



U.S. Department of Justice

Civil Rights Division

*Office of Special Counsel for Immigration-Related
Unfair Employment Practices - NYA
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August 19, 2014

BY EMAIL (Athena@MiGTRI.org)

Athena Trentin
Global Talent Retention Initiative of Michigan
325 East Grand River Ave.
Suite 275 East
Lansing, MI 48823

Dear Ms. Trentin:

Thank you for contacting the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC). This is in response to your e-mail dated July 16, 2014, in which you request guidance as to whether your organization may include information in an international student registry system indicating whether student candidates for employment "have already applied for their Optional Practical Training (OPT) yet and if so, what are their approval dates. If not, when are they eligible to apply and/or for which dates do they expect to be approved." You explain that your organization partners with universities "to help connect their international students to employers in Michigan who need special linguistic/cultural skills and/or are having a hard time filling engineering and IT positions for internships and practical training opportunities." You ask whether "requesting this information from international students and then providing it voluntarily for employers to review would conflict with any U.S. regulations," and if so, whether there is an alternative way to collect this information.

OSC investigates and resolves charges of national origin and citizenship status discrimination in hiring, firing, or recruiting or referring for a fee; discriminatory documentary practices in the employment eligibility verification (Form I-9 and E-Verify) process; and retaliation under the anti-discrimination provision of the Immigration and Nationality Act (INA), 8 U.S.C. § 1324b. OSC cannot provide an advisory opinion on any specific case or set of facts. Nor can we advise on whether a proposed practice violates a law or regulation enforced by another office or agency. However, we can provide general information on compliance with the anti-discrimination provision of the INA.

The anti-discrimination provision of the INA and its implementing regulations prohibit a person or other entity from discriminating against any individual in hiring or recruitment or referral for a fee because of an individual's national origin or citizenship status. 8 U.S.C. § 1324b(a), 28 C.F.R. § 44.200(a)(1). The INA's prohibition against national origin discrimination

extends to all work-authorized individuals. See 8 U.S.C. § 1324b(a)(1)(A), 28 C.F.R. § 44.200(a)(1); see also Salazar-Castro v. Cincinnati Public Schools, 3 OCAHO No. 406 (1992). The prohibition against citizenship status discrimination extends to U.S. citizens, recent lawful permanent residents, asylees and refugees. See 8 U.S.C. §§ 1324b(a)(1)(B) and 1324b(a)(3), 28 C.F.R. § 44.200(b)(1)(iii).

From the limited information provided, it is unclear whether your organization would be considered a recruiter or referrer *for a fee* directly subject to the INA's anti-discrimination provision. However, the anti-discrimination provision of the INA does not directly prohibit a recruiter or referrer for a fee from simply asking whether international students have applied for or intend to apply for OPT and asking for their actual or expected OPT approval dates.

We note that, as is the case with a recruiter or referrer for a fee, an employer that merely asks whether international students have applied for OPT or asks for approval dates is unlikely to violate the anti-discrimination provision of the INA. Nevertheless, collecting and making available the information you describe may lead prospective employers to engage in hiring practices that could violate the anti-discrimination provision of the INA in certain circumstances. To the extent your organization's registry leads a prospective employer to prefer non-immigrant non-citizens over authorized U.S. workers in hiring, the employer's hiring decision could violate the anti-discrimination provision of the INA.¹ Therefore, from a compliance perspective, we would discourage this practice and do not recommend an alternative method for providing prospective employers with student candidates' OPT application and approval dates to be used as a selection criteria in hiring.

We encourage you to visit our website (www.justice.gov/crt/about/osc) or to contact our toll-free employer hotline (1-800-255-8155 or TTY 1-800-237-2515) if you would like to learn about resources available to assist your organization's staff in complying with the anti-discrimination provision in the future, such as through free webinar training by our office or distribution of educational materials to your staff.

Sincerely,



Alberto Ruisanchez
Deputy Special Counsel

¹ Similarly, a prospective employer's preference for hiring certain candidates over other work-authorized candidates based on national origin (including based on linguistic and cultural skills) could violate the anti-discrimination provision's prohibition against national origin discrimination.