



OSC UPDATE

Office of Special Counsel for Immigration-Related Unfair Employment Practices

U.S. Department of Justice | Civil Rights Division

January 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 antidiscrimination provision of the Immigration and Nationality Act (INA). In addition, OSC conducts outreach aimed at educating employers, workers, and the general public about their rights and responsibilities under the INA's antidiscrimination provision.

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New Special Counsel



William J. Sanchez was nominated by President George W. Bush and confirmed unanimously by the United States Senate in 2004 to be Special Counsel for Immigration-Related Unfair Employment Practices.

Prior to joining the U.S. Department of Justice and for more than 15 years, Mr. Sanchez was a Senior Partner in the law firm of William J. Sanchez, P.A. as well as Sanchez and Lopez, P.A. While in private practice, Mr. Sanchez worked on hundreds of immigration court trials as well as numerous appeals before the Board of Immigration Appeals and the federal courts. Among these cases are nationally-recognized class-action lawsuits on behalf of Haitian farmworkers and Cuban refugees who attempted to enter the United States on vintage American cars fashioned into water-crafts. Early in his career, Mr. Sanchez also served as staff attorney for the Haitian Refugee Center and as Professor of International Law at the Ateneo University in the Philippines.

A native of New York City, Mr. Sanchez has spent most of his adult life in South Florida, where he helped establish one of Florida's largest micro-enterprise institutions in Miami's less-advantaged communities. He has also been involved in numerous non-profit and charitable endeavors. In the early 1980's, Mr. Sanchez spent 6 months working as a Georgetown University Student Representative in a Vietnamese Refugee camp in Palawan, Philippines and in the early 1990's spent a year in Naga, Philippines, founding a Grameen village bank for poor families. As a student at Georgetown Law, Mr. Sanchez was Lead Articles Editor for the Georgetown Immigration Law Journal and, in addition to publishing a number of immigration articles, he recently published a book of poetry, *Dancing with Eternity*.

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

Licensing of Refugees and Asylees as Taxicab Drivers

Over the past year, OSC has become aware that taxicab licensing authorities in several cities, including New York, San Diego, and Washington, DC, have required non-U.S. citizen license applicants to present a permanent resident (“green”) card or employment authorization document (EAD). This policy negatively impacts refugees and asylees, who do not yet possess green cards and would be forced to pay a fee to obtain yearly renewals of their EADs. Working in cooperation with advocacy groups and local government representatives, OSC has successfully convinced two local governmental entities to change their policy to allow refugees and asylees to present I-94 cards instead of green cards or EADs when applying for taxicab licenses.

Temporary Protected Status Updates for Nationals of Montserrat, Somalia, Liberia, Honduras and Nicaragua

Section 244 of the INA authorizes the Secretary of Homeland Security to grant Temporary Protected Status (TPS) to aliens in the United States who are nationals of countries that are subject to ongoing armed conflict, environmental disaster, or other extraordinary and temporary conditions. Information about TPS designations, extensions and automatic extensions of work authorization for TPS beneficiaries are published by notice in the Federal Register.

Montserrat

On July 6, 2004, the Department of Homeland Security (DHS) announced the conclusion of TPS for nationals of Montserrat and a six month extension of their Employment Authorization Documents (EADs) until February 27, 2005. After February 27, 2005, the approximately 292 affected individuals will return to

the same immigration status that they maintained before registering for TPS, or to any other status they may have acquired while registered for TPS.

TPS was first granted to nationals from the Caribbean island of Montserrat in 1997 because of volcanic eruptions that temporarily and substantially disrupted living conditions, and prevented Montserratians from safely returning to their country. The decision to terminate the TPS program for nationals of Montserrat was based on a determination by the Secretary of DHS that the volcanic eruptions can no longer be considered temporary as the eruptions are expected to continue for many years to come.

Somalia

On August 6, 2004, DHS announced the extension of TPS for nationals of Somalia for an additional twelve months. The TPS designation, which expired on September 17, 2004, is now in effect until September 17, 2005. These TPS beneficiaries, of which there is approximately 324, had until October 5, 2004, to reregister and to apply for an extension of their EADs.

TPS was first granted to nationals from Somalia in 1991 because of instability caused by armed conflict.

Liberia

On August 25, 2004, DHS announced the re-designation of TPS for nationals of Liberia until October 1, 2005. Liberia was originally designated for TPS status in 2002 because of armed conflict. Although the armed conflict has ended, the Secretary of DHS found that serious conditions continue in Liberia that would prevent the safe return of Liberian nationals. Accordingly, the 2002 TPS designation was terminated and a re-designation announced at the same time.

