

Recognition and Accreditation Program

Frequently Asked Questions



Office of Legal Access Programs

These Frequently Asked Questions (FAQs) are being provided as a public service and do not constitute legal advice or supersede statute, regulations, or case law.

For more detailed information on requirements, an organization should consult federal regulations (particularly 8 C.F.R. § 1292 et. seq.) 81 Fed. Reg. 92346 (Dec. 19, 2016)

Notice on Transition to the 2017 Recognition and Accreditation Rule

Applications Pending on January 18, 2017

On December 19, 2016, a new rule on the Recognition and Accreditation (R&A) Program was published in the Federal Register. 81 Fed. Reg. 92346 (Dec. 19, 2016).

The new rule takes effect on January 18, 2017, and it transfers authority for adjudication of these applications from the Board of Immigration Appeals (BIA) to the Office of Legal Access Programs.

The new rule impacts applications pending at the time of transition that have not yet been decided by the BIA, as well as governs future applications. Applications pending at the time of the rule's effective date will be transferred to the Office of Legal Access Programs for resolution, and if necessary, will be returned to applicants for further documentation or information in order to allow their proper review under the new rule.

The FAQs which follow describe the eligibility criteria and process under the new rule.

Notice on Re-application for Currently Recognized Organizations

Currently recognized organizations should take note that they must apply under the standards of the new rule, on or before one, two or three years from the effective date, depending on the particular program's circumstances:

Recognized organizations **lacking an accredited representative** on the effective date (i.e. January 18, 2017) of this regulation must apply under the new rule **within one year** of the effective date (prior to January 18, 2018);

Organizations that have been **recognized for more than 10 years** as of the effective date will need to apply under the new rule **within two years** of the effective date (prior to January 18, 2019);

Organizations that have been **recognized for less than 10 years** as of the effective date will need to apply under the new rule **within three years** of the effective date (prior to January 18, 2020).

Note: Once currently recognized programs have re-applied successfully under the new rule, they will remain recognized for a six year period, after which renewal will be required on or before the expiration of the six year period.

Accreditation of individuals in recognized programs is valid for three years, and must be re-applied for on or before the expiration date of accreditation. Currently accredited representatives must apply for renewal on or before expiration of the three year accreditation period granted by the BIA. The schedule for renewal of recognition and accreditation does not run concurrently. Rather, it depends when the expiration of each occurs.

Frequently Asked Questions

What is an accredited representative?

A representative is “accredited” when the Office of Legal Access Programs (OLAP) gives permission to a specially qualified non-lawyer to represent noncitizens on behalf of a recognized organization. OLAP will accredit non-lawyer representatives only when they work or volunteer for a recognized organization and will never accredit a non-lawyer representative who tries to practice immigration law on his or her own.

There are two kinds of accreditation: “partial” and “full.” A partially accredited representative may represent noncitizens before the Department of Homeland Security (DHS) only. A fully accredited representative may represent noncitizens before both DHS and the Executive Office for Review (EOIR), which includes the immigration courts and the Board of Immigration Appeals (BIA)).

What are the eligibility requirements for accreditation?

An individual who is employed by or is a volunteer of a recognized organization must meet the eligibility standards at 8 CFR § 1292.12, which include broad knowledge and adequate experience in immigration law, as well as character and fitness requirements.

What is the process for an accreditation application?

Only a recognized organization can apply on behalf of an employee or volunteer seeking accreditation. The application and supporting documentation are filed on the form EOIR-31A, *Request by Organization for Accreditation or Renewal of Accreditation of Non –Attorney Representative*, revised as of January 2017.

What is a recognized organization?

An organization is “recognized” when OLAP gives a non-profit organization in the United States permission to practice immigration law through accredited representatives before DHS only (partial accreditation) or DHS and EOIR (full accreditation). EOIR includes the immigration courts and the BIA. By regulation, a non-profit, federal tax-exempt, religious, charitable, social service, or similar organization established in the United States that has been approved for recognition is called a recognized organization.

How do I find recognized organizations and accredited representatives?

Recognized organizations and accredited representatives are listed alphabetically on the Roster of Recognized Organizations and Accredited Representatives (Roster), which is maintained by OLAP and located at the OLAP website (<https://www.justice.gov/eoir/recognition-accreditation-roster-reports>). The Roster includes the current names and addresses of recognized organizations and accredited representatives, and identifies the type of accreditation (partial or full) for each representative. The Roster is also searchable by state.

What are the eligibility requirements for an organization to become recognized?

To be eligible for recognition, the organization must meet the requirements described at 8 CFR § 1292.11, which includes establishing that it is a non-profit, religious, charitable, social service, or similar organization that provides immigration legal services primarily to low-income and indigent clients within the United States.

Additionally, to be eligible for recognition, an organization is required to:

- 1) Demonstrate federal tax-exempt status;
- 2) Demonstrate that it serves primarily low-income and indigent clients;
- 3) Apply simultaneously to have at least one employee or volunteer approved as an accredited representative (if the organization has not previously been recognized);
- 4) Have access to adequate knowledge, information, and experience in immigration law and procedure; and
- 5) Designate an authorized officer to act on its behalf.

