

The Immigration Reform and Control Act of 1986 (IRCA) requires that employers only hire people who are authorized to work in the United States. This typically includes U.S. citizens, permanent residents, and U.S. nationals. In fact, employers must verify an employee's work authorization status within three days of employment. Thus, it is perfectly legitimate for an employer to require individuals to be authorized to work in the United States as a condition of employment. Moreover, an employer does not violate the law by refusing to sponsor an international student for an H-1B nonimmigrant specialty occupation temporary work visa or for a permanent employment immigrant visa.

There are very few exceptions to the prohibition of citizenship discrimination. A U.S. citizenship requirement for employment is proper only if it is required to comply with a law, regulation, or an executive order; it is required by a federal, state, or local government contract; or the U.S. Attorney General determines that the citizenship requirement is essential for the employer to do business with an agency or a department of the federal, state, or local government.

Additionally, the citizenship requirement must be related to a specific job that has been identified in the contract, by law, or by the U.S. Attorney General. For example, an employer that is a U.S. Department of Defense (DOD) contractor cannot require U.S. citizenship for *all* of its jobs relating to a DOD contract if the contract identifies only *certain* jobs as requiring U.S. citizenship.

Title VII of the Civil Rights Act (Title VII) prohibits discrimination based upon national origin (as well as other protected classifications). National origin discrimination occurs when an individual is denied an employment opportunity or is treated differently because of his or her birthplace, ancestry, cultural background, or heritage.

What is confusing to employers and career services is that IRCA permits employers to hire any international who has the appropriate work authorization, but it does not protect internationals from employment discrimination unless they fit within one of the protected classifications. IRCA and Title VII also permit employers to refuse to hire an individual based upon the person's limited work authorization or the difficulty in obtaining the work authorization for the person.

Unless well versed in the fine points of immigration law, many recruiters and career services professionals don't know the differences between those groups. Moreover, there are far more internationals attending universities and colleges who are on F-1 and J-1 visas than those who are permanent residents, refugees, and asylees.

Therein lies the problem. International students, aware of their right to be employed for a twelve- or eighteen-month practical training period, want to be included in interview schedules. With sponsorship from an employer, any of these international students may obtain an H-1B (specialty occupation) visa to work for up to six years in the United States.

Career services professionals, wanting to assist both employers and students, are unsure if they should exclude such students from interview schedules or ascertain and disclose the student's national origin/citizenship to the employer. The recruiter whose company has legitimate work eligibility or U.S. citizenship requirements may not understand why international students are on the schedule and whether he or she can refuse to interview those students.

So what is the answer to this quandary? Recruiters should clearly define employers' work requirements—will the employer hire individuals that possess practical training work authorization or only those with full-time work authorization? If U.S. citizenship is a requirement of the job, the recruiter should specify the reason for this on the job position notice. Sponsorships or nonsponsorships for H-1B visas should also be stated clearly on the job notice.

While it is illegal to make an interview or hiring decision based upon an individual's national origin, citizenship, age, religion, gender, race, or disability, employers do not violate the IRCA or Title VII by excluding students with F-1 or J-1 visas from interview schedules or hiring. An employer may ask during an interview if the student is on an F-1 or J-1 visa; may ask the type of work authorization that the student possesses; may advise students that as a condition of employment the student will have to complete an I-9 form indicating the student's work eligibility; and may inform the student that the employer does not sponsor individuals for H-1B visas.

An employer may not ask the student's country of origin or "native language" or treat students differently based upon their last name, color, or accent. The recruiter should ask all students the same questions, not only those who may "look" or "sound" international. Selectively questioning and advising students of work authorization requirements could raise the question of whether the recruiter is treating students unfairly based upon national origin.

Career services professionals should advise international students of the work authorization requirements of U.S. law. They should counsel students that the more unique their skills and the more advanced their degree the more likely that an employer will consider them for hire and sponsorship for an H-1B visa or immigrant employment visas. Students should also be encouraged to seek out those employers that have H-1B sponsorship programs or international operations.

Additionally, career services professionals should advise students about proper and improper interview inquiries. Disclosure of a student's visa status by career services should only be done with the written consent of the student.

For more information about this and other legal issues, contact the NACE Legal Department, 62 Highland Ave., Bethlehem, PA 18017-9085; or e-mail rkaplan@naceweb.org