DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION

WINTER 2010

OSC UPDATE

Office of Special Counsel for Immigration-Related Unfair Employment Practices

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 unfair documentary practices during the employment eligibility verification process 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 anti-discrimination provision.

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OSC Employer Hotline:
1-800-255-8155
1-800-237-2515 (TDD)
OSC Worker Hotline:
1-800-255-7688
1-800-237-2515(TDD)

Message From The Assistant Attorney General For Civil Rights

The U.S. Department of Justice Civil Rights Division understands the importance of collaborating with other federal agencies in the enforcement of civil rights laws, including those that protect immigrants' rights. This issue of OSC's newsletter features articles that discuss OSC's interagency collaboration efforts and successes, demonstrating that the Civil Rights Division works closely with other agencies on shared goals and common interests. OSC's efforts range from participating in a U.S. Department of Housing and Urban Development (HUD) Working Group dedicated to educating border region residents and farmworkers on their rights under federal law; to coordinating with the U.S. Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS), to prevent employers from using DHS's electronic employment eligibility verification (E-Verify) program in discriminatory ways.

This newsletter issue is particularly timely as government agencies continue to seek innovative ways to accomplish their important missions with limited resources. Interagency collaboration encourages efficiency and, as a result, betters the lives of U.S. citizens and work-authorized immigrants.

In addition to its interagency collaboration efforts, the Civil Rights Division's sections, including OSC, collaborate with each other on issues affecting immigrant rights. These collaborative efforts include a Civil Rights Division National Origin Working Group established to help citizens and immigrants better understand and exercise their right to be free from national origin discrimination. The National Origin Working Group has issued public guidance on civil rights laws that prohibit national origin discrimination. Examples of national origin discrimination that may fall within the Civil Rights Division's jurisdiction include discrimination in the employment, criminal, disability rights, education, housing, lending, and voting contexts, among others. I encourage you to review this newsletter to learn more about the intra-governmental collaboration on civil rights issues, and to contact OSC for further information.

Tom Perez was sworn in as the Assistant Attorney General for the Civil Rights Division of the United States Department of Justice on October 8, 2009.

AILA InfoNet Doc. No. 10020167. (Posted 02/01/10)

OSC Announces 2009 Grantees

OSC is pleased to announce the award of $723,000 in grants to twelve groups to conduct public education programs for workers and employers about immigration-related job discrimination. Recipients of the grants, ranging from $48,000 to $87,000, will assist discrimination victims; conduct seminars for workers, employers and immigration service providers; distribute educational materials in various languages; and place advertisements in local communities through both mainstream and ethnic media to educate workers and employers about their rights.

The 2009 OSC grant recipients are:

Arizona Attorney General's Office, Civil Rights Division – Phoenix, AZ – will educate employers and workers in the state to understand their responsibilities and rights respectively under the INA.

Asian Pacific American Legal Center of Southern California – Los Angeles, CA – will conduct outreach events to employee groups, unions, community-based organizations, and small-business owners and will translate materials into Asian languages.

Catholic Charities of Dallas – Dallas, TX – will educate workers, employers, and immigration service providers in northern Texas with expansion into Houston, Lubbock, Arkansas, and Oklahoma about the anti-discrimination provision of the INA.

Catholic Charities, Diocese of St. Petersburg, Fla. – St. Petersburg, FL – will conduct outreach to businesses and work-authorized immigrant workers throughout the state.

Colorado Legal Services – Denver, CO – will extend urban and rural community education sessions for immigrant workers and advocates to strategic locations and underrepresented immigrant populations around the state.

Legal Aid Foundation of Los Angeles (LAFLA) – Los Angeles, CA – will educate immigrant workers and small employers through interactive role play presentations and will disseminate information about the anti-discrimination provision of the INA.

National Farm Worker Service Center – Los Angeles, CA – will reach work-authorized farm laborers and low-income immigrants in rural areas of Arizona, California and Washington and will produce and air educational radio programs.

National Immigration Law Center (NILC) – Los Angeles, CA – will continue national program to educate immigration attorneys, service providers, and advocates.

New York City Human Rights Commission – New York, NY – will educate workers, employers, and service providers about worker rights and employer responsibilities under the INA.

Texas RioGrande Legal Aid – Weslaco, TX – will reach employees, employers, employment law professionals and local government agencies in counties in south, west and central Texas.

University of Iowa – Iowa City, Iowa – will conduct an outreach campaign targeting workers and employers in Iowa's meatpacking and construction industries.

Washington Farm Labor Association – Lacey, Washington – will expand statewide employment eligibility verification workshops for agricultural employers.

Rule Requiring Most Federal Contractors To Use E-Verify Goes Into Effect

On September 8, 2009, the federal government implemented regulations requiring certain government contractors and subcontractors to use the E-Verify program to verify the employment eligibility of new employees hired after a contract is signed. With certain exceptions, it also requires those contractors to use E-Verify to re-verify the work authorization of existing employees who are assigned to contracts covered by the regulations.

