



# 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.

## Temporary Protected Status Granted for Eligible Haitian Nationals

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On January 12, 2010, an earthquake struck Haiti, causing devastating destruction and loss of life. As a result, on January 21, 2010, the U.S. Department of Homeland Security (DHS) granted Temporary Protected Status (TPS) for eligible Haitian nationals for eighteen months. The Secretary of DHS may designate a foreign country for TPS due to conditions in the country that temporarily prevent the country's nationals from returning safely, or in certain circumstances, where the country is unable to handle the return of its nationals adequately. TPS beneficiaries are allowed to remain in the U.S. and are eligible for work authorization during the set time period. DHS estimates that 100,000 to 200,000 Haitian nationals will be eligible for TPS.

An individual is eligible for Haitian TPS if he or she (1) is a national of Haiti (or an alien having no nationality who last habitually resided in Haiti); (2) has continuously resided in the U.S. since January 12, 2010; (3) has been continuously present in the U.S. since January 21, 2010 - the date of the Federal Register publication; (4) has met certain eligibility requirements; and (5) has completed all TPS application procedures described in the Federal Register notice announcing Haitian TPS, including, but not limited to, filing an Application for TPS (Form I-821) and Application for Employment Authorization (Form I-765). The registration period for Haitians began on January 21, 2010, and will remain in effect until July 22, 2011.

TPS beneficiaries are eligible for an employment authorization document (EAD), which serves as a Form I-9 "List A" document, establishing the individual's identity and employment eligibility. Applicants who would like an EAD generally will have to pay the Form I-765 application fee of \$340. Applicants who cannot afford the EAD fee can submit a fee waiver request. Additionally, applicants under the age of 14 or above the age of 65 who are filing their initial application for TPS are not required to pay the Form I-765 fee to obtain an EAD. Finally, if an individual is not requesting an EAD, he or she must still file a Form I-765 but does not need to pay the \$340 EAD fee (but should indicate on the Form I-765 that he or she is not requesting an EAD). For more information about TPS, visit the U.S. Citizenship and Immigration Services (USCIS) Web site at [www.uscis.gov](http://www.uscis.gov).

WE'RE ON THE  
WEB AT [HTTP://  
WWW.JUSTICE.GOV  
/CRT/OSC](http://WWW.JUSTICE.GOV/CRT/OSC)

#### OSC Employer Hotline:

1-800-255-8155

1-800-237-2515 (TDD)

#### OSC Worker Hotline:

1-800-255-7688

1-800-237-2515(TDD)

## Agreement Between Civil Rights Division and USCIS Regarding Exchange of Compliance Information

On March 17, 2010, the Civil Rights Division and USCIS entered into an information-sharing Memorandum of Agreement (MOA) at a signing ceremony hosted by USCIS. The Civil Rights Division has a longstanding collaborative relationship with USCIS's Verification Division, which, among other responsibilities, monitors for employer misuse of E-Verify. Each agency's mission is critical to maintaining the balance Congress struck when it passed IRCA's employer sanctions and anti-discrimination provisions.

The MOA memorializes procedures already in place for the exchange of compliance-related information falling within the other's jurisdiction. The Division will receive referrals of potential discrimination that come to USCIS. In turn, USCIS will receive from the Division referrals of

potential employer misuse of E-Verify that do not fall within the Division's enforcement responsibilities under the anti-discrimination provision of the INA. This agreement will not only facilitate greater efficiency for each agency, but will ensure that workers' claims of discrimination and abuse reach the proper agency. The MOA may be viewed on OSC's Web site at <http://www.justice.gov/crt/osc/htm/whatsnew.php>.

The Civil Rights Division and USCIS also consult each other regularly to ensure our guidance to the public is consistent and effectively educates employers and workers on their rights and responsibilities under the INA.

