

**Recognition and Accreditation Program
EOIR Public Meeting March 14, 2012
Recognition of Organizations**

1. Discussion of required documentation to establish eligibility for recognition. What documentation must an organization be required to provide in order to establish that it meets the eligibility requirements for recognition? For example, should EOIR require the organization to submit incorporation or tax documents to prove non-profit status?

A meeting attendee asked why the Executive Office for Immigration Review (EOIR) felt the need for a change, specifically, a change that would include submitting tax documents.

Barbara Leen and Lauren Alder Reid, EOIR, explained that the current regulation is overbroad and more specificity is needed. Additional criteria might demonstrate that applying organizations are legitimate and have demonstrable experience in the field.

Meeting attendees commented that requiring tax documents could be helpful to ensure that organizations are true non-profits, and this could aid in tracking down unscrupulous providers who attempt to create non-profits as shields. Attendees also noted that making some documents public, such as an organization's board structure, could assist in deterring bad actors.

Other commenters said that EOIR should be flexible in determining what documents to require, because an organization's strength can be measured by more than just tax status. There should be a strong board, proper case management and oversight. Commenters said that providing tax documents could be burdensome for some agencies, especially new agencies, agencies with intricate parent-affiliate structures, and those with initial (instead of final) 501(c)3 status.

Karen Grisez, American Bar Association (ABA), commented that non-profit and tax-exempt are two different things, and there is value to establishing different criteria for both.

2. Discussion of fraud prevention. EOIR is committed to preventing fraud and is mindful that the recognition and accreditation program may be susceptible to abuse. How can EOIR both prevent abuse of the system by organizations that may seek to exploit or misuse their recognized status, and encourage the participation of legitimate organizations in the program?

Several commenters requested EOIR improve its fraud prevention public awareness campaign. Suggestions included: 1) working with organizations so they can provide or post an accredited organization's roster; 2) clarifying the complaint process for the Recognition and Accreditation (R&A) and pro bono programs on EOIR's website; 3) educating the private bar, the American Immigration Lawyers Association (AILA), pro bono organizations and better business bureaus on the complaint process; 4) requiring every office of a recognized organization or individual to post certain required information, such as a list of fees and how to make a complaint; and 5) improve the message to people being served (e.g. the respondents, not the practitioners) so that they are aware.

The next major area of comments focused on stricter training, ethics, professional responsibility and case management requirements. Some commenters recommended strengthening the requirements for accredited organizations, such as, requiring more documentation, ensuring that all staff listed as accredited are continuing with the organization, and possibly requiring a re-recognition process or periodic spot checks to determine if the organizations are still operating. Another suggestion was for EOIR to create a mechanism for suspending recognition.

Meeting attendees and EOIR staff conducted a brief discussion about creating an identification card to prove Board of Immigration Appeals (BIA) accreditation. While some attendees said that they could use such a card to help with outside entities understanding what an accredited representative is or to prove that they are accredited, others expressed concerns with requiring a BIA accredited representative to have a higher standard than some attorneys (e.g. not all states require a bar card or bar number). EOIR staff said that concerns have been raised in the past regarding the ease of falsifying an identification card.

3. Discussion of nominal fees. Currently, recognized organizations are allowed to charge only a “nominal fee” for their services in order to ensure that they are serving a non-profit, religious, charitable, or social service purpose. See 8 C.F.R. § 1292.1(a)(1). Should recognized organizations be able to charge more than a nominal fee for their services? If so, under what circumstances? Would a system, in which an organization's eligibility for recognition is determined based on the percentage of its revenue from client fees, be an effective measure to ensure that the recognized organization is serving a non-profit religious, charitable, or social service purpose?

Commenters said that just using fees in isolation would be difficult, and that any eligibility determination based on fees needed to have flexibility in order to increase capacity in a notable and useful manner. Commenters noted the following issues: 1) that their organization’s fees are more wrap-around in nature, and go to more than one purpose (e.g. some go to social services); 2) that different types of cases might reasonably be assessed different fees (due to complexity, opportunity the respondent has had already to earn income, etc.); 3) that organizations in underserved and rural areas need earned income for sustainability; 4) that once organizations have invested in training employees, they need to be able to pay them enough to retain them; 5) that the grant and private funding landscape is very poor, and to offset costs of clients who have no funds, organizations may need to charge those who can afford to pay a higher amount to cover costs; and 6) that costs may be higher in more expensive localities.

Commenters provided numerous suggestions including: 1) using terminology concerning “reasonable funding” instead of “nominal funding”; 2) using a sliding fee scale; and 3) requiring organizations to demonstrate they are providing quality services instead of focusing on fees.