How does an organization show its non-profit status?

To show non-profit status, an organization must submit:

- 1) A copy of its organizing documents, including a statement of its mission or purpose;
- 2) A declaration from its authorized officer attesting that it serves primarily low-income and indigent clients;
- 3) A summary of the legal services to be provided;
- 4) Its annual budget for the current year, and if available, its annual budget for the previous year. The annual budget should describe how the organization is funded and include information about the organization's operating expenses and sources of revenue for providing immigration legal services, including grants, fees, donations, or dues. If an annual budget for current and prior years is unavailable, an organization must submit its projected annual budget for the upcoming year; and

- 5) If an organization charges fees for legal services, then the organization must also submit fee schedules and organizational policies or guidance regarding fee waivers or reduced fees based on financial need.

The organization may also submit additional documentation to demonstrate non-profit status and service to primarily low-income and indigent individuals, such as reports prepared for funders or information about other free or low-cost immigration-related services that it provides (e.g., educational or outreach events).

How does an organization demonstrate its religious, charitable, or social service mission?

An organization should submit documents such as its charter, by-laws, or articles of incorporation, organization, or association to show its religious, charitable, or social service mission.

While there is no one specific document required by OLAP, an organization may want to provide letters of recommendation from community members, particularly letters showing the organization's involvement and commitment to the community it serves and the quality of its services.

How does an organization demonstrate that it is federally tax-exempt?

An organization must submit with its recognition application a copy of its currently valid IRS tax exemption letter, alternative documentation to establish federal tax-exempt status, or proof that it has applied for federal tax-exempt status.

Can organizations charge for services?

Yes, but the organization must declare and document that it serves primarily low-income and indigent clients. As the organization must be a federally tax-exempt non-profit to be recognized, the documents showing the organization's fee schedules, revenue, and budget will be reviewed by OLAP. The rule also requires proof of organizational policies regarding fee waivers or reduced fees based on financial need. The nominal fees/charges restrictions are no longer applicable for the R&A Program.

How does an organization show that its staff has adequate knowledge, information, and experience?

To show that its staff has adequate knowledge, information, and experience, an organization must submit:

- 1) A description of the immigration legal services that the organization seeks to offer;

- 2) A description of the legal resources to which the organization has access;
- 3) An organizational chart showing names, titles, and supervisors of immigration legal staff members;
- 4) A description of the qualifications, experience, and breadth of immigration knowledge of these staff members, including, but not limited to resumes, letters of recommendation, certifications, and a list of all relevant, formal immigration-related trainings attended by staff members; and
- 5) Any agreement or proof of a formal arrangement entered into with non-staff immigration practitioners and recognized organizations for consultations or technical legal assistance.

Can an application for initial recognition be approved if an organization has an attorney on staff but no accredited representative?

No. The purpose of recognition is to allow organizations to provide legal representation to low-income or indigent noncitizens through non-attorneys when there are no attorneys on staff. Thus, organizations which are seeking recognition for the first time must simultaneously apply for an accredited representative. Recognition allows the organization to apply for the accreditation of non-attorney staff.

What happens if a recognized organization loses its accredited representative?

The regulations require recognized organizations to promptly notify OLAP of changes including changes in personnel of accredited representatives on staff. If all of a recognized organization's accredited representatives leave the organization, it will be placed on an inactive status on the Roster. A recognized organization that loses its accredited staff is precluded from offering legal services in that circumstance, unless the organization also has an attorney on staff.

What is inactive status, and how long does it last?

Inactive status indicates that the recognized organization does not currently have an accredited representative, although it did have one at the time it was initially recognized. Inactive status is generally two years from the date the organization is placed on inactive status in order to allow the organization time to apply for and have approved the accreditation of one or more new representatives. Inactive status is described in detail at 8 CFR § 1292.16(h)(3)(i).

How can a nonprofit organization become recognized?

An interested non-profit organization must apply for recognition with OLAP and be approved. To apply for recognition, the organization must file its supporting documentation with a *Request*

for Recognition of a Non-Profit Religious, Charitable, Social Service or Similar Organization (Form EOIR-31), using the January 2017 version. The Form EOIR-31 is available on the EOIR website and provides instructions including what should accompany the form and where to file it.

Who is an authorized officer?

An organization should designate an authorized officer who applies for recognition on behalf of the organization. OLAP requires this person to verify the contents of the application, and to provide his or her information as the point of contact for OLAP in all matters related to the application. The recognized organization must promptly notify OLAP if its authorized officer changes.

Is there a fee to apply for recognition or accreditation?

No, there is no fee to apply for recognition or accreditation.

Does an organization that provides legal services at different office locations need to apply for recognition at each location?

