



U.S. Department of Justice

Civil Rights Division

*Office of Special Counsel for Immigration-Related  
Unfair Employment Practices - NYA  
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**Via First Class Mail and E-Mail (eroth@gcalaw.com)**

Elizabeth Roth, Esq.  
GCA Law Partners LLP  
1891 Landings Drive  
Mountain View, CA 94043

Dear Ms. Roth:

This is in response to your November 23, 2011 email seeking “acceptable language for a job posting in which the employer can only consider US citizens because of the requirement of the government contract under which the new employee would be working.”

Please note that the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) cannot provide an advisory opinion on any particular instance of alleged discrimination or on any set of facts involving a particular individual or entity. However, we can provide some general guidelines regarding employer compliance with the anti-discrimination provision of the Immigration and Nationality Act (INA), 8 U.S.C. § 1324b, which OSC enforces. The anti-discrimination provision prohibits hiring, firing, recruitment or referral for a fee, and unfair documentary practices during the employment eligibility verification (Form I-9) process (document abuse) on the basis of citizenship or immigration status or national origin. It also prohibits retaliation for filing a charge, assisting in an investigation, or asserting rights under the anti-discrimination provision. For more information, you may visit our website at [www.justice.gov/crt/about/osc](http://www.justice.gov/crt/about/osc) or call our toll-free hotline at 800-255-8155.

Citizenship status discrimination occurs when individuals are not hired or are fired because of their citizenship or immigration status. 8 U.S.C. § 1324b. However, an employer may consider citizenship status if it is required in order to comply with a law, regulation, or executive order, or the terms of a Federal, State, or local government contract. 8 U.S.C. § 1324b(a)(2)(C). As discussed in the attached technical assistance letters, dated January 15, 2008, and August 19, 2010, in order for a U.S. citizen requirement to satisfy the exemption found in the anti-discrimination provision of the INA, an employer must show that it is required to discriminate on the basis of citizenship status for the specific position at issue. Factors that come into play in making this determination include the express language of the contract, the employee’s position and the type of work to be performed by the employee. Thus, employers must examine the applicable contract to determine whether it requires the employer to restrict employment for a specific job on the basis of citizenship status.

OSC recommends notifying applicants that the position is limited to U.S. citizens pursuant to a government contract. OSC suggests utilizing language such as: "Please note that pursuant to a government contract, this specific position requires U.S. citizenship status."

We hope this information is of assistance to you.

Sincerely,



Seema Nanda  
Acting Deputy Special Counsel

Enclosures