### OSC Welcomes Special Litigation Counsel Elizabeth Hack

Elizabeth Hack has joined OSC as Special Litigation Counsel. Ms. Hack dedicated the first 15 years of her legal career to public service, including serving as: a trial attorney in the U.S. Department of Justice, Civil Rights Division, Employment Litigation Section, for six years; the Deputy General Counsel at the Congressional Office of Compliance; and as a trial attorney in the U.S. Department of Justice, Civil Division, Frauds Section, for five and a half years.

Ms. Hack spent the past six years as a partner in private practice where her key responsibilities included conducting and supervising complex, multi-jurisdictional litigation, as well as compliance, training and outreach. In private practice Ms. Hack represented clients in a variety of civil rights and health care fraud investigations and litigation, and acquired a specialized experience in the anti-discrimination provision of the INA through the defense of a client. Ms. Hack brings a wealth of experience to OSC, and OSC is fortunate to have her as Special Litigation Counsel.



## Temporary Protected Status/Deferred Enforced Departure Updates

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.

The following countries are currently under TPS designation: El Salvador, Haiti, Honduras, Nicaragua, Somalia, and Sudan. Please visit OSC's Web site at <http://www.justice.gov/crt/osc/> for additional information regarding these TPS Designations.

Deferred Enforced Departure (DED) is a designation by the president of the U.S. granting in-

dividuals from certain countries protection from removal based on U.S. foreign policy concerns. Beneficiaries of DED are also granted work authorization for the time they are in DED status.

On March 18, 2010, President Barack Obama issued a Memorandum directing the Secretary of DHS, Janet Napolitano, to extend DED for eighteen months, through September 30, 2011, for any qualified Liberian national (or person without nationality who last habitually resided in Liberia) who was under DED as of March 31, 2010. DHS granted a six-month automatic extension of employment authorization until September 30, 2010, for eligible Liberians. For Form I-9 Employment Eligibility Verification purposes, Liberians may present an EAD bearing the notation "A-11" on the face of the card under "Category," and having an expiration date of March 31, 2010. For more information on this subject, please go to OSC's website.

## Commonwealth of the Northern Mariana Islands Under INA Umbrella

Lying across the international dateline, the Commonwealth of the Northern Mariana Islands (CNMI) has always been subject to some laws of the United States. However, over its first twenty-three years as a commonwealth of the U.S., the CNMI exercised local control over its own borders and became dependent on large numbers of temporary foreign workers to fuel its local economy.

Effective November 28, 2009, the Consolidated Natural Resources Act of 2008 (CNRA), extended the provisions of the INA, including its employment eligibility verification and anti-discrimination provisions, to the CNMI. Among other provisions, the CNRA authorizes a two-year grandfather period for existing CNMI foreign workers and a five-year transitional period during which special immigration rules will apply to the CNMI.

During the year leading up to the effective date

of the CNRA, OSC, in conjunction with other DOJ components, worked closely with DHS, the Department of State, and the Department of Interior to develop implementing regulations and policies designed to move the CNMI under the INA's umbrella without unnecessarily disrupting the CNMI's local economy. At the same time, OSC worked with USCIS to develop an extensive CNMI-based educational outreach program to prepare the CNMI's employers and employees for the transition to the INA. As part of that outreach initiative, OSC-generated outreach materials were translated into the six major languages encountered in the CNMI.

While OSC and other Federal agencies continue to monitor the situation, no significant problems were encountered in the initial months following the extension of the INA to the CNMI. For its part, OSC is available to the CNMI's employers and employees through its toll-free telephone hotlines and the Internet. In the coming months, OSC looks forward to opportunities to expand and enhance its educational outreach activities and charge investigation capabilities in the CNMI.

## U.S. Department of Labor Revises H-2A Visa Worker Regulations

On March 15, 2010, new H-2A visa worker regulations went into effect. Under the Immigration and Nationality Act, the Department of Labor (DOL) must ensure that U.S. workers (employment-authorized workers in the U.S.) are provided access to agricultural jobs before an employer can bring in workers on H-2A visas.

