



Working to promote due process for all immigrants and refugees in the United States

Avoiding the Unauthorized Practice of Immigration Law

The ABA Commission on Immigration is deeply concerned about non-citizen consumers of immigration legal services being defrauded by non-attorney individuals who are not authorized or qualified to practice immigration law. This practice, often referred to as “unauthorized practice of immigration law” or “UPIIL,” has been a chronic problem for decades; it results in serious consequences including devastating financial loss and severe immigration ramifications such as deportation. This issue is more important now than ever due to the uncertainty and fear resulting from the current immigration climate and the greatly expanded immigration enforcement priorities set out in the President’s Executive Order entitled “Enhancing Public Safety in the Interior of the United States,” issued on January 25, 2017. The Commission is committed to educating the public regarding the legal process and upholding legal standards, ethics, and laws—federal, state, and local—surrounding the practice of law.

Often, the unauthorized practice of law in the immigration context, or “UPIIL,” manifests in a non-attorney who establishes a business to offer immigration and other legal services. This type of unscrupulous practitioner is commonly referred to as a *notario*.¹ In one situation, a notario offered legal services to non-citizen clients and had established business offices in at least two jurisdictions. The notario offered to provide a full range of immigration legal services to clients and represent them before

¹ The literal translation of “*notario*,” or “*notario publico*,” is “notary public.” While a notary public in the United States is authorized only to witness the signature of forms, a notary public in many Latin American (and European) countries refers to an individual who has received the equivalent of a law license and who is authorized to represent others before the government. The problem arises when individuals obtain a notary public license in the United States, and use that license to substantiate representations that they are a “*notario publico*,” or “*notario*,” to immigrant populations that ascribe a vastly different meaning to the term.

the various immigration agencies for a fee. This individual was not a licensed attorney and had no authorization to advise clients on matters of immigration law. After his clients began to question his ability to legitimately practice law and seek out help, he threatened that he would have them deported. Ultimately, the notario was charged with fraud and violation of the local immigration consultant act in the prosecuting jurisdictions.²

While most can readily identify the notario scenario as the unauthorized practice of law, seemingly innocent assistance by community members can also fall into the UPIIL category. A common example is “word of mouth” referrals to “someone in the neighborhood” who knows about immigration forms and can talk to people about their cases. This individual, admired in the community and described as a good person, meets with non-citizen community members to guide them on what actions to take to resolve their immigration matters. He listens to their problem, instructs on which immigration form or process they should utilize, completes the form, possibly even suggesting specific answers and may even advise on what they could expect. Despite his standing as a de facto consultant to the community, this individual is not a licensed attorney authorized to practice law nor is he legally authorized to practice immigration law. Despite having the best of intentions and potentially a desire to help the community at large, this individual is also engaging in the unauthorized practice of law.³ Consumers who seek the advice of this type of consultant are in the vulnerable position of placing blind trust in a person who may not understand the intricacies of immigration law and may damage their case or expose them to risk.

These exact scenarios, and a multitude of variations, are repeated constantly in jurisdictions across the country and result in untold numbers of non-citizens being defrauded of money, proper

² Office of the Attorney General for the District of Columbia, *DC Court Order Protects Vulnerable Immigrants from Fraudulent Service Provider*, available at, <https://oag.dc.gov/release/dc-court-order-protects-vulnerable-immigrants-fraudulent-service-provider>.

³ Amelia Arvesen, *Boulder Co DA cracking down on 'notario fraud*, Times Call, available at, http://www.timescall.com/longmont-local-news/ci_30606775/boulder-county-da-cracking-down-notario-fraud.

representation and access to the legal immigration system, and irreparable damage to viable immigration cases.

Practice of Law

The Model Rules of Professional Conduct guide the legal practice of lawyers in the United States. Based on Rule 5.5, a lawyer is authorized to practice law when she is in compliance with the regulation of the legal profession in that jurisdiction.⁴ This means a lawyer must be admitted to practice and be a bar member in good standing.⁵ The unauthorized practice of law includes falsely representing oneself as admitted to practice law in a given location.⁶ Although the regulation of law practice applies exclusively to attorneys, non-attorneys, without special authorization, engaging in activities that equate to the practice of law are doing so in violation and are also committing the unauthorized practice of law. In addition, many states have specific laws relating to the unauthorized practice of law.

