June 14, 2013

SENT VIA U.S. MAIL AND FAX TO (281) 774-5989

Ms. Sandra M. Heathman
USCIS District 17 Director
126 Northpoint Drive
Houston, TX 77060

Re: Illegal and unconstitutional religious requirements for receiving exemption to "bear arms" oath

Dear Heathman:

I am writing to you on behalf of the Freedom From Religion Foundation and our more than 19,000 members nationwide. Our purpose is to protect the constitutional principle of separation between state and church. Neither I, nor FFRF, nor any of its attorneys legally represent an individual going through the immigration process. However, it has come to our attention that the Houston Office of United States Customs and Immigration Services is imposing unconstitutional and illegal restrictions on applicants.

Specifically, NAME REDACTED a XX-year-old naturalization applicant (Application ID: REDACTED) is being required to show that her moral unwillingness to bear arms is based solely on religion, in violation of Supreme Court precedent. NAME REDACTED is a XX permanent resident of the U.S. that has run non-profit [redacted] organizations. Queen Elizabeth II has honored her service to education.

As you know, 8 U.S.C. 1448 (a) (5) requires naturalization applicants to swear an oath "(A) to bear arms on behalf of the United States when required by the law, or (B) to perform noncombatant service in the Armed Forces of the United States when required by the law, or (C) to perform work of national importance under civilian direction when required by the law." There is an exemption to this oath:

> Any such person shall be required to take an oath … except that a person who shows by clear and convincing evidence … that he is opposed to the bearing of arms in the Armed Forces of the United States by reason of religious training and belief shall be [exempt from the relevant parts of the oath]. The term "religious training and belief" as used in this section shall mean an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code.

It appears that the Houston USCIS office is attempting to enforce a strictly religious test against REDACTED The USCIS officers have recognized that REDACTED is "sincere in [her] belief" against armed service, yet they are requiring religious "documentation to support the claim that your refusal to bear arms is based on religious principles" and requiring her to "submit a letter on official church stationary," signed by members of a church, documenting the church's official position on bearing arms, and a "statement of 'faith'" regarding that position. **As a nonreligious conscientious objector, REDACTED will have difficulty producing such documentation. Without it, she has been told her application can be denied at her June 21, 2013 hearing. This requirement is illegal and unconstitutional**.

The "religious training and belief" language of the armed service exemption has been interpreted by many courts, including the Supreme Court, and despite its religious overtones, the true test for granting an exemption is not – and cannot be — religious. The USCIS must simply ask, "***does the claimed belief occupy the same place in the life of the objector as an orthodox belief in God holds in the life of one clearly qualified for exemption*****?**" *United States v. Seeger*, 380 U.S. 163, 183-84 (1965).

The Supreme Court has interpreted the exemption language to include a nonreligious belief system. The Supreme Court examined the statutory construction of this exemption language nearly 50 years ago. In *United States v. Seeger,* the Court looked at section 6(j) of the Universal Military Training and Service Act. 380 U.S. 163 (1965). The Court specifically noted, the "definition of 'religious training and belief' identical to that in s 6(j) is found in s 337 of the Immigration and Nationality Act, 66 Stat. 258, 8 U.S.C. s 1448(a)." *Id.* at n.3.

When interpreting this identical language, the Court held that the exemption test is not religious:

> We recognize the difficulties that have always faced the trier of fact in these cases. We hope that the test that we lay down proves less onerous. The examiner is furnished a standard that permits consideration of criteria with which he has had considerable experience. While the applicant's words may differ, the test is simple of application. It is essentially an objective one, namely, ***does the claimed belief occupy the same place in the life of the objector as an orthodox belief in God holds in the life of one clearly qualified for exemption***? *Id.* at 183-84.

This means that a belief in God or adherence to a particular religion is not necessary to receive the exemption. Like REDACTED, Seeger did not premise his objection on religion or the existence of a god: " 'skepticism or disbelief in the existence of God' did 'not necessarily mean lack of faith in anything whatsoever'; that his was a 'belief in and devotion to goodness and virtue for their own sakes, and a religious faith in a purely ethical creed.' " *Id.* at 166.

The Court put the test another way:

> The test might be stated in these words: A sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by the God of those admittedly qualifying for the exemption comes within the statutory definition. This construction avoids imputing to Congress an intent to classify different religious beliefs, exempting some and excluding others, and is in accord with the well-established congressional policy of equal treatment for those whose opposition to service is grounded in their religious tenets. *Id.* at 163.

The Court granted Seeger the exemption.

In *Welsh*, the objector's beliefs were more akin to a complete denial of religion and assertion of something like humanism: "Welsh's views, unlike Seeger's, were 'essentially political, sociological, or philosophical views or a merely personal moral code.'" *Welsh v. United States*, 398 U.S. 333, 342 (1970). Despite the fact that this would seem to preclude Welsh from conscientious objector status, the Court concluded: "Welsh was clearly entitled to a conscientious objector exemption." *Id.* at 343-44. The Court put the test more simply: the language "exempts from military service all those whose consciences, spurred by deeply held moral, ethical, or religious beliefs, would give them no rest or peace if they allowed themselves to become a part of an instrument of war." *Id.*

The Supreme Court held in both cases that religion is not necessary to get the exemption:

> If an individual deeply and sincerely holds beliefs that are purely ethical or moral in source and

> content but that nevertheless impose upon him a duty of conscience to refrain from participating in any war at any time, those beliefs certainly occupy in the life of that individual 'a place parallel to that filled by God' in traditionally religious persons. Because his beliefs function as a religion in his life, such an individual is as much entitled to a 'religious' conscientious objector exemption under s 6(j) as is someone who derives his conscientious opposition to war from traditional religious convictions. *Id.* at 340.

