



Submitted via email

December 12, 2019

Office of Management and Budget
Office of Information and Regulatory Affairs
Attention Department of Justice Desk Officer
Washington, D.C. 20503

Lauren Alder Reid
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RE: Comments on the Proposed Changes to Form EOIR-31 and Form EOIR-31A for DOJ Recognition and Accreditation as announced Federal Register / Vol. 84, No 221 / Friday, November 15, 2019, (62555, 62556)

The Catholic Legal Immigration Network, Inc. (CLINIC) submits these comments in response to the proposed changes to Forms EOIR-31 and EOIR-31A for the Department of Justice (DOJ) Recognition and Accreditation Program. CLINIC opposes any changes to Forms EOIR-31 and EOIR-31A that are not supported by the regulations governing the Recognition and Accreditation program.

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.

CLINIC and its affiliate agencies serve family-based immigration applicants as well as victims of trafficking and crimes; refugees; asylees; youth and young adults seeking renewals of Deferred Action for Childhood Arrivals; Violence Against Women's Act petitioners; Special Immigrant Juveniles; persons in removal proceedings; TPS holders; and applicants for naturalization.

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, and thereby meeting individual agency mission statements, 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 are of great importance to CLINIC and its board of directors (comprised principally of Catholic bishops).

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 of this year.

CLINIC sees the proposed form changes as intricately tied to the capacity for providing expanded, charitable immigration legal services to the most vulnerable non-citizens in our country. Due to the complexity of the regulations and the application process, CLINIC dedicates six full-time staff, Capacity Building staff, 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 Recognition and Accreditation Working Group comprised of national networks with affiliates and partners that hold DOJ Recognition.

The clarity and accuracy of Forms EOIR-31 and EOIR-31 are extremely important to nonprofits and non-attorneys who practice immigration law in a charitable setting as they are the principal method for data collection required for their respective applications for credentialing. In 2018 and 2019, CLINIC's Field Support Coordinators provided review and technical assistance to 170 recognition renewal applications, many of which contained initial and renewal accreditation requests. As such, CLINIC is a major stakeholder with unparalleled experience regarding the proposed changes to the instructions and forms.

CLINIC is pleased to have the present opportunity to comment on the instructions and forms. However, it has been extremely difficult for the public and frequent users to publically comment until now. An earlier notice about the proposed form changes was made in the Federal Register under the DOJ category rather than EOIR, which is what immigration practitioners look to in the Federal Register since DOJ notices are considerably more in number and expansive in subject matters. Furthermore, the November 15 notice, which was issued under the EOIR category, did not provide direct access to the forms with the proposed changes. Two layers of communication were necessary in order to access the forms. This severely limits the public's ability to engage the comment process. In addition, EOIR did not provide justifications for making form changes or explanations for the individual changes. In all, the notice process has not met a reasonable standard of access or transparency.

There was no dialogue about the form changes with stakeholders in advance of releasing the notice on November 15. CLINIC on its own and as the chair of the Recognition and Accreditation Working Group, along with other nonprofits, have engaged EOIR and OLAP in the past before major changes were proposed or made final, much to the benefit of government officials and stakeholders. CLINIC requests that the agency resume its past practice of more broadly engaging stakeholders, including rostered organizations and representatives, prior to introducing changes in Recognition and Accreditation in the future. Listening to the expertise and perspectives of CLINIC and other stakeholders would make the regulatory and form-change processes more efficient, as some of the sources of confusion described below could be addressed before the public is engaged through the formal comment process.

We submit the following recommendations to strengthen the forms, improve the quality and accuracy of the information collected for EOIR's use, and make them more user friendly.

II. General Observations

CLINIC opposes many of the proposed changes because they are unnecessary and lack adequate rationale. In some circumstances, necessary information that is helpful for the adjudication process has been deleted. Some changes have created confusion between the form and instructions, if not actual contradictions. With the many changes to the forms it is difficult to understand how the instructions released on November 15 may remain the same. This possible oversight could only lead to numerous inquiries of OLAP and improperly prepared applications, all to the detriment of OLAP's purpose and the mission of the applicants. Other changes suggest insufficient knowledge of how the forms are actually used by applicants according to their local realities.

Further, CLINIC recommends EOIR provide for the ability to submit electronic requests to OLAP for Recognition and Accreditation (initial, renewal, and extensions).

In the instructions for both forms, the address for OLAP should be updated to reflect Suite 2500, OLAP's current address.

In the Proof of Service section on both forms, the (Part 12 on the EOIR-31 and Part 7 on the EOIR-31A) the date fields should be updated to reflect (Month/Day/Year) instead of (Day/Month/Year) in order to be consistent with other date fields in the forms, and avoid confusion.

