

## RECOGNITION AND ACCREDITATION FROM THE BOARD OF IMMIGRATION APPEALS (BIA)

*Web-Based Conference Call Training*

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## Overview of BIA training

- Why apply for BIA recognition and accreditation
- What BIA recognition and accreditation are
- How to apply for BIA recognition and accreditation: the nuts and the bolts

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## I. Why Apply for BIA Recognition and Accreditation

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## Unauthorized practice of law

- Practicing law without official permission (license or accreditation)
- Almost all help on immigration forms without BIA accreditation is unauthorized practice of law
- Agency and/or worker may be liable

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## USCIS Regulations on law practice

- 8 Code of Federal Regulations (CFR) § 1.1(k)

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## What is “practicing law”?

- Anything more than filling in blanks as client directs
- Explaining what something on a form “means”
- Recommending how to fill out a certain form or part of a form
- Recommending which form a client needs

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## What is “practicing law”?

- Telling clients what immigration benefits they might be eligible for
- Advising a client whether or not to file a certain application

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## If you aren't a BIA accredited rep. or an attorney, what can you do?

- Fill in forms:
  - Client brings in form, asks for help filling it in
  - Client tells you what to put in the blanks
- Translation/Interpretation
- You should make clear to clients that you are not qualified in legal matters, and have no expertise in immigration law and procedure

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## What may non-lawyer/BIA rep NOT do?

- May not **practice law**
- Almost anything more than filling in the blanks on a form the client brings you, as the client directs, may be practicing law
- NOTE: If non-BIA reps make status inquiries about client cases, USCIS will not respond. USCIS will only respond if there is a G-28 on file signed by client and attorney or accredited rep.

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## Examples of legal advice

- “I was granted asylum in 2003, and now I want to get a green card. What forms do I need to file?” Answer = legal advice.
- “What does it mean on this form, ‘port of last entry’?” Answer = legal advice.
- “Do I need to include any other papers with this Affidavit of Support? Answer = legal advice.

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## Examples of legal representation

- Writing letters to DHS to inquire about case status
- Advising specific clients on whether they are eligible for specific immigration benefits
- Advising clients on which immigration forms to use
- Accompanying client to adjustment of status interview and speaking on that client's behalf

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## Liability

Due to unauthorized practice of law

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## Unauthorized practice of law can expose agency to liability



- Agency not covered for legal malpractice
- Clients could sue agency if agency gives bad advice/makes mistakes and something goes wrong
- Most states could go after agency for unauthorized practice of law

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## Unauthorized practice of law can harm immigrants



- Staff without sufficient, ongoing training in immigration law and procedure are more likely to make mistakes that will harm clients.
- Staff without training are far less likely to know how and where to look up answers to questions, and instead to rely on what someone else told them was the right thing to do.
- Clients can suffer irreparable harm, for example, deportation, based on mistakes by well-meaning but untrained staff.

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## How BIA recognition and accreditation can strengthen your program



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## Better Service to Clients



- Provide more complete and professional service
- BIA rep will receive copies of everything the Department of Homeland Security (DHS) sends to clients
- BIA rep can sign G-28s, make calls and write letters on behalf of clients
- BIA rep can represent clients at DHS interviews

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## Ensuring that agency gives good immigration advice



- **TRAINING** required for accreditation
- Training teaches agency staff which questions to ask, and when to ask questions
- Immigration applications have serious consequences
- Make sure that clients get the best possible help
- **Ongoing training** is required, ensuring that agency keeps up to date in the ever-changing world of immigration law and procedure

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## What BIA Recognition and Accreditation Are



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## Section Overview



- What is the BIA
- What recognition and accreditation permit non-attorneys to do
- What recognition is
- What accreditation is

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## What is the BIA?



- Board of Immigration Appeals
- Appeals court for immigration court cases
- Part of the Department of Justice
- Also in charge of granting agency recognition and individual accreditation to practice law

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## What recognition and accreditation allow



- Must have *recognition* for the agency, and *accreditation* for the specific individual staff members who will be doing the immigration work
- Once accredited, non-attorney agency staff may practice immigration law just as an attorney would, within the CIS or Immigration Court (Executive Office for Immigration Review = EOIR)

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## Law practice by BIA reps



- Even if state law forbids non-attorneys to practice law, federal rules prevail – federal agencies may decide who practices law in federal agencies.
- BIA reps may NEVER practice law in local, county, state, or federal courts other than immigration trial courts and at the BIA.

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## Extent of law practice by BIA reps



- Accredited rep may practice immigration law ONLY at the recognized agency that applied for her/his accreditation.
- Accredited rep may ONLY do immigration work under the auspices of that recognized agency, at the site that applied for the accreditation or another recognized site of that agency, or at CIS or EOIR.

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## What is recognition?



