



U.S. Department of Justice

Civil Rights Division

Office of Special Counsel for Immigration-Related
Unfair Employment Practices - NYA
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MAR 18 2011

Ms. Jacqueline Longnecker
President
Employment Verification Resources, Inc.
1575 DeLucchi Lane, Suite 207B
Reno, Nevada 89502

Dear Ms Longnecker,

This letter responds to your email dated January 31, 2011. In your email you request guidance from the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) concerning your firm's electronic employment verification processing software. First, you ask whether two series of questions asked in the software are acceptable. Specifically, you indicate that employers using this software are instructed to:

1. Enter the country of origin and classification that appears on an employee's EAD card in order to help them complete the Form I-9 correctly. Related to this, you ask how an employee is supposed to show evidence of re-registration.
2. Answer a series of questions with respect to F-1 and J-1 visa holders, to help identify whether the individual is on STEM or CAP GAP, and "what document(s) will be required if the employee presents the initial requisite documents (i.e., EAD card for OPT or possibly PP, I-94, I-20, IAP for J-1s)."

You also ask for clarification of the "3 day rule for processing that E-Verify has now pushed to the 4th day in the new handbook."

As you may know, OSC is responsible for enforcing the anti-discrimination provision of the INA, which prohibits national origin discrimination, citizenship status discrimination, unfair documentary practices (document abuse) during the employment eligibility verification (Form I-9) process, and retaliation. This office cannot give you an advisory opinion on any set of facts. However, we can provide general information regarding compliance with the anti-discrimination provision of the INA.

The U.S. Citizenship and Immigration Services (USCIS) within Department of Homeland Security is responsible for establishing the rules and procedures governing the Form I-9 process and E-Verify, the electronic employment eligibility system. In addition to the Form I-9 and its

accompanying instructions, USCIS's Form M-274 Handbook for Employers Instructions for Completing Form I-9 provides detailed information concerning proper completion of the Form I-9. The Handbook for Employers is available at <http://www.uscis.gov/files/form/m-274.pdf>.

The first question appears to track employment authorization documents (EADs) issued to individuals with Temporary Protected Status (TPS). The recently revised Handbook for Employers (Rev. 1/05/11) includes a thorough discussion on EADs held by individuals with TPS. The Handbook instructs employers to look at the category and expiration date on an EAD - not the individual's country of origin - to determine if the EAD is subject to an automatic extension. Handbook for Employers at 10-11. The Handbook warns employers not to request evidence that an employee is a national of the TPS designated country. *Id.* Finally, the Handbook directs an employer to reverify an employee's employment eligibility by the expiration date of the TPS automatic extension. *Id.* An employee who presents current documentation by the expiration of the automatic extension, such as a renewal EAD or unrestricted Social Security card, has satisfied his or her Form I-9 obligations. Thus, employers should not be advised to require additional documentation of an employee's country of origin or his or her re-registration for TPS. To do so may be considered document abuse under the anti-discrimination provision of the INA.

The second series of questions concerns documentation presented by temporary visa holders, specifically, J-1 and F-1 visa holders. Here, we again refer you to the revised Handbook for Employers, which contains detailed instructions on Form I-9 documentation for individuals with J-1 and F-1 visas. *See* Handbook for Employers at 11-16.

To address your concerns about USCIS's guidance for the timeline to run an employee through E-Verify, we suggest that you refer to the USCIS website's discussion of the timeline for completing an I-9 form and running an E-Verify query, which can be found at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=c00b59cca6149210VgnVCM100000082ca60aRCRD&vgnnextchannel=d4abfb41c8596210VgnVCM100000b92ca60aRCRD>. You may also wish to contact E-Verify at 1-888-464-4218 with your concerns. To prevent possible discrimination in violation of the anti-discrimination provision of the INA, employers should comply with all E-Verify instructions, including the instructions pertaining to the deadlines for submission of new employees' information to the system, and they should treat all employees consistently throughout the E-Verify process, regardless of their citizenship or immigration status or national origin.

Please feel free to contact us on our toll-free hotline (1-800-255-8155) or visit our website www.justice.gov/crt/osc, if you have further questions regarding immigration-related employment discrimination. We hope this information is helpful to you.

Sincerely,



Katherine A. Baldwin
Deputy Special Counsel