



U.S. Department of Justice

Civil Rights Division

*Office of Special Counsel for Immigration-Related
Unfair Employment Practices - NYA
950 Pennsylvania Ave, NW
Washington, DC 20530
Main (202) 616-5594
Fax (202) 616-5509*

October 4, 2010

VIA FACSIMILE (787) 274-1470

Katherine González Valentín, Esq.
Pietrantonio Mendez & Alvarez LLP
Banco Popular Center, Suite 1901
209 Muñoz Rivera Avenue
Hato Rey, PR 00918

Dear Ms. González Valentín:

This responds to your letter dated September 1, 2010, to the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC). You seek guidance about Puerto Rico Act No. 191¹ (Act 191), which invalidates certain birth certificates issued before July 1, 2010. In your letter, you ask whether an employer may violate the I-9 Form requirements under the Immigration and Nationality Act (INA) if it knowingly accepts an invalid Puerto Rico birth certificate issued before July 1, 2010. You also ask whether an employer may violate the anti-discrimination provision of the INA, 8 U.S.C. § 1324b, if it only accepts Puerto Rico birth certificates issued after July 1, 2010.

OSC enforces the anti-discrimination provision of the INA, 8 U.S.C. § 1324b. 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. The document abuse provision of the INA prohibits an employer from requesting more or different documents or rejecting valid employment eligibility verification documents with the intent to discriminate on the basis of national origin or citizenship status. 8 U.S.C. § 1324b(a)(6). Although OSC cannot comment on any particular case or set of facts, we can share with you general information regarding requirements under the anti-discrimination provision of the INA.

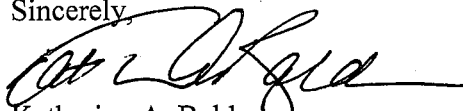
U.S. Citizenship and Immigration Services (USCIS) is the federal agency charged with providing guidance on proper I-9 Form procedures. According to a USCIS press release dated September 30, 2010, "Puerto Rico birth certificates issued prior to July 1, 2010, will no longer be

¹ "Act to Prohibit the Retention, Keeping on Record, and Keeping under Custody of Certified Copies of Birth Certificates," Law 191 of 2009, as Amended.

acceptable as Form I-9 List C documents beginning October 30, 2010.”² Therefore, after October 30, 2010, if an employee presents a birth certificate issued by the Commonwealth of Puerto Rico during the Form I-9 process to establish his or her employment authorization, the employer is required to look at the date on which the birth certificate was issued to ensure that it is valid, i.e., issued on July 1, 2010 or later.³ Under this scenario, if an employer consistently rejects Puerto Rico birth certificates issued prior to July 1, 2010, without regard to citizenship status or national origin, it is unlikely that the employer will be found by OSC to have violated the anti-discrimination provision.

For more information about Form I-9 you may visit USCIS’s website at www.uscis.gov. For more information about Puerto Rico birth certificates you may visit the government of Puerto Rico’s website at <http://www2.pr.gov/prgovEN/Pages/BirthCertificateInfo.aspx>.

Sincerely,



Katherine A. Baldwin
Deputy Special Counsel

² See the attached update circulated by the U.S. Citizenship and Immigration Services, Office of Communications, “Puerto Rico Birth Certificates Issued Before July 1, 2010 Now Valid through Oct 30, 2010,” dated September 30, 2010, available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=85ab78488626b210VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>

³ Id.