

# The Globe

The newsletter of the Illinois State Bar Association's Section on International & Immigration Law

## OK to ask applicants if they need immigration sponsorship

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Attorney Christopher L. Thomas of Ogletree Deakins asked the Office of Special Counsel whether it is permissible for employers to ask the following questions of job applicants:

- A. Do you now, or will you in the future, require sponsorship (e.g., H-1B visa status, etc.) to work legally for THE COMPANY in the United States?
- B. If you will require sponsorship, do you currently hold Optional Practical Training (OPT)?
- C. If you currently hold OPT, are you eligible for a 24-month extension of your OPT, based upon a degree from a qualifying US institution in

Science, Technology, Engineering, or Mathematics (STEM), as defined by Immigration & Customs Enforcement (and as outlined in the following government website: <<https://www.ice.gov/sites/default/files/documents/Document/2016/stem-list.pdf>>?)

For Thomas' client, a negative answer to the third question would apparently be reason for disqualification.

On June 15, 2016 Alberto Ruisanchez responded that an employer that asks all of its job applicants whether they will require sponsorship now or in the future and refuses to hire those who require sponsorship would likely not violate 8

U.S.C. 1324b. Similarly, an employer that asks questions designed to prefer certain classes of nonimmigrant visa holders (e.g., STEM OPT students) over other classes of nonimmigrant visa holders is unlikely to violate the INA's prohibition against citizenship status discrimination.

However, he pointed out that asking job applicants detailed questions about their immigration or citizenship status may deter individuals who *are* protected from citizenship status discrimination, such as refugees and asylees, from applying due to a misunderstanding about their eligibility for the position. ■

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