It depends. Under the current regulation, a recognized organization may request extension of recognition to multiple locations of the organization at the time of application or any time after approval. This type of joint application is appropriate where one authorized officer can present such an application on behalf of multiple locations that are under his or her supervision and control, and that share operations, management structure, or funding sources from the organization's headquarters. Recognition may be extended from headquarters to branch/subordinate offices/locations if they meet the standards in 8 CFR § 1292.15 without applying independently for each location as previously required by BIA precedent.

What records need to be maintained by a recognized organization?

Under the current rule, as of January 18, 2017, recognized organizations should maintain the records detailed in 8 CFR § 1292.14(b)(1)(2) regarding fee schedules and annual summary of immigration legal services.

Where should applications be sent?

Send your complete original application and supporting documentation with proof of service to the R&A Coordinator at OLAP, whose address is available on the recognition application form and OLAP's website. Remember: if you do not include a proof of service of exact copies to the appropriate DHS, U.S. Citizenship and Immigration Services (USCIS) office(s), your application is not considered complete.

What is Proof of Service?

In this context, a “proof of service” (or a “certificate of service”) is an organization’s formal guarantee to OLAP that it has sent an exact copy of its filing to the appropriate USCIS office. USCIS has the same obligation to the organization when it files something with OLAP in response to the organization’s application.

Every filing – whether an application, document, recommendation, extension request, response to a recommendation, or other formal submission – must clearly contain a Proof of Service.

The recognition application, Form EOIR-31, and the accreditation application, Form EOIR-31A, contain a sample Proof of Service on the back of the form.

To which USCIS offices do I need to send copies of the recognition application or accreditation request?

Your organization needs to send its documents to the USCIS District Director(s) in the jurisdiction where your organization’s headquarters is located and to the USCIS office where services will be rendered, if that is a different office of USCIS.

Once OLAP receives an application, how long does it take USCIS to respond?

When an application is filed, OLAP gives USCIS a 30-day deadline to review it and respond with a recommendation. Sometimes USCIS requests an extension. In turn, if USCIS gives an unfavorable recommendation, the organization has 30 days to respond and may ask for an extension. However, neither extension is automatic.

Until OLAP grants an extension, the existing deadline stands. As a general practice, when OLAP grants an extension, it is usually for no more than 30 days. Longer periods may be requested, but an extension request will not be granted unless the reason is persuasive.

What is OLAP’s decision process?

OLAP issues a written decision on each application for recognition. If it is denied, the organization can request reconsideration by the OLAP Director within 30 days. The recognition status of a currently recognized organization will remain valid while that request is pending. If the OLAP Director denies the reconsideration, the organization can request administrative review of the reconsideration denial by the Director of EOIR, who has discretionary authority to review such a denial. The organization may request such a review within 10 days of the denial, identifying the factual and legal errors in the underlying determination. Requests for both reconsideration by OLAP and administrative review by the Director of EOIR should be sent to the R&A Coordinator.

Does an organization requesting initial recognition need to apply for its representatives at the same time?

Yes. An accreditation application must be submitted concurrently with an initial recognition application, unless the organization has previously been recognized.

Can a currently recognized organization apply for accreditation of a representative at any time?

Yes. The organization can apply for accreditation of a representative at any time after the organization's recognition is approved. Accreditation is valid for three years, after which time the organization would need to apply for renewal of accreditation of the representative.

Once an organization is recognized, does it have to report changes to OLAP?

Yes. The authorized officer of the organization must promptly report through written correspondence any material changes to the information in its application, including its contact information (such as name, address, telephone number, fax number, and email), see 8 C.F.R. § 1292.14(a).

With respect to accredited representatives, the organization should report any changes to the names of its accredited representatives. The organization also needs to notify OLAP if an accredited representative leaves the organization. Remember: accreditation is permission for non-lawyers to represent noncitizens in immigration matters on behalf of a recognized organization only.

How does an organization inform OLAP of changes?

Inform OLAP of any changes in writing, with Proof of Service on the appropriate USCIS District Director(s). Changes of address, email, phone numbers, staff names, organizational structure, etc. should be reported promptly to OLAP's R&A Coordinator.

Does recognition expire?

Yes. Recognition under the new rule (effective January 18, 2017), is valid for a period of six years from the date of OLAP's approval of recognition, unless the organization has been granted conditional recognition.

What is conditional recognition?

Conditional recognition is granted to an organization that has not been previously recognized, has federal tax-exempt status pending, or has been approved for recognition after recognition was previously terminated. Conditional recognition is valid for two years from the date of OLAP's approval of conditional recognition.

Can my organization lose its recognition?

Yes. OLAP may terminate recognition of any organization that has failed to maintain the qualifications required for recognition or if an organization is subject to disciplinary sanctions.

When OLAP terminates recognition, the organization loses its status as a recognized organization. The name of the organization and the names of any accredited representatives affiliated with the organization are removed from the Roster. The organization and its staff can no longer use R&A status in community outreach, to file forms, or to enter appearances before DHS or EOIR (using the Form G-28, EOIR-27, or EOIR-28). Claiming R&A status after recognition is terminated would be considered the unauthorized practice of immigration law.

OLAP Contact Information:

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Mail: R&A Coordinator
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