



CATHOLIC LEGAL IMMIGRATION NETWORK, INC.

New Rule on Recognition & Accreditation
Part 1
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Presenters



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Webinar Logistics

- This is a recorded, rather than live, webinar
- A live webinar with EOIR and CLINIC will be on January 11 at 2:00 pm Eastern and recording posted to our website
- CLINIC's press release can be found at: <https://cliniclegal.org/news/clinic-welcomes-change-immigration-ra-program>
- Some content in this webinar may be incomplete because questions remain following the release of the new regulations



Overview of Webinar Series

- **Webinar 1**
 - Background and overview of changes
 - New, Final Rule to Agency *Recognition*
- **Webinar 2**
 - New, Final Rule to Staff/Volunteer *Accreditation*
 - Filing applications
 - Administrative termination and sanctions

History Leading to Final New Rules for BIA R & A

- R & A rules remained mostly unchanged since 1984
- February 2012 EOIR invited public comment on possible amendments to the R & A rules and later that year held public meetings with interested stakeholders
- CLINIC submitted comments dated March 30, 2012
- On 10/1/15, EOIR published proposed changes to R & A process
- There was a 60 day comment period for public input
- CLINIC provided extended comments and advocacy – as did its network

EOIR's Purpose for Rule Change

- Promote effective and efficient administration of representation before DHS and EOIR by increasing the availability of competent non-lawyer representation for underserved immigrant populations
- Clarify the process for applying for R & A and facilitate the ability of orgs. and representatives to serve persons before DHS and EOIR
- Balances increase in the number of R & A with greater oversight and accountability for nonprofit management
- Combat unauthorized practice of immigration law and fraudulent activity

Amending Existing Regulations

- 8 CFR part 1292
- 8 CFR part 1001, 1003, 1103
- 8 CFR part 1212 at § 1212.6

Link to Final Rule

- Final rule gives summary of comments provided for each proposal and final change allowing readers to understand the influence of advocacy comments on DOJ's final decision

<https://cliniclegal.org/resources/final-rule-recognition-organizations-and-accreditation-non-attorney-representatives>

Effective Date of Final Rule

- Final rule published in the Federal Register on December 19, 2016
- Final rule effective January 18, 2017

Transfer of R & A from BIA to Office of Legal Access Programs (OLAP) §1003.0

- Rule changes OLAP's structure and function within EOIR and transfers administration of R & A from the BIA to OLAP
- OLAP currently administers LOP, LOPC, BIA Pro Bono Project, Model Hearing Program and National Qualified Representative Program
- All access to legal representation programs now under OLAP
- OLAP will adjudicate first-time, renewed attempts and renewal applications, maintain the roster of recognized orgs and their accredited reps, administratively terminate an org and discipline accrd. reps.
- Program likely to be called OLAP Recognition and Accreditation

Pending Applications Transferred for OLAP's Review §1003.0

- As of January 18 pending applications for initial recognition, initial accreditation or renewal of accreditation before the BIA will be transferred to OLAP
- Pending applications transferred over to OLAP will have to meet the requirements of the new rule
- Recommend postponing new applications and submit after the 18th per the new rule
- OLAP will provide organizations the opportunity to amend the applications, as needed, to conform to the new rule
- OLAP will respond in writing asking for specific information or documentation required

Overview of Recognition Changes

- Qualifications for Recognition
 - Requires at least 1 accredited rep
 - Federal tax-exempt status
 - Serve low-income, indigent clients
 - Assigned authorized officer
 - Recognition renewal required
- * Elimination of nominal fee requirement

Must have at least 1 Accredited Rep, §1292.11

- In order to be recognized, maintain recognition, and have it renewed.
- Must promptly report to OLAP absence of accred. Rep
- Orgs lacking an accred. rep. will have 1 year to acquire a rep.
- An absent accred. rep will put recognition on inactive status
- OLAP has discretion to extend inactive status when warranted
- Nonprofits must seek renewal of recognition if renewal period falls within inactive status
- Can have recognition administratively terminated during or at the end of inactive status for failure to renew or obtain an accred. rep in time