The re-designation allows nationals of Liberia who have been continuously physically present in the United States since August 25, 2004, and residing continuously in the United States since October 1, 2002, to apply for TPS. The registration period, which

began on August 25, 2004, is in effect until February 21, 2005. All Liberian nationals who were already TPS beneficiaries at the time of re-designation have to register for TPS under the new designation. There are approximately 3,792 nationals of Liberia eligible for registration under the new designation.

Honduras and Nicaragua

On November 3, 2004, DHS announced that it was extending TPS for nationals from Honduras and Nicaragua for an additional eighteen months. Those TPS designations, which would have expired on January 5, 2005, are now in effect until July 5, 2006. Because of the large number of nationals from these two countries, the EADs for those individuals were automatically extended until July 5, 2005.

TPS was first granted to nationals from Honduras and Nicaragua in January 1999 because of damage caused by Hurricane Mitch.

El Salvador

On January 7, 2005, DHS announced that it was extending TPS for nationals from El Salvador for an additional eighteen months. Those TPS designations, which would have expired on March 9, 2005, are now in effect until September 9, 2006. Because of the large number of nationals from this country, the EADs for those individuals were automatically extended until September 9, 2005.

TPS was first granted to nationals from El Salvador in March 2001 because of devastation resulting from a series of severe earthquakes.

Immigrant Farmworker Program in Oregon

In 2003, the Civil Rights Division, through the Office of Special Counsel, awarded Legal Aid Services of Oregon (LASO) a grant to initiate an anti-discrimination education campaign. The project involves educating immigrant and U.S. agricultural workers throughout the state of Oregon about the anti-discrimination provisions of the Immigration and Nationality Act. For the past seven years, LASO has also worked closely with the Oregon Legal Center (OLC). Both offices offer farmworkers free legal services and educate workers on their legal rights as employees by organizing presentations at more than 300 labor camps and recording public service announcements on Spanish-speaking radio shows. Their work includes representing immigrant farmworkers in cases involving disparate treatment, document abuse, and retaliation. Although most agricultural workers speak Spanish, in the 1990's LASO and OLC began noticing that a significant number of immigrant farmworkers were speaking indigenous languages as their first language. Once the need for language appropriate outreach targeting indigenous groups was identified, OLC developed and launched its Indigenous Farmworker Project in 2001.

While there is no official census, recent studies show that approximately 40% of the 170,000 agricultural workers who live and work in Oregon each year are of Latin American indigenous heritage. Most indigenous persons who work in Oregon speak Mixteco and are from either Oaxaca or Guerrero, Mexico. Other languages represented among farmworker indigenous communities in Oregon include: Triqui, Zapoteco, and Kanjobal (which is spoken by indigenous Guatemalan groups). Communication and cultural gaps make indigenous people particularly susceptible to employment and other

forms of discrimination. As little as four years ago, this language disconnect meant that most members of indigenous farmworker communities were uninformed of their legal rights, despite LASO and OLC's outreach efforts.

In order to fill this cultural and language void, two former farmworkers from Oaxaca, Mexico, who speak different types of Mixteco, as well as English and Spanish, were hired by OLC as outreach workers. Since most indigenous languages do not have a common written form, oral presentations at labor camps or community meetings and radio programs in Mixteco are the most effective means of communication for these groups. OLC has also developed cassette tapes in Spanish and Mixteco and Spanish and Triqui, which contain information about the minimum wage, pesticide safety, and discrimination. These tapes are distributed to workers at presentations. OLC has also translated radio announcements regarding the anti-discrimination provisions of the INA into Mixteco and Triqui.

This program has made great progress in informing immigrant indigenous groups of their right to be free of discrimination in the workplace. Outreach workers note that indigenous farmworkers, including women, actively participate in discussions now that the information is provided to them in their own language. As a result, LASO and OLC are better equipped to address the needs of indigenous clients, who were once largely unaware of their legal rights as employees in Oregon.

Legal Working Group for Colonias and Migrant Farmworker Issues

The Office of Special Counsel is working with other federal agencies to reach out to partners everywhere to help protect the legal rights of residents of both colonias and migrant farmworker communities. Colonias are communities located in the U.S.-Mexico border regions of Arizona, California, New Mexico, and Texas characterized by their lack of a potable water supply,

inadequate sewage systems, and a shortage of decent, safe, and sanitary housing. The Federal Interagency Legal Working Group for Colonias and Migrant Farmworker Issues has formed, with the help of OSC, to help local advocacy groups across the nation address the unique needs of this population.

The working group was formed because residents of colonias and migrant farmworker communities face unique legal issues ranging from discrimination based on national origin and citizenship status to predatory lending and illegal land sales. Legal aid associations and other local organizations working in these communities have expressed the need for increased federal attention to the legal issues facing these communities.

