

INTERIM MEMO FOR COMMENT

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This memo is in effect until further notice.

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000



U.S. Citizenship
and Immigration
Services

PM 602-0039

June 7, 2011

Policy Memorandum

SUBJECT: 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

Purpose

This guidance clarifies the role and responsibilities of USCIS District Directors related to the recognition and accreditation process administered by the Board of Immigration Appeals (BIA), Executive Office for Immigration Review (EOIR), Department of Justice.

Scope

Unless specifically exempted herein, this policy memorandum (PM) applies to all USCIS employees.

Authority

Section 292 of the Immigration and Nationality Act; 8 U.S.C. § 1362; Title 8, Code of Federal Regulations (CFR) sections 103.2(a) (3), 292.1 and 292.2.

Background

One of the main pillars of the USCIS effort to combat the unauthorized practice of immigration law is building the capacity of interested stakeholders to provide legal services to the immigrant community. A key component of building stakeholder capacity is ensuring that USCIS provides thorough and timely input on all applications filed by organizations seeking recognition and requests for accreditation of individuals as representatives.

An applicant or a petitioner may be represented by an attorney in the United States or an accredited representative of a recognized organization. In matters outside the geographical confines of the United States, applicants or petitioners may also be represented by an attorney admitted to practice in that country. *See* 8 CFR 103.2(a) (3). Department of Homeland Security (DHS) officials have the discretion to permit a law student, law school graduate, or a reputable

individual to appear in matters before them, subject to the requirements in 8 CFR 292.1(a)(2) and (3).

Non-profit religious, charitable, social service, or similar organizations established in the United States may submit an application to the BIA to obtain status as a recognized organization on Form EOIR-31 "Request for Recognition as a Non-Profit Religious, Charitable, Social Service, or Similar Organization." 8 CFR 292.2(b). A separate Form EOIR-31 must be filed for each branch office of an organization seeking recognition before the BIA. In order to qualify as a recognized organization, organizations must demonstrate that they have adequate knowledge of and experience with immigration law, charge or accept only nominal fees, and assess no excessive membership dues for persons given assistance. The organization must serve a copy of Form EOIR-31 on the local District Director for USCIS and the local Chief Counsel for ICE with jurisdiction over the area in which the organization's office is located. The applicant must include in the application package proof that a copy has been submitted to USCIS and ICE. By regulation, USCIS and ICE have thirty days from the date of receipt of Form EOIR-31 to: (1) request a specified period of time in which to conduct an investigation or obtain relevant information regarding the applicant, or (2) submit to the BIA recommendations for approval or disapproval, including the reasons therefore, and serve a copy of the recommendation on the organization. If the BIA approves a request for time to conduct an investigation or remands the application to the District Director for further information, USCIS and ICE must forward the results to the BIA, along with their recommendations. The BIA will review the USCIS and ICE recommendations and decide whether to approve or deny the application, or seek more information from either the organization or DHS. If USCIS or ICE recommends disapproval, the organization has thirty days to file a response with the BIA. USCIS must serve a copy of its recommendation, either for approval or denial, to the organization.

A grant of recognition does not need to be renewed; however, the BIA may withdraw the recognition of any organization that fails to maintain the qualifications required for such recognition. 8 CFR 292.2(c). A USCIS District Director will initiate withdrawal of recognition proceedings after an investigation reveals that the organization has failed to maintain its qualifications. Following this investigation and a subsequent hearing before an Immigration Judge, a final decision on whether to withdraw recognition must be rendered by the BIA. The final decision will be reported to the District Director. 8 CFR 292.2(c).

A recognized organization may apply to have one or more non-attorneys designated as an accredited representative. A request to accredit individuals may be made simultaneously with, or subsequent to, the filing of Form EOIR-31. There is no application form for this purpose. Only a recognized organization may apply for accreditation of a representative – the individual may not submit the application themselves. 8 CFR 292.2(d). The recognized organization may apply for the individual to have full accreditation to represent individuals before the BIA and the Immigration Courts and DHS or apply for partial accreditation to represent individuals only before DHS. To be accredited by the BIA, the individual must be affiliated with a BIA-recognized organization, have experience and knowledge of immigration and naturalization law and procedure, and be of good moral character. The organization must serve a copy of the

application for accreditation of an individual on the offices as noted above. USCIS and ICE have the opportunity to recommend for or against approval of the application, following the same procedure as outlined above for recognition requests.