III. Comments on the proposed changes to Form EOIR-31

Part 1

We recommend retaining the suite number for the address of organization headquarters or designated office for recognition purposes. Many of our affiliates use this field on the form.

The form instructions state that a post office box is not acceptable. The instructions should be updated to provide a method for programs that serve victims of domestic violence and other crimes to provide a post office box for a safe mailing address. If not, then place the option in the instructions.

Remove the email contact field since the authorized officer is the point of contact signing Part 11 of the form, and provides the email address there.

Part 2

Since EOIR requires one form for three different kinds of recognition requests (initial, renewal, extension), we recommend clarifying in the form and instructions what to include for each type of request and providing specific examples. In particular, the instructions should indicate which parts of the form to complete and which attachments to include for the different kinds of recognition applications, especially for renewals and extensions, as this is an area of confusion.

We recommend retaining the Month/Day/Year field for second and third option in this part (renewal and extension). There has long been a malfunction in the pdf form in this part, and we request that it be corrected. When an applicant enters a date in the fields in this part and tries to either save or print the form, the date field is blank in the saved or printed version. Currently, applicants must hand-write the date in these fields.

When renewing recognition, the instructions say to skip Parts 5-8 if there are no updates since the last grant of approval for recognition. We recommend adding an option to select “no change” for each of these parts.

We recommend allowing for applicants to check more than one box in Part 2. For example, this form can be used for an organization requesting renewal of recognition and extension of recognition simultaneously. Instead of having (check one) next to Type of Recognition, the form should say (check all that apply). This would require changing the instructions as well.

Part 3

Retain the “no” option for those not seeking an extension of recognition with the helpful instructions to Skip Part 4 and Go to Part 5.

Part 4

Retain new extension versus renewal of extension boxes in order to provide clarity on the options. In addition, add the following instructions to the form under the box for renewal of extension: “Attach documentation to demonstrate supervision and control of the extension office(s) and accredited representatives by the headquarters office and documentation of the joint operations,

funding and management of the offices.” In addition, the instructions should indicate to submit the following documents: organizational chart, fee schedule (if any), budget, and law library resources.

Part 5

There is no need for state non-profit status documentation to establish eligibility as a non-profit, religious, charitable, social service or similar organization. There is no such requirement in the recognition and accreditation regulations.¹ We recommend removing “state non-profit status” from the form instructions for Part 5.

Part 6

It is not necessary to provide the first page of last annual IRS information return *in addition to* the IRS tax determination letter. Form EOIR-31 asks for both. The regulation only requires the IRS tax exemption letter and does not mention the IRS information return. The regulation states, “The organization must submit a copy of its currently valid IRS tax-exemption determination letter, alternative documentation to establish Federal tax exempt status, or proof that it has applied for Federal tax exempt status”² We recommend that the agency delete “and first page of the last annual IRS information return” from the second option in Part 6.

We also recommend the agency retain “Alternative documentation to establish federal tax exempt status is attached” in keeping with the language of the regulation.

Part 7

The instructions for Part 7 are bulleted, but should be lettered to clearly reflect which parts of this section they pertain to (a-e).

In addition, the instructions should indicate that if the applicant has an attorney on staff, they can skip (d) (arrangements for technical support).

In Part 7 (c), we recommend adding “for initial and/or renewal” to the first bullet under this subsection to clarify which types of accreditation applications may be included.

In Part 7 (d), for the “other” final bullet option, change the Yes option to read, “Yes, attach all agreements with other providers” for consistency with the first two bullet options for technical legal support.

In Part 7 (e), the form says “Describe immigration legal services offered and qualifications of immigration legal staff to provide such services. Attach supporting documentation such as resumes, training certificates, letters of recommendation, or other similar information.” The form instructions say the same, except rather than “attach...” they say, “if not readily apparent from the resumes and documentation already included with the application.” In the case of an already recognized program that is completing this section because staffing has changed since its last approval, the organization simply attaches the current accredited representatives’ last EOIR letter granting approval of accreditation, instead of attaching resumes/letters of recommendation/certificates. The approval letter should be sufficient to demonstrate staff

¹ 8 C.F.R. § 1292.11(b).

² 8 C.F.R. § 1292.11(d).

qualifications. The form instructions should be updated to allow for submission of the approval letter for staff who are already accredited.

Part 8

The instructions state, “List the print and electronic legal resources available to the organization and its representatives.” A law library resources list would not fit on the three lines provided on the form. The form should specify that if more room is needed, the organization can attach a sheet with additional resources.

