

BIA Issues Two Decisions on Recognition and Accreditation

By Jennie Guilfoyle

On July 3, 2008, the Board of Immigration Appeals (BIA) issued two precedent decisions on recognition and accreditation: 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 represent a significant addition to the case law on recognition and accreditation. Prior to this, there were only five published decisions on this subject. The new decisions add more specifics to the Board's requirements for recognition and accreditation – most importantly seeming to create a requirement for technical support by an attorney or fully accredited representative – while leaving unanswered the important question of what constitutes a "nominal" fee.

Interim Decision 3614 ("EAC decision 3614") requires recognized agencies to have access to the expertise of an immigration attorney or fully accredited representative, who may either work for the agency or agree to a consulting relationship with the agency. The decision also eases requirements for immigration library materials, noting that Internet access is sufficient. The two decisions require that partially accredited representatives must have "broad" knowledge of immigration law, sufficient to recognize issues they are not equipped to handle themselves, as well as access to expert support. Further, an agency staffed only by partially accredited representatives must have a plan to refer clients it cannot help.

Technical Legal Support. EAC decision 3614 lays out a requirement – never before articulated in a precedent decision – for technical legal support by an attorney or fully accredited representative. In order for the Board to consider that an agency has "at its disposal adequate knowledge...and experience," it must have 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" – the expertise of an outside immigration attorney or fully accredited representative. The access need not be in person; it may be by telephone or Internet.

CLINIC affiliates and subscribers, and affiliates of other national networks with attorneys who provide technical support, such as the Lutheran Immigrant and Refugee Service, the International Rescue Committee, and programs serving survivors of domestic violence with funding from the Office of Violence Against Women should be able to meet this requirement. The Board has already recognized many agencies that are part of such networks and have only partially accredited representatives on staff; and apparently it will continue to do so. On the other hand, stand-alone programs without such attorney technical support will not, it appears, be granted recognition.

The Board also makes clear in the EAC recognition decision that agencies may not be recognized without at least a partially accredited representative with access to technical support on staff. Agencies may apply concurrently for recognition and staff accreditation, but agencies without attorneys on staff should not apply solely for recognition. In the past, agencies have

applied for recognition and later for partial accreditation of staff members, but this is no longer possible for agencies without attorneys on staff.

Library Resources. The Board notes that agencies are required at a minimum to have access to up-to-date copies of the Immigration and Nationality Act, the federal immigration regulations (8 CFR), as well as the Board's precedent decisions. Acknowledging that "access to adequate information may now be shown via electronic or Internet access to immigration legal resources," the Board indicates that internet access will now satisfy the library requirement. The Board notes with approval the specific websites EAC had listed in its application; other applicants would be well served by listing the immigration websites it relies on.

While the decision implies that Internet access alone should be sufficient for the Board to grant recognition, CLINIC strongly recommends that agencies regularly purchase at least one general treatise on immigration law, such as Kurzban's Immigration Law Sourcebook, as well as treatises on the agency's specific area(s) of representation, such as family-based immigration and naturalization. CLINIC also recommends annually buying bound copies of the Immigration and Nationality Act and 8 CFR whenever possible, as hard copies are much easier to read and use.

"Full Range of Services." In the past few years the Board has denied recognition to a number of agencies for failing to provide a "full range of services," including removal defense. EAC decision 3614 appears to address this issue, acknowledging that recognized agencies may in fact provide a limited menu of immigration legal services. The Board 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.

Purpose of Recognition. EAC Decision 3614 also discusses the purpose of recognition and accreditation: to provide competent immigration legal help to low-income immigrants. The Board notes that it will only recognize agencies that provide direct immigration representation to individuals; it will not recognize agencies that merely provide "aid, education, and other services" to immigrants. In both decisions, the Board appears to want to ensure that recognized agencies provide "knowledgeable" representation.

Documenting the Recognition Application. In EAC Decision 3614, the Board specifies certain documents that it will look for in recognition applications. These are:

1. Library resources. This requirement may be satisfied through Internet access. If you access the INA and 8 CFR through the Internet, make sure to clearly state that in your application. List other immigration-related websites you use. One useful website to list is the Immigration Advocates Network, www.immigrationadvocates.org, a free resource for nonprofit immigration legal providers.
2. List of Services. The Board wants to see "a description of the specific immigration legal services [an agency] will provide." Programs that charge fees must submit a list of fees for each immigration service they provide; such a list should suffice for this requirement.
3. Staff List. Provide a list of all local staff, along with a resume for any immigration

attorney(s) on staff.

4. Evidence of Arrangement with Outside Expert. An agency that will rely on an attorney or fully accredited representative who is not on staff for expertise will need to provide evidence of that arrangement.

An agency with a formal consultation agreement with an outside attorney should provide evidence of that agreement (via a letter or contract), along with the resume of the attorney.

An agency without attorney or fully accredited staff that is applying for partial accreditation for an employee must submit evidence that that employee will have access to an immigration attorney or fully accredited representative. For CLINIC members and subscribers, this would be a letter from a CLINIC attorney describing the many forms of support CLINIC provides to its members and subscribers (e.g., trainings, webinars, and individual consultations via the attorney-of-the-day hotline).

Partial Accreditation. The Matter of EAC, Inc. decision on partial accreditation ("EAC decision 3615") sets forth a knowledge standard for partial accreditation: partially accredited representatives, even at agencies that provide limited services, must have a "broad knowledge of immigration law and procedure." They must know enough about 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 providers.

The decision details the sorts of documentation that help it determine whether an individual has the broad knowledge and/or experience in immigration law required for accreditation. These include a detailed resume, letter(s) of recommendation, and evidence of training. The training evidence should include a detailed description of what topics were covered.

The decision makes clear that extensive experience with immigration practice is not required where a candidate for accreditation has had sufficient training: "a proposed representative's experience with immigration law need not be fully commensurate with his or her knowledge to be considered adequate." The Board has in the past granted partial accreditation to many people who gained their knowledge of immigration law through trainings, and this decision does not indicate that that will change.

While the decision does not specify how much training or experience are required for partial accreditation, the Board does note that the EAC candidate had worked under the supervision of immigration attorneys "since 1986" and had attended ten trainings at the New York Immigration Coalition within the past two years. Since those trainings are generally two to three hours long, that means about 25 hours' worth of training. This does not mean, however, that someone with, say, less extensive practical experience cannot be granted accreditation.

Full Accreditation. The EAC decisions make clear that the Board expects a lot from fully accredited representatives. Fully accredited representatives must 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

Board. This is a high standard (there are quite a few immigration attorneys who do not meet it).

Accreditation at Multiple Sites. The decision reverses Board practice in the area of accreditation of staff at agencies with multiple locations. Formerly, it was enough to be accredited at one of an agency's several recognized sites in order to work under the accreditation privilege at any of the agency's recognized sites. Not any more. Now each staff member must be accredited at each site where he or she seeks to work as an accredited representative.

Summary. The two EAC decisions make more explicit the kind of immigration legal expertise the Board looks for from recognized agencies and accredited representatives. Most importantly, they require that agencies, in order to be recognized, have access to the support of an attorney or fully accredited representative. While agencies may provide a limited range of services through partially accredited representatives, such agencies must have the support of an attorney or fully accredited representative, must be able to recognize issues they are not equipped to handle, and have a referral plan for complex cases. The decisions leave unanswered, however, the important question of what constitute "nominal" fees, and what percentage of an agency's budget may be composed of fees for immigration services.