A grant of accreditation is valid for three years, and may be renewed. The accreditation shall remain valid pending BIA consideration of an application for renewal of accreditation, provided the application is filed at least sixty days prior to the third anniversary of the date of the BIA's prior accreditation of the representative. The validity of a grant of accreditation is also dependent on the accredited representative's continued affiliation with the specific recognized organization that requested the accreditation. Accreditation does not follow the individual should he or she become affiliated with another recognized organization (or different branch of the same recognized organization), nor may the individual continue to provide representation if the recognized organization is no longer in operation, either voluntarily or as the result of a revocation proceeding. 8 CFR 292.2(d). See also Appendix F for relevant BIA precedent decisions.

Per 8 CFR 292.2(e), the BIA maintains a list of all recognized organizations and accredited representatives. This roster is available on the BIA website at <http://www.justice.gov/eoir/statspub/raroster.htm> and through a link on the USCIS Disciplinary Counsel website.

When USCIS does not participate in the recognition and accreditation process, the BIA makes a decision without input from USCIS or may delay its decision on the application while waiting for a response or recommendation from USCIS. Responding in a timely manner allows USCIS to provide valuable input into the BIA recognition process. Timely and thorough recommendations facilitate the recognition and accreditation processes.

Policy

USCIS district offices will participate in the BIA recognition and accreditation process by providing the BIA in a timely manner with a recommendation to approve or disapprove each applicant for BIA recognition or accreditation.

USCIS District Directors are responsible for filing with the BIA a recommendation for approval or disapproval of the Form EOIR-31 or application for accreditation of representative(s). The recommendation should be based on the application, relevant information within the knowledge of the district staff about the organization applying for recognition and the individual seeking accredited representative status, and any investigation conducted by FDNS or the appropriate USCIS staff in connection with the application(s). An investigation may include a systems check, site visit, or interview, as appropriate. The BIA will evaluate whether fees charged by the organization satisfy the definition of nominal fees; however, USCIS (and ICE) should include an assessment of this issue (and all other relevant issues) in its recommendations. There is no uniform standard for determining whether an applicant meets the "good moral character" requirement. District Directors may make this determination on a case-by-case basis.

Guidelines for USCIS participation in the BIA recognition and accreditation process are outlined in the Adjudicator's Field Manual (AFM) Chapter 12.6.

Implementation

The AFM is revised as follows:

1. A new chapter 12.6 is added to read:

Chapter 12.6 Role of USCIS District Directors in the Board of Immigration Appeals Recognition and Accreditation Process

(a) Establishing a Recognition and Accreditation Point-of-Contact (POC) or Team.

(1) Identify a single recognition and accreditation POC or designate several operational staff members in each district office to be part of a recognition and accreditation team to handle these requests.

(2) Each district office should identify a recognition and accreditation POC or team comprised of several operational staff members from its operational staff (e.g., Field Office Director, Community Relations Officer, Fraud Detection and National Security (FDNS) Officer, officer from the Office of Security and Integrity (OSI)) who is most appropriate for that particular office. The recognition and accreditation POC or team should be familiar with the community-based organizations in the district and have worked with local BIA recognized organizations.

Note: To the extent possible, a recognition and accreditation team should include a Community Relations Officer and an FDNS officer.

(b) Ensuring Timely Receipt of Requests for USCIS Recommendation.

(1) Notify field offices that all such requests should be forwarded to the district office.

(2) Expedite mailroom processing to ensure that the recognition and accreditation POC or team receives all Forms EOIR-31 and applications for accreditation of representative(s) well before the response period expires, thirty days after USCIS receives each Form EOIR-31.

(3) Date stamp all Forms EOIR-31 and applications for accreditation of representative(s) on the date they arrive at the district office to ensure that the recognition and accreditation POC or team knows when the 30-day period will expire.

