



January 9, 2019

Joel C. Smith  
Assistant Regional Audit Manager  
Atlanta Regional Audit Office  
U.S. Department of Justice  
75 Ted Turner Drive SW  
Suite 1130  
Atlanta, GA 30303

**Re: Supplemental recommendations regarding strengthening the Department of Justice's Recognition and Accreditation Program**

Dear Mr. Smith,

The Catholic Legal Immigration Network, Inc. (CLINIC) writes to summarize and supplement the recommendations we presented to the audit team in June 2019.

CLINIC embraces the core Gospel value of welcoming the stranger. CLINIC promotes the dignity and protects the rights of immigrants in partnership with a dedicated national network of Catholic and community legal immigration programs. CLINIC believes that U.S. policies, rules and processes should reflect the country's core moral values and historical practice of welcoming immigrants. As a faith-based organization, we have consistently stood by the principle that all immigrants deserve an immigration system that is fair and ensures due process for all.

**I. CLINIC's vested interest in the DOJ Recognition and Accreditation Program**

CLINIC's existence and growth over its 31 years speaks to the fact that there is an overwhelming need for immigration legal services, particularly for low-income immigrants and vulnerable populations. Meeting that need is the purpose of CLINIC's network of affiliates and other immigration legal programs across the country. The limited availability of affordable attorneys, the threat of unauthorized practitioners of immigration law and the dispersion of low-income immigrants to a wider number of communities, especially rural and exurban, is why CLINIC's network and other nonprofits believe that Recognition and Accreditation is an invaluable tool to increase the availability of competent non-lawyer representation for underserved immigrant populations. As such, any change made by the Executive Office for Immigration Review (EOIR) and the Office of Legal Access Programs (OLAP) regarding Recognition and Accreditation (R&A) are of great importance to CLINIC and its board of directors.

CLINIC supports the largest nationwide network of its kind with over 380 Catholic and community-based legal immigration service programs. CLINIC's affiliated immigration

programs, which operate out of more than 400 offices in 49 states and the District of Columbia, employ approximately 2,000 staff, including attorneys, accredited representatives and paralegals, and serve over 400,000 immigrants each year. Accredited representatives are the majority of legal representatives in our network.

CLINIC's network of affiliate programs represents a diversity of program structures, service delivery models and size. Some programs rely solely on DOJ accredited representatives to provide immigration services; others utilize both attorneys and accredited representatives, while other programs are solely comprised of attorneys and paralegal staff. CLINIC's affiliates reflect approximately 35 percent of OLAP's roster of recognized agencies and 40 percent of the accredited representatives listed. CLINIC's affiliates have been recognized for decades, as early as 1958 and as recently as November 2019.

Due to the complexity of the DOJ R&A regulations and the application process, CLINIC dedicates six full-time staff, our Capacity Building team, to provide training, consultation, and application editing for affiliates and non-affiliates seeking to establish or renew DOJ Recognition and Accreditation. CLINIC's Capacity Building staff has created numerous resources to assist the nonprofit sector, including its DOJ Recognition and Accreditation Toolkit; DOJ Recognition and Accreditation: A Step by Step Guide; and a host of webinar trainings. In addition, CLINIC plays a key role in providing training, consultations and application reviews on a steady basis, year after year. CLINIC also chairs the DOJ R&A Working Group comprised of national networks with affiliates and partners that hold DOJ Recognition.

## **II. Summary of CLINIC's recommendations to the Department of Justice's Office of the Inspector General**

In Spring 2019, CLINIC learned of the Office of the Inspector General's initiation of an audit of the R&A Program. We understand the preliminary objectives of the audit were to determine whether EOIR: (1) established effective controls for the selection, vetting, and certification of accredited representatives under the program; (2) monitors the activities of accredited representatives; and (3) established adequate procedures for investigating and resolving allegations of misconduct against accredited representatives.

As a key stakeholder, CLINIC requested an engagement with you and the audit team. That engagement occurred at CLINIC's offices in Silver Spring, Maryland on June 18, 2019. During that meeting, CLINIC presented the following recommendations to the audit team:

- To preserve the R&A program's objective to expand capacity, any audit recommendations should not further burden R&A applicants.
- Any recommendations resulting from the audit should not require OLAP to exceed the scope of the existing regulations through sub-regulatory guidance.
- Auditors should continue to engage stakeholders throughout the process to ensure that any resulting recommendations do not have unintended consequences for programs or representatives.
- Any recommended changes as a result of this audit or OLAP's implementation should be transparent and well-communicated with stakeholders.