Practice of Immigration Law

The practice of immigration law is defined by federal regulation as an “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 Department of Homeland Security] or any immigration judge, or the [Board of Immigration Appeals].”⁷ Representation is defined as practice and preparation before the Department of Homeland Security (“DHS”) and the Board of Immigration Appeals (“Board”).⁸ Preparation, an essential element of the practice of immigration law, is “the study of the facts of a case and the applicable laws, coupled with the

⁴ Model Rules of Prof'l Conduct R. 5.5.

⁵ MRPC Rule 5.5(a). The practice of immigration law falls under federal law; however, if the practitioner is licensed by a state or similarly recognized bar association, she may practice immigration but is limited to providing advice on federal law matters only. 8 CFR 1001.1(f) (2017).

⁶ MRPC Rule 5.5(b)

⁷ 8 C.F.R. §1001.1(i).

⁸ 8 C.F.R. §1001.1(m).

giving of advice and auxiliary activities, including the incidental preparation of papers.”⁹ However, preparation, or practice, does not include “the lawful functions of a notary public or service consisting solely of assistance in whose remuneration, if any, is nominal and who does not hold himself out as qualified in legal matters or in immigration and naturalization procedure.”¹⁰ For example, it is permissible for a notary to notarize documents, translate documents, arrange for photographs and fingerprints to be taken or engage in other similar activity and not be involved in the practice of law. Additionally, a notary, or other individual, could transcribe information onto an immigration form. However, activity such as advising the consumer of which form to select or coaching on how to respond to form questions is the practice of law since these activities involve legal analysis and advice.

Authorized to Practice Immigration Law

There are a number of categories of authorized individuals who may engage in the practice of immigration law and represent others in immigration matters as detailed in 8 C.F.R. §1292.1. This list includes **attorneys**, law students and law graduates under the supervision of a licensed attorney, reputable individuals, **accredited representatives**, and accredited officials. An attorney is authorized to practice immigration law when he is otherwise eligible to practice law and “is a member in good standing of the bar of the highest court of any state, possession, territory, or Commonwealth of the United States, or of the District of Columbia, and is not under any order suspending, enjoining, restraining, disbaring, or otherwise restricting him in the practice of law.”¹¹ Many non-profit organizations significantly contribute to the effort of providing legal representation to non-citizens in immigration matters. Some are offices of attorneys that also engage paraprofessionals, law students and

⁹ 8 C.F.R. §1001.1(k).

¹⁰ 8 C.F.R. §1001.1(k).

¹¹ 8 C.F.R. §1001.1(f).

law graduates, through attorney supervision, to represent non-citizens. Others, however, have received “recognition” status and utilize “accredited representatives” to provide legal representation.

DOJ Recognition and Accreditation

A recognized organization can seek authorization for a representative to practice before DHS or the Board.¹² An organization is eligible for recognition if it is 1) a non-profit, religious, charitable, social service, or similar entity; 2) offers immigration legal services to indigent and low-income clients and has policies to allow for a waiver of fees if needed; 3) maintains federal tax-exempt status; 4) has a minimum of one accredited representative on staff; 5) identifies a designated authorized officer; and 6) has access to adequate knowledge, information, and experience.¹³ Once an organization has achieved recognition status, it may apply to accredit certain individuals to act as its representatives and provide immigration legal services; accredited representatives may be eligible to practice before either DHS or the Board, or both.¹⁴ An accredited representative must make a showing of good character and fitness in order to represent clients; also, although the representative may be an employee or volunteer of the organization, an attorney is not eligible for accreditation.¹⁵ Finally, the application for accreditation must detail the nature and extent of experience and knowledge of immigration law and procedure.¹⁶

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¹² 8 C.F.R. §1292.12(a). The Department of Justice amended regulations governing the recognition and accreditation program. The final rule, effective as of January 18, 2017, transfers administration of the program to the Office of Legal Access Programs (OLAP) and adds new requirements for acquiring and maintaining recognition and accreditation status. The final rule is available at <https://www.federalregister.gov/documents/2016/12/19/2016-29726/recognition-of-organizations-and-accreditation-of-non-attorney-representatives>.