Federal Tax-Exempt Status, §1292.11 (a)(2), (c)

- Recognized agencies must now have federal tax-exempt status, not only state-granted status
- A variety of documents attesting to status may include:
 - religious, charitable, social service, or
 - similar organizations that provide immigration legal services *primarily to low-income and indigent clients in the U.S.*
 - Government entities, such as libraries and schools, may apply for recognition showing an IRS letter showing exemption from federal taxes.
- Conditional recognition may be granted to nonprofits without tax-exempt status but demonstrating that tax-exempt status is pending with the IRS

Elimination of Nominal Fee Requirement

- Repeatedly criticized by nonprofits over many years
- Nominal fees was not a good measure of "charitable" for recognition purposes
- Nonprofit sustainability is key to meeting OLAP's goal for greater access to charitable-based immigration legal representation
- Shift from assessment of fees to more comprehensive analysis of nonprofit mission and activities

“Substantial Amount” Proposal Dropped

- Proposal for substantial amount of outside funding dropped
- Adds flexibility for nonprofit’s to assess client service fees
- Budget, and thus revenue, are still reviewed but in the totality of the application

Primarily Serve Low-Income & Indigent Clients, §1292.11(a)(1)

- Tied to recognition eligibility but “primarily” is not defined
- Written policy required for sliding scale and legal representation fee waivers
- Policy should clarify who decides to give reduced or *pro bono* services and under what financial conditions presented by the client
- CLINIC recommends phrase “no applicant will go un-served due to inability to pay.”

Other Recognition Requirements

- Charter, by-laws and articles of incorporation
- Mission statement or purpose
- Declaration from authorized officer attesting that it primarily serves low-income and indigent clients
- Summary of legal services provided
- Statement if fees are charged or not
- Fee Schedules from past (if relevant) and current year
- Policy regarding fee waivers and pro bono services

Other Organization Requirements Cont'd.

Annual Legal Program's Budget:

- Budget serves as evidence of purpose to serve low-income clients
- Expenses in personnel and non-personnel totals (legal training expenses are important to show)
- Revenue sources as separate line-items
 - Client service fees
 - Grants and contracts
 - Donations in-cash
 - Other sources of in-cash revenue
 - In-kind donations
- OLAP will review the totality of a recognition application if the nonprofit has limited, non-client-based revenue or other forms of "outside funding"

Knowledge and Experience, §1292.11(a)(4) and (a) (6)

- Adequate knowledge, information, and experience remain unchanged
- Present law library resources, training certificates and technical support agreement when attorney or Full Rep. is absent
- No attorney supervision required, although highly recommended by EOIR and CLINIC where permissible
- OLAP recommends attorney supervision or mentorship
- OLAP seeking a "flexible approach" to evaluating knowledge and experience

Authorized Officer, § 1292.11 (a) (5)

- Proposed as new requirement in 2015 and remains in the final rule
- Authorized officer must be designated to act on the nonprofit's behalf for all R & A matters
- Change in name and contact information for a Authorized Officer must be given to OLAP generally within 30 days of the change
- Changes to e-mail addresses, websites, and changes in nonprofit and tax-exempt status must be reported in 30 days

Filing Applications with EOIR 31 and 31 A

- OLAP will provide public education on filing requirements
- OLAP will coordinate with USCIS in receiving gov't input
- OLAP will post list of USCIS District offices where copies of applications are to be served
- EOIR 31 and 31 A forms will be updated per new rule
- OLAP plans on accepting electronic filings in the future

Conditional Recognition, §1292.11(f)

- For orgs. not previously recognized
- For those recognized anew after having lost recognition due to administrative termination or disciplinary sanctions
- For those with pending federal tax-exempt status
- Conditional recognition granted for 2 years and subject to renewal cycle for 6-year period after that

Recognition Renewal, § 1292.16 (a)