The regulations require employers with government contracts that include an E-Verify clause to enroll in E-Verify. The regulations state that an E-Verify clause will be inserted into a contract above the simplified acquisition threshold ($100,000). The regulations also state that no E-Verify clause will be inserted into prime contracts with performance terms of less than 120 days, contracts for work being performed outside the United States, or for contracts for "Commercially available off-the shelf" (COTS) items.[1] The regulations only cover subcontractors if the "prime" contract includes the clause. For subcontracts that flow from those prime contracts, the E-Verify requirement applies to subcontracts for services or for construction with a value over $3,000. Only employers with an E-Verify clause in their federal government contract and their subcontractors whose contracts for services or construction have a value over $3,000 may verify existing employees using E-Verify. The E-Verify Federal Contractor user Manual and Supplemental Guide for Federal Contractors contain detailed information about the regulations and can be found at www.uscis.gov/everify.

There are important exceptions to the general requirements that Federal contractors with an E-Verify clause in their contract run all new hires and existing employees assigned to work on the contract:

- An employee should only be verified using E-Verify once (do not verify an employee assigned to a contract who was already verified at the time of hire using E-Verify).
- Employees hired on or before November 6, 1986, may not be verified using E-Verify and may not be required to complete a Form I-9.
- Employees who have an active federal agency HSPD-12 credential or who have an active U.S. Government security clearance for access to confidential, secret, or top secret information do not need to be verified using E-Verify.

Institutions of higher learning, state and local governments, governments of federally recognized Indian tribes, and sureties performing under a takeover agreement with a federal agency may choose to only use E-Verify on those new and existing employees assigned to the covered federal contract.

Employers whose contract with the government contains an E-Verify clause and their subcontractors whose contracts for services or construction have a value over $3,000 may also elect to run their entire workforce through E-Verify, except for employees exempt from E-Verify as discussed above.

Like all employees run through E-Verify, an existing employee may only be run through E-Verify after that person has been verified using the Form I-9. Review the E-Verify Memorandum of Understanding (MOU) to determine if an employee's previous Form I-9 may be relied upon to run the E-Verify query.

Failure to follow these rules may constitute a violation of the MOU between the employer and the E-Verify program. In addition, failure to follow these rules or using the program improperly may constitute discrimination on the basis of citizenship status or national origin in violation of the anti-discrimination provision of the INA. An employer found to be in violation of the anti-discrimination provision of the INA may be liable for back pay and civil penalties.

For more information on preventing discrimination in the use of E-Verify as federal contractors, and for information for federal contractor employees, visit OSC's E-Verify webpage at http://www.justice.gov/crt/osc/htm/Everify.php. For questions about potential discrimination in the use of E-Verify, call OSC's Employer hotline at 1-800-255-8155 or Worker hotline at 1-800-255-7688.

[1] A COTS item is a commercial item that is sold in substantial quantities in the commercial marketplace and is offered to the government in the same form that it is available in the commercial marketplace, or with minor modifications. Nearly all food and agricultural products fall within the definition of COTS items. In addition to contracts for COTS, the following contract types are also exempted from having the E-Verify clause inserted: Items that would be COTS items, but for minor modifications (as defined at paragraph (3)(ii) of the definition of "commercial item" at 2.101); Items that would be COTS items if they were not bulk cargo; or Commercial services that are—(i) Part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications); (ii) Performed by the COTS provider; and (iii) Are normally provided for that COTS item.

Temporary Protected Status Updates

Temporary Protected Status (TPS) is granted by the Secretary of DHS to individuals in the United States who are nationals of countries subject to environmental disaster, armed conflict, or other extraordinary and temporary conditions. TPS beneficiaries are granted employment authorization and a stay of removal while in TPS status. Information about TPS designations, extensions and automatic extensions of work authorization for TPS beneficiaries is published by notice in the Federal Register. In addition, please visit OSC's web site at http://www.justice.gov/crt/osc.

Somalia

On July 27, 2009, DHS announced an eighteen-month extension of TPS for eligible Somalian nationals from September 17, 2009, through March 17, 2011.

TPS beneficiaries must re-register for TPS. Upon processing applications, USCIS will issue new Employment Authorization Documents for TPS Somalian nationals. The old EADs for TPS Somalian nationals expired on September 17, 2009. In order to prevent a gap in work authorization while eligible TPS Somalians wait for their re-registration applications to be processed, DHS granted a six-month automatic extension of their old EADs until March 17, 2010.

For Form I-9, Employment Eligibility Verification purposes, TPS Somalian nationals may present EADs that expired on September 17, 2009, and bear the notation of "A-12" or C-19" under the section "Category" on the face of the cards. These TPS recipients may present such expired EADs as evidence of current work authorization through March 17, 2010.

Honduras and Nicaragua

On October 1, 2008, the Secretary of DHS extended TPS for citizens of Honduras and Nicaragua for an additional eighteen months, or until July 5, 2010. Eligible TPS Hondurans and Nicaraguans were required to re-register with USCIS. Upon processing these applications, USCIS issued new EADs for TPS Hondurans and Nicaraguans.

