

CHAPTER FOUR

Authorization for Non-Attorneys to Practice Immigration Law

Learning Objective: *To understand Board of Immigration Appeals Recognition and Accreditation and how to apply for Agency Recognition and Staff Accreditation.*

Your agency has no attorneys on staff, you have no money to hire any, but you want to offer immigration legal services. Or your agency has been helping immigrants for years with simple immigration matters, but you've realized that what you're doing is unauthorized practice of law, and you would like to get authorization to do the work you've been doing. Or your agency has attorneys and non-attorneys on staff, and you'd like your experienced non-attorney staff to expand the range of the immigration work they do. In each of these common situations, your agency should seek recognition for the agency and accreditation for non-attorney employees so that they may practice immigration law with legal authorization. This is not a difficult process, and the process of applying is not complicated.

We will begin this chapter by explaining what is meant by "practice of law" and "representation" and what constitutes unauthorized practice of law. Many programs employ non-attorney, non-accredited staff. It is important to understand what constitutes unauthorized practice of law, and why you will need either an accredited representative or an attorney on your staff in order to offer immigration legal services.

Practice of Law

What does it mean to "practice law"? What does it mean to "represent" a client? It turns out that almost any advice you give to clients about their own particular immigration situation may be construed as "practicing immigration law." Even something as simple as handing out immigration forms may constitute practice of law.

Examples of "**Practice of Law**":

- Immigrant walks into your agency and says "I've been a refugee for three years. Now I want to apply for a green card. Which forms do I need? Can you give them to me?" A staff member hands her a packet of forms.
- Immigrant brings you a form and asks for your help filling it out and you help him figure out what is meant by the questions "date of last entry" and "current immigration status."

Immigration regulations define "practice" of law thus:

"The term "practice" means the act or acts of any person appearing in any case, either in person or through the preparation or filing of any brief or other document, paper, application, or petition on behalf of another person or client before or with the Service, or any officer of the Service, or the Board." 8 CFR § 1.1(i)

And further define "preparation" thus:

"The term "preparation," constituting practice, means the study of the facts of a case and the applicable laws, coupled with the giving of advice and auxiliary activities, including the incidental preparation of papers, but does not include the lawful functions of a notary public or service consisting solely of assistance in the completion of blank spaces on printed Service forms by one whose remuneration, if any, is nominal and who does not hold himself out as qualified in legal matters or in immigration and naturalization procedure." 8 CFR § 1.1(k)

The reason that all these seemingly innocuous and trivial activities might constitute practice of law is that they may cause an immigrant to think that she is being given advice about how to handle her immigration situation, and to rely on that advice. That can have dangerous consequences. If the immigrant above who asked you for "green card application forms" has a

conviction that makes her deportable, and she applies for permanent residence because your agency, a reputable immigrant-serving agency she trusts, gave her the forms and thus, she believes, it is fine for her to apply for residency, you have not actually served her well at all.

Examples of what is not “practice of law” in immigration matters:

- Helping someone fill out a form that he brings you, merely by filling in the blanks as he directs
- Translating documents
- Interpreting (i.e., in-person translation of real-time conversations)
- Providing general information about immigration law (for instance, about the requirements for naturalization) in a group setting in which you make it clear that you are not advising anyone about her or his individual case

Unauthorized Practice of Law (UPL) is a serious problem in immigrant communities around the country, with unscrupulous individuals claiming authorization to practice immigration law. Many immigrants have been defrauded by “immigration consultants” who demand large fees and expose them to serious immigration consequences by doing shoddy work, or filing fraudulent or frivolous applications. Such consultants, often known as “notarios,” engage regularly in unauthorized practice of law, sometimes with devastating consequences.

Unauthorized practice is an issue for well-meaning nonprofits as well. A nonprofit that practices immigration law without authorization also exposes clients to potential harm, and the agency to liability. Even workers with the best of intentions, but who lack knowledge, training, and authorization, may put clients at risk of losing immigration benefits and even deportation.

