Immigration Lawyers Should Embrace Technology to Thwart UPL

By Helen Gunnarsson

Online services could be the key to protecting immigrants from unlicensed legal practitioners, according to a panel of immigration lawyers at the ABA's 2017 UPL School.

Immigration law has long been rife with bad actors who engage in the unauthorized practice of law and victimize immigrants, the panelists said. Many of them identify themselves as “notarios” if they are notaries public. But their use of that term often misleads immigrants into thinking that they can provide legal services as well, Moderator M. Mercedes Badia-Tavas and panelist Mary Carmen R. Madrid-Crost said.

This is because in many Spanish-speaking countries and in the Philippines, the term “notario” refers to a law school graduate who has passed the bar examination, practiced law, and satisfied further requirements to obtain an additional license.

Additionally, panelist Javad M. Khazaeli said, notarios and others engaged in UPL are increasingly including immigration services in advertisements for tax, accounting, or insurance services, marketing themselves as “the one-stop shop in the neighborhood.” And the shopowner, said Badia-Tavas, may be a trusted family friend. As Khazaeli put it, “You need to get your taxes done, sign up for Obamacare? [Go to] so-and-so's aunt. She helps everybody.”

Badia-Tavas is of counsel to Barnes & Thornburg LLP in Chicago; Madrid-Crost practices with the Madrid Crost Law Group in Chicago; and Khazaeli is a partner in Khazaeli Wyrsch, LLC in St. Louis.

False Promises

“A lot of immigrants are looking to latch onto any opportunity from someone who makes promises,” Madrid-Crost said. “They are more comfortable with someone who can talk to them in their language, not thinking that this person may be defrauding them.” She said many immigrants also think notarios and other UPL actors charge less than lawyers. But applications for immigrant status that are incompetently prepared by unauthorized persons and then denied cost more than those prepared correctly the first time, she noted.

“One of the big things notarios offer people is work authorization,” Khazaeli said. The pitch goes something like this: “I will file this for you and you'll be able to legally work here.”

The notario will then file a fraudulent application for asylum, Khazaeli said, “knowing it will take three years to get through the initial process, then three years in immigration court. While the application is
pending, you get work authorization. People think it's great."

But the immigrant doesn't realize, he warned, the application “is saying ‘come get me’” for deportation. He added “When you hear these bogus applications over and over again, the immigration judge becomes really jaded.” Such shady tactics can end up tainting the immigration population from certain countries or world regions in the eyes of immigration courts, he said, causing immigration judges to view even legitimate applications with jaundice.

The panel then dug into the internet's potential for helping—and hurting—consumers in need of legal services.

The U.S. Customs and Immigration Service, the panelists and audience members agreed, has made its website more user-friendly by offering all instructions and forms for free, although only a few may be filed online. Additionally, the USCIS enables nonlawyer organizations to become authorized providers of immigration services by submitting an application for accreditation. Authorized providers, Madrid-Crost said, may translate and assemble documents completed either by the immigrant or by the provider based on the immigrant's instructions, but may not determine which forms should be completed or advise the immigrant on which options to choose.

USCIS's moves toward increasing accessibility of forms and information have benefited immigrants, the panelists said. But, Khazaeli noted, they have also opened the door for notarios and other nonlawyer providers to market their services helping immigrants fill out forms—in some cases, charging them to obtain what USCIS makes available for free—and filing them with USCIS. In some cases, he said, the nonlawyer provider websites "look like government websites" and may confuse immigrants who do not scroll to the bottom and read the disclaimers in fine print.

**Online Options**

Khazaeli said immigrants outside large cities such as Chicago and Los Angeles have even greater difficulties accessing competent legal services, and therefore turn to the internet. "People are used to doing their taxes online and getting their degrees online," he said, and "are looking for" online services in immigration as well. "There has been a major move in the last two years of online immigration help," he told the audience, pointing to one nonlawyer immigration service provider with a "terrifying" name: "SkipTheLawyer.com."

Khazaeli urged immigration lawyers to embrace technology to benefit their practices. "Some attorneys are super proud of the fact that they use old software or no software," Khazaeli said. "People hate dealing with immigration attorneys because we're all very busy and not always so responsive. We need to use technology."

Khazaeli's own law firm has developed an online immigration service platform called "Road To Status." He told the audience the company provides immigrants with a “do-it-yourself platform” that enables them to work on their own cases. He said the company's software uses artificial intelligence to ask users questions "to make sure they are going down the right path."

Khazaeli said the software doesn't attempt to make legal determinations but instead “enables [users] to choose [a course of action] based on their own answers to the questions.” It may also require some users, depending on information they provide, to speak to an administrator, who, in turn, may suggest the user speak with a lawyer.

Badia-Tavas asked panelist Robert Glaves to provide the bar foundation's perspective on online immigration assistance. Glaves is Executive Director of The Chicago Bar Foundation.

“We have a lot of online resources because there is not enough access to justice,” Glaves said. Lawyers’
traditional business model, summarized as “you come to me and I do everything and you do nothing on
your own,” is fast becoming obsolete. “Whether we like it or not,” more companies and technology to
assist people in need of legal services are coming online—and in some cases, he said, this is the answer,
or part of the answer, to the consumer's needs. “If we don’t start leading in this, the bad actors will win,”
he and Badia-Tavas agreed.

For lawyers to maintain credibility with persons in need of legal services, he said, “we need to help them
figure out when online resources are good enough for them and when they need to come in and see a
lawyer.” He said lawyers need to identify “what we do as lawyers that technology is not going to replace.”
Analysis of and advice on legal issues by lawyers, Glaves said, is “unique” and may be enhanced, but not
replaced, by technology. Badia-Tavas suggested lawyers might have “a mix” of clients who pay for
services both on- and offline.

Lawyers should discard the idea that online providers “are going to take [their] business away,” Khazaeli
said. “We don’t realize there is a service gap out there. Either we are not as busy as we want to be and
we can't believe that [underserved legal services consumers] are out there or we are busy and we don’t
want others to take our business away from us.” He urged lawyers to consider the potential client's
perspective. “What can we do to make sure they get competent legal services?” If lawyers aren’t
accessible to persons in need of legal services, he said, “they will go to the notario, their cousin,” or
someone else engaged in unauthorized legal practice.

The program, “Online Providers in Immigration: Are They Helping or Harming,” was held Oct. 27 in
Chicago.