El Salvador

On September 24, 2008, USCIS granted an eighteen-month extension of TPS for Salvadoran nationals, until September 9, 2010.

Liberia

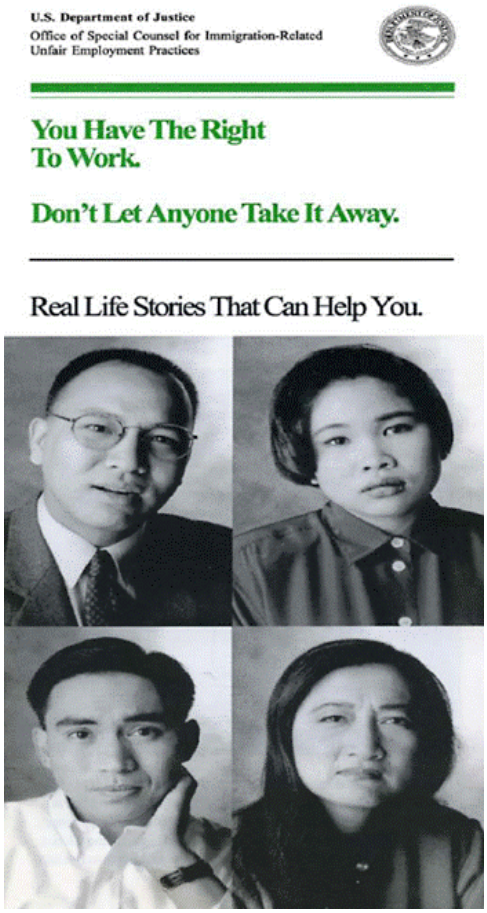
On March 20, 2009, President Barack Obama issued a Memorandum directing the Secretary of DHS, Janet Napolitano, to extend deferred enforced departure (DED) for twelve months, through March 31, 2010, for any qualified Liberian national (or person without nationality who last habitually resided in Liberia) who is under DED as of March 31, 2009.

Sudan

On December 31, 2009, USCIS announced an extension of TPS for eligible Sudanese nationals for eighteen months, until November 2, 2011. Eligible Sudanese are required to re-register with USCIS by March 1, 2010. Upon processing these applications, USCIS issued new EADs for these individuals.

Social Security Administration No-Match Rule Rescinded

On October 7, 2009, the U.S. Department of Homeland Security published a final rule rescinding the Social Security Administration No-Match Rule. The No-Match rule offered employers who receive no-match letters from the Social Security Administration (SSA) a safe-harbor in a related immigration enforcement action if those employers follow the series of steps set forth in the no-match rule. The No-Match rule's rescission became effective on November 6, 2009. Visit OSC's Web site for information on how to respond to a No-Match letter in a non-discriminatory manner.



Visit OSC's Web site to view or download at http://www.justice.gov/crt/osc/pdf/publications/EnglishWorkerBrochure.pdf

Interagency Collaboration

Federal agencies with a shared mission and/or stake holder group can often address the inter-related yet distinct problems confronting a community through coordination and collaboration. Towards that goal, OSC has partnered with other agencies on matters of common concern in an effort to further its mission of compliance, enforcement, education and outreach.

Collaboration with HUD

OSC participates in the Colonias/ Farmworker Initiatives Legal Working Group of HUD's Southwest Border Region. The mission of the Working Group is to coordinate and integrate the legal resources of its federal participants to educate colonias residents and farmworkers on their rights under federal law; address critical community assistance; and create effective and appropriate multimedia educational materials. The Working Group also helps local groups across the nation including legal aid groups, address the unique needs of these residents.

Colonias are unincorporated rural communities located within 150 miles of the U.S. Mexican Border. Linguistically isolated, they are usually characterized by inadequate or non-existent infrastructure support and services, substandard housing and poverty. The typical colonias resident is Hispanic and a U.S. citizen with an average annual income of about $5,000. Colonias are often the home base of a large number of migrant farmworker families. A migrant farmworker is someone who annually travels from his or her "home base" to a series of temporary remote residences in search of work, primarily in agriculture or an agriculture-related industry. But even where they don't live in colonias, migrant farmworkers share the same demographic characteristics of poverty, substandard housing, linguistic isolation, and social neglect. HUD's Colonias/Farmworker Initiatives' Legal Working Group is a focused, collaborative effort to address the specialized needs of this population.

An example of the type of coordinated action by the Working Group includes the Frontier and Colonias campaign of the IRS Stakeholders, Partnership, Education & Communication (SPEC) group, which provided free tax counseling and federal income tax return preparation to colonias residents through the IRS Volunteer Income Tax Assistance center sites (VITA). Through this campaign, SPEC was able to return to the colonias millions of dollars previously lost because residents did not make full use of the Earned Income Tax Credit (EITC) provisions of the Internal Revenue Code. Another example is the Department of Treasury's Access to Capital Education Program, which seeks to improve the financial literacy of colonias residents, and helps these communities access local and regional financial and consulting entities willing to support local community development efforts.

