



U.S. Department of Justice

Civil Rights Division

Office of Special Counsel for Immigration-Related
Unfair Employment Practices - NYA
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Washington, DC 20530
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August 21, 2012

Via Email (jsun@experience.com)

Janet Sun
VP, Marketing
Experience, Inc.
www.experience.com

Dear Ms. Sun:

Thank you for contacting the Office of Special Counsel for Immigration-Related Unfair Employment Practices ("OSC"). This is in response to your email dated July 19, 2012. In your email, you explain that your company provides software to career centers. You ask whether your company can ask jobseekers to provide their visa status, make the information available to the jobseeker's school, and "take the jobseeker-provided visa information and translate it so that employers can only see whether a jobseeker is 'authorized to work in the US' or not." You do not indicate why your company makes this information available to the schools in which the jobseeker attends or what use the school makes of this information.

OSC is responsible for enforcing the anti-discrimination provision of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1324b, which prohibits national origin discrimination, citizenship status discrimination in hiring and firing, unfair documentary practices ("document abuse") during the employment eligibility verification (Form I-9) process, and retaliation. More information on OSC can be found on our website: www.justice.gov/crt/about/osc. OSC cannot provide an advisory opinion on any set of facts involving a particular individual or entity. However, we can provide some general guidelines regarding the anti-discrimination provision of the INA, 8 U.S.C. § 1324b.

OSC cautions against asking applicants to specify their citizenship or immigration status at the application stage, even if the information is then converted to a general description of whether an employee is work-authorized or not. A process that asks applicants to identify their citizenship status may be facially discriminatory in that it creates an unnecessary barrier to potential noncitizen applicants. *See Eze v. West County Transportation Agency*, 10 OCAHO No. 1140, at 3 (2011). Applicants asked to specify their citizenship or immigration status during the employment application process may perceive that an employer considered that information in making its hiring decision in a manner that violates the INA's anti-discrimination provision. Specifically, refusing to hire a work-authorized individual based on their citizenship or immigration status may constitute a violation of the INA's anti-discrimination provision. In addition, an applicant's immigration status may change over

time, resulting in a mischaracterization of current status to the school. Because such software appears to make a determination about status in advance of an applicant's acceptance of a job offer—possibly far in advance—it does not account for potential changes in status that may occur prior to offer and acceptance and prior to the completion of a Form I-9. Furthermore, caution should be exercised that the software program does not inaccurately determine the applicant's eligibility to work in the United States, particularly for individuals with less common immigration statuses and/or new categories of legal immigration status.

We hope this information is helpful. If you have further questions, please call OSC's employer hotline at 1-800-255-8155 or visit OSC's website.

Sincerely,

A handwritten signature in black ink, appearing to read "Seema Nanda". The signature is fluid and cursive, with a long horizontal stroke at the end.

Seema Nanda
Deputy Special Counsel