In addition, the instructions should mention completion of the third line of the form that indicates whether extended locations have access to the same law library resources. The instructions should say to attach an updated list of print and/or electronic legal resources when requesting extension.

Part 9

Update the instructions to reflect the removal of membership dues in section (b).

Part 10

Retain section c, “If the organization does not currently have an accredited representative on staff and is on inactive status or seeks inactive status, check this box.” The regulation states, “If an organization on inactive status is subject to renewal while on inactive status, the organization must request renewal of recognition at the time required for renewal.”³

We agree with removing section (d), as it is duplicative. This needs to be reflected in the form instructions.

Part 12

Retain the option for a second U.S. Citizenship and Immigration Services (USCIS) District Director address for those agencies that have offices in different USCIS Districts. Our affiliates often use the second option.

The instructions on page 6 have a typographical error. The sections labeled D and E need to be changed to Part 11 and Part 12. Also, we recommend providing a hyperlink to the USCIS website in the third bullet under sub section E.⁴

IV. Comments on the proposed changes to Form EOIR-31A

Part 1

We recommend retaining the fields for the organization’s full address and telephone number as OLAP has not provided a rationale for removing this. We support removing the fields for fax, email, other names, and other names previously applied under. Instructions for the form should be updated to reflect these changes.

The instructions should be updated to provide a method for programs that serve victims of domestic violence and other crimes to provide a post office box for a safe mailing address.

³ 8 C.F.R. § 1292.16(h)(3)(i).

⁴ www.uscis.gov/about-us/find-uscis-office/field-offices

The form instructions need to be updated to reflect the removal of “date of last approval of recognition (month/day/year)” from the form.

Part 4

For Part 4A, the instructions state, “Provide documentation to show that the individual possesses the required character and fitness, such as character references from professionals in the community, employment references, AND criminal background checks.” The form says, “Attach character reference letter(s) AND other supporting documentation (see instructions for details).” No supporting documentation is required by the regulation.⁵ A criminal background check is optional. The final attestations from the authorized officer and the applicant in Part 6 are sufficient. The instructions should be updated to reflect this. Also, for Part 4A, we recommend removing the following sentence “Attach character reference letter(s) and other supporting documentation (see instructions for details).”

Part 5

In Part 5A, we recommend removing “Attach a copy of the last order approving accreditation” from the form. OLAP already has this information and this will help reduce unnecessary paperwork. We note that there is no corresponding instruction in the form instructions.

In Part 5C, we recommend removing the last sentence, “Character reference letters and other supporting documentation may be submitted.” This is misleading as character reference letters are not required under the regulation.⁶ In addition, for consistency with Part 4A, remove this related sentence from the instructions: “The organization may submit character reference letters and other supporting documentation to demonstrate the accredited representative’s continuing character and fitness.”

The instructions for Part 5D state, “Updated letters of recommendation in support of the representative’s qualifications, or other documentation demonstrating the representative’s eligibility are also encouraged.” This is misleading. We recommend removing this sentence, as letters of recommendation are not required for accreditation renewal.

Part 7

Retain the option for a second USCIS District Director address for those agencies that have offices in different USCIS Districts. Our affiliates often use the second option.

V. Conclusion

The Recognition and Accreditation Program has been a highly successful public-private partnership for more than half a century. The Catholic Church of the United States and a dozen other faith communities, in addition to hundreds of stand-alone community-based organizations, are deeply committed to their work to integrate the foreign-born for the strengthening of our country. The Recognition and Accreditation Program is part of that success.

⁵ 8 C.F.R. § 1292.12(a)(1).

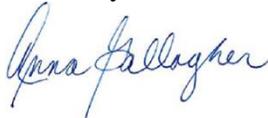
⁶ 8 C.F.R. § 1292.12(a)(1).

CLINIC's network of affiliates is a significant stakeholder in the Recognition and Accreditation Program. Since the associated forms and instructions are a critical byproduct of the Recognition and Accreditation regulations, we respectfully offer these comments and suggestions.

We repeat the request for more and open dialogue with stakeholders prior to the introduction of changes to forms and regulations. We expect that any future changes in the Recognition and Accreditation Program, and OLAP in general, will bring improvements aligned with stakeholder expectations and needs. CLINIC stands ready to engage in more dialogue to assist OLAP in these pursuits.

Thank you for the opportunity to submit these comments. We appreciate your consideration. Please do not hesitate to contact Jill Marie Bussey, CLINIC's Advocacy Director, at jbussey@cliniclegal.org should you have any questions about our comments or require further information.

Sincerely,

A handwritten signature in blue ink that reads "Anna Gallagher". The signature is written in a cursive, flowing style.

Anna Gallagher
Executive Director