OSC's specific focus on the Working Group is workers' rights under the anti-discrimination provision of the INA. "OSC is committed to ensuring that *all* authorized workers—wherever they live and whatever they do for a living—are treated fairly in the workplace," stated Katherine A. Baldwin, Deputy Special Counsel. "For us, working with our federal colleagues in reaching geographically and linguistically isolated and often forgotten communities is not just a good idea, it is an integral part of our core mission."

Information about the HUD Initiatives office is available at http://www.hud.gov/groups/swbr.cfm. Information about the Initiatives' Legal Working Group, its resources and its membership is available at http://www.hud.gov/groups/legal.cfm.

Naturalization Ceremony Outreach Collaboration

Since 2008, OSC has worked with USCIS, as well as with U.S. Attorneys' Offices and federal district courts, to facilitate OSC's participation in naturalization ceremonies. Naturalization ceremonies are conducted by federal district courts (often with the assistance of U.S. Attorneys' Offices) and USCIS, and take place in various venues around the country on a regular basis. The number of individuals being sworn in as citizens at any given ceremony ranges from under 100 to 3,000.

Recently, OSC staffers have participated in naturalization ceremonies to inform newly naturalized citizens, as well as their friends and family members attending the ceremony, about the work of OSC, and their rights under the anti-discrimination provision of the INA. For example, in November 2008, the Special Counsel spoke to approximately 3,000 naturalized citizens at a ceremony held in Boston. Since then, OSC staffers have presented at naturalization ceremonies at the U.S. District Court in Alexandria, Virginia, and Washington, DC.

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Interagency Collaboration (continued)

OSC plans to further expand its outreach efforts at naturalization ceremonies because naturalized U.S. citizens often experience discrimination, in that many employers perceive them to be non-citizens based on their foreign appearance or accent. In addition, naturalized citizens are more likely to receive a tentative nonconfirmation response from E-Verify if their Social Security Administration (SSA) records have not been updated to reflect their change in citizenship status. To this end, OSC hopes to use its participation in naturalization ceremonies in part to remind newly naturalizing citizens to notify the SSA of their change in status.

Collaboration with U.S. Department of Labor

In late 2008, OSC was invited by the U.S. Department of Labor (DOL) to participate in quarterly "Federal Partners Collaboration Meetings" with other federal agencies involved in work relating to immigration. OSC has participated in several Federal Partners Collaboration Meetings.

Agencies that regularly attend the quarterly meetings include the Consular Section of the U.S. Department of State and various sections of USCIS. The impetus for the partnership meetings was creation of a new visa fraud unit within DOL's, Employment and Training Administration (ETA). This new unit is housed in ETA's Office of Foreign Labor Certification.

DOL has a long history of involvement with immigration matters, which makes it a critical OSC partner. Since 1965, all employment-based immigration must be certified by the DOL.

Today, DOL certifies employers that wish to bring foreign workers into the U.S. using the following visa classifications: H-1B, H-2B and H-2A. Beneficiaries of H-visas enter for a limited duration as non-immigrants. H-1B visa holders must have at least a college degree or its equivalent. H-2B visa holders enter to perform unskilled temporary jobs, primarily in hospitality and forestry jobs. H-2A visa holders enter to perform work on a farm. Employers requesting workers pursuant to these categories generally must attest that domestic workers cannot be found for the job vacancies for which the temporary workers are sought. DOL also certifies permanent labor certification applications. Workers granted a permanent labor certification can enter the U.S. as lawful permanent residents and are under no obligation to work for the employer who petitioned for them.

Pursuant to OSC's invitation, the Criminal Section of the Civil Rights Division, which is charged with combating human trafficking, joined the Federal Partners Collaboration Meeting in December 2008. It informed the group that some recruiters and brokers fraudulently indicate they will place workers into legitimate industries, but instead use the workers for sex-related human trafficking. Workers are threatened with deportation or physical abuse if they try to leave. The Criminal Section sought referrals from the group insofar as it obtains any information of trafficking. OSC also requested that the other agencies refer cases where employers discriminate against U.S. workers in favor of non-immigrant visa holders. Those in attendance expressed interest in these topics and promised to refer cases and information as appropriate.