The goal of the working group is to provide a forum for federal, state, and local government agencies and community organizations, such as legal aid groups, to discuss and solve legal problems that impact colonias and migrant farmworker communities. By working together, the government can be more effective in addressing these problems and in enforcing laws.

The working group website address is www.hud.gov/legalgroup.

The website contains helpful lists of outreach videos and points of contact to assist groups based in colonias and farmworker communities to contact the appropriate government employees who can help them address their needs.

Typical OSC Telephone Intervention Scenarios

1. *The Pilot Program “Violator”*

Employee: (*Speaking with an OSC attorney.*) I am authorized to work in the United States. I was just hired for a new job and was told that my new employer participates in the Citizenship and Immigration Service’s (USCIS) Basic Pilot Program. A day after I filled out the I-9 Form, the human resources person told me that she received a “tentative non-confirmation” from the Pilot Program regarding my employment authorization. According to the piece of paper she gave me, all I had to do was call the Pilot Program hotline and clear it up, which I did. The man I spoke with through the hotline told me that he would correct the information in the Pilot Program database to show that I am work authorized. When I told this to the human resources person she insisted that I present a letter from USCIS stating that I am work-authorized. What can I do to keep this job if I can’t show a letter?

OSC Attorney: As you may know, the Basic Pilot Program permits employers to verify workers’ employment eligibility electronically through the Social Security Administration and USCIS databases. The employer should perform the automated employment verification query after an employee has been hired, and the Form I-9 process completed. The system should not be used to pre-screen an applicant for employment and should not be used to reverify employment eligibility. Although employers are expected to follow all of the Pilot Program rules, some employers do not. In this case, your new employer was supposed to run your information back through the Pilot Program system after you reported back on your conversation with the USCIS representative. If you would like, I would be happy to speak with your employer about the Pilot Program rules. 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 through the Pilot Program.)

OSC Attorney: Hi. Good news. I spoke with your employer and now the person in charge of the Pilot Program understands why you do not need to present a letter from USCIS. Your employer has run your information through the Pilot Program system again and this time it confirmed your employment eligibility. Enjoy the new job!

Employee: Thank you so much for helping me.

2. *The Asylee Without an EAD*

Employer: (*Speaking to an OSC attorney.*) I have an employee who originally presented an Employment Authorization Document (EAD) for I-9 purposes when we first hired her. On a blank line next to the third box in section one of her I-9 Form, it indicates that she is an asylee, and the EAD that she presented when we originally verified her employment authorization expires today. When I told her that she needs to show me proof of continued work authorization for reverification, she presented me with two documents—an I-94 card with an indefinite work authorization stamp and a USCIS Notice of Action stating that her asylum petition has been approved. Are either of these documents good enough for reverification purposes or does she have to show me a new EAD?

OSC Attorney: For reverification of an employee’s employment eligibility, a worker need only show her employer a List A or List C document. The worker gets to choose which document from the lists provided on the back of the I-9 form. As with initial verification, the employer must accept the document that the worker presents if it appears to be reasonably genuine and relate to the person presenting it. You are correct that because this worker’s EAD has expired, it is time for you, her employer, to reverify her employment eligibility. However, as an asylee, she need not present a new unexpired EAD card unless she chooses to do so. Either of the two documents that this worker presented are sufficient for reverification as List C documents.

Employer: It’s great that I can keep this excellent employee on board without any more worries. Thanks.

CASE UPDATES

During fiscal year 2004 (October 1, 2003, through September 30, 2004), OSC received 367 charges of alleged discrimination. In addition, OSC attorneys and equal opportunity specialists conducted 109 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. In the recent past there has been a rise in the number of bilateral settlements between employers and workers that were prompted by OSC's initiation of investigations. In fiscal year 2004, OSC issued 36 letters of resolution to employers and workers who voluntarily entered bilateral settlement agreements resolving discrimination charges and resulting in dismissal of the 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.

Settlement Reached with National Airline

In November 2004, OSC entered into a settlement agreement with a national airline, resolving a charge filed by a lawful permanent resident alleging that the respondent had discriminated against him and other non-U.S. citizens on the basis of their citizenship status when it delayed them in the pilot hiring process. The settlement agreement also resolved OSC's independent investigation of the same airline for advertising a U.S. citizens-only pilot hiring policy.

Under the settlement agreement, the airline agreed to pay \$9,000 in civil penalties, educate its personnel, and post anti-discrimination notices. The charging party was not entitled to any back pay because he was working at another job throughout the application process.

