CHAPTER FOUR
Authorization for Non-Attorneys to Practice Immigration Law

Learning Objective: To understand the requirements for Department of Justice (DOJ) Recognition and 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 have realized that what you are doing is unauthorized practice of law, and you would like to get authorization to do the work you have been doing. Or your agency has attorneys and non-attorneys on staff, and you would like your experienced non-attorney staff to expand the range of 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.

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:”

- An 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.
- An 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.

Here are 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 his or her 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 Department of Justice (DOJ) and the Department of Homeland Security (DHS) do not enforce unauthorized practice laws, but USCIS does have an initiative warning the public about UPL: https://www.uscis.gov/avoidscams. USCIS has created a chart showing each state’s laws regulating UPL; note that some states have laws specifically regulating non-attorney immigration consultants: https://www.uscis.gov/avoid-scams/report-immigration-scams#A%20to%20H.

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.”

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.

---

3 http://www3.flabar.org/DIVCOM/JN/JNNews01.nsf/76d28aa8f2ee03e185256aa9005d8d9a/3fe84c2d97b75380852572e50050124a?OpenDocument
Recognition and Accreditation by the Department of Justice

“Recognition” of a nonprofit immigration legal services organization and “accreditation” of its staff members by the Office of Legal Access Programs (OLAP) within DOJ’s Executive Office for Immigration Review (EOIR) allow non-attorneys working at that nonprofit to practice immigration law. Accredited representatives working at recognized organizations may represent clients before DHS and/or 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. DOJ recognition and accreditation also provide assurance to the organization’s clients that it has experience and knowledge in the area of immigration law.

Recognition is granted to a nonprofit charitable, religious, social service, or similar organization. In order to be granted recognition, an organization must have “access to adequate knowledge, information, and experience” in immigration law and primarily serve low income or indigent clients. Initial recognition is granted for two years, and must be renewed on a six year cycle after the first renewal.

Once an organization 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 organization for which they work.

The rules governing recognition and accreditation are found at 8 CFR § 1292. In addition, we encourage you to review the FAQ sheet on the recognition and accreditation program which is available on the EOIR website at https://www.justice.gov/sites/default/files/pages/attachments/2017/02/27/olaprafaqsfinal227.pdf.

OLAP maintains rosters of all the recognized agencies and accredited representatives; they are available on the EOIR website at https://www.justice.gov/eoir/recognition-accreditation-roster-reports.

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.

DOJ Recognition

Recognition Requirements

The requirements for organization recognition, which are found in 8 CFR § 1292.11, are as follows:

- The organization must be a non-profit religious, charitable, social service, or similar organization;
- The organization must have federal tax-exempt status;
- The organization must provide immigration legal services primarily to low-income or indigent clients within the U.S.;
- The organization must have access to adequate knowledge, information, and experience in immigration law and procedure;

Pros and Cons of Recognition and Accreditation

Pros

- It is free.
- It is a lower cost staffing option than attorneys.
- The organization avoids engaging in unauthorized practice of law.
- The organization 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

- Recognition must be renewed on a cyclical basis.
- Accreditation must be renewed every three years.
- The agency must comply with recordkeeping, reporting, and posting requirements, discussed in more detail below.

• The organization must be simultaneously applying for at least one employee or volunteer to be accredited, and must maintain at least one accredited representative on staff; and
• The organization must designate an authorized officer to act on its behalf.

Non-profit Religious, Charitable, Social Service, or Similar Organization: You will need to provide your organization’s mission statement or statement of purpose and a declaration from an authorized officer attesting that your organization serves primarily low-income and indigent clients.

Federal Tax Exempt Status: You will need to provide a currently valid IRS tax determination letter, alternative documentation of federal tax exempt status, or proof that this status has been applied for and a determination is pending.

Serving Primarily Low-income or Indigent Clients: You will need to provide an annual budget for providing immigration legal services for the current year and past year, if available, including information on sources of revenue and operating expenses; detailed fee schedules for all locations, if applicable; a summary of legal services provided; a list of membership dues charged at all locations, if applicable; and your fee waiver/fee reduction policy or guidance provided to clients or staff at all locations, if fees are charged.