Reid Trautz, AILA, expressed concerns with expanding to “reasonable” terminology, suggesting that the possibility of increased revenue could entice non-accredited immigration consultants.

4. Discussion of withdrawal of recognition. Are the current procedures for withdrawal of recognition for an organization effective? See 8 C.F.R. § 1292.2(c). If not, how can the process be improved?

Diego Bonesatti, Illinois Coalition for Immigrant and Refugee Rights, commented that he noticed that the R&A list was shrinking and asked if the Board has been contacting organizations that are dormant and then closing them out.

Barbara Leen, EOIR, explained the regulatory withdrawal process. Under that process, the Department of Homeland Security (DHS) has to file an Order to Show Cause and that there is a withdrawal process. She said that EOIR has been contacting people who have not been active to see if they would like to be removed from the list. If EOIR does not hear from an organization, or they are behaving inappropriately, then DHS needs to charge them with an Order to Show Cause, then it needs to be argued in front of an immigration judge.

Amy Tenney, World Relief, asked if an organization writes to say an organization, or sub-organization, is no longer active, can EOIR act on that?

Barbara Leen, EOIR, said that EOIR can only act if an organization is writing on behalf of its organization.

(Regarding the comments above, although this information was not discussed at the meeting, EOIR would like to note that the Board has contacted organizations to inquire if they still provide legal services. Organizations that are not providing immigration services are removed from the roster. The regulations allow the Board to withdraw recognition if the organization fails to maintain the qualifications required. DHS may conduct an investigation and then charge the organization with a Notice to Show Cause, which requires the organization to appear at a hearing before an immigration judge.)

Commenters suggested that EOIR develop and implement a process for re-recognition for organizations every three to five years and oversee the program. Organizations should provide job descriptions, fee structure, training, access to legal materials, etc. If the organization cannot provide this information then recognition would be automatically withdrawn.

5. Discussion of definition of “low income.” EOIR is considering defining “low-income” by using percentages of the Federal Poverty Guidelines amounts. For example, the Legal Services Corporation provides that the income of service recipients may not exceed 125% of the current official Federal Poverty Guidelines amounts. See 45 C.F.R. Part 1611. How should “low-income” be defined?

Karen Grisez, commenting personally, said that the Washington D.C. Bar uses 200 percent of the federal poverty level for pro bono services and there is a wide gap between poverty level and private market attorney fees. People who are not below the poverty level still may not be able to afford a private market attorney. There should also be an opportunity to adjust for things like extraordinary circumstances or other family costs.

Elissa Mittman, Hebrew Immigrant Society, commented that relationships are built over time and once clients are making some money, they typically do not want to find another organization. She was concerned about the word low income and said that it should not be only about low income, but also the type of work and applications, such as humanitarian or family based.

Amy Tenney, World Relief, said the government should not be allowed to prohibit an organization from working with a client because their income is too high unless the government is also providing funding to the organization. There are a lot of moderate income levels, and there should be flexibility to take some clients who can pay to offset other clients who cannot.

Marti Jones, Immigration Project, commented that there should be a relationship of support between the bar and organizations so good referrals can be made. Some clients refuse to seek another avenue and try to handle legal issues themselves. In terms of low income, there should be strict guidelines. Do not compare this situation to Legal Services Corp because there are no funds attached.

Catherine Picker, International Rescue Committee, commented that it is important to ensure that there is access to moderately priced services.

Barbara Leen, EOIR, acknowledged the need for objective measures for low income versus moderate income.

Recognition and Accreditation Program EOIR Public Meeting March 21, 2012 Accreditation of Representatives

1. Discussion of required training for accredited representatives. In order to ensure that accredited representatives maintain sufficient knowledge in immigration law and procedure to represent individuals adequately before the Department of Homeland Security and EOIR, should EOIR require that accredited representatives fulfill an annual immigration training requirement similar to a Continuing Legal Education (CLE) requirement for attorneys? What would be the appropriate amount and type of annual training for accredited representatives (e.g., requiring fifteen hours of CLE annually as many state bar associations require for licensed attorneys)?

Commenters agreed that EOIR should require some type of training, but that 15 hours per year may be too much and too costly. EOIR should not mandate testing. Some jurisdictions require that you be an attorney in order to participate in CLE. EOIR should be flexible with the number of training hours per year (15 hours per year or 45 hours over three years), the type of training and the reporting requirement.