(c) Reviewing Requests for USCIS Recommendation.

(1) Upon receiving a request, if it is unlikely the office will be able to respond within 30 days, the recognition and accreditation POC or team should immediately request an appropriate extension through the BIA Recognition and Accreditation Coordinator so that the BIA is aware that a response from USCIS will be forthcoming. One to two weeks after a request for an extension is submitted, the POC or a team member should contact the BIA Recognition and Accreditation Coordinator to determine whether he or she granted the extension. The program coordinator's telephone number is (703) 305-9029.

(2) The recognition and accreditation POC or team should review the organization or individual's qualifications to provide immigration services.

Note: The USCIS Checklist: Request for BIA Recognition and Accreditation (see [Appendix 12-1](#)) and the USCIS Worksheet: Requests for Recognition and Accreditation Processing and Procedures (see [Appendix 12-2](#)) may be used as a resource to help organize requests for recognition and accreditation, but use of the checklist and worksheet is not required.

In evaluating the qualifications of an organization, the team should review relevant information, which may include:

- **Form EOIR-31;**
- Evidence of non-profit status;
- Evidence of what type of services the organization intends to provide;
- Source of the organization's funding;
- Evidence of knowledge, information, and experience in immigration law and procedure;
- Proposed fee structure for services;
- Any additional information, including IBIS checks, review of agency databases including SCCLAIMS, site visits, personal interviews of organization officials, and references; and
- Evidence that the organization or individual is being investigated or prosecuted in a civil or criminal matter for violations relevant to the EOIR-31 (e.g., consumer fraud, unauthorized practice of law, etc.).

In evaluating the qualifications of an individual for whom a recognized organization has filed a request to be accredited as a representative, the recognition and accreditation POC or team should review relevant information, which may include:

- Request for accreditation of representative submitted by recognized organization;
- Letters of recommendation, awards, training certificates, etc.;

- Evidence of experience and knowledge of immigration and naturalization law and procedure;
- Evidence of compensation agreement with the recognized organization;
- Evidence of plan for supervision of accredited representative by recognized organization;
- Any additional information regarding the individual's relationship with the recognized organization, qualifications, and good moral character, including: site visits, personal interviews of organization officials, and references; and
- Evidence that the organization or individual is being investigated or prosecuted in a civil or criminal matter for violations relevant to the request (e.g., consumer fraud, unauthorized practice of law, etc.).

(3) The recognition and accreditation POC or team should seek input from the local ICE office, district Community Relations Officer and the Field Office Director, FDNS officers, supervisory and senior immigration services officers, and USCIS counsel in the jurisdiction where the organization is located.

(4) If the recognition and accreditation POC or team and other USCIS staff are not familiar with the organization or individual, the District or Field Office Director should contact the organization or individual practitioner to assess the strength of the application.

(5) The recognition and accreditation POC or team should conduct checks of media reports, public databases, and other sources to obtain additional information about the organization and individuals seeking accredited representative status.

(6) The recognition and accreditation POC or team should ask FDNS to vet individuals seeking accreditation and any organizations seeking recognition that have not previously been fully vetted through USCIS fraud databases, such as the FDNS data system. If necessary, the POC or team should ask ICE to conduct further background checks.

(7) The recognition and accreditation POC or team should check with the state bar (with the assistance of local USCIS counsel where possible) and other appropriate state agencies, the local FDNS unit, EOIR Disciplinary Counsel (full accreditation requests only), and USCIS Disciplinary Counsel to determine whether there have been any complaints about the organization or individual(s) applying for recognition or accreditation status. The EOIR Office of General Counsel can be contacted at (703) 305-0470.

(d) Responding to Requests for USCIS Recommendation.

(1) If the district office recommends approval, the District Director should submit a letter to the BIA with supporting evidence, if available (see **Appendix 12-3**). A copy

of all documents filed with the BIA must be served on the organization. Personal information identifying customers or stakeholders should be redacted as required by the Privacy Act and DHS policy.