Each state regulates who may practice law in that state. Anyone who practices law without authorization may be liable under the particular state’s unauthorized practice of law statute. It is up to a particular state to enforce unauthorized practice laws. The Board of Immigration Appeals (BIA) and the Department of Homeland Security (DHS) do not enforce unauthorized practice laws. The American Bar Association has created a chart showing each state’s laws regulating UPL; note that some states have laws specifically regulating non-attorney immigration consultants:
http://www.abanet.org/publicserv/immigration/notarios_state_law_chart.pdf

Florida, for instance, specifically prohibits non-attorneys and non-accredited representatives from discussing immigration questions with clients. The only exception is translating an immigration form, “as long as questions are not asked or answered.” “The Florida Bar will not prosecute a non-lawyer for the unlicensed practice of law for the use of computer software spell-checking, grammar-checking, or proofreading utilities to correct spelling or grammatical errors where the spelling or grammatical error is so obvious that the correction does not require discussions with the customer. This policy does not prohibit the Florida Bar from investigating the activities of a non-lawyer to determine what services are being provided.”¹

Unauthorized practice may also expose an agency to lawsuits filed by clients who have been harmed by the agency. An inexperienced staff member without adequate immigration law training and skills may inadvertently subject a client to denial of immigration benefits and even deportation. An agency that is engaged in unauthorized practice of law will not be insured for legal malpractice, and is more likely to make mistakes that could lead to serious consequences for clients.

In order to protect your clients and your agency, it is important to ensure that your agency does not engage in unauthorized practice of law. If you have been doing this, the good news is that there is a way for non-attorneys to practice law with authorization; it is open to nonprofit organizations. The requirements are laid out below.

¹<http://www3.flabar.org/DIVCOM/JN/JNNews01.nsf/76d28aa8f2ee03e185256aa9005d8d9a/3fe84c2d97b75380852572e50050124a?OpenDocument>

Recognition and Accreditation by the Board of Immigration Appeals

“Recognition” of a nonprofit immigration legal services agency and “accreditation” of some of its staff members by the BIA allow non-attorneys working at that nonprofit to practice immigration law. Accredited representatives working at recognized agencies may represent clients before DHS and/or the Executive Office of Immigration Review (EOIR) to the same extent as attorneys. Recognition and accreditation are enormously important in the nonprofit immigration field since the majority of nonprofit immigration legal service providers are staffed by accredited representatives. BIA recognition and accreditation also provide assurance to the agency’s clients that it has experience and knowledge in the area of immigration law.

“**Recognition**” is granted to a nonprofit charitable, religious, or social services agency. In order to be granted recognition, an agency must have “knowledge, information and experience” with immigration law and procedure and charge only “nominal” fees if it charges clients any fees. Recognition of an agency does not expire, and need not be renewed.

Once an agency is recognized, it may apply for individual staff members to be **accredited**. Accreditation allows non-attorneys to practice immigration law under the auspices of the recognized agency for which they work. There are two types of accreditation, known as “partial” and “full.” **Partial accreditation** allows for practice before Department of Homeland Security only, while **full accreditation** allows for practice also before the Immigration Court and BIA.

The rules governing recognition and accreditation are found at 8 CFR § 292.2, and in a handful of published BIA decisions. The regulations themselves are extremely brief, and the few published BIA decisions do not address some of the important issues that arise in recognition and accreditation applications. It is a very good idea when applying for recognition and accreditation to talk to other programs whose applications were recently approved or to practitioners with experience handling these applications.

Pros and Cons of Recognition and Accreditation

Pros

It is free.
Recognition need not be renewed.
It is a lower cost staffing option than attorneys.
The agency is not engaging in unauthorized practice of law.

The agency can provide better service to clients: an accredited representative may file a G-28 “Notice of Entry of Appearance” with applications; this form, which generally only attorneys and accredited representatives may file, notifies USCIS that the client has a representative. USCIS must then send the representative a copy of all correspondence it sends to the client. This is tremendously helpful to clients. The G-28 also allows the accredited representative to make direct inquiries to USCIS on behalf of clients. An accredited representative may also represent clients at DHS/EOIR interviews and hearings.

Cons

“Nominal fee” caps. Recognition and accreditation subjects the agency to the BIA’s “nominal fee” caps. An agency that employs only attorneys and paralegal staff would not be subject to these fee restrictions. (Note that we discuss the “nominal” fee requirement in detail below.)

