

MEMORANDUM TO: All Assistant Chief Immigration Judges
All Immigration Judges
All Court Administrators
All Support Staff

FROM: The Office of the Chief Immigration Judge

SUBJECT: Operating Policy and Procedure Memorandum 97-1:
Maintaining the List of Free Legal Services Providers

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I. INTRODUCTION

Section 239(b)(2) of the Immigration and Nationality Act (the Act)¹ requires that

¹ Formerly section 242B of the Act. Section 242B of the Act was stricken by section 306 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, 110 Stat. 3009 (Sept. 30, 1996). Provisions relating to

the Attorney General provide for lists (updated not less often than quarterly) of persons who have indicated their availability to represent pro bono aliens in immigration proceedings. In addition, section 604(d)(4) of IIRIRA requires a listing of persons who indicate their willingness to represent aliens in asylum proceedings on a pro bono basis. That requirement is found at section 208(d)(4)(B) of the Act. We will merge this listing into the list of free legal services providers, and indicate those entities that will represent aliens in asylum proceedings before an Immigration Judge. Until a recent regulatory change, the responsibility for such list rested with the Immigration and Naturalization Service (INS) under 8 C.F.R. part 292a.

II. REGULATORY CHANGE

The regulatory provision relating to the list of free legal services providers was amended and redesignated by publication of a final rule in the Federal Register on February 28, 1997. 62 Fed. Reg. 9071 (1997). The effective date of this final rule is March 31, 1997. 8 C.F.R. § 292a has been deleted and replaced by 8 C.F.R. §§ 3.61 - 3.65. The final rule shifts the responsibility for maintaining the list of free legal services providers from the INS to the Chief Immigration Judge, or his or her designee. This Operating Policy and Procedures Memorandum (OPPM) sets forth the appropriate designations and the procedures for creating, updating, maintaining, and publishing this list. This OPPM becomes effective immediately so that the Immigration Court will be ready to assume this responsibility on March 31, 1997.

The final rule provides for the listing of four separate entities. They are:

- 1- organizations recognized by the Board of Immigration Appeals (BIA) pursuant to 8 C.F.R. § 292.2;
- 2- organizations not recognized pursuant to 8 C.F.R. § 292.2 but which meet certain requirements under 8 C.F.R. § 3.62(b);
- 3- bar associations which provide a referral service of attorneys who render pro bono legal assistance, and other organizations that provide such a referral service; and
- 4- individual attorneys who demonstrate that they provide free legal services to indigent aliens.

The final rule sets forth a process for approving and denying applications for

free legal service lists for aliens in removal proceedings were retained in section 304 of IIRIRA and now can be found at section 239(b)(2) of the Act. All references to the Act reflect the amendments made by IIRIRA.

inclusion on the list. Denials must be based on an organization's² or attorney's failure to meet the qualifications and/or comply with the procedures set forth in the regulation. Denials can be appealed to the BIA. Furthermore, an organization or attorney that is included on the list that thereafter fails to meet the qualifications set forth in the regulation can be removed from the list in accordance with 8 C.F.R. § 3.65.

III. NEW PROCEDURES

A. Update the INS Listing

The Court Administrator should obtain the most recent version(s) of the list of free legal services providers from every INS District Office within the Immigration Court's jurisdiction. Organizations already on the list will be considered "grandfathered" and need not submit a new application. Each organization listed should be contacted to verify that the information on the list is accurate, and to inform them of the new procedures. In addition, those organizations must be asked whether they will represent asylum applicants and what limitations they have on representing aliens in proceedings. These limitations may include appearing only at certain locations, representing certain types of cases or nationalities, or not representing criminal aliens.

Organizations that are recognized pursuant to 8 C.F.R. § 292.2 are automatically eligible for inclusion on the lists of free legal services providers, provided they have on their staff an attorney or an accredited representative who is authorized to practice before the Immigration Court. See 8 C.F.R. § 3.62(a). The Court Administrator should contact each organization, within the Immigration Court's jurisdiction, on the BIA's quarterly listing of organizations recognized pursuant to 8 C.F.R. § 292.2 that has not been previously contacted, to see if they want to be included on the list. It should be noted that some organizations recognized pursuant to 8 C.F.R. § 292.2 may charge nominal fees. In preparing the Immigration Court's list, please ask the 292.2 organization whether it charges nominal fees. If so, please note this on the list of free legal services providers.

Organizations which are not recognized pursuant to 8 C.F.R. §292.2, bar associations, and attorneys must apply for inclusion in accordance with 8 C.F.R. § 3.63. Bar associations should be contacted to determine if they provide a referral service and to

²Unless otherwise noted, the term "organization" in this OPPM includes organizations recognized under part 292 , non-recognized organizations under section 3.62(b), and bar associations and other organizations which provide a referral service in accordance with section 3.62(c).

see if they would like to apply to be included on the list of free legal services providers.³

B. Post New Rules

To ensure widespread dissemination of the new rules, a notice must be posted in the public area of the Immigration Court setting forth the new eligibility requirements for inclusion on the list, and the proper method to apply. A sample notice is attached.