Settlement Reached with Fast Food Franchise

In April 2004, OSC entered a settlement agreement with the owner of a fast-food franchise based in Florida resolving a charge filed by a lawful permanent resident who alleged discrimination in the

employment eligibility verification process and retaliation. During its investigation, OSC determined that the worker was terminated after he voiced concerns about over-documentation during the employment eligibility verification process at the time of his hiring.

Under the terms of the agreement, the franchise agreed to pay \$3,000 in backpay to the worker and a \$2,200 civil penalty. The franchise also agreed to train its staff in proper employment eligibility verification procedures.

Resolution Between Hospital and Permanent Resident

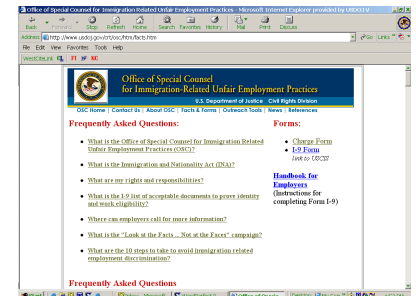
In July 2004, OSC issued a letter of resolution dismissing the charge of a permanent resident filed against a Virginia hospital. The individual alleged that her offer of employment was rescinded after she produced, for employment eligibility verification purposes, an unexpired foreign passport with a valid I-551 stamp, indicating permanent residence, which should have been accepted. After receiving notice of OSC's investigation and after a discussion with OSC concerning proper verification practices, the hospital made the individual an unconditional offer of employment, which she accepted.

Resolution Between Discount Retail Chain and U.S. Citizen

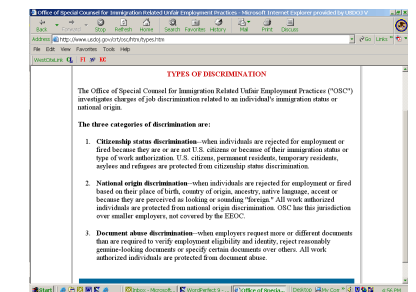
In September 2004, OSC issued a letter of resolution to a national discount retail chain dismissing a charge of document abuse filed on behalf of a U.S. citizen who was born in Puerto Rico. The individual alleged that she had presented her Massachusetts Electronic Benefit Transfer (EBT)(public assistance) card in order to demonstrate her identity for employment eligibility verification purposes in connection with her employment at a Massachusetts store, but that it was rejected.

In response to OSC's investigation, the company offered the individual a job and back pay, and educated the appropriate personnel about proper employment

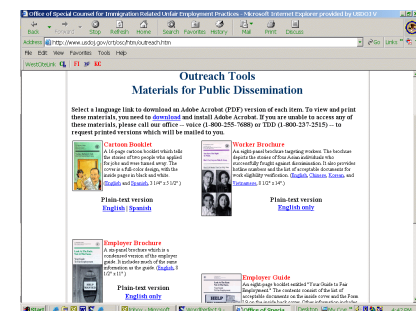
eligibility verification practices, including the acceptability of public assistance cards as List B (identity) documents.



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



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



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

OSC OUTREACH ACTIVITIES

Outreach to Union Groups

The Office of Special Counsel is increasingly working with union groups across the country by providing training and forums on immigrants' rights to work.

In June, the Heartland Regional Council of Carpenters of Omaha, Nebraska, hosted a forum on employee rights, including presentations on Federal and state laws on job discrimination. The Office of Special Counsel was invited to address the protections of workers against immigration-related discrimination. The audience of over 100 employers, union members, and community leaders was told that there must be a level playing field for all employment eligible persons in the United States, that discrimination for or against a job applicant due to his/her immigrant or citizenship status is unlawful, and, that such discrimination will be addressed by OSC.

OSC is currently working with the Construction and General Laborers' Local Union in Kansas City, Kansas, on a labor symposium focusing on Federal and state laws regulating employer-employee relations and employer discriminatory practices. The Union realizes that many employers and contractors are not familiar with employment laws impacting immigrant workers and hopes to provide a better understanding about these laws to employers, workers, and job applicants.

Alaska's Immigrant Community

In recent years, Alaska has experienced an increase in its immigrant population and workforce, including immigrants from Asia, Russia, Eastern Europe, and South America. Upon the invitation of the Anchorage Equal Rights Commission, OSC recently addressed immigration attorneys, community service providers, and representatives of immigrant communities in Anchorage, Alaska. The presentation included an overview of the statutes protecting immigrant workers from job discrimination, an explanation regarding how the I-9 employment eligibility verification form should be completed, and a discussion of common issues that arise about employment eligibility.

The Office of Special Counsel is often able to provide speakers to discuss these issues upon request, subject to budgetary constraints.

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

How To Contact OSC

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

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>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>
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