Knowledge, Information and Experience in Immigration Law and Procedure: The organization must have someone with knowledge and experience in immigration law on staff. This would be the staff (paid or volunteer) applying for full or partial accreditation, as well as any immigration attorneys on staff. An organization that does not have an attorney on staff must have access to an outside immigration attorney or fully accredited representative from another organization that has agreed to provide technical legal support and answer any immigration law or case questions that staff may have. The technical legal support may be in person, by telephone, or via the internet.

If your organization has only partially accredited representatives on staff but is a CLINIC affiliate, you should have no problems showing that you have access to technical legal support. The same is true for members of other national networks with immigration attorneys who provide technical support. Stand-alone programs without such attorney technical support through a network will need to arrange for a local attorney or fully accredited representative to provide this support.

Simultaneously Applying for at Least One Employee or Volunteer to be Accredited: In order to obtain and maintain agency recognition, you must have at least one accredited representative on staff (paid or volunteer). An organization that loses its accredited staff will be placed on inactive status and will lose its recognition if it fails to obtain accreditation for a new staff person within a reasonable period of time.

Authorized Officer: A recognized organization must designate an authorized officer to act on its behalf. The authorized officer is responsible for certifying the information in the recognition and accreditation applications and for promptly informing OLAP of any changes to the organization’s contact information or any changes affecting the organization’s and staff’s eligibility for recognition and accreditation. For example, if an accredited representative leaves the organization, the authorized officer must promptly inform OLAP of this change.

Duration of Recognition

EOIR published new regulations for recognition and accreditation that took effect on January 18, 2017. Under the new regulations, duration of recognition varies.

Initial recognition is granted conditionally for two years and then must be renewed. After the first renewal, it must be renewed every six years. For organizations that were recognized prior to January 18, 2017, the rules for renewal vary as follows:

• Organizations without an accredited rep. as of 1/18/17 must renew recognition within 1 year (prior to 1/18/18)
• Organizations that were recognized more than 10 years as of 1/18/17 must renew within 2 years (prior to 1/18/19)
• Organizations that were recognized less than 10 years as of 1/18/17 must renew within 3 years (prior to 1/18/20)

After the initial renewal for these organizations, recognition is valid for six years.
OLAP may terminate an organization’s recognition if it fails to maintain the qualifications for recognition or the organization is subject to disciplinary sanctions. The procedures for termination and disciplinary sanctions are set forth at 8 CFR § 1292.17 and 8 CFR § 1003.

**Reporting, Recordkeeping, and Posting**

All DOJ recognized organizations must comply with certain requirements for reporting, recordkeeping, and posting. These are set forth at 8 CFR § 1292.14.

**Reporting**: A recognized organization is required to promptly inform OLAP within 30 days of any changes affecting eligibility for recognition or accreditation and any changes to its information on the roster. Examples of such changes include a change of address, phone number, or name of the organization; the departure of an accredited representative; or a change in the organization’s mission or tax exempt status. The authorized officer is responsible for reporting changes to OLAP.

**Recordkeeping**: A recognized organization is required to compile certain records and retain them for a period of six years from the date they are created. These records consist of: 1) the organization’s immigration legal services fee schedule for each location where services are provided and 2) an annual summary of legal services provided by the organization. The annual summary must include the following information:

- The total number of clients served (whether through client intakes, applications prepared and filed with DHS, cases in which its attorneys or accredited representatives appeared before the Immigration Courts or the Board (if applicable), or referrals to other attorneys or organizations;
- Clients to which it provided services at no cost;
- A general description of the immigration legal services and other immigration-related services (non-legal) provided;
- A statement regarding whether services were provided pro bono or clients were charged in accordance with a fee schedule;
- Organizational policies or guidance regarding fee waivers and reduced fees; and
- A list of the offices or locations where the immigration legal services were provided.