Karen Grisez, ABA, commented that the ABA does not have a formal policy on the number of training hours per year. She commented in her personal capacity that accredited representatives should have to attend two trainings per year.

Reid Trautz, AILA, suggested that continuing education requirements be included in a re-registration or re-accreditation type of schedule, every three years.

Careen Shannon, New York State Bar, suggested that EOIR develop and initially maintain basic curriculum and testing. Existing accredited representatives should be exempt from the basic curriculum and initial testing. However, when they re-register, they should take the test. Representatives should be required to submit writing samples and demonstrate legal fact pattern analysis.

Amy Tenney, World Relief, had concerns with submitting writing samples because it would be over burdensome.

Barbara Leen, EOIR, asked how EOIR could measure whether a group providing training is good, bad or even legitimate, or whether a specific educational program is effective. She asked what sort of measure EOIR should require and are there options beyond CLE. What can EOIR put in place that is not over burdensome and how can EOIR ensure that the various options it considers are not over burdensome?

Commenters suggested that organizations be allowed to conduct in-house training and have trainers submit resumes to EOIR to show that they are qualified to teach classes. A commenter said that individuals are accredited with the organizations, so they are already vetted through their organization. The organization is at a level to assess individuals and has a careful internal review process.

A commenter implied that lots of people are practicing law who do not know the law. There should be some way to regulate and ensure an attorney knows immigration law.

Jennifer Barnes, EOIR, explained that the competence of an attorney is covered under the EOIR rules of professional conduct. EOIR regulates attorneys with regard to their competence and diligence. It is up to the public to do due diligence on their part.

2. Discussion of fraud prevention. EOIR is committed to preventing fraud and mindful that the recognition and accreditation program may be susceptible to abuse. How can EOIR both prevent abuse of the system by individuals who may seek to exploit or misuse their accredited status, and encourage the participation of legitimate individuals in the program?

Barbara Leen, EOIR, explained that EOIR is trying to increase capacity to get smaller programs in smaller areas. As the fraud prevention program expands, EOIR wants to ensure that new groups are doing what they are supposed to be doing, while retaining the integrity of the program. EOIR wants to ensure that a provider or organization is not setting up a front and asked if strengthening the requirements for organizations would help solve this problem.

Lauren Alder Reid, EOIR, commented that the unauthorized practice of law is a major concern.

Commenters suggested that EOIR regulate people who leave organizations to ensure that they are not misrepresenting themselves as accredited representatives. EOIR should also develop an identification card and certificate for accredited representatives to use at immigration courts, U.S. Citizenship and Immigration Services' (USCIS) offices and detention facilities. The immigration courts should also have updated lists of accredited representatives to prohibit unaccredited representatives from appearing in immigration court.

A commenter suggested implementing strong training requirements to help deter and prevent fraud. EOIR should make it easy to report fraud. EOIR should develop a hotline or website and advertise in EOIR and USCIS' offices as well as all R&A locations so people will know how to report and prevent fraud. EOIR should also provide education and outreach to the DHS, local police and jails so they know how to submit a complaint.

3. Discussion of adequate supervision. Generally, accredited representatives are non-attorneys who provide advice and representation to individuals. What is the best way to ensure that accredited representatives receive adequate supervision in order to provide effective assistance and representation?

Commenters were concerned about requiring attorneys to supervise organizations or accredited representatives because that will not maximize the force and could be over burdensome for attorneys. Careen Shannon, New York State Bar, said a better solution could be to have EOIR facilitate access to technical assistance, such as Catholic Legal Immigration Network, Inc. webinars, and develop a training curriculum, a best practices manual to provide guidance on caseloads/case management, and a policy for issues surrounding responding to deadlines and complaints. There were mixed feelings on the issue of requiring case caps. Commenters suggested that EOIR have more monitoring of accredited representatives to prevent well-meaning people from getting in over their heads.

A commenter requested to know the EOIR goals of the program and also expressed concern with supervision because requiring attorneys to supervise accredited representatives may cause major problems and tension with the private bar because of time commitments and pulling attorneys away from their client base and income.

Patricia Chiriboga-Roby, World Relief Immigration Legal Clinic, commented that EOIR should work with AILA to see if AILA could develop a mentoring connection. A mentoring relationship could provide guidance and support and maximize available services. There was some concern, however, with mentoring because of liability issues.

Barbara Leen, EOIR, commented that EOIR understands that there is a difference between technical advice and supervision and that there is a concern regarding how to keep technical advice separate from the services attorneys provide. EOIR is seeking help to develop new guidance because the current regulation may not be specific enough and people need clear guidance.