



OSC UPDATE

Office of Special Counsel for Immigration-Related Unfair Employment Practices

U.S. Department of Justice | Civil Rights Division

April 2004

The Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) investigates and prosecutes allegations of national origin and citizenship status discrimination in hiring, firing, and recruitment or referral for a fee, as well as document abuse and retaliation under the anti-discrimination provision of the Immigration and Nationality Act (INA). In addition, OSC conducts outreach aimed at educating employers, workers, and the general public about their rights and responsibilities under the INA's antidiscrimination provision.

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OSC's 2004 GRANT PROGRAM APPLICATION PERIOD OPEN THROUGH MAY 7, 2004

OSC awards grants to conduct public education programs about the rights afforded potential victims of employment discrimination and the responsibilities of employers under the antidiscrimination provisions of the Immigration and Nationality Act (INA), 8 U.S.C. § 1324b. Education is an essential element of OSC's mission to eliminate employment discrimination against individuals who are eligible to work in this country. Every Spring, a notice of availability of funds and solicitation for grant applications appears in the Federal Register. This year, the application submission period ends on May 7, 2004. For more information, go to: <http://www.usdoj.gov/crt/osc/>.

OSC accepts proposals from applicants whose experience qualifies them to educate workers, employers, and the general public about the antidiscrimination provisions of the INA. In the Summer, grantees are notified of their grant awards. Grant amounts typically range from \$35,000 to \$85,000.

The 2003 grantees are:

- NYC Commission on Human Rights, New York, NY;
- Asian Pacific American Legal Center of Southern California (APALC), Los Angeles, CA;
- International Rescue Committee (IRC), San Diego, CA;
- Catholic Charities of Dallas, Dallas, TX;
- Catholic Charities of Houston, Houston, TX;
- Georgia Hispanic Chamber of Commerce, Atlanta, GA;
- Illinois Dept. of Human Rights, Chicago IL;
- Catholic Charities of St. Petersburg, St. Petersburg, FL;
- Legal Aid Services of Oregon, Hillsboro, OR;
- Hogar Hispano, Catholic Charities of Arlington, Arlington, VA;
- National Immigration Law Center (NILC), Los Angeles, CA.

NEWS AND NOTES

Limited English Proficiency Initiative

OSC has been an active participant in the Interagency Task Force on Limited English Proficiency. The Task Force's mission is to ensure that all federal agencies comply with Executive Order 13166, which requires Federal agencies to improve access to services for individuals with Limited English Proficiency (LEP). OSC lends its extensive experience with non-English-speaking workers to this effort. Among the issues most cited by LEP Task Force member agencies is the challenge of interpretation and translation quality assurance.

Recent Extensions of Temporary Protected Status for Salvadorans, Hondurans, and Nicaraguans

On July 15, 2003, the Secretary of the Department of Homeland Security (DHS) extended Temporary Protected Status (TPS) for nationals from El Salvador for an additional eighteen months. The extension of these TPS designations, which expired on September 9, 2003, will remain in effect until March 9, 2005. Consequently, the Employment Authorization Documents (EADs) for these individuals were automatically extended until March 9, 2004.

On May 5, 2003, the Secretary of DHS extended TPS status for nationals from Honduras and Nicaragua for an additional eighteen months. Those TPS designations, which expired on July 5, 2003, are now in effect until January 5, 2005. The EADs for those individuals were automatically extended until December 5, 2003.

These extensions of work authorization have been published in a Federal Register notice, which explains how employers can determine whether an employee's EAD has been automatically extended and instructs employees on how to reregister for TPS and how to apply for a new EAD.

TPS is granted to persons from countries that are designated as experiencing war,

environmental disaster, or certain other conditions that prevent those persons from returning.

TPS was first granted to nationals from El Salvador in March 2001 because of the damage caused by severe earthquakes. Similarly, TPS was granted to nationals from Honduras and Nicaragua in January 1999 because of damage caused by Hurricane Mitch.

Online Job Postings

Over the past year and a half, OSC has investigated online job postings that appear to impose discriminatory citizenship requirements. On any given day, various internet job boards list numerous job postings requiring that applicants be U.S. citizens or permanent residents (or "green card" holders) only. In addition, many job postings, especially for positions in the high tech industry, express a preference for H-1B visa holders only.

In most cases, it is unlawful discrimination to require job applicants to have a particular citizenship status or immigration status. An employer may require U.S. citizenship or permanent residence for a particular job only when required by law, regulation, or government contract.