- BIA grants recognition only to non-profit agencies. Must be federal 501(C)(3) status.
- Agency must have recognition in order for agency staff to be accredited.
- Only recognized non-profits may apply for staff members to become accredited.

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## Criteria for recognition

- Must show that agency is:
  - Non-profit religious, charitable, or social service agency
  - Agency charges no fees or “nominal” fees
  - Agency has knowledge of, and experience with, immigration law, including maintaining an immigration resource library
- 8 CFR § 1292.2(a)

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## Duration of recognition

- Lasts indefinitely unless revoked
- No renewal necessary
- If agency changes name or address, need to let BIA know so they can update the roster of recognized agencies, which is available at <http://www.usdoj.gov/eoir/statspub/raroster.htm>

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## Recognition is SITE SPECIFIC

- If your agency has more than one physical site, and you would like to offer immigration legal services at more than one site, each site needs to apply separately for recognition, even though the sites are part of the same overall agency.

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## Accreditation

- Regulations are laid out at 8 CFR § 1292.2(d)

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## Criteria for Accreditation

- For individual staff members working at a *recognized* agency
- Agency applies on behalf of staff members
- Specific to agency – if Anna is accredited at Agency A and then leaves to work at Agency B, she would no longer be accredited and Agency B would have to apply for her (provided B was also recognized agency)
- Accredited reps may be full or part-time workers, and volunteers.

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## Two levels of accreditation

- “Partial” accreditation allows practice before the USCIS only. May do everything an attorney would do at USCIS (while working for the recognized agency).
- “Full” accreditation allows practice before USCIS, Immigration Court, and BIA (while working for the recognized agency)

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## Duration of accreditation

- Lasts for three years
- Renewed every three years; if apply for renewal at least 60 days before accreditation expires you will be allowed to continue practicing even if the BIA does not respond before expiration date.
- Accredited rep must continue to attend trainings after accreditation, in order for accreditation to be renewed
- Specific to the agency – not transferable to another agency

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## Accredited reps may supervise non-accredited staff

- If agency has accredited reps, other staff may work with them on immigration matters.
- Accredited rep must supervise the non-accredited staff, and only accredited rep may sign G-28s and accompany clients to interviews
- Non-accredited staff would be like paralegals.

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## How to Apply for Recognition and Accreditation

The nuts and bolts

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## Criteria for recognition

- 8 CFR 1292.2 (a) and (b)
- Non-profit religious, charitable, or social services agency
- Charges only “nominal” fees
- Knowledge of and experience with immigration law, including maintaining an immigration resources library

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## Recognition

- No application form beyond the form EOIR-31, two-page form available at <http://www.usdoj.gov/eoir/eoirforms/eoir31.pdf>
- Federal regulations (8 CFR § 1292.2) and BIA case law indicate what kinds of documents need to be sent to satisfy each element of the recognition requirements

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## What to include in recognition application

- EOIR-31, showing proof of service on CIS and ICE
- Cover letter
- Proof of federal 501(C)(3) non-profit status
- List of immigration resource materials (hard copy and internet)
- Fee schedule
- List of funding sources
- Organizational chart (supervision of immigration staff)
- Letters of support
- Immigration resumes/training certificates of staff with immigration knowledge/experience

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## Cover letter from agency director



- Introduce agency and the great work it does for immigrants
- Ask for recognition
- Explain how the agency meets the recognition criteria
- Introduce staff who are applying for accreditation, and explain how they meet the criteria for accreditation
- Include language about not needing to provide a “full range of services”

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## Proof of non-profit status



- Certificate of incorporation as non-profit
- By-laws
- 501(c)(3) federal non-profit status letter
- Indicate on form EOIR-31 whether agency is “religious, charitable, or social services”

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## How to show “nominal” fees



- No definition specifically, although if fees will provide more than 50% of the funding for your immigration program, recognition will be denied.
- Look at what currently recognized agencies in your area are charging
- **What to submit:** list of fees (“Fee schedule”) and list of total funding for your agency in current year.

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## List of fees



- List of fees for each service you provide
- Required part of recognition application
- Include in your fee waiver policy and at the top of the fee schedule this phrase:
- **“No one will be denied services based on an inability to pay”**

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## Statement of agency funding sources



- Bare bones list of every source of funding the parent agency received in the last year or an estimate for a new agency
- For each source, list total amount agency receives per year
- Include estimation of how much you expect immigration program would bring in per year in fees.