¹³ 8 C.F.R. §1292.11(a).

¹⁴ 8 C.F.R. §1292.12(a).

¹⁵ 8 C.F.R. §1292.12(a). Accreditation of attorneys is specifically prohibited in the current regulations; because attorneys must be specifically licensed to practice law, accreditation is not necessary.

¹⁶ 8 C.F.R. §1292.12(a)(6).

The unauthorized practice of law in the immigration context includes any “practice” or “preparation” activity, as defined in 8 C.F.R. §1001.1(i) and (k), by any individual not authorized to provide “representation” as outlined in 8 C.F.R. §1292.1 (i.e. attorneys, law students and law graduates, reputable individuals, accredited representatives, and accredited officials). Most often, legal immigration representation is engaged in by attorneys or accredited representatives, on behalf of a recognized organization. Both attorneys and accredited representatives must meet the criteria outlined in 8 C.F.R. §1292.1 in order to be engaging lawfully in the provision of immigration legal services.

An attorney may be admitted to the bar of any state in the U.S., as a member in good standing, and be eligible to practice immigration law.¹⁷ In order to determine if an attorney meets this criteria, a non-citizen can (1) ask to view a copy of the attorney’s bar card or license and (2) contact the state bar association where she believes the attorney is admitted or in the state in which the attorney is practicing to confirm; many state bar associations have an online portal for verifying a lawyer’s admission status. To determine if an accredited representative is eligible to practice, a non-citizen can consult the accredited representative roster, managed by the Office of Legal Access Programs (OLAP).¹⁸

Preparation of immigration matters does not constitute practice or representation in the case of lawful notary public services, assisting to complete blank spaces on printed forms with information provided solely by the applicant, where compensation is small or non-existent and when the individual does not claim to be an expert in immigration matters.¹⁹ Any activity outside of solely auxiliary services is arguably practice and representation and, if engaged in by someone other than an authorized actor from the list in 8 C.F.R. §1292.1, would constitute the unauthorized practice of immigration law.

¹⁷ 8 C.F.R. §1001.1(a). Many issues in immigration law depend on analysis of underlying state law, such as the elements of a criminal statute. If a practitioner is not licensed to practice within a particular state, or experienced with the state law in question, he may not be able to provide advice on the subject.

¹⁸ <https://www.justice.gov/eoir/recognition-accreditation-roster-reports>.

¹⁹ 8 C.F.R. §1001.1(k).

Options for Recourse

Actions a victim may take to recover following an incident of UPIL include making a record of the incident; reporting what has happened with local, state, or federal authorities; or seeking the assistance of a criminal or civil lawyer to explore legal remedies.

Make a record

Gathering information on what has occurred will be an important step and will assist in any other action in an immigration, consumer protection, or unauthorized practice of law case. Compile information and evidence about the events and what has occurred. This information can be used to prepare a formal complaint with local, state, or federal authorities. Such entities can include local and state executive agencies, UPL committees, state licensing offices, and the Federal Trade Commission. A victim of UPIL, sometimes referred to as notario fraud, can file complaints with multiple agencies. However, a victim should cautiously consider submitting a formal complaint prior to doing so because it may require her to identify herself in order for the complaint process to move forward. Moreover, the decision of whether to submit a formal complaint could play a role in a larger strategy related to a potential immigration or consumer protection case, which may involve statutes of limitations; appropriate counsel should be consulted to determine how a complaint may factor into larger strategies of advocacy or recourse for a victim.

Submitting a complaint

Gather relevant information of the offense committed and collect documents. Verify the regulations of the relevant jurisdiction. Determine the agencies with which to lodge the complaint(s)

and be prepared to provide additional information to satisfy the complaint process if requested. Finally, follow-up with individual agencies for responses.