BIA Recognition

Recognition Requirements

The requirements for agency recognition, which derive from 8 CFR § 292.2 and from the seven published BIA decisions on recognition and accreditation, are as follows:

- Must be nonprofit religious, charitable, or social services agency;
- Any fees the agency charges for immigration work may only be “nominal”;
- Must have knowledge, information, and experience in immigration and nationality law and procedure; and
- Must have independent existence apart from its proposed representative.

Nonprofit Religious, Charitable or Social Services Agency: You will need to show that your agency has been legally incorporated as a nonprofit, and that you do some kind of religious, charitable and/or social services work.

Which Fees are “Nominal”: There is no formal definition of what the regulations mean by “nominal” fees. The BIA will look at the application to determine whether or not the agency has means to support its immigration work apart from client fees. If your program’s budget does not show some significant funding sources beyond client fees, the BIA is likely to determine that your fees are not “nominal.” The BIA also appears to consider the proposed fees in and of themselves. To determine if your fees are “nominal,” it is best to compare them to fees the BIA has recently approved.

Knowledge, Information and Experience with Immigration Law and Procedure: The agency must have someone on staff that has knowledge and experience with immigration law, or have some other source of knowledge and information. This could be the immigration attorney on staff or an immigration attorney contracted on a pro bono or consultant basis by the agency or the candidate applying for full or partial accreditation. Partial accreditation allows individuals to practice before DHS where as full accreditation allows individuals to practice before DHS *and* EOIR. A more thorough discussion about the two levels of accreditation will be discussed in more detail later in this chapter. If the candidate is applying for partial accreditation, then the agency must have access to the expertise of an immigration attorney or fully accredited representative on staff or from another agency that has agreed to provide the services

In *Matter of EAC, Inc.*, 24 I&N Dec. 556 (BIA 2008), the BIA articulated that an agency is considered to have “at its disposal adequate knowledge... and experience,” if it has one of the following: (1) an immigration attorney or fully accredited representative on staff; (2) an off-site immigration attorney or fully accredited representative who provides consultation whether on a pro bono or paid basis; or (3) a partially accredited representative with “access to additional expertise” from an outside immigration attorney or fully accredited representative whether in person, by telephone or via the internet.

If your agency has only partially accredited representative(s), you should have no problems showing that you have access to additional expertise outside your agency as a CLINIC affiliate and subscriber. The same is true for members of other national networks with immigration attorneys who provide technical support. Other stand-alone programs without such attorney technical support will not, as it appears, be granted recognition.

Independent Existence: This requirement stems from one of the seven published BIA decisions on recognition and accreditation, *Matter of Baptist Educational Center*, 20 I &N Dec. 723 (BIA 1993). In that case, the Board found that the agency in question was not an independent nonprofit, but merely a means for a law school graduate who could not pass the bar to offer immigration services for his own personal profit. The purported organization, among other problems, had no bank account of its own, operated out of the home of its accredited representative, and conducted no business other than his own immigration counseling.

Duration of Recognition

Duration: Recognition does not expire. Once your agency is recognized, you need never renew that recognition.

Withdrawal of Recognition: The BIA may withdraw an agency’s recognition if it no longer meets the requirements for recognition. The procedures for withdrawal are set forth at 8 CFR § 292.2(c).

Reporting Changes of Address: A recognized agency must promptly inform the BIA of any changes of address, phone number, or name. This is in your agency’s best interest, as it is to your benefit to have correct contact information on the BIA recognition roster.

Separate Offices Need Separate Recognition

If your agency has more than one physical office, and each office wants recognition, you will need to submit a separate application for each office. Recognition of the “parent” agency does not confer recognition on separate satellite offices. This requirement stems from a BIA decision, *Matter of Florida Rural Legal Services, Inc.*, Int. Dec. 3196 (BIA 1993).

However, some agencies hold off-site clinics or do intake or outreach off-site from time to time. As long as the bulk of the legal work is being done back at the recognized office, it should not be necessary to apply for recognition for these off-site locations. Separate recognition is needed where an agency has actual offices in different locations and wishes to do legal work at each of these separate offices. This often comes up when a parent agency has “sub-offices.”