**Posting**: A recognized organization is required to post certain public notices provided by OLAP. The public notices are limited to the names and validity periods of the recognized organization and its accredited staff; the requirements for recognition and accreditation; and the means to complain about a recognized organization or accredited representative.

**Renewal of Recognition**

At the time of renewal, the organization must demonstrate that it continues to meet all the requirements for DOJ recognition, and must submit updated documentation for any information that has changed since its last recognition date. In addition, the organization must submit its fee schedules and annual reports compiled since the last date of recognition (or since January 18, 2017 if the organization was already recognized on that date).

**Extension of Recognition**

If your organization has more than one physical office, and each office wants recognition, you can apply to extend recognition from the main office to the sub-offices. The sub-offices must meet the same eligibility requirements as the main office and must share the same operations, management structure, and funding sources. The authorized officer must attest that the sub-offices are under the supervision and control of the main office.

In lieu of extension, OLAP may require an organization to file a separate application for recognition of an office or location of the organization when, for example, the sub-office has distinct operations, management structure, or funding sources from the organization’s main office.

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 organization has 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 Apply for First-Time Recognition, Renewal, or Extension

Submit Form EOIR-31 (Request for New Recognition, Renewal of Recognition, or Extension of Recognition of a Non-Profit Religious, Charitable, Social Service, or Similar Organization). Please refer to CLINIC’s DOJ Recognition and Accreditation Step-by-Step Guide for details on how to prepare the application and for samples of the application materials required. The guide is available at https://cliniclegal.org/sites/default/files/resources/recognition-accreditation/WR-and-CLINIC-Combined-Step-By-Step-Edits-FINAL.pdf.

DOJ Accreditation

Under new regulations that took effect on January 18, 2017, an organization that is not recognized must request both agency recognition and staff accreditation at the same time. However, if an organization is already recognized and wishes to request accreditation for additional staff, it can file an application for accreditation only. There are two levels of accreditation, referred to as “partial” and “full.”

Partial Accreditation

Partial accreditation allows the representative to practice before DHS only. 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 DHS and EOIR (which includes both the Immigration Court and the Board of Immigration Appeals (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, such as state or federal courts.

Accreditation Requirements

The requirements for staff accreditation are found in 8 CFR § 1292.12. In order to be eligible for staff accreditation, the proposed representative must:

- Be an employee or volunteer of the organization;
- Have the character and fitness to represent clients;
- Have broad knowledge and adequate experience in immigration law and procedure;
- Not be an attorney who is eligible to practice law in the U.S. or a U.S. territory, commonwealth, or possession;
- Not have resigned while a disciplinary investigation or proceeding is pending;
- Not be subject to any order disbarring, suspending, enjoining, restraining, or otherwise restricting him/her in the practice of law or representation before a court or any administrative agency; and
- Not have been convicted of a serious crime anywhere in the world.

Character and Fitness

This is similar to the standard required of attorneys for the admission to practice law. According to the regulation (8 CFR § 1292.12 (a) (1)), “Character and fitness includes, but is not limited to, an examination of factors such as: Criminal background; prior acts involving dishonesty, fraud, deceit, or misrepresentation; past history of neglecting professional, financial, or legal obligations; and current immigration status that presents an actual or perceived conflict of interest.” Character and fitness is demonstrated through the attestation of the applicant and authorized officer in the accreditation application form as well as character reference letters, employment references, or criminal background checks.
Amount of Training or Experience Required

There are no written requirements about how many hours of training and/or experience a candidate for partial or full accreditation should have. Recommendations about how much training and experience are needed are based on what has been approved in the past, as well as how much training an organization would want for its staff, to ensure that they can do good work.

Types of Training and Experience Required: Partial Accreditation

A candidate for partial accreditation should plan to attend several immigration trainings before applying. The regulations require that accredited representatives gain a broad knowledge of immigration law even if the organization is offering limited immigration services. Accredited representatives must know enough immigration law to discern when immigrants have complex issues that they are not equipped to handle so that they may refer such immigrants to other legal service providers.

