



August 27, 2024

Administrative Conference of the United States (ACUS)

Submitted via email to info@acus.gov

RE: Nonlawyer Assistance and Representation; Request for Comments, 89 Fed. Reg. 130 (July 8, 2024)

Dear Administrative Conference of the United States:

These comments are submitted on behalf of Legal Aid of North Carolina (LANC). We appreciate the opportunity to provide comment on the notice dated July 8, 2024, requesting input on non-lawyer assistance in federal agency adjudication.

I. Introduction

Legal Aid of North Carolina is a statewide, nonprofit law firm that provides free legal services in civil matters to low-income people in North Carolina to ensure equal access to justice and to remove legal barriers to economic opportunities. Immigration Pathways for Victims (IMMPAV), part of our Domestic Violence Prevention Initiative, is a statewide project within LANC and provides free immigration assistance to immigrant survivors of domestic violence, sexual assault, and human trafficking. The cases we handle include:

- Self-Petitions and Petitions to Remove Conditions for victims of domestic violence who are married to (or recently divorced from) U.S. citizens or lawful permanent residents who abuse them;
- U Visas for victims of domestic violence, sexual assault and human trafficking;
- T Visas for victims of human trafficking;
- Applications to Adjust Status (to become a permanent resident) for Violence Against Women Act (VAWA) self-petitioners, U visa holders, and T visa holders; and,
- Removal defense for qualifying victims of domestic violence, sexual assault and human trafficking.

LANC and IMMPAV serve all 100 counties in North Carolina and part of LANC's funding comes from the Legal Services Corporation (LSC). In working on any case or matter, LANC employees, including IMMPAV staff, adhere to regulations in 45 CFR § 1626 regarding representation of non-citizen clients. In addition, under 45 CFR § 1612 *et seq.*, an LSC grantee, such as LANC, may use non-LSC funds for responding to public rulemakings. These comments are submitted in compliance with the above-referenced regulations.

II. Comments in response to ACUS information request:

A. *Experiences Navigating Administrative Adjudication*

1. *What has been your experience interacting with an administrative adjudication regarding a benefit or service that you are applying for or renewing, for example unemployment insurance or student loan assistance? Were you able to receive adequate assistance from the agency, including interactions with agency staff and agency-provided resources, such that you did not need external legal services from lawyers or nonlawyers? If not, what steps did you take to find such assistance, if any?*

Questions 1 and 2 seek input from *individuals* that need representation before agencies. Our response is from the perspective of an organization with non-lawyers serving as legal representatives. No comment to provide on Questions 1 and 2.

2. *If you have been represented by someone in an administrative adjudication, how would you describe the experience and outcome? Have you experienced any unintended consequences from representation? How did you find and decide to work with your representative? Did the agency assist you with finding your representative? Was your representative a lawyer? If not, was your representative part of an organization or a solo practitioner? How did you decide to proceed with your representative, and what alternatives did you consider?*

See response to above question.

B. Perspectives From Representatives or Legal Assistance Providers

3. *If you have worked as a nonlawyer representative in administrative adjudications, how long have you worked in this capacity? Before which agency or agencies do you practice? What tasks do you undertake as part of your representation? How were you trained? Are you required to re-certify regularly or seek ongoing training? Is training provided by the agency or by a sponsoring organization? Are you supervised by a lawyer in any capacity?*

Legal Aid of North Carolina has two nonlawyer Department of Justice (DOJ) Partially Accredited Representatives on staff with our IMMPAV project. For the purposes of these comments, we will refer to them as Nonlawyer Representative A and Nonlawyer Representative B.

Nonlawyer Representative A has been accredited for eight (8) years. Nonlawyer Representative B has been accredited for two (2) years. Both nonlawyer representatives practice before the Department of Homeland Security, specifically before the U.S. Citizenship and Immigration Services (USCIS).

The two nonlawyer representatives on staff served as paralegals with IMMPAV for several years before becoming DOJ Partially Accredited Representatives. Nonlawyer Representative A was a

paralegal for eight (8) years before seeking accreditation, and Nonlawyer Representative B was a paralegal for nine (9) years prior to seeking accreditation. Nonlawyer representatives on staff were encouraged to seek accreditation after their demonstrated years of successful service to clients.

Nonlawyer representatives undertook an intensive multi-day training offered by Catholic Legal Immigration Network, Inc. (CLINIC), a nonprofit that offers training specific to DOJ accreditation before immigration agencies. The training focused on the types of cases that DOJ accredited representatives typically handle before USCIS including naturalization, family-based immigration, and affirmative humanitarian immigration such as U visas for victims of crime and VAWA self-petitions.

Our two DOJ legal representatives are both partially accredited representatives, meaning they only enter appearances and file cases before USCIS (and not before the Executive Office of Immigration Review (EOIR), which oversees the immigration courts). The nonlawyer representatives must recertify their accredited status every three years.

IMMPAV's two nonlawyer representatives are supervised by attorneys readily available on staff. In our experience, immediate access to attorney supervision is vital to the success of legal representatives to offer low-cost, ethically sound, and legally correct representation. The DOJ Accredited Representative program requires that, "[t]he organization has access to adequate knowledge, information, and experience in all aspects of immigration law and procedure[.]" 8 CFR § 1292.11(a)(4). This may be met through staff attorneys or through formal agreements with outside private counsel, recognized organizations, or other qualified sources. 8 C.F.R. § 1292.11(e).

Legal Aid of North Carolina's IMMPAV project has attorneys on staff that supervise the work of the nonlawyer representatives. Our organization has nine (9) immigration staff attorneys and (2) DOJ accredited legal representatives. The DOJ legal representatives on staff have regular and immediate access to attorneys. Our organization has an open-door policy, and the DOJ legal representatives report that this immediate access to attorneys is vital to their practice.

