

Interviewing Foreign National Applicants

Interview Questions

Employers typically want to know if a foreign national applicant is eligible to work in the United States. Many individuals have permanent resident status (a "green card") which authorizes work in the U.S. without restriction. Others have Employment Authorization Documents (EADs) for specific time periods (which may be renewable). Still others do not have work authorization and are dependent on the employer petitioning the USCIS for appropriate employment-based immigration status.

The process of obtaining work authorization varies in terms of time and complexity, depending upon the type of immigration status for which the applicant is qualified. The Center for International Faculty & Student Services (CIFSS) is available to assist departments with this process. However, concern about national origin discrimination in the workplace requires careful attention to the phrasing of work eligibility-related questions in the application process.

1. During the pre-offer interview process, it is permissible to inquire about work eligibility as follows:

"Employment at the Rutgers, The State University of New Jersey is subject to verification of an applicant's identity and eligibility for employment as required by immigration laws. If hired, will you be able to provide evidence that you are legally permitted to work in the United States?"

2. Only after a job offer has been extended may the employer ask the following question of the individual:

"What is your work authorization or visa status?"

- If an applicant responds affirmatively to question #1 and the decision is made to extend an offer of employment, it is imperative that the offer be made contingent upon the individual having the appropriate work authorization, and being able to maintain that authorization for the entire employment period. For example:

"We would like to offer you a temporary position as a <title> in the <department> at Rutgers University, based on satisfactory performance and mutual agreement. Your employment is to begin <date> and end <date>. Compensation will be at the rate of <salary>, plus fringe benefits. This offer is contingent upon you having the appropriate work authorization for the entire employment period listed above."

- If an applicant responds negatively to question #1, but expresses interest in obtaining appropriate work authorization, it is acceptable to respond as follows:

"The Center for International Faculty and Student Services at Rutgers University is available to assist departments in determining which, if any, employment-based immigration status is appropriate for prospective employees. Depending upon individual circumstances, however, not everyone

is eligible for work authorization in the United States. Any offer of employment will be contingent upon your ability to obtain appropriate work authorization within an acceptable period of time."

In such circumstances, if the decision is made to extend an offer of employment, the offer should be made contingent upon **obtaining** the appropriate work authorization and being able to maintain that authorization for the entire employment period. For example:

"We would like to offer you a temporary position as a <title> in the <department> at Rutgers, based on satisfactory performance and mutual agreement. Your employment is to begin <date> and end <date>. Compensation will be at the rate of <salary>, plus fringe benefits. This offer is contingent upon you obtaining appropriate work authorization for the entire employment period listed above."

If a department wishes to extend an offer of employment to an individual who is not currently authorized to work in the United States and/or at Rutgers, it is imperative that the department consult CIFSS as early in the hiring process as possible, in order to avoid any serious delays in obtaining work authorization. Please keep in mind, however, that regardless of an individual's qualifications, not everyone is eligible for employment in the U.S., as determined by his or her individual immigration-related circumstances.

- If an individual responds affirmatively to question #1, but is in fact unable to verify their response to question #2 after an offer of employment has been extended, then-if the offer was made contingent on having the appropriate work authorization-the department may withdraw that offer.

CIFSS advisors are available to answer questions regarding the validity of documentation, or whether a particular visa status authorizes employment. The Office of Equal Employment Opportunity and Affirmative Action should be consulted if questions arise regarding the withdrawal of an offer of employment, or the acceptable phrasing of any interview questions not addressed in this memo.