All first-time accreditation applicants (whether applying for partial or full accreditation) are required to have recently completed at least one formal training course designed to give new practitioners a solid overview of the fundamentals of immigration law and procedure. In addition to a general overview course, it is a good idea to attend other overview courses that introduce topics such as family-based immigration law, naturalization, and 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 and other crimes. Training formats include in-person trainings, e-learning courses, and webinars.

In addition to formal training, a candidate for partial accreditation should obtain practical, hands-on experience providing immigration legal services under the supervision of an attorney or DOJ accredited representative. Organizations that do not have an attorney or accredited representative on staff should make arrangements for accreditation candidates who lack previous, practical experience to volunteer at another immigration law nonprofit or a local immigration law office. 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 is recommended as the best way to prepare for accreditation.

Training and Experience Required: 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. An applicant for full accreditation will want to find a mentor who is an immigration attorney or fully accredited representative and who can help the applicant gain experience working on court cases. The applicant should observe Immigration Court hearings observe and accompany the mentor to court several times before applying. The applicant will also need to obtain a strong letter of recommendation from the mentor attesting to the applicant’s knowledge and experience with Immigration Court hearings.

Duration of Accreditation

Accreditation lasts for three years. Accredited representatives must apply to renew their accreditation every three years. You must file the renewal application on or before the expiration date, in order for the accreditation to remain valid pending OLAP’s decision on the renewal application. It is a good idea to apply for renewal 60 days before the expiration date.

Accreditation Doesn't Travel . . .

To another organization. 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 Organization that Applied for You

An accredited representative may only practice immigration law while working at the recognized organization that applied for his or her accreditation. He or she may not practice as an accredited representative concurrently at any other organization unless that organization has also applied for and been granted his or her accreditation. It is possible for a representative to work part-time at one recognized organization and part-time at another and to be accredited at both.

Staff members who are accredited at one recognized location of an organization are authorized to practice immigration law at all other recognized locations of the same organization, and do not need to apply for accreditation separately at each location. Organizations with more than one physical site sometimes get all their sites recognized and have their accredited representative make visits to provide immigration legal services at each site.

Renewal of Accreditation

If you are planning to renew your accreditation, it is important that you keep your immigration knowledge and experience up to date. Consider attending immigration law trainings semi-annually or annually, attending webinars on a monthly basis, and working on immigration cases to maintain your knowledge and practical experience. When it is time to renew your accreditation, OLAP requires you to submit the same type of documentation you submitted with your initial accreditation application. This includes an updated resume indicating your immigration law experience and trainings attended to date, certificates and/or agendas for the trainings, and letters of recommendation.

How to Apply for First-Time Accreditation or Renewal of Accreditation

Submit Form EOIR-31A (Request by Organization for Accreditation or Renewal of Accreditation of Non-Attorney Representative). Please refer to CLINIC’s DOJ Recognition and Accreditation Step-by-Step Guide for details on how to prepare the accreditation application and for samples of the application materials required. The guide is available at https://cliniclegal.org/sites/default/files/resources/recognition-accreditation/WR-and-CLINIC-Combined-Step-By-Step-Edits-FINAL.pdf.

OLAP Decision Process for Recognition and Accreditation

Once you file the application, USCIS will have 30 days to respond to your requests. USCIS may recommend approval or denial of your request. USCIS may also ask for additional time to investigate your request. Note that in most cases USCIS chooses not to comment at all on recognition and accreditation requests.

If, however, USCIS recommends 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 OLAP (again, serving a copy on USCIS). OLAP is not bound by USCIS’ recommendation. OLAP will make its own decision—so if you are one of the few agencies that get a negative recommendation from USCIS, remember that this does not mean an automatic denial by OLAP.

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

After reviewing your application, OLAP will send you a written decision. If the decision is favorable, your recognition and/or accreditation begin as of the date of the decision. If the decision is unfavorable, you may file a request for reconsideration within 30 days. If the request for reconsideration is denied, you may file a request for administrative review within 10 days.

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

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