

1980 WL 121066 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 27, 1980

***1 Re: Public Employment of Aliens**

The Honorable Juhn D. Bradley, III
1063 Northbridge Drive
Charleston, South Carolina 29407

Dear Representative Bradley:

You have recently asked this Office for its opinion as to whether it is improper for a state agency to hire foreign nationals. For the reasons given below, it would be improper for a state agency to adopt a policy of not hiring foreign nationals.

In 1886 the United States Supreme Court held that aliens are persons whose rights are protected from discriminatory state action by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. [Yick Wo v. Hopkins](#), 118 U.S. 356 (1886). The Court has used a strict scrutiny test in examining states' discrimination against aliens and practically all discrimination based on alienage has been found illegal. The Court specifically has declared unconstitutional a state statute which forbid aliens from holding civil service jobs. [Sugarman v. Dougall](#), 413 U.S. 634 (1973). Additionally, employment discrimination based on alienage is prohibited by 42 U.S.C. § 1981. [Jones v. United Gas Improvement Corp.](#), 68 F.R.D. 1, 12 (E.D. Pa. 1975). Finally, even though Title VII of the Civil Rights Act of 1964, as amended does not prohibit employment discrimination based solely upon alienage, aliens are protected from discrimination based upon race, color, religion, sex or national origin. [Espinoza v. Farah Manufacturing Co.](#), 414 U.S. 86, 95 (1973).

Sincerely,

Barbara J. Hamilton
Assistant Attorney General

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