



OSC UPDATE

Office of Special Counsel for Immigration-Related Unfair Employment Practices

U.S. Department of Justice | Civil Rights Division

OCTOBER 2005

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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News Alert

DHS I-9 Policy on hiring victims of Hurricane Katrina

The Department of Homeland Security (DHS) announced that it will not sanction employers that hire individuals evacuated or displaced by Hurricane Katrina otherwise eligible for employment but who currently lack documentation establishing employment eligibility and identity. For detailed information, please visit <http://www.usdoj.gov/crt/osc/> or <http://www.dhs.gov/dhspublic/display?content=4788>

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A Message from the Special Counsel, William J. Sanchez



Since starting my tenure as Special Counsel, I have been inspired by the work of my staff, who continue to work diligently to accomplish OSC's mission of eliminating immigration-related discriminatory practices in the workplace. As a reminder to our readers, this mission is accomplished through OSC's investigations, employer and employee telephone hotlines, and public education and outreach.

As with past issues of OSC Update, in this issue you will find the most recent updates affecting individuals protected by Temporary Protected Status as well as sample telephone intervention scenarios. I would also like to heartily congratulate our new grantees, a complete listing of whom can be found in this issue. Moreover, I would like to thank all of our past grantees for their tireless efforts in promoting the work of OSC and in making the work we do more effective. On a final note, I would like to remind our readers that we are always happy to hear from you and to assist you in any way that we can—whether it is a call to our hotline, a request for educational materials or an invitation to participate in an outreach event. We believe that with joint effort and cooperation with employers, workers, advocacy groups and the general public that we can better fulfill the mission of OSC.

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)

Need a Speaker?

OSC provides speakers to make presentations to educate employees, employers and the general public about their rights and responsibilities under the anti-discrimination provision of the Immigration and Nationality Act. Upon request, OSC also provides educational materials (printed and audiovisual) at no cost. Please contact us to learn more about these services. (See last page for contact information.)

NEWS AND NOTES

Memoranda of Understanding

The Office of Special Counsel cooperates with federal, state, and local government agencies to ensure that discrimination charges get to agencies that can address the types of discrimination alleged. OSC has entered fifty Memoranda of Understanding (MOUs) that allow it to refer charges to other government agencies and to accept charges from those agencies that allege possible violations of the antidiscrimination provision. The key feature of the MOUs is that charges first filed with an MOU partner within 180 days of the date of the alleged discrimination are deemed timely filed with OSC.

We continue efforts to train our MOU partners on the anti-discrimination provision so they know how to spot immigration-related unfair employment practices. This spring, OSC attorneys met with the Director of the California Department of Fair Employment and Housing (DFEH) and we are working together to reinvigorate the MOU between the two agencies. OSC attorneys trained DFEH intake staff at six key offices around the state. OSC similarly ramped up its collaboration with the U.S. Equal Employment Opportunity Commission (EEOC), one of our key MOU partners. OSC attorneys trained EEOC staffers at regional offices and at an orientation session for new investigators in Washington, DC. We also participated in several EEOC-sponsored Technical Assistance Programs (TAPS) for employers.

Please do not hesitate to contact OSC to assist in training an MOU partner in your area.

Temporary Protected Status Updates for Nationals of Burundi, Sudan, Liberia, Somalia, El Salvador, Honduras, and Nicaragua

Temporary Protected Status (TPS) is granted by the Secretary of Homeland Security to aliens in the United States who are nationals of countries subject to environmental disaster, armed conflict, or other extraordinary and temporary conditions. Information about TPS designations, extensions and automatic extensions of work authorization for TPS beneficiaries is published by notice in the Federal Register. Complete TPS information can be found at:

<http://uscis.gov/graphics/index.htm>

OSC also provides information about automatic extension of work authorization for TPS recipients on its website at:

<http://www.usdoj.gov/crt/osc/index.html>

Burundi

On September 2, 2005, the Department of Homeland Security (DHS) announced a 12-month extension of TPS for nationals of Burundi until November 2, 2006. Eligible TPS nationals of Burundi are required to re-register with the U.S. Citizenship and Immigration Services (USCIS) during the 60-day period from September 2, 2005, to November 1, 2005, and those TPS beneficiaries who desire work authorization are also required to submit a new Employment Authorization Document (EAD) application.

