



*Office of Policy
Executive Office for Immigration Review
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Re: Executive Office for Immigration Review (EOIR), Department of Justice (DOJ), EOIR Docket No. 18-502, RIN No. 1125-AA85, A.G. Order No. 4515-2019, 84 FR 4453, Effective 8/26/2019

Dear EOIR:

I am writing on behalf of The International Institute of New England in opposition to the DOJ EOIR's interim rule, effective immediately with request for comment, "Organization of the Executive Office for Immigration Review." We oppose elimination of the Office of Legal Access Programs (OLAP) and the dissolution of the OLAP Director's authority.

The Assistant Director of EOIR's Office of Policy has been appointed as head of what remains of OLAP's programs, in direct contradiction to the 2016 regulations. We oppose the transfer of OLAP's current functions to the Office of Policy, which was created in 2017 without regulatory or statutory authority, lacks legal legitimacy and has no expertise in the mission of OLAP to foster access to legal representation in immigration cases. This move violates the intent and the specific requirements of the 2016 rule that moved the Recognition and Accreditation Program (the R & A program) to OLAP, which also housed similar legal access programs promoting representation of underserved immigrants.¹

We also oppose the delegation of Board of Immigration appeal decisions to the Director of EOIR, a de facto political appointee who is an administrator, not a judge. We oppose the rule's limitation of the functions and authority of the Office of General Counsel, as well. We are filing these comments by the deadline of October 25, 2019.

Founded in 1918, the International Institute of New England (IINE) is one of the largest and oldest social service organizations for new Americans in New England. IINE's mission is to create opportunities for refugees and immigrants to succeed through welcoming, resettlement, education, career advancement, and pathways to citizenship. IINE provides humanitarian relief in the form of refugee resettlement, asylee support, and legal services. Additionally, through IINE, new Americans can access English language courses, skills training, and life skills coaching to make US integration experiences successful. Each year, we serve more than 2,500 refugee, asylee, and immigrant beneficiaries across our three sites in Boston and Lowell, Massachusetts, and Manchester, New Hampshire.

¹ The 2016 regulation that finalized OLAP's authority over the R & A program was the product of years of internal discussion at EOIR and extensive engagement with the public. See 60 Fed. Reg. 57200 (Nov. 14, 1995)(requesting public comment on possible changes in the R & A program); 77 Fed. Reg. 9590 (Feb. 17, 2012) (notice of two public meetings on possible changes with R & A program); R & A Program Comments, 80 Fed. Reg. 59514-01, 2015 WL 5723105 (Oct. 1, 2015) where 64 public organizations and individuals concerned with recognition and accreditation offered extensive comments to the proposed rule, which were analyzed and incorporated into the final rule, 81 Fed. Reg. 92346 (Dec. 19, 2016).

Utilizing two DOJ-accredited representatives, IINE assisted 625 clients in FY2019. The trajectory of each of their lives was changed as they completed these important steps toward integration. Nearly every refugee and immigrant that IINE serves across our three sites is in need of trustworthy and affordable assistance in applying for immigration relief. IINE's Legal Immigration Forms Service (LIFS) offers affordable, high-quality and in-demand support for a range of legal immigration forms unique to the immigrant community, such as status adjustment, work authorization, and family reunification. The forms services IINE provides include: Citizenship, Employment Authorization Document, Adjustment of Status, Family Reunification, Temporary Protected Status, and Others (e.g., forms to support for Freedom of Information Act (FOIA) requests (usually as part of other form engagements) and DACA services).

Unlike free clinics and even many fee-for-service providers, IINE's experienced, Department-of-Justice accredited LIFS staff members formally represent each forms applicant. By serving as formal counsel, we bring our expertise and competence to a process that, if handled improperly, can threaten the stability and security of members of a very vulnerable population. Existing affordable immigration forms services in Eastern Massachusetts and Southern New Hampshire are scarce and unable to meet the significant demand for high-quality, affordable immigration forms support. Refugees and immigrants who cannot afford to hire the services of an immigration lawyer do not have many options. They can access free legal clinics for citizenship support, which provide an important service in helping clients fill out forms but do not provide USCIS representation and often have long waiting lists for service. They can try to fill out the forms themselves, which is inherently risky, especially for those who do not speak English very well. They can engage with one of the few fee-for-service providers in this space, which typically have long waiting lists for services. Or they can engage with unaccredited "consultants," many of whom are unauthorized to practice law and take advantage of desperate immigrants by misrepresenting their competencies and what they can legally do on behalf of their clients.