While we have not subsequently heard from you or the audit team, we understand that the audit has progressed and is in its final phases. We trust that our recommendations and the information offered have been helpful to your team in the process and that you will feel free to reach out to us if there is any additional information that we may offer.

### **III. CLINIC's recommendations regarding potential additional requirements for accredited representatives.**

During our discussion in June, the audit team asked us if CLINIC had developed any formal response to the American Bar Association's (ABA) report on reforming the immigration court system that also includes R&A recommendations.<sup>1</sup> CLINIC addressed the concerns laid out by the ABA in our public comment on the 2015 EOIR proposed rule<sup>2</sup>, which we previously provided to you, and enclose herein.

#### **A. CLINIC continues to oppose a Continuing Legal Education requirement for accredited representatives.**

CLINIC does not support the ABA's recommendation for a CLE requirement, specifically two CLE trainings per year. Our rationale is best summarized in the excerpt from our public comment to the EOIR proposed changes to R&A below:<sup>3</sup>

CLINIC believes that EOIR's current adjudication of the broad knowledge and adequate experience requirement is meaningful and sufficient. CLINIC does not believe that EOIR should mandate a rigid curriculum but education efforts should be substantial in adding to the knowledge base of the representative. The training received should demonstrate a representative's acquisition of broad knowledge in immigration law and specific knowledge in areas related to his or her organization's caseload. CLINIC appreciates that the proposed rule does not require a number of formal training hours, specific courses, or testing. CLINIC's updated opinion on keeping broad knowledge and adequate experience requirements flexible reflects the growing number of online and innovative media education tools that have emerged in the area of immigration law since 2012. The widespread availability of immigration law apps, podcasts, and e-learning courses have broadened educational access and made learning opportunities much more available and diverse.

In an effort to be mindful of cost and administrative burdens facing immigration service organizations, EOIR should minimize restrictions on when, where, and in

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<sup>1</sup> 2 COMMISSION ON IMMIGR., A.B.A., 2019 UPDATE REPORT: REFORMING THE IMMIGRATION SYSTEM (2019) [www.americanbar.org/content/dam/aba/publications/commission\\_on\\_immigration/2019\\_reforming\\_the\\_immigration\\_system\\_volume\\_2.pdf](http://www.americanbar.org/content/dam/aba/publications/commission_on_immigration/2019_reforming_the_immigration_system_volume_2.pdf).

<sup>2</sup> Recognition of Organizations and Accreditation of Non-Attorney Representatives, 80 Fed. Reg. 59,514 (Oct. 1, 2015) (to be codified at 8 C.F.R. pts. 1001, 1003, 1103, 1212, and 1292).

<sup>3</sup> Public Comment from Catholic Legal Immigration Network, Inc., to Jean King, General Counsel, Executive Office for Immigration Review (Nov. 17, 2015) (attached). *See id.* at 11 for a discussion on the training required for demonstrating broad knowledge and adequate experience.

what format training is received within the three year period. Finally, EOIR should share its *Professional Conduct for Practitioners – Rules and Procedures* widely – both in its initial letters to representatives informing them of their accreditation, and in regular communications. The agency should also consider conducting an annual webinar on the rules of professional conduct.

CLINIC acknowledges that EOIR’s Office of Legal Access Programs (OLAP) may be considering setting a number of hours of coursework to measure broad knowledge in immigration law. We have recommended that any guidance regarding training requirements should focus on the content and substance of the training rather than a set number of hours. We attach a letter setting forth CLINIC’s recommendations to the Director of OLAP dated August 30, 2018. While we have highlighted sections, the full body of the letter is pertinent to your audit and most relevant to helping the R&A Program pursue its mission.

Furthermore, and as set forth in our letter to OLAP Director Lang, CLINIC acknowledges that OLAP may be considering raising requirements to demonstrate adequate experience for first-time, partial accredited representatives. Guidance on adequate experience for first-time, partial accreditation should focus on ensuring that applicants have been exposed to fundamental tasks in the case management process rather than logging an arbitrary number of hours.

**B. CLINIC supports EOIR regulations that do not require attorney supervision for accredited representatives.**

CLINIC understands the ABA has recommended EOIR require recognized organizations have structures in place to “promote” attorney supervision, mentoring, and support. If EOIR were inclined to follow this recommendation, this would require the office to follow the formal regulatory process before implementing yet another change to the R&A regulations, which CLINIC opposes. EOIR already explored this option and made a determination not to require attorney supervision.