How to Tell if an Agency is Recognized: The BIA maintains rosters of all the recognized agencies and accredited representatives; they are available on their website at <http://www.usdoj.gov/eoir/statspub/raroster.htm>.

How to Apply for Recognition

Please see attached “Sample BIA Recognition Request” on page 143.

A request for recognition should contain the following:

- Form EOIR-31;
- Cover letter explaining what the agency does and why it merits recognition;
- Any documentation showing the agency is a nonprofit religious, charitable or social services agency such as: agency charter, constitution, articles of incorporation, by-laws and/or 501(c)(3) letter showing tax exempt nonprofit status;
- List of agency’s immigration library resources;
- List of fees for immigration services;
- Brief list of agency’s funding sources and budget showing income and expenses;
- Organizational chart, showing supervision of immigration staff;
- Caseload of staff;
- Resumes of any staff with immigration training and/or experience; including any supervision or technical assistance provided by immigration attorney or fully accredited representative on staff, as a consultant or pro-bono basis including information about their immigration experience
- Letters of recommendation; and
- Local newspaper articles showcasing agency’s great work (optional)

We will cover each of these elements in more detail.

EOIR-31

EOIR-31 is the form you use to indicate that your program is applying for recognition. The form also asks you to indicate whether your agency is a religious, charitable, social service, or other type of nonprofit. This form is available on the EOIR website at <http://www.usdoj.gov/eoir/eoirforms/instru31.htm>. Note that the form lists supporting documentation you must provide: proof of nonprofit status; list of library resources; list of fees and funding sources; organizational diagram; resumes and training certificates for those with immigration experiences.

Cover Letter Explaining What the Agency Does and Why it Merits Recognition

Use the cover letter to introduce your agency, explain the work it does, request recognition (and accreditation if you are requesting that for staff) and show how the program meets the criteria for recognition. Highlight the immigrant-related programs at your agency. Describe the need for low-cost, high-quality services in your community that is leading your program to seek recognition. Sum up for the reader the reasons your agency merits recognition.

Important note: In the past few years, BIA has denied recognition to a number of agencies for failing to provide a “full range of services,” including removal defenses. Matter of EAC, Inc., 24 I&N Dec 556 (BIA 2008), Interim Decision 3614, clarified the issue acknowledging that recognized agencies may in fact provide a limited menu of immigration legal services. BIA notes, however, that in such cases agencies must be able to “discern” when clients need more help than an agency can provide, and must have a plan to refer such clients elsewhere.

If your agency is planning to provide limited immigration services indicate the types of cases it plans to take and reference the EAC decision above and indicate clearly on the cover letter how your agency has at its disposal a broad knowledge of immigration law and procedure to be able to discern the entire scope of client’s immigration needs. This is usually shown through staff member’s attendance in a range of immigration law trainings, experience and or access to immigration attorneys and or fully accredited representatives in and or outside the agency.

Additionally, it is important to note on the cover letter the referral plan your agency has in place if it intends to provide limited immigration services. It is important you establish relationships with outside immigration services providers who offer the immigration service(s) your agency does not and make these referral arrangements with them prior to applying for recognition.

Proof of Nonprofit Status

- *Agency charter;*
- *Articles of incorporation;*
- *Agency by-laws; and or*
- *501(c)(3) letter*

Include a copy of some or all of these documents. If you are part of a parent agency that has a different name from your program, make sure that you include paperwork that indicates that your program is part of the parent agency, so the BIA will see that these papers do in fact relate to your program. If your agency's name has changed since any of these documents were created, make sure to include copies of the legal documentation showing the name change.

Library Resources

The EOIR-31 form requires a list of immigration legal library resources with the recognition request. This requirement may be satisfied by access to these materials via the internet instead of a hard copy. Make a list of all the library resources at your agency. At a minimum, you should have access to current editions of:

- The Immigration and Nationality Act (known as the INA)
- Volume 8 of the Code of Federal Regulations (known as 8 CFR)

These two resources contain almost all U.S. immigration laws and regulations. It is possible to access both of these for free via the internet through the U.S. Citizenship and Immigration Services (USCIS) website, www.uscis.gov. However, **it is an extremely good idea to budget for paper copies every year.** It is much easier to read and use the INA and 8 CFR on paper. Staff members are more likely to consult paper copies, and it is EXTREMELY important that staff who are practicing immigration law feel comfortable consulting the INA and 8 CFR.

