



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.

INSIDE THIS ISSUE

DOJ Files Brief in Arizona Matter	1
Temporary Protected Status Updates	2
USCIS Updates Green Card & EAD	3
Recent OSC Enforcement Activity	4
E-Verify Announces New Worker Hotline	5

Supreme Court to Review Arizona's Employer Sanctions Law

On June 28, 2010, the Supreme Court granted certiorari in *Chamber of Commerce v. Candelaria*, No. 09-115 (U.S. 2009). The case centers around an Arizona law titled the "Legal Arizona Workers Act," which was passed in 2007 and became effective on January 1, 2008. The statute was later amended by the Arizona legislature; the amendments and final version of the law became effective on May 1, 2008.

The Arizona law prohibits businesses from knowingly or intentionally hiring an "unauthorized alien," which is already prohibited under federal law. The statute defines an "unauthorized alien" as "an alien who does not have the legal right or authorization under federal law to work in the United States." Penalties for the hiring of "unauthorized aliens" vary, with the most severe penalty being revocation of the business's operating license. The Arizona law also requires that all employers in Arizona use E-Verify.

Businesses, community organizations, and civil rights organizations filed suit in federal district court, arguing that the Legal Arizona Workers Act is both explicitly and impliedly preempted by federal law. The United States District Court for the District of Arizona held that the Act was not preempted. This holding was affirmed by the United States Court of Appeals for the Ninth Circuit. The plaintiffs then filed a petition for certiorari in the Supreme Court, presenting the following three questions:

1. Whether an Arizona statute that imposes sanctions on employers who hire unauthorized aliens is invalid under a federal statute that expressly "preempt[s] any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens." 8 U.S.C. § 1324a(h)(2).

2. Whether the Arizona statute, which requires all employers to participate in a federal electronic employment verification system, is preempted by a federal law that specifically makes that system voluntary. 8 U.S.C. § 1324a note.

WE'RE ON THE
WEB :
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)

(Continued on page 2)

Supreme Court to Review Arizona's Employer Sanctions Law

(Continued from page 1)

3. Whether the Arizona statute is impliedly preempted because it undermines the comprehensive scheme" that Congress created to regulate the employment of aliens. *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 147 (2002).

On November 2, 2009, the Supreme Court invited the Department of Justice to file an amicus brief on the question of whether certiorari should be granted.

On May 28, 2010, the Acting Solicitor General filed an amicus brief urging the Supreme Court to grant certiorari on the first of the three questions posed by the petitioners. The Supreme Court's June 28 order granted certiorari on all three questions.

The Supreme Court will take up the appeal during the Court's next session, which begins in October.

Temporary Protected Status Updates

Temporary Protected Status (TPS) is granted by the Secretary of the Department of Homeland Security (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/> or USCIS's website at <http://uscis.gov> for additional information regarding these TPS Designations.

Haiti

Haitian nationals who have continuously resided in the United States since Jan. 12, 2010, and who meet other TPS eligibility requirements may apply for TPS. They must file their applications for TPS no later than July 20, 2010. The TPS designation for Haiti will remain in effect through July 22, 2011.

NOTE: Approximately 320 Haitian TPS applicants were issued an Employment Authorization Document (EAD) with the expiration date of July 22, 2010, instead of July 22, 2011. USCIS is re-issuing extended EADs with the expiration date of July 22, 2011, to the impacted cardholders. The impacted cardholders should receive the new card before the expiration of their current EAD. Impacted cardholders do not need to file a new Application for Employment Authorization (Form I-765) or take any other action.

Honduras and Nicaragua

On May 5, 2010, DHS formally announced an eighteen-month extension of the TPS designation for eligible Honduran and Nicaraguan nationals from July 5, 2010, to January 5, 2012. In addition, EADs for Honduran and Nicaraguan TPS beneficiaries bearing an expiration date of July 5, 2010, and category A-12 or C-19 will be automatically extended for a six month period, through January 5, 2011. Employers should accept the EADs as valid "List A" documents. Employers should not request proof of Honduran or Nicaraguan citizenship, or ask for additional Form I-9 documentation if a worker presents an EAD that has been automatically extended.

Recent OSC Enforcement Activity

Below are examples of OSC's enforcement activity during the third quarter of fiscal year 2010.