At the December 2008 meeting, DOL spoke about the benefits of the interagency coordination to date, in particular, increasing referrals and sharing of information, etc. DOL also provided an update on the lawsuit by the United Farm Workers (UFW) and other workers which sought, unsuccessfully, to enjoin the new H-2A regulations from taking effect in January 2009. DOL's Wage and Hour Division informed the group that, under the new H-2B regulations, it now has enforcement authority over H-2B employers. Wage and Hour expressed its intent to send out compliance packets to employers to ensure that employers are aware of H-2B requirements. Procedures are being developed to ensure that employers are knowledgeable about their responsibilities. Since the December meeting, DOL decided to withdraw the new H-2A rule and reverted back to the previous H-2A regulations. However, as a result of a subsequent lawsuit, DOL was ordered to reinstate the January 2009 H-2A regulations. Soon thereafter, DOL published a notice of proposed new rulemaking that will add more worker protections to the January 2009 H-2A rule. In response to another lawsuit, DOL also retracted a small portion of the new H-2B regulations related to an interpretation of the Fair Labor Standards Act with respect to whether or not an employer who brings in temporary non-immigrant visa workers is responsible for the visa and travel fees of the foreign workers and whether these fees need to be reimbursed during the first week of work.

As a result of OSC's participation in these quarterly meetings, OSC was invited to speak at ETA's H-2B Stakeholder's meetings held in Boston and Chicago month in September 2009. At those meetings, ETA explained the new regulations and answered questions about H-2B procedures. The regulations require that employers post two newspaper advertisements and a job order with their State Workforce Agency in order test the labor market in order to see if domestic workers are

Interagency Collaboration (continued)

available. The regulations allow employers to advertise for domestic applicants up to 120 days before the date of need. Most employers are required to advertise for only ten days. OSC stressed that employers may be subject to citizenship status discrimination claims from rejected domestic applicants for these vacancies, even if the domestic applicants apply outside of the ten-day, precertification recruitment period.

OSC has continued to find participation in the quarterly federal partner meetings helpful to its mission and has gained valuable insight as to how other federal agencies are dealing with immigration visa fraud. The last such meeting was hosted by the State Department in October 2009. OSC looks forward to upcoming quarterly meetings, which will give OSC yet another opportunity to coordinate and share information with agencies that have information and/or functions that overlap with OSC.

Collaborative Efforts with U.S. Immigration and Customs Enforcement

OSC continues to work with U.S. Immigration and Customs Enforcement (ICE), a component of DHS, in a joint effort to educate employers and employees about their rights and responsibilities under 8 U.S.C. § 1324a (the employer sanctions provision of the INA) and 8 U.S.C. § 1324b (the anti-discrimination provision of the INA). These joint efforts are intended to ensure that employers properly administer the employment eligibility verification process while not discriminating against employees on the basis of their national origin and citizenship status. Similarly, OSC's cooperation with ICE is intended to ensure that employers' hiring and termination practices are free from discrimination on the basis of citizenship status and national origin, while being compliant with the prohibition against hiring undocumented workers.

To this end, OSC and ICE have collaborated on joint training and outreach presentations. For example, in September 2007, representatives from ICE's Worksite Enforcement Unit participated in OSC's Grantee Training Conference in Washington, DC. Likewise, in September 2008, OSC participated in ICE's IMAGE (Mutual Agreement between Government and Employers) training conference in Crystal City, Virginia. Periodically, OSC attorneys and representatives from ICE's Worksite Enforcement Unit have also participated together in outreach events, serving on the same panel.

Furthermore, during 2008, OSC sent each of the 28 regional Immigration and Customs Enforcement (ICE) offices bulk shipments of the OSC Employers Brochure titled: "Look At The Facts, Not At The Faces: Your Guide to Fair Employment Brochure." During 2009, OSC sent three additional shipments of this brochure to an ICE regional office serving a multi-state area. OSC has also participated in ICE training sessions for its special agents and for companies participating in its ICE Mutual Agreement between Government and Employers (IMAGE) program.

Collaborative Efforts with U.S. Citizenship and Immigration Services' Verification Division

OSC collaborates extensively with USCIS. This collaboration occurs most frequently with USCIS's Verification Division, to further both offices' interest in ensuring that employers do not discriminate in the employment eligibility verification process. Owing to OSC's collaborative efforts with USCIS, in 2008, OSC, on behalf of the U.S. Department of Justice, received the DHS's Partnership Award: The Director's Award for Effective Interagency Cooperation.

A significant area of collaboration relates to E-Verify, DHS's electronic employment eligibility verification program. Over the past two years, OSC and the Verification Division have worked together on strategies to prevent employers from using E-Verify in a manner that adversely affects immigrant workers. In addition, OSC and the Verification Division have conducted joint outreach events to educate the public about E-Verify and how to use the program in a non-discriminatory manner. USCIS also provided input on OSC's "E-Verify Dos and Don'ts" guidance and translated this guidance into several languages. OSC has given USCIS extensive feedback on how to detect and deter discrimination in the E-Verify program.

Another area of collaboration with the Verification Division includes the Employment Eligibility Verification Form I-9 and the Handbook for Employers. Many of OSC's hotline calls relate to the Form I-9 process and raise questions best addressed by the Verification Division. OSC has provided input to the Verification Division on the revised I-9 form and Handbook. OSC and the Verification Division intend to continue this collaboration for future revisions.

Finally, OSC exchanges information periodically with the Verification Division to discuss matters brought to OSC's attention through its hotlines and enforcement activities that impact the work of both offices.