- Renewal of agency recognition every 6 years.
- On or before 2 years to lift conditional recognition
- Must compile and maintain certain records for each year
- Items for renewal include:
 - Total # of clients served (intake, USCIS applications, immigration court, BIA petitions or referrals);
 - # of clients who were served at no cost (*pro bono or waived fees*)
 - General description of immigration legal services and other related services (i.e. public education and outreach) offered
 - Statement revealing pro bono, sliding scale and fee waiver policies
 - List of offices and other locations where immigration legal services were provided
 - "May include total amount of fees, donations and membership dues, charged or requested"

When to Renew Recognition the First Time? §1292.16 (h)(2)

- Orgs. without an accrd. rep. must renew recognition *within 1 year of the final rule date*
- Orgs. that were recognized **more than 10 years** prior to the effective date must seek renewal *within 2 years of the final rule date*
- Orgs that were recognized **less than 10 years** prior to the effective date must seek renewal *within 3 years of the final rule date*

Hypos for renewal cycle scenarios

Immigration Legal Services (ILS) Dallas was granted recognition on 6/1/2009 but does not have a BIA rep (shouldn't be practicing unless through an attorney):

- Will need to obtain an accrd. rep. by 1/17/2018 (implementation date + 1YEAR)

ILS Chicago granted recognition on 1/1/1980:

- Will need to apply for renewal of recognition by 1/17/2019 (implementation date + 2 YEARS)

ILS Boston granted recognition on 3/5/2008:

- Will need to apply for renewal of recognition by 1/17/2020 (implementation date + 3 YEARS)

Hypos for renewal cycle scenarios

ILS Cleveland applies for first-time recognition with an IRS tax-exempt application pending. If approved on June 8, 2017, OLAP will grant conditional recognition for a 2 year period. *ILS Cleveland* will need to apply for renewal on or before June 7, 2019.

ILS Miami has never had recognition and has proposed reps ready for accreditation:

- When they receive approval after 1/17/2017, they will be granted *conditional recognition* and will need to renew 2 years from that grant of approval (2019). Then will be granted 6 year period of recognition (next renewal not due until 2025).

Points for Consideration

- Increased mission scrutiny and accountability on services in exchange for no “nominal fee” requirement
- Attorney-driven programs can still benefit from R & A
- Training budgets and ongoing training remain important
- Policies & procedures, case management systems, case management databases and record keeping gain importance
- Budget construction and revenue showing external funding
- Tickler system to timely renew with all necessary documentation

Resources

- EOIR BIA R & A Website
<http://www.justice.gov/eoir/recognition-and-accreditation-program>
- BIA R & A Toolkit and Step-by-Step Guide
<https://cliniclegal.org/R&A>
- Sign-up for CLINIC announcements <https://cliniclegal.org/>

Join CLINIC’s Network for Help

- CLINIC’s network includes Catholic members and non-Catholic subscribers
- All affiliates must be federally tax-exempt
- Benefits are many but include:
 - Counsel on completing a R and/or A application
 - Editing of a final draft application
 - CLINIC letter to OLAP listing affiliate benefits including access to CLINIC’s attorney-of-the-day help line

CLINIC Affiliation Can Help, cont'd.

- Subscription benefits listed and request for application posted here: <https://cliniclegal.org/affiliates/subscription>
- Applications vetted with input from local partners in your community taking 30 days or more
- Annual dues are \$1,500 but pro-rated in half for 2nd half of the year approvals

CLINIC's Next Steps

- Convene R & A Liaison Group of nonprofit advocates
- Seek OLAP clarification in FAQ format
- Participate in community education meetings
- Update its R & A Toolkit including *Step by Step Guide* with sample applications
- Host training opportunities on R & A
- Edit R & A applications for CLINIC affiliates
- Work with USCIS on corresponding updates

R&A Advocacy – Feedback Requested

- USCIS Engagement Survey (This survey should take about 5 minutes to complete. Your feedback will help us to better understand USCIS' current role in the R&A process.) <https://cliniclegal.org/toolkit/ra/survey>
- For R&A Initial Feedback & Questions, contact our team at Advocacy@cliniclegal.org

Part 2 Webinar

- To continue learning about the new rule for R&A please view part 2 of this webinar found here: https://cliniclegal.org/clinic_toolkit/672



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