Employers or online recruiters who wish to limit their applicant pool to candidates who are authorized to work in the United States or who wish to convey that no sponsorship is available for the position may state who have the following without violating federal anti-discrimination law: "Applicants must be currently authorized to work in the United States for any employer," or "No sponsorship is available for this position."

Finally, job postings may not express a preference for H-1B visa holders. While employers and online recruiters are certainly free to sponsor candidates, including H-1B visa holders, they may not express a preference for H-1B visa candidates or other individuals requiring sponsorship or employment visas.

Employment opportunities should generally be made available equally to all individuals who are authorized to work in the United States, regardless of citizenship

status. To do otherwise, could violate federal anti-discrimination law.

SSA "No-match" Letters

The Social Security Administration routinely sends "no-match" letters to workers and employers when there is a discrepancy between the employer's and SSA's records for a certain taxpayer. Such "no-match" letters are intended to help taxpayers correct their SSA files so that they will receive all of the Social Security benefits that they are owed.

However, some employers have misinterpreted "no-match" letters to mean that the concerned individuals are unauthorized workers, and have taken adverse employment actions against them based on that information alone.

OSC has worked closely with the Social Security Administration to address the unintended consequences of "no-match" letters. OSC and SSA have worked together to make the language of the "no-match" letters less prone to misinterpretation, clarifying that a "no-match letter" alone does not indicate that a worker lacks employment eligibility. Also, SSA agreed to include OSC's toll-free hotline number in each "no-match" letter so workers facing adverse employment actions can seek OSC's help.

OSC's staff members frequently provide assistance to workers who are facing adverse employment actions by employers based on the "no-match" letters, and work closely with advocacy organizations who encounter workers facing the unintended negative consequences of "no-match" letters.

OSC's Telephone Interventions

OSC's telephone intervention program is an innovative form of alternative dispute resolution. It allows a caller to OSC's employee or employer hotline to work informally with OSC's staff to resolve potential immigration-related employment disputes within hours or minutes, rather than weeks or months, without contested litigation.

Employers love the program because it saves them time and money. Employees love the program because it keeps them on the job.

Employer Hotline:
1-800-255-8155

1-800-362-2735(TDD)

Employee Hotline:
1-800-255-7688
1-800-237-2515 (TDD)

Typical OSC Telephone Intervention Scenarios

1. The "Choosy" Employer

Employee: (Speaking with an OSC attorney.) I'm a legal permanent resident. I came to the United States when I was just six, and my Mom still has my "green card." I just got hired for a really good job, but when I wanted to show my driver's license and my unrestricted Social Security card for the I-9 form, the boss said: "No. All aliens have to show a BCIS (formerly INS) document." Can you help? I really need this job.

OSC Attorney: Yes, requiring aliens to show a BCIS (formerly INS) document for I-9 purposes can be illegal document abuse. If you like, I can telephone your employer and explain the rules about completing I-9s to him. What is your employer's telephone number?

(Employee gives OSC permission to call his employer. In discussing the matter with the employer's counsel or, if the employer is not represented in the matter, directly with the employer, the OSC attorney explains proper employment eligibility verification procedures to the employer. The employer agrees to allow the employee to start work.)

OSC Attorney: Hi. Good news. I spoke with your employer and now he understands that he can't tell you what document you can present for I-9 purposes and that the documents you wanted to present were acceptable. He says you should call him and you can start right away.

Employee: That's great! Thank you.

2. The Hard to Lose Employee

Employer: (Speaking to an OSC attorney) I have an employee whose EAD has just expired. When I asked him to show me a new one, he said he applied for it but he hasn't received it yet. Do I have to fire him?

OSC Attorney: Maybe not; there are some other options. First, he doesn't have to show you a new EAD to reverify his employment eligibility. He can show you ANY document from List A or List C.

There are some other options you can try, as well. You can go to www.uscis.gov and check the status of his EAD application online. If it has been approved, print out the page and you can use that for reverification. If it has been more than ninety days since he applied for his EAD and he still hasn't received notice of approval (which can be used) or the card itself, he can take his receipt directly to his local BCIS district office and it will issue him temporary proof of employment authorization.

Please note that each situation is unique, and there are various situations in which an employer would not need additional proof of current work authorization. For example, individuals under the Temporary Protected Status Program whose EADs are subject to an automatic extension may continue to work with expired EADs. Furthermore, there are special rules allowing certain individuals to present a receipt as proof of current work authorization.

Employer: As a matter of fact, he does have an unrestricted Social Security card. I have a copy of it right here. I'll just have him show me the original again and I'll be all set. I would have hated to lose him; he's a terrific employee.

Thanks.