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## List of immigration resource materials



- Immigration and Nationality Act (INA)
- 8 CFR
- Internet access
  - DOWNLOAD MATERIALS FROM
  - [www.cliniclegal.org](http://www.cliniclegal.org)
  - [www.ilrc.org](http://www.ilrc.org)
  - etc
- Materials from immigration trainings
- Any other immigration resource materials

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## Library resources



STRONGLY recommended:

- General overview of immigration law like Kurzban's Immigration Law Sourcebook
- Other books on specific immigration topics (like family immigration, naturalization, asylum) as needed by your program

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## Organizational chart



- Chart of agency personnel, showing which positions supervise other positions
- Should indicate who will supervise the immigration staff

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## Letters of support/recommendation



- From other local agencies that know your agency's work and can attest to the good work you do and the importance of your being able to offer immigration legal services in your community
- From outside immigration attorney, if agency has relationship with one (NOTE: this is not required)

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## Nice articles about the agency and the great work it does



- If you have any, include some
- NOT NECESSARY

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## Staff immigration knowledge



- Immigration resume and training certificates of all staff with immigration knowledge and/or experience
- If you have attorneys on staff, include their resumes (not required)
- If you have relationship with outside attorneys, include letter showing that relationship (not required)

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## Where to mail original recognition application



- Mail originals to the BIA at this address:
- Ms. Angela Revis, Coordinator  
Recognition and Accreditation Program  
Executive Office for Immigration Review  
Board of Immigration Appeals  
P. O. Box 8530  
5107 Leesburg Pike, Suite 2000  
Falls Church, VA 22041

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## Copies to USCIS and ICE

- MUST send copy of complete application to local USCIS District Director
- MUST send separate copy in separate envelope with separate postage to local ICE Special-Agent-in-Charge
- Make sure to fill out "Proof of Service" on second page of EOIR-31, indicating that you have mailed these copies

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## Accreditation

For individual staff members



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## Accreditation

- 8 CFR 1292.2(d) requires that candidates for accreditation have "experience and knowledge of immigration and naturalization law and procedure" and "good moral character."
- Agency applies for accreditation – individuals may not apply on their own
- Two levels: partial and full

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## Partial accreditation: what it is

- Practice before USCIS (formerly INS)
- Permitted to everything lawyer can do before the USCIS
- Including: signing G-28s, representation at USCIS interviews
- May choose which services before USCIS rep wants to perform
- Easier to get than full accreditation
- Most people apply first for partial accreditation; may decide after several years of experience to apply for full

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## Full accreditation: what it is

- Practice before the USCIS, in Immigration Court, and before the BIA
- May act like a lawyer in court
- Need *a lot* more training and experience

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## Accreditation criteria

- Individual must work for a *recognized* agency;
- Demonstrate knowledge of and experience with, immigration law and procedure;
- Good moral character

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## Knowledge and experience

- Staff will need training on immigration law and procedure
- There is no formula for exactly how much training staff members need.
- ONGOING TRAINING is required to renew accreditation
- Work under supervision of immigration or accredited rep absolutely worth listing

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## Trainings

- Immigrant Legal Resource Center 40-hour training. BIA regards very highly. [www.ilrc.org](http://www.ilrc.org)
- AILA, NLG, others provide trainings throughout the year on wide variety of immigration topics
- CLINIC also offers trainings [www.cliniclegal.org](http://www.cliniclegal.org)
- Focus on topics that will be most relevant for the services agency wants to offer

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## Duration

- Accreditation lasts for three years
- Must re-apply every three years
- Supposed to re-apply at least 60 days before accreditation expires
- Ongoing training is required to renew accreditation
- Terminates if staff member leaves the agency – tied to the specific recognized agency

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## Good moral character

- Just need supervisor to attest to staff member's having good moral character
- No other requirements to prove this
- DHS may do criminal background check

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## What should be included in accreditation application

- Resume of staff member, listing all immigration-related experience and trainings;
- Letter(s) of recommendation from supervisor and others who know person's work well (2 letters are entirely sufficient in most cases)
- Certificates and agendas from trainings attended, if you have those.
- Proof of service on CIS and ICE
- NO FEE!!

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## Where to send

- Same address as recognition application
- Must send copies to USCIS local District Director and ICE Special-Agent-in-Charge
- Proof of service on USCIS and ICE

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## What happens next



- Agency may send in applications for recognition and accreditation at the same time – NOTE that there is no reason not to do this – if you don't the whole process will just take longer
- Must serve copies of whole packet on local USCIS district office at the same time and local ICE office; local offices have 30 days to recommend for or against.

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## What happens next



- CIS and ICE often choose not to respond.
- If CIS and/or ICE timely recommends against the recognition and/or accreditation, the agency is permitted to respond, with the original response going to the BIA, and copies served on CIS and ICE.

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## BIA decision



- BIA makes the decision – so a letter from CIS or ICE recommending against approval is not necessarily fatal.
- If the decision is a denial, BIA will state its reasons for the denial. Agency may apply again immediately or appeal the denial.
- If the decision is yes, newly accredited representative may immediately begin practicing immigration law at that agency

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