

Can we ask applicants about their immigration sponsorship and legal status?

Q. I was recently reviewing an employment application submitted by a candidate for an open position. Can we lawfully ask whether the candidate requires immigration sponsorship in order to obtain authorization to work for our company?

A. Yes. Since an employer can decide whether to sponsor the employment visa for an employee, it follows that it may ask questions related to whether the candidate requires sponsorship.

The Office of Special Counsel of the U.S. Department of Justice provides guidance and sample language that employers can use on their employment applications.

The endorsed language permits an employer to be direct and specific in its inquiries regarding a job applicant's authorization to accept employment in the United States. An employer is permitted to ask the following questions on an employment application:

- Are you legally authorized to work in the United States?
- Will you now or in the future require sponsorship for employment visa status (e.g., H-1B visa status)?

By using these questions, an employer can determine whether a job applicant requires immigration sponsorship. Employers are well-advised to be consistent in gathering this information. Include the questions on a written, professional employment application instead of asking them orally. That ensures hiring managers do not misinterpret these provisions, or ask additional questions that extend beyond the scope of the two questions listed above.

Employers should use the same professional employment application for all job applicants, regardless of their appearance, accent, name or location of permanent address abroad.