

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*

David C. Fowler
Vice President, Product Strategy
TALX Corporation
11432 Lackland Road
St. Louis, MO 63146

JUL 01 2011

Dear Mr. Fowler,

This is in response to your email of May 25, 2011. You ask whether it is discriminatory for an employer agent to shorten the list of available documents the employee may choose from when completing Section 2 of an electronic Form I-9, once the worker has selected his or her status in Section 1. You would like to know whether limiting the document options to those that correspond to a particular immigration status would fall under the description of document abuse available on the USCIS I-9 Central website: "specify[ing] certain documents over others based on an employee's citizenship or immigration status."

As you know, the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) enforces the anti-discrimination provision of the Immigration and Nationality Act (INA), codified at 8 U.S.C. §1324b. OSC cannot provide an advisory opinion on any particular instance of alleged discrimination or on any set of facts involving a particular individual or entity. We can, however, provide some general guidelines regarding employer compliance with the INA's anti-discrimination provision. Please also note that OSC does not endorse, certify or otherwise approve a commercial product as ensuring compliance with 8 U.S.C. § 1324b. We cannot offer our view on whether the product, on its face and without regard to the facts under which the product might be used, is inconsistent with an employer's or employee's rights and responsibilities under 8 U.S.C. § 1324b.

The INA's 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 (*i.e.*, "document abuse"); and retaliation for filing a charge, assisting in an investigation, or asserting rights under the anti-discrimination provision.

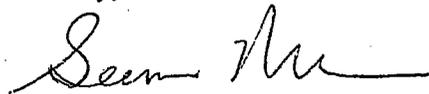
Document abuse occurs when an employer either demands that a worker produce more or different documents than those identified in the Form I-9 process, or refuses to honor documents tendered that on their face reasonably appear to be genuine, based on national origin or citizenship status. *See* 8 U.S.C. § 1324b(a)(6).

OSC cannot speculate on whether there are circumstances under which an employer, relying on a program that limits the Lists of Acceptable Documents based on an employee's citizenship or immigration status as identified in Section 1 of the Form I-9, might be deemed to have committed document abuse.

We do note, however, that to the extent that an employee either inadvertently or mistakenly indicates an incorrect immigration status in Section 1 of the Form I-9, the limitation of documents in Section 2 may prevent that employee from presenting valid document(s) acceptable for I-9 purposes. Similarly, if the list excludes one or more documents that an employee of a particular status may possess, the limitation of documents may also prevent that employee from presenting his or her valid document(s) acceptable for I-9 purposes.

We hope you find this information helpful, and thank you for contacting OSC.

Sincerely,

A handwritten signature in cursive script, appearing to read "Seema Nanda".

Seema Nanda
Acting Deputy Special Counsel