

June 21, 2011

Mariela Melero
Chief, Office of Public Engagement
U.S. Citizenship and Immigration Services (USCIS)
VIA E-MAIL: opefeedback@uscis.dhs.gov

RE: Comments on Policy Memorandum; The Role of USCIS District Directors in the Board of Immigration Appeals Recognition and Accreditation Process; Revisions to the *Adjudicator's Field Manual*, New Chapter 12.6, AFM Update AD 11-34

Dear Ms. Melero:

The Catholic Legal Immigration Network, Inc. (CLINIC) submits these comments in response to the request for public comments by the U.S. Citizenship and Immigration Services (USCIS) on Policy Memorandum, PM-602-0039, The Role of USCIS District Directors in the Board of Immigration Appeals Recognition and Accreditation Process; Revisions to the Adjudicator's Field Manual, New Chapter 12.6, AFM Update AD 11-34.

CLINIC supports a national network of community-based legal immigration services programs. The network includes 200 affiliated immigration programs, which operate out of 290 offices in 47 states. CLINIC's network employs roughly 1,200 attorneys and accredited representatives who, in turn, serve 600,000 low income immigrants each year. CLINIC and its member agencies serve family, humanitarian, and employment-based applicants for free or on a sliding-scale basis.

CLINIC appreciates the concern USCIS has demonstrated to curb the unauthorized practice of law by issuing this policy memorandum. CLINIC commends USCIS for its efforts to establish a recognition and accreditation process that is reliable and efficient. In order to aid in this effort, we respectfully submit the following comments:

Impact of USCIS and ICE Involvement on Recognition and Accreditation Process

An organization seeking recognition and an individual seeking accreditation before the BIA must demonstrate that it has satisfied the requisite criteria and then serve a copy of Form EOIR-31 on the local District Director for USCIS and the local Chief Counsel for ICE. Thereafter, USCIS and ICE have thirty days to request more time in which to conduct an investigation, or submit to the BIA recommendation for approval or disapproval. Thus, the criteria to become a recognized organization and an accredited representative is clearly set out in the policy memorandum, however the timing of the application process once it is reviewed by USCIS and ICE is ambiguous and should be clarified.

It is important that applications for BIA recognition and accreditation be adjudicated in a timely and efficient manner. Such applications should be encouraged by USCIS and other agencies, as

the availability of well-trained low-cost practitioners is vital to meeting the needs of the immigrant community in the United States and to combating the unauthorized practice of law. Despite the clear examples of evidence to demonstrate non-profit status and BIA decisions to navigate the accreditation process, this policy memorandum is silent on what occurs if the District Director or the Chief Counsel does not respond to the BIA with either a request for a specified period of time to conduct an investigation or a recommendation for approval or disapproval even after an extension has been granted.

The memorandum indicates that there are instances where USCIS does not participate in the accreditation process, but should clearly state that non-participation can in fact be considered an implicit, positive recommendation of the application.

Moreover, the memorandum indicates that applicants can assist in the timely adjudication of an application by responding to USCIS's further inquiries in a timely manner. However, no matter how responsive an applicant is, a timeline must be set out for the government agencies' final responses to the BIA. It seems impossible that the USCIS and ICE responses can be as timely as is suggested when FDNS, IBIS, and other agencies are involved in the consideration of an application.

CLINIC recommends delineating a reasonable time frame for USCIS and ICE to conduct any investigation and require the agency requesting the extension to explain the reason for the request. The BIA should also establish a formal set of standards for requesting an extension of time to consider an application.

The requirement that USCIS and ICE district offices provide a recommendation in a timely manner should be followed by an explanation of a time frame in which a recommendation will be considered "timely." We suggest that USCIS and ICE's consideration should take no longer than 60 days in total, which will include the agencies' one-time thirty day extension in addition to the initial thirty day allotment.

If USCIS or ICE is permitted to delay the BIA's decision arbitrarily, then the accreditation process can be neither timely nor reliable.

Recognition and Accreditation Point of Contact (POC) and Team Training

While the memorandum explains the composition of the recognition and accreditation POC or team in each district office, the memorandum does not illustrate how the POC or team will be trained. If the goal is to provide a reliable and uniform process for accreditation, absent training this goal will not be met. Although the "USCIS Checklist: Request for BIA Recognition and Accreditation" and the "USCIS Worksheet: Requests for Recognition and Accreditation Processing and Procedures" are a useful resource, their use is not required by this memorandum nor by the regulations. However, the mandatory use of these tools is not the solution as they are an inadequate substitute for specialized training in evaluating whether an organization or individual warrants accreditation. For instance, guidance as to when a POC or team member must request additional information, whether personal interviews with organization officials should be requested, and what the scope of the interviews should be, is not provided by either the

checklist or the worksheet. A purpose of the investigation should not include testing the accreditation applicant's knowledge of immigration law. This should be left to the BIA's realm of decision-making. Knowledge of the law at the point of application will vary considerably between someone who has practiced prior, particularly under an attorney's supervision, compared to someone without experience but is pursuing on-going training and outside technical support per Matter of EAC, Inc., 24 I&N Dec. 556 (BIA 2008), Interim Decision 3614, and Matter of EAC, Inc., 24 I&N Dec. 563 (BIA 2008), Interim Decision 3615. These questions should be addressed in a training format that will result in decreasing or eliminating the role of subjective discretion in determining whether an organization should be recognized or individual should be accredited. As part of the training, USCIS POCs should be exposed to the character of nonprofit immigration programs and the roles of staff seeking accreditation. To that end, CLINIC is willing to participate in USCIS training based on its extensive experience working with hundreds of nonprofits in and outside its network seeking recognition and accreditation. CLINIC and other national nonprofits specializing in immigration law have assisted USCIS in the past in training its field staff on issues that intersect with community based organizations.

Finally, the relevant evidence recommended by this memorandum for determining the qualifications of an individual -- a compensation agreement with the recognized organization -- is not required by the regulations and not the best tool for determining fraud. This recommendation should be removed.

CLINIC commends USCIS's commitment to eliminating the unauthorized practice of immigration law and urges USCIS to seriously consider these recommendations. Thank you for consideration of our comments.

Sincerely,

A handwritten signature in dark ink, appearing to read "Maria M. Odom". The signature is fluid and cursive, with a long horizontal stroke at the end.

Maria M. Odom
Executive Director
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