EOIR’s rationale is set forth in the final rule published on December 19, 2016.<sup>4</sup> Please see an excerpt from the final rule below.<sup>5</sup>

**EOIR final rule on R&A published December 2016:**

Five commenters asserted that the rule should require that organizations have attorney supervision or mentors in order to satisfy the knowledge and experience requirement to be recognized. According to these commenters, an attorney supervision or mentoring requirement would provide much needed oversight to avoid the improper handling of cases while also preventing unscrupulous individuals from attempting to obtain recognition and accreditation. Attorney supervision or mentoring could be achieved through an attorney on staff or a formal arrangement with an attorney or another recognized

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<sup>4</sup> Recognition of Organizations and Accreditation of Non-Attorney Representatives, 81 Fed. Reg. 92,346 (Dec. 19, 2016) (codified at 8 C.F.R. pts. 1001, 1003, 1103, 1212, and 1292).

<sup>5</sup> 8 C.F.R. § 1292.

organization with attorneys on staff. A waiver of the requirement could be provided when it was cost-prohibitive or not feasible due to a lack of attorneys in an area.

**While the Department understands the concerns raised regarding the need for attorney supervision or mentoring and more specific testing or training requirements, such requirements would not advance the rule’s goal to increase capacity because they would result in increased costs for non-profit organizations. The flexible approach adopted by the rule allows organizations to meet the knowledge and experience requirements in a number of ways, and it is currently used by the Department in the recognition and accreditation process. (emphasis added)**

CLINIC fully supports EOIR’s rationale for not requiring attorney supervision for accredited representatives. In addition, we support the current EOIR requirement for organizations to demonstrate access to technical legal support in the form of a consulting agreement with an outside attorney or another recognized organization.<sup>6</sup>

#### **IV. CLINIC’s concerns regarding the reorganization of EOIR and the implications for the integrity and mission of the R&A program**

Since our meeting in June 2019, there has been a troubling development at EOIR that we strongly believe has already had a negative impact on the R&A program and will have additional implications in the future. On August 26, 2019, the Department of Justice published an Interim Rule and Request for Comment entitled “Organization of the Executive Office for Immigration Review.”<sup>7</sup> CLINIC opposes the Interim Rule for the reasons set forth in our public comment that was submitted on October 16, 2019, and requested that it be withdrawn.<sup>8</sup>

We hope that the Office of the Inspector General Office is aware of the immediate resultant changes, which officially created the Office of Policy, moved OLAP within the Office of Policy, and authorizes the Director of EOIR to adjudicate long-pending Board of Immigration Appeals (BIA) cases. As indicated in our public comment, CLINIC does not believe the reorganization of OLAP brings merit or value to OLAP’s programs, particularly R&A.<sup>9</sup> Rather, CLINIC sees the Interim Rule as an erosion of OLAP’s mission to enhance access to counsel. We have serious concerns about the reorganization’s immediate effects on the R&A program, which already include significant R&A case processing backlogs, and implications for the future of the R&A Program.

For the reasons set forth in our attached public comment, CLINIC strongly opposes moving OLAP to the Office of Policy. The changes will neither improve administrative efficiency nor

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<sup>6</sup> 8 C.F.R. § 1292.11(e).

<sup>7</sup> Organization of the Executive Office for Immigration Review, 84 Fed. Reg. 44,537 (Aug. 26, 2019) (to be codified at 8 C.F.R. Pts. 1001, 1003, 1292, and 28 C.F.R. pt. 0).

<sup>8</sup> Public Comment from Catholic Legal Immigration Network, Inc., to Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review (Oct. 17, 2019), available at <https://cliniclegal.org/resources/federal-administrative-advocacy/clinic-comment-eoir-interim-rule>

<sup>9</sup> *Id.*

ensure justice, protection, or humane treatment for immigrants. Instead, the changes open the door to impermissible political considerations taking the place of impartial case adjudication and create additional barriers for low-income immigrants who seek access to justice. We encourage the Office of the Inspector General to review our full comment in opposition to the Interim Rule as it relates to the R&A program.

We appreciate your consideration of this updated and supplemental information about the R&A program as you finalize the audit results and recommendations. Please contact me at [jbussey@cliniclegal.org](mailto:jbussey@cliniclegal.org) should you have any questions or require further information.

Sincerely,

A handwritten signature in blue ink that reads "Jill Marie Bussey". The signature is written in a cursive style with a light blue shadow effect behind the text.

Jill Marie Bussey, Esq.  
Director of Advocacy

Attachments