It is **extremely important to have a general treatise on immigration law**; the most widely used one is *Kurzban's Immigration Law Sourcebook*, but there are others. **It is very difficult to practice immigration law competently without access to secondary research materials.** See Chapter Two for information on where to buy *Kurzban's*. There are many other secondary resource books on immigration law; see Chapter Two for a more complete discussion of other books you might want in your library.

In addition to the INA, 8 CFR, and *Kurzban's*, or any other general treatises, list all other immigration legal materials in the agency. Include manuals from any immigration trainings your staff have attended.

There is a growing body of immigration legal materials available on the internet. Make sure to indicate that you have internet access, and list any immigration-related websites that you use and any immigration-related listservs you belong to.

Fee Schedule

The EOIR-31 requires agencies to "attach a fee schedule, if applicable," and cites to *Matter of American Paralegal Academy, Inc.*, 19 I&N Dec. 386 (BIA 1986).

List all the immigration services your agency provides or plans to provide, and what fees you charge or plan to charge, if any. Many agencies list their fees by USCIS application number, although it's not necessary to do this; what's important is to be clear about exactly what the fee is being charged for. See Chapter Six for a complete discussion of setting fees.

The BIA requires that a recognized agency charge only "nominal" fees. The regulations do not define what a "nominal" fee is, and the few published decisions by the BIA on agency recognition do not shed much light on this issue. *American Paralegal Academy* says that the requirement of "nominal fees was not intended as a means through which an organization could fund itself," and that "the fact that an applicant's fees may be substantially less than those charged by law firms is not a proper standard for consideration since such organizations are not law firms." If your budget shows immigration fees carrying the weight of the program, it is likely that the BIA will find that the fees are not nominal.

Given the paucity of published guidance from the BIA on which fees are "nominal," most agencies turn to other agencies whose applications have been approved for guidance on fees. If your agency is part of a national network, contact your national office, as well as other members of the network, to see what their experiences with fees have been. If you are not part of a network, contact recognized agencies in your city, state, or region to see what fees the BIA approved for them. Remember, however, that the BIA will be looking at your fees not only on their own, but in the context of what percentage of your agency's funding derives from client fees. The smaller the percentage of funding that derives from immigration service fees, the better.

If your agency has a policy of providing free services to those who are unable to pay, clearly state this on the fee schedule. You may write at the top of the fee list "No one will be denied services based on an inability to pay." Anecdotal evidence suggests that the BIA responds favorably to this.

List of Funding Sources and Budget

The EOIR-31 requires agencies to "attach . . . a detailed statement of the organization's sources and amounts of funding other than dues or fees," and cites to *Matter of American Paralegal Academy, Inc.*, 19 I&N Dec. 386 (BIA 1986).

Put together a budget which includes a list of all your agency's sources of funding, income and expense and how much you expect to receive from each source in the calendar year. Note that you are not required to—and there is generally no need to—submit any further financial reports from the agency. The purpose of this list is to demonstrate that your agency is not being funded primarily through immigration client fees. You will therefore need to be able to show that your agency has funding sources independent of client fees.

When you create your list, make sure to write out all names; do not assume that the reader of your application knows what any acronym is. Clearly state each source of funding, and list how much money you expect to receive from that source this year.

Organizational Chart

You must include "a description and/or diagram of the organizational structure, showing the supervision of staff members." This requirement is listed on the EOIR-31 form. *Matter of Lutheran Ministries of Florida*, Int. Dec. 3132 (BIA 1990) makes clear that an agency must clearly indicate in its application who staffs the agency, and who supervises staff.

Caseload of Staff

Include an explanation of the types of cases the staff is taking or will take on. This information could be included in the cover letter requesting for agency recognition.

Documentation of Immigration Knowledge and Experience

As mentioned previously, BIA requires that agencies have access to an immigration attorney or fully accredited representative on staff or as a consultant or on a pro bono basis that is formally arranged and documented. If the agency has only partial accredited representative(s), then agency must have access to an immigration attorney or fully accredited representative in person, over the telephone or internet.