To ensure minimal disruption of employment authorization while TPS re-registration applications are processed, a sticker will be affixed to the current EAD of an eligible TPS beneficiary at the time biometrics are collected at the U.S. Citizenship and Immigration Services Application Support Center (ASC). This sticker will extend the current EAD through February 28, 2006. Note that the EAD extension sticker will be provided only at the ASC. The USCIS district offices and sub-offices will not be providing this service.

TPS was first granted to nationals of Burundi in 1999 because of ongoing armed conflict and extraordinary and temporary conditions existing in Burundi that prevent nationals of Burundi from returning to Burundi in safety.

Sudan

On September 2, 2005, DHS announced an 18-month extension of TPS for nationals of Sudan until May 2, 2007.

Eligible TPS nationals of Sudan are required to re-register with USCIS during the 60-day period from September 2, 2005, to November 1, 2005, and those TPS beneficiaries who desire work authorization are also required to submit a new EAD application.

To ensure minimal disruption of employment authorization while TPS re-registration applications are processed, a sticker will be affixed to the current EAD of an eligible TPS beneficiary at the time biometrics are collected at the ASC. This sticker will extend the current EAD through February 28, 2006. Note that the EAD extension sticker will be provided only at the ASC. The USCIS district offices and sub-offices will not be providing this service.

TPS was first granted to nationals of Sudan in 1997 because of ongoing armed conflict, as well as extraordinary and temporary conditions existing in Sudan.

Liberia

On August 16, 2005, DHS announced a 12-month extension of TPS for nationals of Liberia until October 1, 2006. The extension of Liberia's designation for TPS is effective October 1, 2005 and will remain in effect until October 1, 2006. Eligible TPS nationals of Liberia are required to re-register with USCIS during the 60-day period from August 16, 2005, to October 14, 2005, and those TPS beneficiaries who desire work authorization are also required to submit a new EAD application.

To ensure minimal disruption of employment authorization while TPS re-registration applications are processed, a sticker will be affixed to the current EAD of an eligible TPS beneficiary at the time biometrics are col-

lected at the ASC. This sticker will extend the current EAD through February 28, 2006. Note that the EAD extension sticker will be provided only at the ASC. The USCIS district offices and suboffices will not be providing this service.

TPS was first granted to nationals of Liberia in 2004 because of the extraordinary and temporary conditions existing in Liberia that prevent nationals of Liberia from returning to Liberia in safety.

Somalia

On July 27, 2005, DHS announced a 12-month extension of TPS for nationals of Somalia until September 17, 2006. The extension of Somalia's designation for TPS is effective September 17, 2005, and remains in effect until September 17, 2006. Eligible TPS nationals of Somalia were required to re-register with USCIS, and those TPS beneficiaries who desired work authorization were also required to submit a new EAD application.

Individuals re-registering for TPS under the Somalia designation had to follow the new filing instructions or processing of the application could be delayed. Unlike previous re-registration periods, applicants were not required to submit a photograph with their re-registration material, as both photographs and fingerprints were collected at the ASC. Applicants automatically received an appointment at an ASC, and were notified of the appointment by mail. USCIS has also published a revised Form I-821, and only the revised form was accepted.

TPS was first granted to nationals of Somalia in 2001 because of instability caused by armed conflict there.

El Salvador

On January 7, 2005, DHS announced that it was granting an 18-month extension of TPS for nationals of El Salvador until September 9, 2006. Eligible TPS Salvadoran nationals were required to re-register with USCIS, and those TPS beneficiaries who desired work authorization were also required to submit a new EAD application. In order to prevent a gap in work authorization while eligible Salvadorans wait for their applications to be processed,

the old EADs which would have expired on March 9, 2005, were automatically extended until September 9, 2005.