Explore legal remedies

Other alternatives to submitting a formal complaint include exploring civil and criminal legal remedies. A victim should consult with an experienced civil lawyer to determine if a civil suit can be filed against an unscrupulous practitioner. Remedies could include, but are not limited to, restitution, damages or injunctions. Likewise, a victim should consult with an experienced criminal lawyer to determine if a criminal action can be filed against a practitioner.²⁰ Remedies could include, but are not limited to, fines, jail time, injunctions, restitution or other disciplinary action. The victim will need to carefully consider the strength of the civil or criminal case prior to filing. The exact claims to be litigated will depend on the statutes and regulations within the jurisdiction, however, basic concepts of fraud, theft, extortion, and misrepresentation may apply. Moreover, a victim should consider that while civil litigation may be an effective long term solution, it still may be costly at the outset since attorney's fees and damages may be limited based on applicable law. Local and state agencies, specifically UPL Committees and consumer protection agencies, could potentially refer the matter to the state attorney general or other law enforcement; this action could lead to criminal charges or an injunction. In the case of a notario committing UPIL, the agencies could also demand a consent agreement to cease the notario's activity. Alternatively, the agency could remove the notario's license or a UPL Committee could issue a written opinion of action taken against the unscrupulous practitioner.

Additional Resources

²⁰ A criminal complaint/case must be lodged in conjunction with an agency that has prosecutorial authority, such as the state attorney general, district attorney, or local police.

This is not an exhaustive list of next steps. Depending on the nature and circumstances of the unauthorized practice activity, there may be additional options for lodging complaints and seeking recourse.

Here is a list of additional resources that may aid in making this determination:

- State Bar Associations:
<http://shop.americanbar.org/ebus/ABAGroups/DivisionforBarServices/BarAssociationDirectories/StateLocalBarAssociations.aspx>
- State Attorney General's Office where the person operates: <http://naag.org/naag/attorneys-general/whos-my-ag.php>
- Office of Legal Access Programs: <https://www.justice.gov/eoir/office-of-legal-access-programs>
- Federal Trade Commission: <https://www.ftc.gov/>
- American Bar Association Fight Notario Fraud Project, Training Materials:
<http://ambar.org/fightnotariofraud>
- 2ND ABA UPL School:
http://www.americanbar.org/groups/professional_responsibility/events_cle/2015abauplschool/uplschoolcoursematerials.html
- Notario Fraud Remedies: A Practical Manual for Immigration Practitioners:
<https://www.consumer.gov/content/notario-fraud>
- Code of Federal Regulations, Final Rule on Recognition of Organizations and Accreditation of Representatives: <https://www.federalregister.gov/documents/2016/12/19/2016-29726/recognition-of-organizations-and-accreditation-of-non-attorney-representatives>
- Catholic Legal Immigration Network, Inc., DOJ Recognition and Accreditation Toolkit:
https://cliniclegal.org/clinic_toolkit/672

- Catholic Legal Immigration Network, Inc., “Who Can Help with Immigration Matters?”:
https://cliniclegal.org/clinic_toolkit/672/676
- Catholic Legal Immigration Network, Inc., Five Ways to Avoid Immigration Scams:
<https://cliniclegal.org/resources/5-ways-avoid-immigration-scams>
- Protecting Immigrant New Yorkers Task Force, Collaborating to Protect New Yorkers from Immigration Fraud: A Resource Guide for Law Enforcement, Government Agencies and Advocates: <https://protectingimmigrants.org/2016/02/04/piny-resource-guide/>
- ABA Center for Client Protection, Directory of Unlicensed Practice of Law Committees:
http://www.americanbar.org/groups/professional_responsibility/resources/client_protection/client.html
- ABA Center for Professional Responsibility, Directory of State Disciplinary Agencies:
http://www.americanbar.org/groups/professional_responsibility/resources.html
- American Immigration Lawyers Association, State Consumer Protection Agencies:
<http://www.stopnotariofraud.org/get-help.php>
- American Immigration Lawyers Association and Catholic Legal Immigration Network, Inc., State-by-State Overview of Legal Mechanisms: <https://cliniclegal.org/upil>
- UPIL Article from LA Times “Man posing as attorney lied to immigrants seeking legal help”:
<http://www.latimes.com/local/california/la-me-immigration-fraud-20150602-story.html>

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