



U.S. Department of Justice
Civil Rights Division

*Office of Special Counsel for Immigration-Related
Unfair Employment Practices - NYA
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November 20, 2013

BY FIRST CLASS MAIL AND EMAIL (growold@ou.edu)

Gretta Rowold, Esq.
Executive Director of Secure Research Operations
Office of Legal Counsel
The University of Oklahoma
301 David L. Boren Blvd. Suite 1070
Norman, OK 73072

Dear Ms. Rowold:

This letter responds to your e-mail dated October 22, 2013, to the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC). In your email, you state that your client, the University of Oklahoma (OU), negotiates "sponsored research agreements with non-university parties." In this capacity, your client is periodically asked "to restrict participants to 'U.S. citizens only.'" You state that at times, "the organization sponsoring the research is unwilling or unable to provide justification for its U.S. citizen only hiring requirement" and often simply states that "the organization does 'sensitive' work, or has a U.S. government customer who wouldn't like it if non-U.S. citizens were involved in the project." You ask what "exposure the University might have under 8 U.S.C. 1324 if we accept an unjustified citizenship restriction." You further ask "what type of justification/documentation is appropriate to protect the University against any liability under 8 U.S.C. 1324."

Please note that OSC cannot provide an advisory opinion 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, enforced by OSC, and employer actions under that provision. The anti-discrimination provision prohibits four types of employment-related discrimination: citizenship or immigration status discrimination; national origin discrimination; unfair documentary practices during the employment eligibility verification (I-9 and E-Verify) process ("document abuse"); and retaliation for filing a charge, assisting in an investigation or asserting rights under the anti-discrimination provision. 8 U.S.C. § 1324b.

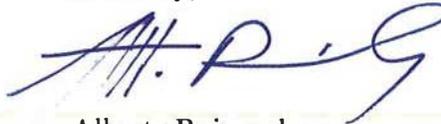
Under the anti-discrimination provision, employers may not institute a hiring preference for U.S. citizens unless *required* to do so in order to comply with a law, regulation, executive order or government contract. 8 U.S.C. § 1324b(a)(2)(C). Individuals protected from citizenship status discrimination under the anti-discrimination provision include U.S. citizens, recent lawful permanent

resident, refugees and asylees. 8 U.S.C. § 1324b(a)(1)(3). It is unclear whether the non-university parties referenced in your inquiry are relying on a legal requirement to discriminate on the basis of citizenship status in the form of a law, regulation, executive order, or government contract. In all instances, OSC encourages an employer considering a restriction in hiring based on citizenship status to ensure that it is properly restricting the position to a certain class of individuals in accordance with the specific language of the relevant law, regulation, executive order, or government contract. To the extent an employer or entity is found to have violated 8 U.S.C. § 1324b, it can be subject to, among other sanctions, civil penalty fines, reporting requirements, and back pay. 8 U.S.C. § 1324b b(g)(B)(i-viii).

If you have further questions that pertain to the anti-discrimination provision of the INA, please contact OSC's employer hotline, 800-255-8155, or visit OSC's website at www.justice.gov/crt/about/osc.

We hope this information is helpful. Thank you for contacting OSC.

Sincerely,

A handwritten signature in blue ink, appearing to read 'A. Ruisanchez', with a stylized flourish at the end.

Alberto Ruisanchez
Acting Deputy Special Counsel