As of September 9, 2005, re-registering EAD applicants fell into four categories:

- (1) have received a new approved EAD;
- (2) have been notified of denial of a new EAD;
- (3) have already had a biometrics appointment, are awaiting a new EAD, and either have been mailed a 90-day temporary EAD card while USCIS completes processing or will be mailed a notice informing the re-registrant of any unresolved issues; or
- (4) have a pending biometrics appointment and have been mailed a letter informing them to report to an ASC to receive an extension sticker to be affixed to their existing EAD. USCIS has announced that the extension sticker will extend the validity of existing EADs through December 2005, or, in some cases, January 2006, depending on sticker availability. Stickers cannot be obtained at local USCIS offices. They may be obtained only at ASCs.

TPS was first granted to nationals of El Salvador in 2001 because of the damage caused by devastating earthquakes.

Honduras and Nicaragua

On November 3, 2004, DHS announced that it was granting an 18-month extension of TPS for nationals of Honduras and Nicaragua until July 5, 2006. Eligible TPS Hondurans and Nicaraguans were required to re-register with USCIS. Upon processing these applications, USCIS will issue new EADs for TPS Hondurans and Nicaraguans. In order to prevent a gap in work authorization while eligible Hondurans and Nicaraguans wait for their re-registration applications to be processed, the old EADs, which would have expired on January 5, 2005, were automatically extended until July 5, 2005. Thereafter, on July 7, 2005, DHS announced an additional automatic extension of these EADS until October 5, 2005.

In order to show that TPS Hondurans and Nicaraguans are eligible to work through October 5, 2005, they may present a work permit that expires on January 5, 2005, and has either:

- (a) "A-12" or "C-19" under the section "Category"; or
- (b) "274a.12(a)(12)" or "274a.12(c)(19)" under the section "Provision of Law."

TPS was first granted to nationals of Honduras and Nicaragua in 1999 because of conditions stemming from Hurricane Mitch.

OSC's Hotline Is Popular with the Public

Unlike many electronic menu-driven hotlines, when workers and employers call OSC, they can immediately speak with real person.

On an average, OSC answers 350 calls per week.

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 New Employee Who Lost Her Employment Authorization Document*

Employer: (speaking with an OSC attorney.) I just hired a new employee. When I asked her to complete section one of the I-9 form, she checked the box that indicates that she is an alien authorized to work until November 1, 2006. However, when I asked her to present proof of her authorization to work in the United States—either a List A document or one document from List B and one document from List C—she showed me a photocopy of her employment authorization document (“EAD”) and stated that she had lost the original document when she left her wallet on the bus. Can I accept the photocopy instead of the original document?

OSC Attorney: As you may suspect, an employer must review the original document and may not accept a photocopy in its place for employment eligibility verification purposes. However, where an employee has lost or misplaced her document or where it has been stolen, she can present her employer with a receipt showing that she has applied for a replacement document. The employer must accept this receipt in lieu of the original document and the employee must then present the new replacement document within 90 days of hire, or in the case of reverification, by the date that the employment authorization expires. Please note that this “receipt rule” does not apply to receipts that demonstrate that an employee has applied for a new document extending her status or adjusting her status. In the alternative, a newly hired employee may show a different original List A document or an original List B and an original List C document.

Employer: It sounds like there is a good chance that I will be able to employ this individual, because she has applied for a replacement EAD and does have a receipt. Thank you for this valuable advice.

2. *The Employee With an Expired “Green Card”*

Employee: (speaking with an OSC attorney) I am a lawful permanent resident. I began working for my company five years ago. At the time that I was hired I was asked to complete section one of the I-9 form and then to produce proof of my eligibility to work in the United States. I showed my green card, which has an expiration date of yesterday. I do not have a new unexpired green card. My employer accepted my card at that time and I have been working ever since. Yesterday I was called into the human resources office and asked to reverify my employment eligibility by showing either a List A document or a List C document because my green card had expired. Believe it or not, I never got around to getting an unrestricted Social Security card after I became a lawful permanent resident and I have nothing else to show. Do I really need to apply for a new green card or an unrestricted Social Security card? I need this job and I know that reapplication will take some time during which my employer will likely not allow me to continue to work.

