



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

DEC 22 2011

**BY EMAIL** ([wschroer@msn.com](mailto:wschroer@msn.com))

Dear Mr. Schroer:

Thank you for contacting the Office of Special Counsel for Immigration-Related Unfair Employment Practices. This is in response to your email dated October 18, 2011. In your email, you inquire about the types of documents that citizens may be asked by an employer to present "to prove U.S. citizenship." Your email references that the policy would apply to "a potential employee" who will be working on "systems which contain sensitive federal government information" and you indicate that you wish to narrow the "list of accepted documents" for those individuals based on "national security concerns."

The Office of Special Counsel for Immigration-Related Unfair Employment Practices ("OSC") investigates and resolves charges of national origin and citizenship status discrimination as well as over-documentation in the employment eligibility verification process ("document abuse") and retaliation under the anti-discrimination provisions of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1324b.

The OSC cannot give you an advisory opinion on any set of facts involving a particular individual or company. However, we can provide some general guidance regarding pre-employment inquiries and procedures under the anti-discrimination provision of the INA. Document abuse is the request for specific documents or the rejection of documents otherwise acceptable for employment eligibility verification (Form I-9) purposes based on an employee's citizenship or immigration status or based on an employee's national origin. 8 U.S.C. § 1324b. The anti-discrimination provision also prohibits citizenship status discrimination in hiring, 8 U.S.C. § 1324b (a)(1)(B), but exempts citizenship status discrimination that is required in order to comply with law, regulation, executive order, or government contract. 8 U.S.C. § 1324b(a)(2)(C). This exemption also extends to situations where the Attorney General determines that such practices are "essential for an employer to do business with an agency or department of the Federal, State, or local government." *Id.*

We assume that the "list of accepted documents to be narrowed" that you refer to in your inquiry is the List of Acceptable Documents available for proof of employment authorization and identity when completing the Form I-9. As a preliminary matter, the I-9 Form should be completed for new employees hired after November 6, 1986. *See* M-274, p. 3. Specifically, "[y]ou may not begin the Form I-9 process until you offer an individual a job and he or she accepts your offer." M-274, p. 3. The documents acceptable to verify employment eligibility during the I-9 process are specified in 8 U.S.C. § 1324a(b)(1). Under 8 U.S.C. § 1324a(b)(1)(B), a new employee may choose to show either a Form I-9 List A document (identity and work

authorization), or both a List B (identity) and a List C (work authorization) document. See M-274, pages 4-5, 37-38 (discussing an employee's choice of employment eligibility and identity documents). Neither this provision, nor any other provision of the INA, specify any exceptions or special rules regarding restricting or altering the types of I-9 documents acceptable for employees hired to work on "systems which contain sensitive government information" or positions involving national security. Moreover, neither the Form I-9 nor the accompanying M-274 Handbook for Employers, Instructions for Completing Form I-9 ("Handbook") discuss any exceptions based on an employee's job duties. See M-274 (Rev. 01/05/2011).

Furthermore, even if an employer is required by law, regulation, executive order, or government contract to allow only a U.S. citizen to work on a particular matter or to be assigned to a particular project, OSC cautions against verifying citizenship status during or through the Form I-9 process. Intertwining these two processes could lead an employer to more closely scrutinize documents presented for the Form I-9 process and to possibly reject documents that do not verify an employee's particular immigration or citizenship status. Accordingly, an employee who believes that his or her documents were rejected based on his or her immigration or citizenship status may file a charge alleging document abuse with OSC.

If you have further questions that pertain to OSC, do not hesitate to contact OSC on our worker hotline, 1-800-255-7688, or to visit OSC's website at [www.justice.gov/crt/about/osc](http://www.justice.gov/crt/about/osc). We hope this information is helpful and thank you for contacting OSC.

Sincerely,



Seema Nanda

Acting Deputy Special Counsel