



U.S. Department of Justice

Civil Rights Division

*Special Counsel for Immigration Related
Unfair Employment Practices
P.O. Box 27728
Washington, DC 20038-7728*

AUG 6 1998

Mr. Arnold Eagle
President
American Council on International
Personnel, Inc.
515 Madison Avenue, 15th Floor
New York, NY 10022

Re: Pre-Employment Inquiries Regarding
Sponsorship for an Employment Visa

Dear Mr. Eagle:

This is in response to your letter dated July 10, 1998. In your letter you inquire as to the acceptability of various inquiries, either in an employment interview or on an employment application, regarding whether the applicant will require immediate or future sponsorship for an employment visa. Specifically, you propose the following queries:

1. Are you legally authorized to work in the United States? ☐ YES ☐ NO
2. Will you now or in the future require sponsorship for employment visa status (e.g., H-1B visa status)?
☐ YES ☐ NO

As an alternative, you suggest the following:

1. Are you one of the following:
U.S. citizen
Lawful Permanent Resident
Temporary Resident
Asylee
Refugee
☐ YES ☐ NO
2. If no, are you currently authorized to work in the United States? ☐ YES ☐ NO

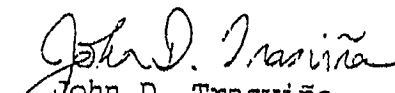
If yes, please explain the basis of your employment authorization: _____

Please note that this Office cannot give you an advisory opinion on any particular case of alleged discrimination, or on any set of facts involving a particular individual or entity. However, we can provide some general guidelines as to the coverage of the statute and legality of various pre-employment inquiries under the anti-discrimination provisions of the Immigration and Nationality Act (INA), 8 U.S.C. § 1324b.

In response to your inquiry, we recommend using the initial set of questions above, rather than the proposed alternative. This is because, as a general rule, we do not recommend asking applicants to specify their citizenship status in the context of the employment application process because a rejected applicant may rely upon such an inquiry later to allege that the employer considered the information in making the hiring decision, and discriminated based on citizenship status. It appears that the initial set of questions seeks the information you require, without having to inquire into specific citizenship status categories. Moreover, asking applicants to explain the "basis of [their] employment authorization" may be too vague or confusing to them, and not elicit the necessary information.

For your further information, we have also attached prior opinion letters discussing related issues. If you have any questions or require additional information, please feel free to contact Robin M. Stutman of my staff at (202) 616-5538.

Sincerely,


John D. Trasviña
Special Counsel

Enclosures