



U.S. Department of Justice

Civil Rights Division

Office of Special Counsel for Immigration-Related
Unfair Employment Practices - NYA
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SEP - 6 2013

Via First Class Mail and E-Mail (binshteynn@gtlaw.com)

Nataliya Binshteyn, Esq.
Greenberg Traurig, LLP
1750 Tysons Boulevard
Suite 1200
McLean, VA 22102

Dear Ms. Binshteyn,

Thank you for contacting the Office of Special Counsel for Immigration-Related Unfair Employment Practices ("OSC"). This is in response to your email to Byron Wong, dated August 22, 2013. In your email, you ask whether an August 6, 1998, OSC technical assistance letter, pertaining to pre-employment inquiries on whether an applicant will need sponsorship for an employment visa, "is still currently in effect or if alternative and supplemental guidance has since been issued" by OSC.

OSC enforces the anti-discrimination provision of the Immigration and Nationality Act ("INA"), as amended, 8 U.S.C. § 1324b. The anti-discrimination provision prohibits citizenship or immigration status discrimination, national origin discrimination, unfair documentary practices ("document abuse") during the employment eligibility verification (Form I-9) process, and retaliation for filing a charge or asserting rights under the anti-discrimination provision. More information on OSC, including a number of OSC technical assistance letters on the topic of pre-employment inquiries, can be found on our website: www.justice.gov/crt/about/osc. Although OSC cannot give you an advisory opinion on any set of facts involving a particular individual or company, we are pleased to provide some general guidelines regarding compliance with the anti-discrimination provision of the INA, 8 U.S.C. § 1324b.

The class of workers protected from citizenship status discrimination under the INA includes U.S. citizens, lawful permanent residents, refugees, and asylees. 8 U.S.C. § 1324b(a)(3). All work-authorized persons, including non-immigrant visa holders, are protected from national origin discrimination and document abuse under 8 U.S.C. §§ 1324b(a)(1)(A) and (a)(6), and from retaliation under 8 U.S.C. § 1324b(a)(5).

The guidance laid out in the August 6, 1998 technical assistance letter (attached) is still OSC's position. In that letter, OSC cautions against asking applicants to specify their citizenship status during the application process because a rejected applicant who is protected from citizenship status discrimination may perceive that the employer used that information to

discriminate against him or her in making the hiring decision. Instead, OSC recommends that employers wishing to inquire about sponsorship limit their question to that topic, without asking specifically about immigration status. Therefore, OSC prefers the question proposed in the 1998 technical assistance letter: *Will you now or in the future require sponsorship for employment visa status (e.g. H-1B visa status)?* If an employer chooses not to employ persons who require sponsorship for an employment visa, such as an H-1 visa, the employer may state in its job postings that it will not sponsor applicants for work visas.

We hope this information is of assistance to you. Please feel free to contact us through our toll free number at 1-800-255-8155 if you have any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Seema Nanda", with a long horizontal flourish extending to the right.

Seema Nanda
Deputy Special Counsel

Enclosure