The revised Final Rule:

- Increases domestic worker recruitment and program oversight.
- Increases farm worker wages.
- Reinstates the critical role of State Workforce Agencies (SWA) in the recruitment process, thereby expanding job opportunities for U.S. workers.
- Reinstates the requirement that the SWA must inspect and approve employer-provided housing before DOL issues a labor certification.
- Creates a national electronic job registry for all H-2A job orders to improve U.S. worker access to agricultural jobs and help growers find workers from across the U.S.
- Extends H-2A program benefits to workers in "corresponding employment" (other workers employed by an H-2A employer in any work included in the job order and any work performed by the H-2A workers) to ensure that U.S. workers do not receive lower wages or fewer benefits.
- Ends the practice of moving H-2A workers to multiple sites in multiple areas of employment un-

der one labor certification.

- Prohibits the approval of labor certification applications for worksites where workers are on strike or locked out and protects U.S. workers who are denied employment or laid off.

For the latest information, please check the USDOL's Foreign Labor Certification Web site at <http://www.foreignlaborcert.doleta.gov/>.

## Recent OSC Enforcement Activity

**Below are samples of some of OSC's recent enforcement activities during the first months of 2010.**

### *City Government Reinstates Worker After Charge of Document Abuse and Retaliation*

A lawful permanent resident entered into a settlement agreement with his employer, a city government, resolving a charge of document abuse and retaliation. The worker alleged that the city terminated her when her document establishing temporary evidence of permanent residence expired, even though she had produced an unrestricted Social Security card as evidence of her permanent work authorization. As part of the settlement, the worker was rehired and the city trained its human resources staff on proper employment eligibility verification procedures.

### *Beauty Supply Company Pays Back Pay and Civil Penalty After Engaging in National Origin Discrimination*

OSC entered into a formal settlement agreement with a beauty supply company, resolving a charge of national origin discrimination. The charging party, an African-American U.S. citizen, alleged that the employer failed to hire her on January 9, 2009, because she is not of Korean national origin. During the course of its investigation, OSC found that the store was engaged in a pattern or practice of preferential treatment towards individuals of Korean origin during the application and hiring processes. Furthermore, the company had maintained a dual pay system that disfavored non-Korean employees and had never promoted a non-Korean to a management position.

Under the agreement, the company paid the charging party \$2,000 in back pay and a \$500 civil penalty to the United States. In addition, the company has agreed to advertise job openings at its store locations as well as in a newspaper of general circulation for at least two weeks, and to maintain applicant data for two years. The beauty supply company will also conduct training for its employees concerning the protections afforded by the anti-discrimination provision of the INA. OSC will monitor the beauty supply company over the next two years to ensure that it complies with its obligations under the settlement agreement.

## OSC Outreach Activities

OSC's outreach and education program is aimed at helping employers and employees understand the anti-discrimination provision of the INA. In the first three months of 2010, OSC staff members have presented at seminars, conferences, naturalization ceremonies, and other events across the United States, including in California, Arizona, New York, Colorado, Texas, Washington, Tennessee, Georgia, New Jersey, Virginia, and Washington, D.C.

If you are interested in having an OSC speaker at your next conference, seminar, or would like to schedule a presentation for a group, please contact Mr. Terence Scott, OSC's Public Affairs Specialist at (202) 616-5594. OSC speakers are available nationwide for groups of 50 or more attendees.

## Sign Up to Receive E-Mail Updates from OSC!

OSC now has a way for you to automatically get notice of changes to OSC's Web site, including when OSC posts a new issue of "OSC Update". Go to <http://www.justice.gov/govdelivery/multi-subscribe.html?code=USDOJ>, click on the link under the second paragraph, "Start, Change or Cancel Your Subscription", and follow the prompts. On the "subscriber preferences" screen, click the plus sign next to "Civil Rights Division" and check the box next to "OSC for Immigration Related Unfair Employment Practices." You will soon start to receive OSC updates by E-mail!

### U S D E P A R T M E N T O F J U S T I C E

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**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>

**Special Counsel** Vacant  
**Deputy Special Counsel** Katherine A. Baldwin

**Special Litigation Counsel** Elizabeth I. Hack

**Special Policy Counsel** Margaret Hu

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