March 6, 2012

Lauren Alder-Reid  
Counsel for Legislative and Public Affairs  
Executive Office for Immigration Review  
Department of Justice  
5107 Leesburg Pike  
Suite 1800  
Fall Church, VA 22041  
PAO.EOIR@usdoj.gov

Re: EOIR Review of 8 C.F.R. §1292

Dear Ms. Alder-Reid,

The American Bar Association (ABA) supports efforts to improve access to counsel for individuals in removal proceedings. As you may be aware, several studies have now found that the presence of representation has a significant impact on case outcomes in immigration court.1 We recognize the importance of enhancing representation and fairness by increasing the capacity and competency of Board of Immigration Appeals (BIA)–recognized agencies and accredited non-attorneys. The ABA urges you to continue encouraging organizations to seek BIA recognition and accreditation of individuals. We also have several recommendations for ensuring that appropriate agencies are recognized, and that accredited representatives are competent.

BIA Agency Recognition

In considering amendments to the regulations governing the accreditation of representatives who appear before EOIR, the ABA urges EOIR to strengthen the requirements for agency recognition. The ABA believes that all organizations recognized by the BIA should ensure that a competent attorney is available to provide mentoring and supervision to accredited representatives. Organizations could either have an attorney available on staff or, when that is not possible, establish a technical support relationship with an appropriate agency. This is important given the complexity of many immigration cases and the need for individuals to have access to adequate mentoring and support when difficult legal issues present themselves.

The ABA supports the requirement that all BIA accredited agencies obtain IRS tax-exempt status and provide documentation of that status to EOIR with their applications for recognition.

---

The ABA also supports the careful review of the financial status of organizations seeking accreditation. BIA accredited organizations should provide free or low cost services, depending on the financial need of the individual in need of legal services. To this end, the ABA believes that BIA recognition should include a requirement that a meaningful portion of an agency’s budget come from sources of support other than fees charged to clients.

**Requirements for Accredited Individuals**

In addition to the additional requirements for the recognition of organizations, the ABA encourages adopting additional requirements for accredited individuals. First, a minimum training requirement would be appropriate for accredited representatives. In many states, attorneys are required to participate in continuing legal education programs, and a similar expectation for non-attorneys would be appropriate. Specifically, the ABA recommends that all accredited representatives be required to participate in a minimum of two training sessions on immigration law each year.

One other consideration would be a requirement for accredited representatives to accept only those cases that are appropriate to their skill level. Though the regulations currently distinguish between partial and full accreditation, there is a much wider range of complexity in immigration cases. EOIR could provide guidance to accredited representatives to help their organizations gauge cases appropriate to their skill level.

**Outreach in Underserved Locations**

As mentioned above, the ABA believes that the EOIR should conduct outreach, particularly in areas lacking in legal service agencies, to encourage existing organizations to seek BIA accreditation. The ABA notes that this is of particular concern for immigrants in remote detention facilities, a significant number of which are located 100 miles or more from large cities. Existing legal service agencies report that their lack of proximity to detained individuals is a significant impediment to representation.\(^2\) Were EOIR to identify existing organizations in communities adjacent to detention facilities and encourage them to seek BIA accreditation, more individuals in removal proceedings would benefit from representation.

We look forward to working with you as EOIR considers amendments to the regulations governing the recognition of organizations and accreditation of representatives who appear before EOIR. If you have any questions or need additional information, please don’t hesitate to contact Elizabeth Sweet with the Commission on Immigration at 202-662-1007, or Kristi Gaines in the Governmental Affairs Office at 202-662-1763. Thank you for your consideration.

Sincerely,

Thomas M. Susman
Director

---