There are other organizations in Charlotte, North Carolina, that have DOJ legal representatives on staff, but no internal staff attorneys. In these cases, the organization has written agreements with practicing immigration attorneys. The DOJ legal representatives can reach out to their network of technical assistance attorneys. One difference is that feedback from outside technical assistance may not be immediately addressed. On our staff, if a DOJ legal representative has a question, they can walk into any one of our offices and ask their question. At other organizations, they need to send an email, wait for a response, and then get the information they seek. Our DOJ legal representatives expressed that they feel having attorney supervision directly in the office also leads to stricter ethical practices, as compared to organizations with no attorneys on site. In our experience, having an on-site attorney for supervision and questions helps make our DOJ legal representatives successful.

We believe the extensive training (both in years of experience and required training) and the on-site supervision by attorneys makes the DOJ accredited representative program successful for our organization.

4. *If you have worked as a nonlawyer representative in administrative adjudications, what was the certification and oversight process from the agency? In your experience, was that process efficient and/or successful?*

Legal Aid of North Carolina's IMMPAV project uses nonlawyer representatives to handle immigration cases. To appear before immigration agencies, the Department of Justice established the "DOJ Recognition and Accreditation Program."

There are two levels of DOJ accreditation – full accreditation and partial accreditation. Partial accreditation is for legal representatives to appear before the U.S. Citizenship and Immigration Services (USCIS). These partially accredited representatives only file affirmative applications for adjudication by USCIS. Full accreditation is for legal representatives that appear before both USCIS and the Executive Office for Immigration Review (EOIR), which oversees the immigration courts nationwide and the Board of Immigration Appeals.

DOJ has an extensive certification and oversight process that oversees both levels of accreditation. The DOJ website has information on the program: <https://www.justice.gov/eoir/recognition-and-accreditation-program>. In its simplest form, a nonprofit organization must apply to be recognized. Once the organization is recognized, then the non-lawyer individual may seek accreditation. Both the organization and the individual legal representative will need to renew their accreditation periodically.

The application process for individuals to become accredited representatives is extensive. We have a third staff member (paralegal) going through the process to become an accredited representative who confirms the certification process is extensive and thorough. The certification process requires many hours to put together a full organizational and individual application. DHS frequently advises applicants to avoid immigration scams by going to either an attorney or a DOJ accredited representative. Immigration law has a high level of notario fraud, perpetuated by individuals who engage in the unauthorized practice of law. The extensive DOJ accreditation application process is likely reflective of this need to ensure vetted organizations and individuals are the ones getting approved for accreditation.

5. *If you have worked as a nonlawyer representative in administrative adjudications, have you felt that you were treated professionally and equally by others in the process? Was the government represented by a lawyer?*

The DOJ accredited representatives on staff with IMMPAV report that most of the time they are treated professionally and equal to attorneys in the process. One of the representatives expressed that out of 100 clients, one client may say they "want to speak to a real attorney." Both legal representatives said that this is not the usual experience, and most of the time the clients are grateful

for any legal representation. The legal representatives expressed that the inverse occurs – clients will refer to them as “Attorney” - and that the legal representatives always remind clients that that they are not attorneys. Both legal representatives confirmed that federal agency officials treated them with respect at adjudication.

Attorneys represent the government before the EOIR immigration courts. This means that fully accredited representatives, who are not attorneys, may appear before an immigration judge, where their opposing counsel is an attorney. Our organization only has partially accredited representatives that do not appear in immigration court. USCIS agency adjudicators are often not attorneys themselves. In our experience, partially accredited legal representatives are fairly and equally treated before the agency.

6. *If you are a lawyer representing people in administrative adjudications, what are your experiences and interactions with nonlawyer representatives, if any?*

There are nine (9) staff attorneys that handle immigration cases, and (two) 2 nonlawyer representatives. The attorneys and nonlawyer representatives interact daily. As attorneys at a nonprofit organization that provides immigration services to the community, the DOJ accredited representative program has been successful for us in supporting clients. The nonlawyer representatives on staff allow us to reach more survivors with free immigration legal assistance.

Our representatives practice before the Department of Homeland Security, specifically before the U.S. Citizenship and Immigration Services (USCIS). As DOJ Accredited Representatives practicing before USCIS, the nonlawyer representatives assist with form preparation, client interviewing, evidence gathering, attending client interviews, providing legal analysis of client options, and written arguments as needed. Our DOJ Accredited Representatives carry a full case load and do the same work as our immigration staff attorneys. They enter appearances and sign off on immigration applications filed on behalf of their clients with USCIS.

Having DOJ accredited representatives on staff allows us to increase our capacity to serve more survivors in their immigration journey.

7. *If you represent people in administrative adjudications, what are your experiences with agency rules and procedures regarding representation? In what ways could they be improved?*

No answer provided.

C. Landscape of Relevant Agency Programs

8. *Are you familiar with specific agency programs that encourage nonlawyer representation? Are these programs working to meet the demand of need for assistance and/or representation in administrative adjudications? If not, how might they be improved?*

No answer provided.

9. Are there specific agency programs that could be expanded to encourage more forms of nonlawyer assistance and/or representation?

No answer provided.

10. Are you aware of studies or other data examining aspects of nonlawyer representation before federal agencies, beyond data that is publicly available through agency websites?

None.

11. What role can public- and private-sector groups play in increasing nonlawyer representation, and how should government agencies encourage such actions, if at all?

No answer provided.

Legal Aid of North Carolina appreciates your consideration of these comments.

Respectfully submitted this 27th day of August, 2024.

Sincerely,



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Legal Aid of North Carolina