Other courts have followed this precedent in the immigration context

As the Supreme Court pointed out in footnote 3 of *Seeger,* the statutory language of the military exemption is the same as the INA exemption. The interpretation is therefore the same and courts have held accordingly. *See , e.g. Rafferty v. United States*, 477 F.2d 531, 533-34 (5th Cir. 1973) ("We therefore hold that the proper test to be applied in determining whether a petitioner for naturalization is to be permitted to take the qualified oath of allegiance to the United States is the religious parallel test as advanced by the Supreme Court in *United States v. Seeger* and *Welsh v. United States*. The question to be answered is whether or not an individual's opposition to the bearing of arms stems from his moral, ethical or religious beliefs about what is right and wrong, and whether or not these beliefs are held with strength of traditional religious convictions." (citations omitted)); *In re Weitzman*, 426 F.2d 439, 458 (8th Cir. 1970) ("Mrs. Weitzman has established her sincere belief as a conscientious objector on the basis of conscience and sincere conviction. This should be enough. To require her to further justify this faith in scientific terms or as one of religious orthodoxy is patently wrong"' (opinion of Lay, J.); "Mrs. Weitzman sustained the burden of proving, by clear and convincing evidence, that she is opposed to bearing arms as a matter of conscience. The trial judge found her to be completely sincere. She stated that her refusal to take the oath was based on conscience and personal moral conviction. She made it clear that she was opposed to all killing of human beings under any circumstances. In the light of these expressions of conscientious belief, Mrs. Weitzman should be permitted to take the oath and become a citizen of the United States." (opinion of Heaney, J.)); *In re Thomsen*, 324 F.Supp. 1205, 1210 (N.D. Ga. 1971) ("the Court's burden is in no way alleviated by Dr. Thomsen's apparent difficulty in clearly categorizing her particular beliefs. As the Court has heretofore taken note of the difficulty of this endeavor, however, such shortcomings on the petitioner's part cannot be held against her. Nor does the Court in any way doubt petitioner's sincerity in attempting to state her true beliefs.").

The exemption violates the Constitution, especially as applied by Houston USCIS

These exemptions must be applied with the lightest possible hand to avoid any constitutional violation. The only reason the *Welsh* and *Seeger* Courts did not find the exemption a violation of the First Amendment religion clauses was because of their expansive and generous interpretation of the exemption to include the nonreligious. *See, e.g., Welsh at* 345 (1970) (J., Harlan, concurring) (Harlan would have found the language unconstitutional, "I therefore find myself unable to escape facing the constitutional issue that this case squarely presents: whether s 6(j) in limiting this draft exemption to those opposed to war in general because of theistic beliefs runs afoul of the religious clauses of the First Amendment. … I believe it does…")

To require religious documentation of the belief would violate the Constitution: "We repeat and again reaffirm that neither a State nor the Federal Government can constitutionally force a person 'to profess a belief or disbelief in any religion.' Neither can constitutionally pass laws or impose requirements which aid all religions as against non-believers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs." *Torcaso v. Watkins*, 367 U.S. 488, 495 (1961).

In a footnote to the clause "religions founded on different beliefs" the Court recognized "Ethical Culture, Secular Humanism, and others." *Id.* at n. 11. These two freethinking categories and one catchall illuminate the constitutional problem with Houston USCIS's requirement for religious "documentation to

support the claim that your refusal to bear arms is based on religious principles." Freethinkers like humanists, ethicists, atheists, agnostics, anti-theists, naturalists, secularists, and "others" rarely adhere to a strict church structure with set beliefs. Requiring this extra step for non-religious conscientious objectors violates the First Amendment's Establishment Clause, Free Exercise Clause, and Freedom of Assembly Clause. *See, e.g. In re Weitzman,* 426 F.2d 439, 459 (8th Cir. 1970) (unable to "to accept the view that Congress can, consistent with the First Amendment, excuse some who sincerely object in conscience to taking an oath to bear arms and refuse to excuse others whose objections are just as deeply rooted." And "we must either construe the statute as permitting all who sincerely object in conscience to bearing arms to be excused from the oath or hold that the statute is unconstitutional.") (J. Heaney, Circuit Judge, concurring in per curium with one Circuit Judge concurring in result)

In short, this exemption requires only a deeply held belief in not bearing arms or serving in the armed forces. Anything more, such as a requirement to document the belief with a particular church, is a gross violation of the law and the Constitution.

Conclusion

It is shocking that USCIS officers would not be aware that a nonreligious yet deeply held belief would be sufficient to attain this exemption. This is a longstanding part of our law and every USCIS officer should receive training on this exemption. Form N-400, which the officers gave to REDACTED, even mentions the exemption and Supreme Court cases above. Either the officers in Houston are inept, or they are deliberately discriminating against nonreligious applicants for naturalization.

As an organization dedicated to upholding the constitutional principle of the separation of state and church, and not as a personal legal representative of any individual, we request that REDACTED and others be granted the exemption as demanded by law and the recognized sincerity of her belief. We also request an investigation of the officers handling this case. Either ineptitude or discrimination are at work, and both are unacceptable. May we hear from you, in writing, at your earliest convenience?

Sincerely,

Andrew L. Seidel
Staff Attorney
Freedom From Religion Foundation

Cc:
Regional Director for USCIS Central Region
USCIS Central Region
7701 N. Stemmons Freeway
Dallas, TX 75247
Fax: (214) 905-5435 or (214) 905-5318

USCIS Houston Field Office Director: Ricky Hamilton
Ricky.W.Hamilton@dhs.gov