The EOIR-31 form directs agencies requesting recognition to attach “resumes and any immigration training certificates for staff members. . . Any supervision or assistance provided by attorneys should be documented, including proof of the immigration experience of the attorneys.” This includes any arrangement to consult with other recognized organizations and attorneys should also be documented.

Include immigration resumes for all staff with immigration knowledge and experience. If you have one or more immigration attorneys on staff, include their resumes. If you have staff who is applying for accreditation concurrently with your recognition application, include a second copy of their resumes and training certificates with the recognition application. If you have staff with immigration knowledge and experience applying for accreditation at a later time, include their immigration resumes as well. However, BIA will not recognize an agency if it does not have at least a partial accredited representative with access to technical support. In the past, agencies without immigration attorneys on staff could apply for recognition first and then apply for accreditation of staff members later. However, this is no longer possible. Agencies without immigration attorneys on staff will need to submit their recognition and accreditation application concurrently.

If the agency has only partially accredited representative(s), make sure you indicate your technical support in the application and provide documentation such as a written confirmation showing such arrangement. If you are part of a national network, you may have access to immigration attorneys through your national parent agency; be sure to document this with a letter from the attorney. If you are not part of a network—and even if you are—you may seek a consulting relationship with a local immigration attorney.

Letters of Recommendation

It is an excellent idea to get several letters of recommendation from the local community that show how well-regarded your agency is, and how serious the need for low-cost, high-quality immigration legal services is. Letters of recommendation may come from local government officials, other agencies offering legal or social services to immigrants, local clergy, schools, or any other programs that know your agency’s work and can attest to the need for more immigration legal services in the community. Occasionally programs are able to get a letter of support from the local USCIS office—that does not hurt, although it is certainly not necessary.

Make sure that your recommender knows your agency’s work and can attest to what a good job you do, and that the writer understands how badly nonprofit immigration legal services are needed in your community. As with any recommendation letter, specific details about your agency make a letter much more valuable. The most valuable letter of recommendation will attest to your agency’s knowledge of and experience with immigration law.

Newspaper Articles

If you have any clippings from local papers that talk about the great work your agency has done with immigrants, you can include one or two. Note that this is absolutely NOT REQUIRED.

Accreditation

Once an agency is recognized, it may request that individual staff members be “accredited.” An agency may request recognition and staff accreditation at the same time; if you are seeking both, it is generally best to request them at the same

time, in order to minimize time spent waiting for decisions. There are two levels of accreditation, often referred to as “partial” and “full.”

Partial Accreditation

Partial accreditation allows the representative to practice before USCIS part of DHS. This includes representing clients at USCIS interviews (e.g., adjustment of status, naturalization, and even asylum interviews); signing G-28s; speaking to USCIS officers on a client’s behalf without the client being present; signing applications as the client’s representative; and writing letters and motions to USCIS. The vast majority of accredited representatives are partially accredited. Unless you have extensive experience in immigration law, including knowledge and experience with removal proceedings, it is best to begin by applying for partial accreditation.

Full Accreditation

Full accreditation allows the representative to practice before USCIS and the Executive Office for Immigration Review, EOIR (which includes both the Immigration Court and the BIA). Fully accredited representatives may represent immigrants in Immigration Court proceedings and BIA appeals, to the same extent that attorneys do. Full accreditation does not allow a non-attorney to practice in any other courts, including state and federal courts.

Training Requirements

Just as with fees, there are no specific requirements about how many hours of training and/or experience a candidate for accreditation should have. Recommendations about how much training and experience are needed are based on what the BIA has approved in the past, as well as how much training an agency would want for its staff, to ensure that they can do adequate work.

Training and Experience: Partial Accreditation

A candidate for partial accreditation who has had no prior experience with immigration law should plan to attend several immigration trainings before applying. The BIA requires that accredited representatives gain a broad knowledge of immigration law even if the agency is offering limited immigration services. Accredited representatives must know enough immigration law to discern when immigrants have complex issues they are not themselves equipped to handle so that they may refer such immigrants to other legal services providers.