(2) If the district office recommends against approval, a letter should be submitted to the BIA with supporting evidence, if available (see **Appendix 12-4**). Supporting evidence is not required, but may include affidavits or sworn statements by adjudicators, investigators, clients of the applicant representative; criminal history reports; G-28s; investigation results, etc. Note: USCIS may not base a negative recommendation on information that it is unwilling or unable to release to the BIA. A copy of all documents filed with the BIA must be served on the organization. Personal information identifying USCIS officers, customers, or other stakeholders should be redacted as required by the Privacy Act and DHS policy.

(3) The recognition and accreditation POC or team should track all requests for recognition, including the date the Form EOIR-31 is received, due dates for response, date on which a request for additional time in which to submit the recommendation is filed with the BIA, the due date after an extension is granted by the BIA, the date that the recommendation is submitted to the BIA by USCIS or ICE, and the date and disposition by the BIA.

(4) The recognition and accreditation POC or team should retain copies of the all documentation related to the Form EOIR-31 and application(s) for accreditation of representatives.

(e) After Submitting Recommendation to BIA.

The recognition and accreditation POC or team should retain all responses from the BIA, and inform the local USCIS counsel, Field Office Director, and District Director of the BIA decision on all EOIR-31 forms and application(s) for accreditation of representative(s).

(f) Withdrawal of BIA Recognition or Accreditation.

If a USCIS officer believes that an organization's recognition should be revoked, he or she should report the concerns through the supervisory chain of command to the District Director. The District Director has authority to conduct an investigation and, if warranted, may submit a written request to the BIA requesting that the organization's recognition be withdrawn. The filing must include the results of the investigation of the recognized organization. The request must be filed with the BIA recognition and accreditation coordinator and a copy must be served on the organization. An immigration judge will hold a hearing and forward all evidence, along with his or her recommendation, to the BIA. USCIS, ICE, and the organization will have the

opportunity to engage in an oral argument before the BIA, after which the BIA will render a decision.

(g) Summaries of BIA Decisions Relating to the Recognition and Accreditation Process.

Matter of Elly Velez Pamatong (Interim Decision #2743 – November 1979)

- **Summary:** A graduate of the University of Philippines Law Program, who was considered a refugee by the U.N. High Commissioner for Refugees, applied for permission to represent individuals before the Board of Immigration Appeals and the Immigration and Naturalization Service. Notwithstanding the provisions of Article 19 of the Convention and Protocol Relating to the Status of Refugees, his application was denied because he was not an attorney within the meaning of 8 CFR 292.1, or fit under the categories listed in that provision.
- **Full Text of Decision:** <http://www.justice.gov/eoir/vll/intdec/vol17/2743.pdf>

Matter of American Paralegal Academy, Inc. (Interim Decision #3012 – April 1986)

- **Summary:** Nominal charges are not defined in terms of specific dollar amounts, but have been interpreted to mean a very small quantity or something existing in name only as distinguished from something real or actual. An applicant for BIA recognition, whose charges for services exceed amounts which can be construed as nominal may not rely upon the notion that its fees are substantially less than those charged by law firms, or that its fees are one of the means by which it is able to fund itself.
- **Full Text of Decision:** <http://www.justice.gov/eoir/vll/intdec/vol19/3012.pdf>

Matter of Lutheran Ministries of Florida (Interim Decision #3132 – February 1990)

- **Summary:** An application for BIA recognition should include detailed information as to how the organization will operate and by whom it will be staffed, as well as other evidence regarding the organization's qualifications, such as resumes for the staff members and information as to the availability of legal resource materials, training programs in immigration law and procedure, and supervised employment for the staff.
- **Full Text of Decision:** <http://www.justice.gov/eoir/vll/intdec/vol20/3132.pdf>

Matter of Florida Rural Legal Services Inc. (Interim Decision #3196 – February 1993)

- **Summary:** An organization requesting recognition or accreditation of its representatives, which has physically separate offices, must demonstrate by individual application that each office independently has at its disposal adequate knowledge, information, and experience in immigration law and procedure, and that it makes only nominal charges and assesses no excessive membership dues for persons given assistance.
- **Full Text of Decision:** <http://www.justice.gov/eoir/vll/intdec/vol20/3196.pdf>

Matter of Baptist Educational Center (Interim Decision #3210 – September 1993)

- **Summary:** During proceedings to withdraw an organization's recognized status, if an organization wishes to retain its recognized status, it must demonstrate by clear,

unequivocal, and convincing evidence that it continues to satisfy the requirements for recognition.