Recent OSC Enforcement Activity

Turkey Processing Company Settles with Lawful Permanent Resident and Agrees to Reinstatement and Back Pay

A turkey processing company entered into a bilateral agreement with a lawful permanent resident (LPR) resolving a charge of document abuse discrimination. At the time of hire, the LPR presented a Resident Alien Card (I-551) ("green card") to the employer in the employment eligibility verification (I-9) process. An employer should not reverify the green card of an employee after hire, even if the card has expired. However, the employer reverified the LPR, and terminated him because his green card subsequently expired. After OSC started its investigation, the company and the worker entered into an agreement reinstating him with $8,640 in back pay. The company further agreed to use OSC resources and materials to train its human resources personnel on the anti-discrimination provision of the INA. Based on a bilateral settlement, OSC issued a letter of resolution to the charging party.

Bakery's Suspension of Worker Was Improper Use of E-Verify; Worker Reinstated with Back Pay

A bakery and a United States citizen entered into a bilateral agreement resolving a charge of document abuse. The bakery participates in E-Verify. When the bakery received a notice of tentative non-confirmation (TNC) of the citizen's employment eligibility status, the employer improperly suspended the worker. Under the E-Verify guidelines, an employer cannot take adverse action (e.g. suspension or firing) against an employee who chooses to contest a TNC until a Final Non-confirmation is issued. As a result of OSC's investigation, the employer entered into an agreement with the worker that provided for reinstatement and $4,104 in back pay. OSC subsequently issued letters of resolution resolving the charge.

Landscaping Company Reinstates Worker with Back Pay After Misusing E-Verify

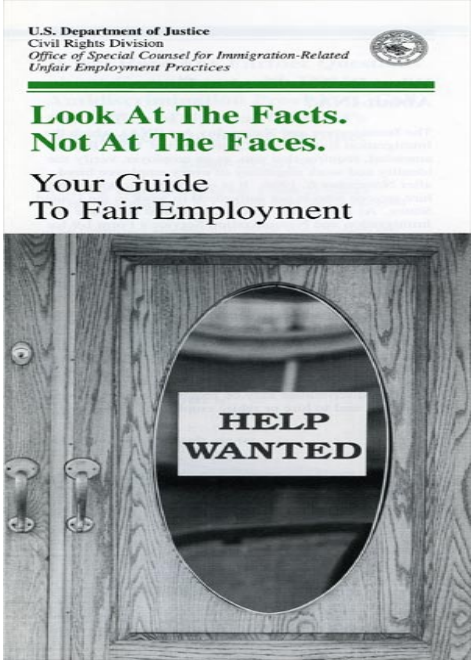
A landscaping company offered to reinstate a LPR employee and provide him with full back pay after improperly firing him. The employer participates in E-Verify, and received a TNC notice regarding the LPR's employment eligibility. Instead of providing the employee with a referral letter to resolve the discrepancy, the employer improperly terminated the LPR. OSC investigated the charge of citizenship status discrimination and document abuse filed by the LPR, and the employer subsequently entered an agreement with him to resolve the matter by providing full remedial relief. OSC subsequently issued letters of resolution to the parties.

Major Meat Processor Pays Back Pay to Naturalized United States Citizen in Refusal to Hire Charge

A major meat processing company refused to hire a naturalized United States citizen when the citizen showed a United States passport and unrestricted Social Security card during the Form I-9 process. Employees are permitted to choose which document(s) they present from the list of acceptable Form I-9 documents for verification and reverification. A United States passport is a valid "List A" document and an unrestricted Social Security card is a valid "List C" document on the list of acceptable Form I-9 documents. A "List A" document is sufficient to demonstrate both identity and employment eligibility. In response to OSC's investigation, the employer entered into a bilateral agreement with the employee, and paid $2,261 in back pay. In December 2008, based on their agreement, OSC issued letters of resolution.

Medical School Residency Programs Remove Discriminatory Admissions Language from Web sites

OSC issued letters of resolution to five medical school residency programs, ending independent investigations based on discriminatory language found on the programs' Web sites. The residency programs' Web sites contained language purporting to limit admission into the programs to U.S. citizens, lawful permanent residents, and J-1 visa holders. The programs' Web sites excluded refugees and asylees, who are protected from citizenship status discrimination under the anti-discrimination provision of the Immigration and Nationality Act (INA). As a result of OSC's investigation, all five programs agreed to modify the admissions language on their Web sites to comply with the anti-discrimination provision of the INA.