It is a good idea to attend an overview or survey course that introduces general immigration law, family based immigration law, naturalization and a course covering inadmissibility and deportability issues. After that, candidates should decide which areas of immigration law they want to concentrate in and make sure they attend trainings on those. Staff of a refugee resettlement agency would likely want training on asylee and refugee immigration issues, while staff of a domestic violence agency may want training on immigration relief for survivors of domestic violence other crimes.

Another option for gaining knowledge and experience is learning from actual practitioners. Your staff may want to consider volunteering at local immigration law office or another immigration law nonprofit. Some agencies set up “job shadowing” arrangements or internships with other nonprofits so that their staff can learn immigration work through practical experience. For staff without previous experience working in a law office, a combination of formal training with job shadowing might be an ideal way to prepare for accreditation.

Training and Experience: Full Accreditation

Full accreditation requires greater knowledge. Fully accredited representatives are expected at the minimum to be able to: advocate a client’s position at a hearing in front of an Immigration Judge; present documentary evidence; conduct questioning of witnesses; prepare motions and briefs; and present oral arguments before the BIA. This is a high standard which requires extensive training and experience in immigration law. Applicants for full accreditation will want to observe and, if possible, assist experienced practitioners with Immigration Court hearings before they apply.

Duration

Accreditation lasts for three years. Accredited representatives **must apply to renew** their accreditation every three years. If you apply for renewal 60 days or more before your accreditation expires, your accreditation will remain valid pending the BIA's decision on the renewal application. Make sure to apply for renewal at least 60 days in advance so that you don't have a gap in accreditation!

Accreditation Doesn't Travel . . .

To another agency. If you are accredited at recognized Agency A, and you get a new job at recognized Agency B, your accreditation does not accompany you. Agency B will need to apply for your accreditation at Agency B. Because you were previously accredited at Agency A, Agency B may apply for you as soon as you start working there.

Accreditation Allows Practice Only At the Agency that Applied for You

An accredited representative may only practice immigration law while working at the recognized agency that applied for her or his accreditation. He or she may not practice as an accredited representative concurrently at any other agency unless that agency has also applied for and been granted her or his accreditation. It is possible for a representative to work part-time at one recognized agency and part-time at another and to be accredited at both. Agencies with more than one physical site sometimes get all their sites recognized and have their accredited representative make visits to each site; such a representative would need to be accredited only at one site, and would be able to work for the agency at its other recognized sites.

Accreditation Requirements

What to include in an accreditation request:

- Cover letter requesting accreditation
- Immigration resume of the applicant
- Certificates and/or agendas from immigration trainings
- Letter(s) of recommendation
- Certificates of service on USCIS and Immigration and Customs Enforcement (ICE)

Cover Letter

If you are sending an accreditation request separately from a recognition request, make sure to include a cover letter that explains exactly what (whether partial or full accreditation) and who your request is for, and how your candidate(s) meet the requirements for that level of accreditation.

Immigration Resume and Proof of Immigration-Related Trainings

Each candidate for accreditation should put together a resume that lists all immigration-related work and educational experience. List all jobs related to immigration or immigrants. If you have done immigration work, be specific about what it was. If you were working under the supervision of an attorney or an accredited representative, be sure to note that. It may or may not be helpful to include non-immigration-related work experience; consider how relevant it might be to doing immigration legal work.

List all your language capabilities. List any volunteer or community work you have done that is related to immigrants or immigration.

Include all immigration-related trainings you have attended. Make sure to include how long each training was (one day? one week?); the dates you attended; the subject of the training and topics covered; and the full name of the organization that ran

the training. If you have certificates from your trainings, attach copies. If you have agendas from trainings, you may attach copies of those as well. List any immigration-related webinars you have attended.

Letters of Recommendation

Your immigration resume, including all your training and experience, should demonstrate that you have knowledge and experience with immigration law. Your letter(s) of recommendation may also demonstrate your knowledge and experience; the letter(s) should also indicate that you have good moral character, the second requirement for accreditation.

Each applicant's supervisor should write a letter of recommendation describing how the writer knows the applicant; her knowledge and experience of immigration law; and her good moral character. The requirement that a candidate for accreditation have good moral character may be satisfied this way.