- **Full Text of Decision:** <http://www.justice.gov/eoir/vll/intdec/vol20/3210.pdf>
- ***In re Chaplain Services, Inc.*** (Interim Decision #3292 – July 1996)
 - **Summary:** In an application for recognition, an applicant must respond to and successfully rebut an adverse recommendation made by the district director, even when such recommendation has been made in a prior recognition proceeding involving the applicant. In this case, the applicant's request for recognition was denied because, among others, applicant failed to rebut allegations made by the district director in prior recognition proceedings that the applicant's organization provided clients with misinformation; that the applicant improperly submitted Notices of Entry of Appearance as Attorney or Representative (Forms G-28) on behalf of a purportedly associated attorney who never performed services; that the applicant's clients had been charged excessive amounts for services in spite of the applicant's fee list which reflects nominal charges; and that the member of the applicant's staff upon whose expertise the applicant relies has been the subject of complaints for the unauthorized practice of law.
 - **Full Text of Decision:** <http://www.justice.gov/eoir/vll/intdec/vol21/3292.pdf>

Matter of EAC Inc., Request for Recognition (Interim Decision #3614 – July 2008)

- **Summary:** The process of recognition is designed to evaluate the qualifications of only those nonprofit organizations that provide knowledgeable legal assistance to low-income aliens in matters involving immigration law and procedure. In order to establish that it has adequate knowledge of immigration law and procedure, an organization seeking recognition must have sufficient access to legal resources, which may include electronic or internet access, as well as resources provided by a law library. An organization seeking recognition must show that it has either a local attorney who is on the staff, offering pro bono services, or providing consultation under a formal arrangement; a fully accredited representative; or a partially accredited representative with access to additional expertise. A recognized organization that does not offer a full range of immigration legal services or whose staff is not sufficiently experienced to handle more complex immigration issues must have the ability to discern when it should direct aliens to seek other legal assistance.
- **Full Text of Decision:** <http://www.justice.gov/eoir/vll/intdec/vol24/3614%28recog%29.pdf>

Matter of EAC Inc., Request for Accreditation (Interim Decision #3615 – July 2008)

- **Summary:** All accredited representatives on the staff of a recognized organization must have a broad knowledge of immigration law and procedure, even if the organization only intends to provide limited services through one or more partially accredited representatives. In order to show that a proposed accredited representative has the broad knowledge and experience in immigration law and procedure required by 8 CFR § 1292.2(d) (2008), a recognized organization should submit the individual's resume, letters of recommendation, and evidence of immigration training completed, including detailed descriptions of the topics addressed.
- **Full Text of Decision:** <http://www.justice.gov/eoir/vll/intdec/vol24/3615%28accred%29.pdf>

☞ 2. Appendix 12-1 is added to read:

[INSERT CHECKLIST HERE]

☞ 3. Appendix 12-2 is added to read:

[INSERT WORKSHEET HERE]

☞ 4. Appendix 12-3 is added to read:

[INSERT APPROVAL LETTER HERE]

☞ 5. Appendix 12-4 is added to read:

[INSERT DENIAL LETTER HERE]

☞ 6. The AFM Transmittal Memoranda button is revised by adding, in numerical order, a new entry to read:

AD 11-34 [06/07/2011]	Chapter 12.6, Appendix 12-1, Appendix 12-2, Appendix 12-3, and Appendix 12-4	Clarifies the role and responsibilities of USCIS District Directors related to the recognition and accreditation process administered by the Board of Immigration Appeals (BIA), Executive Office for Immigration Review (EOIR), Department of Justice.
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Use

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and should not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information

Questions or suggestions regarding this PM should be addressed through appropriate supervisory channels to the Office of Public Engagement.

Attachment: Form EOIR-31