OSC Attorney: As you may know, even though a lawful permanent resident’s green card may expire, his or her legal status to work in the United States does not expire. In most cases when an employee’s work authorization expires, the employer must ask that employee to show continued proof of work authorization. This is known as reverification. However, this rule does not apply to lawful permanent residents. Lawful permanent residents who present a valid lawful permanent resident card for I-9 purposes when they are hired should not be reverified. It might be helpful for you to have an unexpired lawful permanent resident card or unrestricted Social Security card if you ever decide to switch jobs. If you would like, I would be happy to contact your employer and explain this. 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 verification procedures for lawful permanent residents who present a lawful permanent resident card.)

OSC Attorney: Hi. I spoke with your employer and it has been resolved. You need not reverify your employment eligibility and you can continue to work.

Employee: Thank you so much for your help. That is great news!

CASE UPDATES

During fiscal year 2005, OSC received 338 charges of alleged discrimination and more than 18,000 calls on its worker and employer hot-lines. In the same period OSC entered 49 settlements. This includes 43 letters of resolution issued to employers who voluntarily entered into bi-lateral settlement agreements resolving discrimination charges. Letters of resolution are also issued to conclude independent investigations where the employer has voluntarily corrected its practices and no victims can be identified. In addition, OSC attorneys and equal opportunity specialists conducted 186 telephone interventions in order to educate employers about their responsibilities under the Immigration and Nationality Act, and to assist workers in obtaining early resolution of alleged claims of employment discrimination.

Settlement Reached with Nursing Home

In February 2005, OSC entered into a settlement agreement with a nursing home resolving a charge filed by a refugee. The charge alleged that the nursing home committed document abuse during the employment eligibility verification (I-9) process when it failed to accept the charging party's unrestricted Social Security card and driver's license as documents adequately establishing her employment eligibility.

Under the settlement agreement, the nursing home agreed to provide full back pay to the charging party, a civil penalty to the United States, and other injunctive relief, including training of its human resources staff in proper employment eligibility verification procedures by OSC.

Resolution Between National Accounting Firm and Lawful Permanent Resident

In May 2005, OSC issued a letter of resolution dismissing a citizenship status discrimination charge filed by a lawful permanent resident against a national accounting firm. The individual alleged that he was rejected for hire because he is not a U.S. citizen. In response to OSC's investigation, the firm acknowledged that its actions violated the INA's anti-discrimination provision, and entered into a bi-lateral settlement agreement with the individual providing for \$7,000 in back pay.

Resolution of Independent Investigation of Online Job Posting Website

In May 2005, OSC issued a letter of resolution to an online job posting website, closing its investigation of potential citizenship status discrimination in recruiting. OSC closed the investigation in response to a number of remedial measures taken by the company to reduce the incidence of job postings that potentially discriminate on the basis of citizenship status in violation of the anti-discrimination provision of the INA. Among other things, the company revised its membership agreement and client contracts to include an acknowledgment that job postings may not require U. S. citizenship or lawful permanent residence in the United States as a condition of employment unless required in order to comply with a law, regulation, executive order or federal, state or local government contract. In addition, the company's website now provides a link to a description of specific prohibited job postings, including job postings that unlawfully require U. S. Citizenship or lawful permanent residence.



<http://www.usdoj.gov/crt/osc/htm/facts.htm>



<http://www.usdoj.gov/crt/osc/htm/types.htm>



<http://www.usdoj.gov/crt/osc/htm/outreach.htm>

OSC OUTREACH ACTIVITIES

OSC Announces 2005 Grantees

OSC is pleased to announce the award of more than \$660,000 in grants to thirteen nonprofit groups to conduct public education programs for workers and employers about immigration-related job discrimination. Recipients of the grants, ranging from \$40,000 to \$85,000, will assist discrimination victims; conduct seminars for workers, employers and immigration service providers; distribute educational materials in various languages; and publicize information in local communities through the media.

The selected grantees are known and respected in their communities and will work with OSC to provide assistance to employers to prevent discrimination and to workers to protect them against discrimination.

The recipients are required to attend a grantee training conference. The OSC grantee training conference took place on June 15-16, 2005, at the Sumner School and Museum in Washington, DC.

