



Suggested Questions to Pose to Foreign National Job Applicants

Employers often wonder which questions they can ask foreign national job candidates to confirm the candidate's authorization to work without exposing themselves to a discrimination claim. This summary is designed to provide some practical guidance.

The Immigration Reform and Control Act of 1986 (IRCA) protects foreign nationals from two types of discrimination: (1) citizenship discrimination, and (2) national origin discrimination. Only U.S. citizens, permanent residents, temporary residents, asylees, refugees, and conditional permanent residents are protected against citizenship discrimination. U.S. Citizens, permanent residents, and all work-authorized foreign nationals are protected against national origin discrimination.

Listed below are two sets of questions. The first consists of "suggested questions," and the second set of "not suggested questions." Please note that it is not illegal to ask any questions about immigration status. It is illegal only to *discriminate* on the basis of the answers. Asking questions about immigration status, however, may lead rejected candidates to perceive discrimination and file a discrimination claim with the U.S. Department of Justice. Whether or not an employer intended to discriminate or actually did discriminate, poorly phrased questions during the interview process could strengthen a rejected candidate's claim that he or she was discriminated against because of his or her citizenship status or national origin. Asking only "suggested questions" will help minimize the risk of a discrimination claim.

Suggested Question	Not Suggested Questions
Are you currently authorized to work in the U.S. on a full-time basis?	Are you a U.S. Citizen? If not, are you authorized to work permanently in the U.S.? Do you have 'unlimited' work authorization?

Comment: Using the phrase "full-time" rather than "permanently" is recommended because temporary residents, conditional permanent residents, refugees, and asylees are all authorized to work on a full-time basis, but for a limited duration. Although their work authorization may be extended indefinitely, they do not have "permanent" or "unlimited" work authorization.



Suggested Question	Not Suggested Questions
Will you now or in the future require sponsorship for employment visa status (e.g., H-1B status)?	Are you one of the following: U.S. Citizen, lawful permanent resident, temporary resident, asylee, refugee? What is your visa status for work authorization?

Comment: The question in the left box above is suggested because it allows the employer to inquire whether the employer will need to actively participate in gaining work authorization for the candidate, without focusing on whether the candidate belongs to any specific immigration group. The questions in the right box are not recommended because they may increase an employer's risk of citizenship-status discrimination claims.

Suggested Questions	Not Suggested Question
Are you currently in F-1 status? Is your current work authorization limited to practical training?	How long is the duration of your work authorization?

Comment: The suggested questions are recommended because they provide an employer with important information about the duration of a candidate's work authorization without inquiring whether the candidate is in a "protected class." IRCA's citizenship-status discrimination provision does not apply to persons in F-1 status. As long as an employer does not use this information to discriminate against persons of specific national origins, the questions should not support a claim of discrimination. The question in the right box is not recommended because the inquiry about the duration of the candidate's work authorization may trigger a citizenship discrimination claim, because, again, persons who are temporary residents, asylees, refugees, and conditional permanent residents have work authorization of limited duration.

Suggested Question	Not Suggested Approach
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Will you complete an I-9 Form?	Asking only selected candidates to complete an I-9 prior to being hired.
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Comment: An employer may ask a candidate to present documentation to complete an I-9 *after* an offer of employment has been made and the candidate has accepted, but before employment has commenced. The OSC recommends that employers who wish to have a candidate complete an I-9 before employment actually commences have all candidates complete an I-9 form at that time. Alternatively, an employer may ask an employee to complete an I-9 form in advance of starting employment if the employer wishes to hire the candidate, but knows he/she may be unauthorized.

The above questions are examples of inquiries employers may make during the interview process. The distinguishing factor between the suggested questions and the non-suggested questions is that the suggested questions minimize an employer's risk of a discrimination claim by a rejected candidate. The suggested questions are phrased broadly so as not to draw distinctive lines between candidates based on their immigration status, while still gaining the information employers need to determine whether candidates are authorized to work for the employer.