Visit OSC's Web site to view or download at http://www.justice.gov/crt/osc/pdf/publications/ee_factsfaces_english2.pdf

WE'RE ON THE WEB AT
HTTP://WWW.JUSTICE..GOV/
CRT/OSC

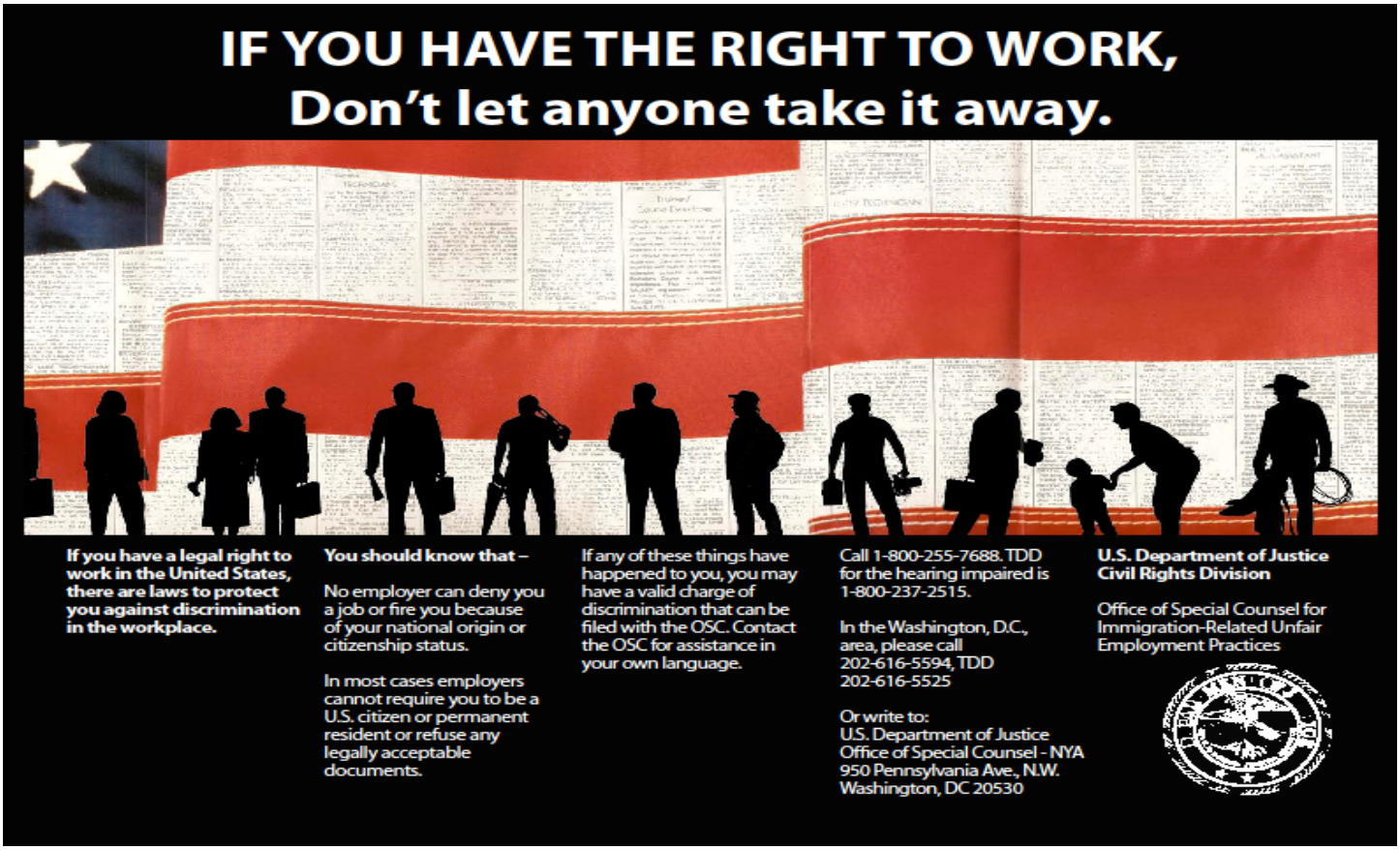
New Video About Immigration-Related Discrimination Available on OSC's Web Site!

Robin Stutman, OSC's former Special Litigation Counsel, recently recorded an educational video for the Justice Television Network (JTN), DOJ's satellite broadcast television network, on the topic of immigration-related employment discrimination. This video discusses prohibited discriminatory employment practices and provides information to employers on avoiding immigration-related discrimination claims. This video is a great resource for employers interested in learning more about the anti-discrimination provision of the INA. Free copies of the video are available on request, or visit http://www.justice.gov/crt/osc to watch the video.

OSC Grantee Spotlight

New York City Human Rights Commission

The New York City Commission on Human Rights and the New York Immigration Coalition have jointly collaborated to create a curriculum for adult ESOL (English for Speakers of Other Languages) classes held at public libraries, community colleges, workforce development agencies, and other venues throughout the New York City area. The workbooks used to implement the curriculum are published in instructor and student versions, and are titled "The Right to Work: Understanding Immigrant Employment Rights." Copies of the workbooks are available for download on the Commission's website at http://www.nyc.gov/html/cchr/html/immig_esol.html.