The 2005 OSC grant recipients are:

YMCA of Greater New York, New York, NY - will provide education to employers, service providers and immigrant workers from Latin America, the Caribbean, Asia, Haiti and India.

Asian Pacific American Legal Center of Southern California (APALC), Los Angeles, CA, in partnership with Asian Law Caucus (ALC), San Francisco, CA - will educate workers and employers in two of the nation's largest Asian American communities.

Legal Aid Foundation of Los Angeles, Los Angeles, CA - Outreach Events

International Rescue Committee (IRC), San Diego, CA - will provide anti-discrimination education for refugees, asylees and other immigrant workers in this crucial border area.

University of Nevada/Small Business Development Center, Las Vegas, NV - will conduct a statewide information campaign to educate employers through chambers of commerce, curriculum programs at the University of Nevada, and extensive use of print and electronic media.

Catholic Charities of Dallas, Dallas, TX - will serve workers and employers in northern Texas, Arkansas, New Mexico and Oklahoma.

Catholic Community Services of Southern Arizona, Tucson, AZ - will provide education services to employers and Hispanics workers throughout the state.

Chicago Lawyers' Committee for Civil Rights, Chicago IL, in partnership with Chicago Interfaith Committee - will target employers, immigration service providers, and workers statewide to promote voluntary compliance.

American-Arab Anti-Discrimination Committee (ADC), Washington, DC - will carry out a national program to educate immigration service providers, employers, and workers.

Cuban American National Council, Inc., Miami, FL - will provide education to workers and small businesses through its network of service providers, with special emphasis on areas with high concentrations of immigrants (Africans, Croatians, Serbians, Haitians, and Cubans).

Legal Aid Services of Oregon, Hillsboro, OR, in partnership with the Oregon Law Center - will educate agricultural workers with a state wide media campaign and group presentations.

Hogar Hispano, Catholic Charities of Arlington, Arlington, VA - will educate immigrant workers and employers in the Northern Virginia, Maryland and Washington, DC area.

National Immigration Law Center (NILC), Los Angeles, CA - will carry out a national program to educate immigration service providers and pro-bono attorneys through regional seminars in the Northeast, Upper Midwest, Southeast and West.

Office of Special Counsel
for Immigration Related Unfair Employment Practices
U.S. Department of Justice Civil Rights Division



You Have a Right to Work
2005 OSC Grantees Training Conference
HANDBOOK

Outreach Events

Date	Location	Sponsor	Target Audience
October 20-23	Washington, DC	9th Annual Latino/a Law Student Ass'n Conference	Professors, law students, and lawyers.
October 25	New York, NY	YMCA (OSC grantee)	ESL students, service providers, and workers.
October 27	Houston, TX	Concerned Hispanic Evangelists	Ministers, employers, workers, community leaders, and service providers.
November 4	Jacksonville, FL	EEOC Technical Assistance Seminar	Employers.
November 3-4	Leavenworth, WA	Washington State Farm Bureau	Agricultural employers and human resources professionals.
November 16	New York, NY	YMCA and ADC (OSC grantees)	Grantee staff members, local community leaders, and service providers.
November 17	New York, NY	NY Immigration Coalition	Service providers, and workers.
December 8-9	Portland, OR	Oregon Legal Aid, (OSC grantee)	Workers.

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

How To Contact OSC

<p>Mailing Address: Office of Special Counsel for Immigration-Related Unfair Employment Practices U.S. Department of Justice Civil Rights Division 950 Pennsylvania Avenue, N.W. Washington, D.C. 20530</p>		<p>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) (Language interpretation available) Employer Hotline: 1-800-255-8155 1-800-362-2735 (TDD for hearing impaired) E-mail Address: oscrt@usdoj.gov Web Address: http://www.usdoj.gov/crt/osc</p>	
<p>Special Counsel William J. Sanchez</p>	<p>Deputy Special Counsel Katherine A. Baldwin</p>	<p>Special Policy Counsel Bruce Friedman</p>	<p>Special Litigation Counsel Robin M. Stutman</p>