Argosy University Pays \$7,100 in Back Pay to Lawful Permanent Resident in Settlement of Citizenship Status Discrimination and Intimidation Claims

OSC recently entered into a settlement agreement with Argosy University, parent company EDMC, and a charging party, resolving a charge of citizenship status discrimination and intimidation. The charging party, a lawful permanent resident, applied for a job at a university and was selected for hire. However, the human resources department for the entities misinterpreted a policy regarding the employment of foreign nationals and would not allow the charging party to be hired due to his non-U.S. citizen status. Following an OSC hotline intervention, the university re-offered the job to the charging party, but not before a manager at the university reprimanded the charging party for contacting OSC. The settlement agreement provided for back pay to the charging party in the amount of \$7,100 and training for the university's management and HR staff regarding the anti-discrimination provision of the INA. The university also modified its policy regarding the employment of foreign nationals.

ValleyCrest Landscaping Company and OSC Settle Citizenship Status Discrimination Claim for \$11,173

OSC entered into a settlement agreement with a landscaping company that resolved charges that the company preferred to hire H-2B visa holders over domestic workers. Under the settlement agreement, the company will modify its hiring policy to extend significantly the time period during which it will recruit U.S. workers for jobs that would otherwise be filled with H-2B temporary visa holders. Specifically, ValleyCrest will recruit and hire domestic workers until two weeks before H-2B workers are scheduled to begin work. The company also agreed to pay \$11,173 in back pay to the only U.S. applicant who was identified during the course of the investigation as an economic victim.

John Jay College Agrees to Pay \$33,330 in Back Pay and Civil Penalties to Settle a Pattern or Practice Claim of Document Abuse

OSC and John Jay College in New York City entered into a settlement agreement after OSC filed a lawsuit with the Office of the Chief Administrative Hearing Officer (OCAHO) alleging that the college engaged in a pattern or practice of document abuse. The complaint alleged that the college's human resources personnel requested documents issued by DHS from non-U.S. citizens, but not U.S. citizens, at the initial employment eligibility verification stage, as well as during reverification. As part of the settlement, the college agreed to pay \$23,260 in civil penalties and \$10,000 in back pay to an employee who was fired by John Jay because she could not produce a DHS-issued document. In addition, the college agreed to (1) train its recruitment personnel on their responsibilities not to discriminate, (2) promulgate and implement a policy prohibiting discrimination under the anti-discrimination provisions of the INA, and (3) provide reports to the Department of Justice for three years.

Aquatico Pool Management Company Pays \$1,500 in Back Pay and Civil Penalties to Settle Document Abuse Claim

OSC and a Texas pool management company recently settled a document abuse claim filed by a lawful permanent resident. The claim arose when the company withdrew an offer of employment to the resident because he presented a Permanent Resident Card and a restricted Social Security Card (with the notation "valid for work only with DHS authorization") during the Form I-9, Employment Eligibility Verification process. The Permanent Resident Card alone was sufficient to meet Form I-9 requirements, even if the Social Security Card was restricted. OSC and the pool management company agreed to settle the claim for \$1,500 in back pay and civil penalties.

E-Verify Launches New Hotline for Employees

On April 5, 2010, E-Verify launched an employee hotline, which allows employees to:

- Gain general information about the E-Verify program and procedures
- Understand how to complete the Form I-9 with acceptable documentation
- Understand the E-Verify process and how it affects them
- Learn about employee rights
- Report employer misuse of the E-Verify system
- File complaints regarding possible violations of verification policy and privacy laws
- Contest an E-Verify case.

E-Verify's employee hotline is available in several languages. The number for the employee hotline is 888-897-7781. Employees may also call OSC's worker hotline if they believe they have been discriminated against through an employer's use of E-Verify based on the employee's citizenship or immigration status, or based on the employee's national origin.

OSC Update is Going Green!

OSC will soon distribute OSC Update online exclusively. The newsletter will be available on OSC's website at: www.justice.gov/crt/osc.

To automatically receive notice of new issues of OSC Update, visit OSC's website and click on "Sign up for Email Updates" in the left navigation bar, then follow prompts. Once at the "subscriber's preference screen," click the plus sign next to "Civil Rights Division," scroll down to "Immigrant Rights and National Origin Discrimination," and check the box next to "Office of Special Counsel for Immigration Related Unfair Employment Practices News and Information." Then click "Save" at the bottom of the screen. On the next screen, scroll to the bottom and click "Finish."

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

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>

Special Counsel
Vacant

Deputy Special Counsel
Katherine A. Baldwin

Special Litigation Counsel
Elizabeth I. Hack

Special Policy Counsel
Margaret Hu

**WE VALUE YOUR FEEDBACK! IS THERE A TOPIC YOU WOULD LIKE TO READ ABOUT IN OUR NEWSLETTER?
EMAIL US AT OSCCRT@USDOJ.GOV**