



U.S. Department of Justice
Civil Rights Division

Office of Special Counsel for Immigration-Related
Unfair Employment Practices - NYA
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JAN 24 2011

By Email (tfox@rifkinfox.com)

Tammy Fox-Isicoff, Esq.
Rifkin & Fox-Isicoff, P.A.
1110 Brickell Avenue, Suite 210
Miami, Florida 33131

Dear Ms. Fox-Isicoff:


This letter responds to your letter to the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), dated December 21, 2010. In your letter, you ask whether an employer faces any liability under 8 U.S.C. §1324b if the employer is required by United States Citizenship & Immigration Services (USCIS) to request certain documents from his employees in excess of Form I-9 requirements as evidence that the jobs he is obligated to create as an EB-5 visa holder have been filled by work-authorized individuals.

Please note that OSC cannot provide an advisory opinion on any set of facts involving a particular individual or entity. We can provide, however, some general guidelines regarding the anti-discrimination provision of the Immigration and Nationality Act (INA) enforced by OSC, 8 U.S.C. §1324b, and employer actions under that provision. The anti-discrimination provision prohibits four types of employment-related discrimination: citizenship or immigration status discrimination; national origin discrimination; unfair documentary practices during the employment eligibility verification (Form I-9) process ("document abuse"); and retaliation for filing a charge, assisting in an investigation, or asserting rights under the anti-discrimination provision.

With respect to your query, the request for more or different documents violates our statute only if committed with the intent to discriminate based on citizenship status or national origin. 8 U.S.C. §1324b(a)(6). An employer can avoid discriminatory documentary practices by ensuring a consistent approach to employment eligibility verification is taken without regard to an employee's citizenship status or national origin. Further, OSC will bring the matter you raise to the attention of USCIS.

We hope you find this information helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "Katherine Baldwin". The signature is written in a cursive style with a large, sweeping flourish at the end.

Katherine A. Baldwin
Deputy Special Counsel