You may want to obtain another letter of recommendation for the applicant, from someone else who knows her work and can attest to her fitness to be an accredited representative, and her good moral character. There is generally no need to include more than two letters of recommendation.

Certificates of Service on USCIS and ICE

Remember that if you are filing an accreditation request separately from a recognition request, you will need to serve a copy on your local USCIS District Director and ICE local Chief Counsel who have jurisdiction over the area which your agency is located, just as you would for a recognition request. You will need to include in the original packet to the BIA Certificates of Service that show who sent these requests, on what date, and what method he or she used to send them.

Renewal

If you are planning to renew your accreditation, it is important that you continually update your immigration knowledge and experience. Consider attending immigration law trainings semi-annually or annually, listen to webinars, and or work on immigration cases to gain practical experience. When it is time to renew your accreditation, BIA requires you to submit the same type of documentation you submitted with your initial accreditation application. This includes the cover letter requesting to renew accreditation, updated resume indicating your immigration law and trainings attended to date, certificates and or agendas of the trainings and letters of recommendations. You will also need to serve a copy of your application to USCIS local district director and to the Immigration and Customs Enforcement (ICE) local Chief Counsel.

A Final Note on BIA Recognition and Accreditation Requirements

The regulations and BIA published decisions on recognition and accreditation give little guidance and direction about recognition and accreditation and the process of applying for them. Many of the recommendations in the sections above are drawn from practical experience. If you have questions about what to include in your application or how to put it together, consult with someone who has experience with these applications.

Finally: this is not a difficult process, and the process of applying is not complicated. The most time and resource-consuming part of the process is getting your staff trained. Once your staff have enough training and experience, don't let concerns about the difficulty of the application process slow you down. Hundreds and hundreds of other agencies of all sizes and in all 50 states have already applied for and been granted recognition and accreditation.

Where to Send Requests

Mail the original request packet to the BIA. The current, correct address to which to send the application is listed on the EOIR-31 form.

Send one copy each to your local USCIS District Director and ICE local Chief Counsel. The CIS and ICE addresses can be found at:

- USCIS: https://egov.uscis.gov/crisgwi/go?action=offices.type&OfficeLocator.office_type=LO
- ICE: http://www.ice.gov/about/district_offices.htm

Make sure that you fill out and sign the second page of the EOIR-31. This is the “Certificate of Service” that demonstrates to the BIA that you “served” copies on USCIS and ICE.

It is a very good idea to send your requests by certified mail, return receipt requested.

BIA Decision Process

USCIS and ICE will have 30 days to respond to your request(s). They may make a recommendation to the BIA either in favor of, or opposed to, your request. They may also ask for additional time to investigate your request. Note that in most cases USCIS and ICE choose not to comment at all on recognition and accreditation requests.

If, however, they do recommend against recognition and/or accreditation, they must send a copy of their recommendation to you; you will then have 30 days to submit a rebuttal letter to the BIA (again, serving copies on USCIS and ICE). The BIA is not bound by USCIS’s or ICE’s recommendation. The BIA will make its own decisions—so if you are one of the few agencies that gets a negative recommendation from USCIS or ICE, remember that their recommendation does not mean an automatic denial by the BIA.

The BIA will then review your application(s). Decisions on recognition and accreditation applications can take anywhere from two months to as much as a year, although they usually take three to six months. If it has been much longer than that and you have not received a decision, you may want to call the BIA Recognition and Accreditation Coordinator to ensure that your application has not been lost.

After reviewing your application, the BIA will send you a written decision. If the decision is favorable, your recognition and/or accreditation begin as of the date of the decision. Recognition never expires, while accreditation must be renewed every three years.

If the decision is unfavorable, you have two options. If you believe the BIA’s decision was incorrect based on the requirements for recognition and accreditation and your agency’s demonstrated qualifications, you may submit a Motion to Reopen the decision. You must submit this motion within 30 days of the decision. Your motion should lay out exactly what you think the flaws were in the BIA’s reasoning, and why your agency/staff does in fact merit recognition and/or accreditation.

You may also re-apply for recognition and accreditation at any time after a denial. If you do so, make sure to address the reasons for the denial in your new application.