AILA InfoNet Doc. No. 10020167. (Posted 02/01/10)

OSC's Telephone Interventions

OSC's telephone intervention program is an innovative form of alternative dispute resolution. It allows a caller to OSC's worker or employer hotline to work informally with OSC's staff to resolve potential immigration-related employment disputes within hours or minutes, rather than months, without contested litigation. Employers love the program because it saves them time and money. Workers love the program because it keeps them on the job. Listed below are common hotline intervention scenarios.

1. Employer Who Recently Enrolled in E-Verify

Employer: I signed up for E-Verify a month ago. I read information about your office in the E-Verify tutorial and have some questions.

OSC: Sure, how may I help you?

Employer: I just hired several employees, and some stated on their Forms I-9 that they are not U.S. citizens. Can I just run the non-U.S. citizens through E-Verify to be sure they are employment authorized?

OSC: E-Verify is to be used for all new hires. Employers cannot selectively run new employees through E-Verify, but must run queries for all new hires. Also, the employee should be run through E-Verify once he or she has completed the Form I-9. E-Verify cannot be used to pre-screen job applicants, except by State Workforce Agencies. If you have questions about how to run a query for a new employee, you can call E-Verify customer service at 1-888-464-4218.

Employer: Ok. The tutorial said that E-Verify has a feature called the "photo tool." One of my new employees indicated in her I-9 that she is a lawful permanent resident, but she gave me a driver's license and Social Security card. I examined them and they appear to be genuine, but can I request to see her green card so I can compare the photo on her card with the photo in E-Verify?

OSC: Employers may not request a specific document from an employee in order to activate the photo tool feature. As you learned in the tutorial, information provided in an employee's Form I-9 should be used to run an E-Verify query. An employer must accept the documents an employee chooses to present to complete the Form I-9, as long as the documents appear to be genuine and to relate to the employee presenting them. There is one exception to this rule for employers who use E-Verify: Employers may only accept a Form I-9 List B document with a photo from an employee who chooses to present a List B document. A List B driver's license contains a photo and is acceptable for use in running her E-Verify query.

Employer: Thank you. I will run an E-Verify query for the lawful permanent resident using her driver's license and Social Security card and not ask for additional documents.

2. Beneficiary of Temporary Protected Status Terminated Although Still in Status

Employee: I'm from Somalia and I have TPS [Temporary Protected Status]. My card [Employment Authorization Document] expired on September 17, 2009, but it's still valid. Immigration extended it until March 17, 2010. A local non-profit agency gave me a copy of the Questions and Answers explaining the extension from the USCIS web page, and I showed it to my boss. I also showed her the receipt showing that I applied for a renewal card. I even called USCIS and asked if they could speed up my card because I did not want to lose my job, but they told me I just had to wait and not to worry because my card was still good until March 17, 2010. My boss said she could not accept the "Questions and Answers"; it was just something printed from the Internet, and it wasn't personal to me. She said she had no choice but to fire me because my old card expired. She said she would get in trouble from Immigration if she didn't fire me.

OSC: The work permits of Somalian TPS recipients were automatically extended by Immigration (USCIS) because the agency knew it could not print all the cards in time. If you'll give me permission, I will call and explain to your employer that TPS recipients permits are still valid even though they appear to have expired.

OSC calls the employer's counsel, explains the automatic extension of the worker's Employment Authorization Document, and provides a copy of the Federal Register notice announcing the automatic extension of Employment Authorization Documents for Somalian TPS beneficiaries. The employer then permits the worker to return to her job.

OSC Outreach Activities

OSC's outreach and education program is aimed at helping employers and employees understand the anti-discrimination provision of the INA. OSC's staff is available to participate in seminars and conferences. During the 2009 summer months, for example, OSC had outreach activities in Albuquerque (NM), Charlotte (NC), Denver (CO), Las Vegas (NV), Los Angeles (CA), Norfolk (VA), Pasadena (CA), Phoenix (AZ), Staten Island (NY), Rochester (MN), Cannon Falls (MN), Owatonna (MN), and Washington, D.C. To find out if there will be any seminars or conferences near you, or if you would like to organize your own event featuring an OSC speaker, please contact Mr. Terrence Scott, OSC's Public Affairs Specialist. Speakers are available nationwide for groups of 50 or more attendees. He can be reached by telephone at (202) 616-5594.

OSC attorney speaking at an outreach event.

US DEPARTMENT OF JUSTICE

Office of Special Counsel for Immigration-Related
Unfair Employment Practices
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W. (NYA) Suite 9000
Washington, D.C. 20530

Main Number: (202) 616-5594

Toll Free Information Number and Worker Hotline:
1-800-255-7688/(202) 616-5525 or 1-800-237-2515 (TDD for hearing impaired)
(Language interpretation available)

Employer Hotline: 1-800-255-8155 or 1-800-237-2515 (TDD for hearing impaired)

Fax Number: (202) 616-5509

Website Address: http://www.justice.gov/crt/osc

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We Value Your Feedback! Is there a topic you would like to read about in our newsletter?

Email us at osccrt@usdoj.gov

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