Providing representation is more important than ever as policies under the new federal administration are making all aspects of the immigration process more challenging. The application for permanent residency, for example, has grown from 6 to 18 pages and the form instructions are now 42 pages long. For non-native-English speakers, petitioning for green card status is an increasingly more daunting process. In addition, clients applying for permanent residency – who previously only needed to have their fingerprints recorded – will soon have to report for an interview at USCIS. All refugees and immigrants taking part in USCIS interviews should have counsel accompanying them.

LIFS DOJ-accredited representatives keep clients on track throughout the process. We receive every notice that the client receives, enabling staff to ensure that no steps or follow-up activities are missed, such as biometrics (fingerprinting) dates or requests for additional information. We accompany clients to USCIS interviews and, for drawn-out services such as family reunification, our fee includes management of their cases for however long they take.

In 2019, after contacting IINE looking for quality legal immigration services to apply for citizenship, Mr. Thapa utilized the quality representation of a Department of Justice Accredited Representative from IINE to receive legal representation. Mr. Thapa arrived in the United States as a refugee from Burma in 2010. As a stateless person, he was eager to become a US Citizen in order to fully integrate and have

a sense of true belonging. Mr. Thapa suffers from PTSD as a result of the severe trauma suffered when the Burmese military seized his farm in Burma, forcing him to leave his home country and endure life in a refugee camp for over a decade. Additionally, he suffers from amnesic disorder, major depressive disorder, and anxiety disorder. As such, he is disabled and when he came to IINE he was unable to work. Moreover, he never had the opportunity to learn to read or write. Having already overcome so many obstacles, Mr. Thapa was relieved to find there would be no barrier to receiving quality legal immigration services. In October of 2019, at almost 70 years old, Mr. Thapa became a citizen of the United States with the help of the International Institute of New England. Finally, after a lifetime of hardships and statelessness, Mr. Thapa has a sense and pride of belonging to a country—something that would have been fundamentally prohibitive if the affordable and knowledgeable accredited representatives of IINE would have been unavailable.

OLAP oversees several long-standing programs of DOJ and is not an “anomaly” as described in the rule. The EOIR Office of Policy that purports to take it over is the anomaly, as it was created in 2017 by the then Attorney General and had no regulatory authority until this rule attempts to give it some.

OLAP operates the R & A program, a function that has resided with DOJ for over 60 years.² The 2016 rule moved the R & A program into OLAP within EOIR because that office was already handling several legal access programs designed to promote increased representation of low-income immigrants.³ The purpose of the R & A program is “to promote the effective and efficient administration of justice before DHS and EOIR by increasing the availability of competent non-lawyer representation for underserved immigrant populations.”⁴ For more than six decades, the R & A program has addressed the problem of “the critical and ongoing shortage of qualified legal representation for underserved populations in immigration cases....”⁵

The R & A program extends the ability of low-income immigrants to obtain legal representation because it allows non-profit organizations, after proving their charitable purpose and expertise in the field of immigration law, to be “recognized” by the Department of Justice. These recognized programs can also request that their qualified paralegals become “accredited representatives” to enable them to file immigration applications and represent clients before immigration agencies and in immigration court.

² Among the first recognized legal services programs under the R & A program was the Connecticut Institute for Refugees and Immigrants in 1958, which continues to deliver legal services today for immigrants with a six person staff of accredited representatives, EOIR, Recognition and Accreditation roster, <https://www.justice.gov/eoir/page/file/942301/download>. R & A was initially operated by the Board of Immigration Appeals within the Justice Department. In 2000, OLAP (then known as the legal orientation and pro bono programs) was established in the Office of the EOIR Director, administering programs that promoted legal representation for immigrants in removal proceedings by offering legal education on rights and responsibilities by pro bono legal services providers. In 2016, after more than five years of notice and comment procedures it was decided to move the R & A program under OLAP and away from the Board of Immigration appeals. 81 Fed. Reg. 92346 (Dec. 19, 2016). See 77 Fed. Reg. 9590 (Feb. 17, 2012) (notice of two public meetings on possible changes with R & A program).

³ 81 Fed. Reg. 92346 (Dec. 19, 2016).

⁴ EOIR, *Recognition of Organizations and Accreditation on Non-Attorney Representatives*, 80 Fed. Reg. 59514 (Oct. 1, 2015).

⁵ *Id.*

There are currently 823 recognized non-profit organizations nation-wide, with 1,986 accredited representatives. Most are faith-based organizations that have been serving in this area for decades. Many university and law school clinics are in the R & A program, as well.⁶ These programs represent the most vulnerable immigrant populations, including victims of domestic violence filing petitions under the Violence Against Women Act, victims of crime filing for U visas, asylum seekers, refugees, and juveniles. In addition, the recognized programs assist naturalization applicants and immigrants filing petitions to reunite their families.