Employers' Frequently Asked Questions About Permissible Job Postings

1. How can I be sure that applicants for the posted position are authorized to work in the U.S.? You can state the following in your job posting: "Applicants must be currently authorized to work in the United States for any employer." Once you hire a person, you and your new employee must complete an Employment Eligibility Verification Form I-9.

2. Can't I just require that applicants have a "green card?" No. A "green card only" (generally used to refer to a permanent resident card) policy will almost always violate federal anti-discrimination law.

First, "green cards" are only issued to individuals with a specific immigration status, namely permanent residents. Many other immigrants are authorized to work in the U.S. but don't have "green cards." Thus, by requiring a "green card," you are effectively limiting your job posting to permanent residents only, and excluding other categories of individuals who are authorized to work. Requiring applicants to have a particular citizenship or immigration status is generally unlawful.

Second, requiring a "green card" or any other BCIS (formerly INS) issued document during completion of the Form I-9 may also violate federal law. All new employees should be shown the complete list of documents acceptable to complete the Form I-9 and given the choice of which documents to show to complete the form.

3. How can I convey that I am not interested in sponsoring a candidate for this position? You may simply state: "No sponsorship is available for this position." In the alternative, as discussed above in response to Question 1, you may state the following: "Applicants must be currently authorized to work in the United States for any employer." Candidates requiring sponsorship are not authorized to work in the United States for any employer.

4. May I express a preference for H-1B candidates? No. While you are certainly free to sponsor candidates for positions with your company, including H-1B visa holders, you may not express a preference for H-1B candidates or other individuals requiring sponsorship or employment visas. Employment opportunities should be made available equally to all individuals who are authorized to work in the United States. To do otherwise, may violate federal anti-discrimination law.

CASE UPDATES

In the fiscal year 2003, which ran from October 1, 2002, through September 30, 2003, OSC reviewed or investigated 480 charges of discrimination. In addition, OSC attorneys and equal opportunity specialists conducted 194 telephone interventions in order to educate employers about their responsibilities under the Immigration and Naturalization Act, and to assist workers in obtaining early resolution to alleged claims of employment discrimination. An unprecedented development in the work of OSC for the fiscal year 2004 has been the number of bilateral settlements between employers and workers that were prompted by OSC's initiation of investigations. As of early March 2004, OSC had issued 15 letters of resolution to employers and workers who voluntarily entered bilateral settlement agreements fully resolving discrimination charges and resulting in a dismissal of the charge. Letters of resolution are also issued to conclude independent investigations where the employer has voluntarily corrected its practices and no victims can be identified.

Settlement Reached with Upstate New York Dairy

In March 2003, OSC entered into a settlement agreement with a dairy in upstate New York resulting in the dismissal of a complaint filed by OSC in

September 2002.

The complaint alleged that the dairy committed unlawful citizenship status discrimination when it discharged and replaced four U.S. citizen employees with non-citizens because it allegedly believed that non-citizens would be harder working and more dependable than the American workers, and would be less likely to complain about the working conditions. A fifth U.S. citizen represented by the Farm Workers Law Project (Legal Aid) also filed his own complaint.

Under the terms of the agreement, the dairy will pay \$18,000 in back pay to the injured parties and a \$1,000 civil penalty. The dairy is also obligated to use local newspapers to advertise for future positions and to notify OSC of all new hires and terminations. The agreement will remain in effect for one year.

Settlement Reached with Nationwide Trucking Company

In January 2003, OSC entered into a settlement agreement with a nationwide trucking company resulting in the dismissal of a complaint filed by OSC in September 2002. The complaint alleged that the trucking company refused to hire asylees and refugees because of their immigration status, and that it limited its hiring to U.S. citizens and lawful permanent residents only.

Under the settlement agreement, the company will: change its hiring policies and practices to allow the hiring of asylees and refugees, among other immigrants; pay back pay to the two named injured parties in the amount of \$13,100; educate its personnel; post anti-discrimination notices, and pay a \$500 civil penalty.

(Case Updates continued on page 5)

CASE UPDATES (Continued from page 4)

Settlement Reached with Las Vegas Casino

In July 2003, OSC entered into a settlement agreement with a casino in Las Vegas, Nevada resulting in the dismissal of a former employee's charge of employment discrimination filed with OSC in July 2003.

OSC investigated a claim filed by a Cuban national and asylee, alleging that the former employee was terminated by the casino despite the fact that she had provided sufficient documentation demonstrating her continued employment eligibility.

During the course of the investigation, OSC discovered that the casino's procedures for reverifying employment eligibility were not in compliance with the law because it required many of its employees to needlessly demonstrate their continued employment eligibility.

