 413 U. S. 634 (1973); *Graham v. Richardson*, 403 U. S. 365 (1971). See also *Chapman v. Gerard*, 456 F. 2d 577 (3rd Cir. 1972).

In *Takahashi v. Fish and Game Commission*, 334 U. S. 410 (1948), the Supreme Court held California's purported ownership of the fish off its shores did not constitute such an interest as would justify excluding aliens from commercial fishing licenses while permitting such licenses to other State residents. Justice Black wrote:

"The Fourteenth Amendment and the laws adopted under its authority thus embody a general policy that all persons lawfully in this country shall abide 'in any state' on an equality of legal privileges with all citizens under non-discriminatory laws." 334 U. S. at 420.

The Attorney General of the Commonwealth of Pennsylvania has frequently been called on in the last four years to render advice as to the validity of similar citizenship requirements and has always responded that such requirements are unenforceable.<sup>2</sup> The instant classification presents no reason to alter the advice which has heretofore been customary. There is no compelling purpose to differentiate between alien and non-alien residents for fishing licenses. Since both are granted licenses, the only purpose for the difference that can be argued is the increase in resulting revenue, hardly a compelling purpose in light of the small amount of monies involved.

After examination, it is our conclusion that the citizenship requirements for a resident fish license set forth in Section 220 of the Fish Law of 1959, 30 P. S. § 220, are contrary to the Fourteenth Amendment and United States Supreme Court cases directly on point. You are therefore advised that such citizenship requirements are to be treated as unenforceable and no license application should be refused due to the non-citizen status of the applicant.

Very truly yours,

W. WILLIAM ANDERSON  
*Deputy Attorney General*

VINCENT X. YAKOWICZ  
*Solicitor General*

ROBERT P. KANE  
*Attorney General*

2. *O. O. No. 48*, Op. Pa. Atty. Gen. (Sept. 18, 1974) concerning corporate liquor licenses; *O. O. No. 23*, Op. Pa. Atty. Gen. (April 30, 1974) concerning individual liquor licenses; *O. O. No. 52*, Op. Pa. Atty. Gen. (June 20, 1973) concerning public weighmasters; *O. O. No. 4*, Op. Pa. Atty. Gen. (Jan. 15, 1973) concerning state scholarship applicants; *O. O. No. 116*, Op. Pa. Atty. Gen. (April 4, 1972) concerning registered and practical nurses; *O. O. No. 114*, Op. Pa. Atty. Gen. (March 23, 1972) concerning pharmacists; *O. O. No. 113*, Op. Pa. Atty. Gen. (March 23, 1972) concerning physicians; *O. O. No. 112*, Op. Pa. Atty. Gen. (March 15, 1972) concerning real estate brokers; *O. O. No. 92*, Op. Pa. Atty. Gen. (Dec. 17, 1971) concerning veterinarians.