Within the office of EOIR Director, OLAP has been responsible since 2000 for running several programs that foster legal representation in immigration: the national qualified representative program, which is mandated by court order from the 9th Circuit and provides funded counsel for individuals in removal proceedings who are deemed mentally incompetent; the maintenance of the list of pro bono attorneys that is required to be distributed in immigration courts to persons in removal proceedings; the operation of the legal orientation program and the legal orientation program for custodians of unaccompanied minors, both of which are now funded by specific congressional appropriations; and the immigration help desk, which assists individuals who are representing themselves in immigration court.

1. The Office of Policy that is taking over recognition and accreditation and other functions of OLAP is an anomaly created by the administration two years ago that has no expertise or interest in fostering legal representation.

The interim rule makes sweeping changes to the programs run by OLAP by placing them under a political office established at EOIR in 2017, called the Office of Policy, which has been responsible for implementing a series of restrictive immigration measures. The interim rule “transfers OLAP’s responsibilities to a division in the Office of Policy and removes references in the regulations to OLAP and the OLAP Director...” which effectively eliminates OLAP. The rule is dismantling programs within EOIR that are supported by regulation,⁷ court order,⁸ and specific congressional appropriations.⁹

The Office of Policy awards the top position under the new rule to itself, as the Assistant Policy Director would be replacing the Director of OLAP as the head of the functions of the former OLAP. Structurally, it is irrational to put an Office of Policy in charge of a program that runs legal access programs. The

⁶ Among the long-established charitable providers of immigration legal services in the R & A program are more than 200 Catholic organizations, at least a dozen Lutheran organizations, as well as groups that represent Quaker, Jewish, Muslim, Episcopal, Evangelical, Anglican, Mennonite and Baptist faiths. There are dozens of university legal clinics, legal services offices, refugee groups, and other charitable non-profits who are in the R & A program. EOIR, *Recognition and Accreditation roster*, <https://www.justice.gov/eoir/page/file/942301/download>.

⁷ EOIR, *Recognition of Organizations and Accreditation on Non-Attorney Representatives*, 80 Fed. Reg. 59514 (Oct. 1, 2015).

⁸ *Franco-Gonzalez v. Holder*, No. CV 10-02211 DMG (DTBx) (C.D. Cal.) (Feb. 27, 2015).

⁹ Emergency Supplemental Appropriations for Humanitarian Assistance and Security at the Southern Border Act, H.R. 3401, 116th Congress (2019) providing \$10,000,000 for the services and activities of the legal orientation program.

current OLAP is an administrative office overseeing legal access programs that performs its functions as described in the 2016 regulations. OLAP does not have any policy functions.

The Office of Policy describes itself as a body which promotes quality and consistency in adjudications throughout EOIR. It has communications functions for EOIR. In fact, it is known within DOJ and by the public that the Office of Policy was created by the current administration in 2017 to implement the restrictive anti-immigrant agenda and to ensure the compliance of EOIR in that mold. The existence of a policy program in an office that is supposed to manage the business of the immigration courts is an anomaly: are decisions to be made by the immigration judges, or by the Office of Policy?

The Office of Policy released the asylum ban to individuals who entered the United States across the southern land border who are unable to show that they applied for asylum protection in every country that they transited through *en route*.¹⁰ This office also released a regulation encouraging streamlined review by the BIA, reducing due process in appeals.¹¹ The Office of Policy has no demonstrated expertise in running the R & A program, nor in running the court-mandated national qualified representative program, nor the congressionally funded orientation programs.

The rule attempts to justify these changes by referencing the “official EOIR organizational chart” approved by the Attorney General. The chart being referenced was created by the current administration’s then Attorney General in 2017, who had little interest in any programs that provided increased legal representation for low-income immigrants. The rule claims that “no justification was provided” as to why OLAP should be an entity within the office of the Director when, in fact, there was a long history of internal and external debate that led to that decision and to the transfer of the R & A program into OLAP.

- 2. The publication of the rule as an interim final rule violates the Administrative Procedures Act because it failed to provide prior notice and comment to the public of a substantive program change that impacts thousands of immigrants and the non-profit programs that represent them.**
- Despite EOIR’s characterizing the rule as a mere internal “reorganization,” it fundamentally impacts the legal access programs that the public has been invested in for more than sixty years. The rule should have been published as a proposed rule with prior notice and comment under the Administrative Procedures Act.**

This rule was published as an interim rule effective immediately, on the pretense that it merely deals with rules of internal agency organization and is therefore exempt from the requirement that rules that

¹⁰ Department of Homeland Security, Department of Justice, EOIR, U.S. Citizenship and Immigration Services, *Asylum Eligibility and Procedural Modifications*, 84 Fed. Reg. 33829 (July 16, 2019).