Under the terms of the agreement, the casino agreed to reinstate and provide the employee with \$5,448 in back pay and related benefits (e.g., sick leave, annual leave, fringe benefits and insurance coverage).

The casino also agreed to pay \$1,394 in back pay to another former employee, who was also wrongfully terminated. Furthermore, the casino agreed to pay \$2,610 in civil penalties, to post educational notices in the workplace, and to have its managers trained in INS Form I-9 procedures.

Resolution Ends Independent Investigation of Airline Company

In October 2003, OSC closed its independent investigation of and issued a letter of resolution to an airline company based in Oklahoma. Although the airline had a contract with the U.S. Department of Defense that required that cockpit crew members be U.S. citizens, the airline had extended the U.S. citizenship requirement to flight attendants. As a result of OSC's investigation, the airline agreed to remove its U.S. citizenship requirement from flight attendant recruiting announcements and to instruct its recruiters that the U.S. citizenship requirement does not apply to flight attendants. Because no victims could be identified, monetary relief was not at issue.

Resolution Between Private Club and Naturalized U.S. Citizen

In November 2003, OSC issued a letter of resolution dismissing the charge of a naturalized U.S. citizen filed against a prominent private club located in Washington, DC. The individual alleged that she was terminated despite providing documentation demonstrating her work authorization. The club entered into a bilateral settlement agreement with the individual pursuant to which it agreed to pay her \$10,000 in back pay.

Subsequently, OSC conducted training on the I-9 employment verification process for the club's supervisors and manager.



Web Address: <http://www.usdoj.gov/crt/osc>

Meet the New Assistant Attorney General for Civil Rights

In August 2003, R. Alexander Acosta became Assistant Attorney General for Civil Rights. Mr. Acosta was most recently a Member of the National Labor Relations Board. Prior to that Mr. Acosta served as Principal Deputy Assistant Attorney General for Civil Rights.

A native of Miami, FL, Mr. Acosta earned his bachelor's degree from Harvard College and his law degree from the Harvard Law School. After graduation, he served as a law clerk on the U.S. Court of Appeals for the Third Circuit and then worked at the Washington office of the Kirkland and Ellis law firm, where he specialized in employment and labor issues.

In 1997, Mr. Acosta left private practice at Kirkland & Ellis to serve as a fellow in legal studies at the Ethics and Public Policy Center. Mr. Acosta has also taught several classes on employment law, disability-based discrimination law and civil rights law at the George Mason School of Law.

Mr. Acosta is the 2003 recipient of the Mexican-American Legal Defense and Education Fund's Excellence in Government Service Award for his work on language access to government-funded services and the DC Hispanic Bar Association's Hugh A. Johnson, Jr. Memorial Award.

Upcoming Outreach Events at Which an OSC Representative Will Speak:

Date	Location	Sponsoring Organization	Audience
April 2, 2004	Boston, MA	Massachusetts Bar Association Labor and Employment Law	Employers
April 20, 2004	Dade City, FL	Catholic Charities of Saint Petersburg	Service Providers
May 3-5, 2004	Washington, DC	Church World Service's Immigration and Refugee Program	Employers & Employees
May 13, 2004	Atlanta, GA	Hispanic Chamber of Commerce	Employees
May 14, 2004	Springdale, AR	Catholic Charities of Dallas	Employers
May 19, 2004	Chicago, IL	Lorman Education	Employers
May 26, 2004	Albuquerque, NM	EEOC Employer Technical Assistance Seminar	Employers
May 26, 2004	New York City, NY	Lorman Education	Employers
June 3, 2004	Pittsburg, PA	EEOC Employer Technical Assistance Seminar	Employers
July 16, 2004	Dallas, TX	Catholic Charities of Dallas	Employers
September 24, 2004	Dallas, TX	Catholic Charities of Dallas	Employers
October 13, 2004	Manchester, NH	New Hampshire Commission on Human Rights	Employers & Employees
November 17, 2004	Clearwater, FL	Florida Department of Children and Families, Office of Refugee Services	Employers & Refugees

If your organization is interested in having OSC speak at educational event, please write to us.

How To Contact OSC

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Civil Rights Division
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Main Number: (202) 616-5594 /TDD: (202) 616-5525

Fax Number: (202) 616-5509

Toll Free Information Number and Worker Hotline:

1-800-255-7688

(202) 616-5525 or 1-800-237-2515 (TDD for hearing impaired)

Employer Hotline: 1-800-255-8155

(Language interpretation available)

1-800-362-2735 (TDD for hearing impaired)

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