¹¹ Department of Justice, EOIR, *Board of Immigration Appeals: Affirmance Without Opinion, Referral for Panel Review, and Publication of Decisions as Precedents*, 84 Fed. Reg. 31463 (July 2, 2019).

impact the public must be published as proposed with opportunity for prior notice and comment.¹² But it is obviously not the case that the rule involves a mere internal reorganization. The rule should have been published as a proposed rule for public notice and comment because it makes major changes in the substance of the legal access programs by placing them in a political office, possibly eliminating them entirely. The rule ignores years of rulemaking from 2012 and beyond that culminated in the 2016 rule's placing the R & A program in OLAP, and completely refuses to acknowledge the enormous stake that the public has in the programs run by OLAP, including the R & A program, legal orientation, and the national qualified representative program.

This is not the first time that this administration has aimed to eliminate OLAP's programs. EOIR announced a similar plan to eliminate OLAP's legal orientation programs in spring of 2018, but after protests from the Senate Appropriations Subcommittee, the programs were restored by then Attorney General Sessions.¹³ The Attorney General and the EOIR Director were both witnesses in hearings where they were challenged on the termination of the OLAP orientation program, and reversed their decision after the committee's opposition. The committee members, quoting EOIR's own materials, pointed out that legal orientation programs aid court efficiency, making it possible for cases to be completed faster, resulting in fewer court hearings and less time spent in detention, and that the representation rates for detained individuals is 30% or lower, a cause for concern.¹⁴ EOIR was unable to provide reasonable justification for ending the program. The current rule also lacks any reasonable justification.

The rule impacts almost 2000 accredited representatives and the 800 non-profit programs that employ them, in addition to the thousands of immigrants who those programs represent. The public has not been consulted on this change despite its major stake in these programs and failing to publish this as a proposed rule is a violation of due process and the Administrative Procedures Act, which requires prior notice and comment if the public will be adversely impacted.

3. The Board of Immigration Appeal's authority and the responsibilities of the Office of the General Counsel are being unlawfully delegated to the EOIR Director, an administrator who is being given the role of chief judge and principal counsel for the agency.

The rule also allows the Director of EOIR to decide appeals filed at the Board of Immigration Appeals if adjudication exceeds time limits of 90 days (for single Board member cases) or 180 days (if a three-member panel is assigned). The Director of EOIR is an office administrator for the court system of EOIR, not a judge. This re-assignment of the BIA's authority is arbitrary and violates due process, as review is curtailed to a minimum and is allotted to an individual who is not part of the Board of Immigration Appeals and has not been qualified to be a judge for that body.

¹² Administrative Procedures Act, 8 U.S.C. §553.

¹³ Department of Justice, *Opening Statement of Attorney General Jeff Sessions Before the Senate Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies*, (April 25, 2018), [justice.gov/opa/speech/opening-statement-attorney-general-jeff-sessions-senate-appropriations-subcommittee](https://www.justice.gov/opa/speech/opening-statement-attorney-general-jeff-sessions-senate-appropriations-subcommittee).

¹⁴ Senate Committee on the Judiciary, Subcommittee on Border Security and Immigration, *Strengthening and Reforming America's Immigration Court System, Questions for the Record*, (April 18, 2018) <https://www.judiciary.senate.gov/imo/media/doc/McHenry%20Responses%20to%20QFRs.pdf>.

The rule also delegates decision-making power to the EOIR Director of various matters previously handled by the office of general counsel at EOIR. It gives the EOIR Director the ability to weigh in on adjudication of any individual cases, yet general counsel may not do so. This is an extraordinary consolidation of powers in one individual who is not a judge and who is supposed to serve as an office administrator.

Conclusion

IINE's Legal Immigration Forms Service (LIFS) program is rapidly growing—in fact, it is the fastest growing program at our organization—as we continue to provide critical, trustworthy, and reliable services to immigrants and refugees. The loss of accredited representatives would be devastating to the hundreds of clients who IINE serves annually. Additionally, the competent and professional services provided by our accredited representatives ensure that when legal forms are sent for review, they are filed correctly and without error. This eliminates the burden of bureaucratic entities having to review or reject improperly filed paperwork. Based on both the moral and legal imperatives surrounding this ill-conceived rule, IINE strongly encourages withdrawing it and the accompanying delegation of authority to the EOIR Director.

We urge EOIR rather than implement this rule to withdraw it. It will have an adverse impact on legal access programs and the thousands of immigrants who they serve.

We further urge that EOIR not delegate authority from the BIA to the EOIR Director, a move that will erode due process and deliberative review of appeals.

Sincerely yours,



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