Any organization or attorney who seeks to be included on the list must indicate if there are any hearing locations within the jurisdiction of the court where it will not accept cases. Similarly, any other limitations, such as the type of cases that will be accepted, should also be included. These limitations will be noted on the official list. Each organization or attorney must indicate if they are willing to represent aliens in asylum cases, and be advised that the list will reflect such a designation.

Organizations and attorneys are under a continuing obligation to notify the Chief Immigration Judge, or his or her designee, in writing of any change of address, telephone number, or status. 8 C.F.R. § 3.63(d). The designee for this purpose is the Court Administrator.

C. Designate a Point of Contact

The Court Administrator should designate one or more persons in each Court to be responsible for updating the list. The names of these designees should be forwarded to the Counsel for the Chief Immigration Judge on or before April 1, 1997.

D. Update and Distribute Quarterly

By statute, the list of free legal services providers must be updated not less than quarterly. Each version of the list will contain a date (month and year). Even if there are no changes, the list should be reproduced with a new date. This requirement will avoid confusion and ensure that outdated lists are not disseminated. A copy of each update must be sent to the Counsel for the Chief Immigration Judge.

As in the past, the list must be available at the reception window, in each

³ In addition to bar associations, the final rule permits other organizations that provide a referral service to apply for inclusion on the list. The decision whether to include them rests in the sole discretion of the Chief Immigration Judge. 8 C.F.R. § 3.62(c).

courtroom, and at all detail hearing locations, including Institutional Hearing Program (IHP) locations. Depending on the circumstances of the respective Immigration Court, it might be beneficial to produce a separate list for certain hearing locations (e.g., IHP locations).

A copy of each revised list should be sent to the INS District Office(s) within the Immigration Court's jurisdiction (either to the attention of the District Director or the District Counsel). It will be the responsibility of the INS to reproduce and disseminate the list within the District or Sector, including asylum offices, sub-offices, and stations. Furthermore, copies should be given directly to the Departments of Corrections in states where we conduct IHP hearings.

Between quarterly issues, the Immigration Court should maintain a file of updates, changes, and additions to the list, for inclusion in the next quarterly release.

E. Application Procedure

Any organization or attorney that wishes to apply for inclusion on the list of free legal services providers can do so by submitting an application to the Counsel to the Chief Immigration Judge, with a copy served on the Court Administrator for the Immigration Court with jurisdiction over each area in which the free legal services are being provided by the organization or attorney. The organization or attorney should note any limitations, such as hearing locations or the types of cases they will accept. The organization or attorney must indicate whether they will represent aliens in asylum hearings. The application should be identified by the notation "Application for Inclusion on the List of Free Legal Services Providers" on the envelope. The Court Administrator should review the application, consult with the Liaison Judge, and forward a recommendation to the Counsel for the Chief Immigration Judge, within ten (10) business days of receiving the application. The Counsel to the Chief Immigration Judge is the designee of the Chief Immigration Judge and will exercise the regulatory authority to approve or deny such applications. In accordance with the regulation, denials may be appealed to the BIA.

F. Removal Procedure

8 C.F.R. § 3.65 provides as follows:

(a) Involuntary removal. If the Chief Immigration Judge believes that an organization or attorney included on the list of free legal services providers no longer meets the qualifications set forth in this subpart, he or she shall promptly notify the organization or attorney in writing, at the

organization's or attorney's last known address, of his or her intention to remove the name of the organization or attorney from the list. The organization or attorney may submit an answer within 30 days from the date the notice is served. The organization or attorney must establish by clear, unequivocal, and convincing evidence that the organization's or attorney's name should not be removed from the list. If, after consideration of any answers submitted by the organization or attorney, the Chief Immigration Judge determines that the organization or attorney no longer meets the qualifications set forth in this subpart, the Chief Immigration Judge shall promptly remove the name of the organization or attorney from the list of free legal services providers, the removal of which will be reflected in the next quarterly update, and shall notify the organization or attorney of such removal in writing at the organization's or attorney's last known address .

(b) Voluntary removal. Any organization or attorney qualified under this subpart may, at any time, submit a written request to have its, his or her name removed from the list of free legal services providers. Such a request shall be honored, and the name of the organization or attorney shall promptly be removed from the list, the removal of which will be reflected in the next quarterly update.

The Court Administrator shall honor any request by an organization or attorney to have its name removed. A copy of the request must be forwarded to the Counsel for the Chief Immigration Judge. The next quarterly list shall incorporate the deletion. Requests by others to have an organization or attorney removed from the list shall be reviewed by the Court Administrator. After consultation with the Liaison Judge, the Court Administrator shall forward a recommendation to the Counsel for the Chief Immigration Judge within ten (10) business days of receiving the request for removal. The Counsel for the Chief Immigration Judge shall provide the organization or attorney with the required notice, shall solicit the organization's or attorney's response (due within 30 days from the date the notice was served), and shall decide to retain or delete the organization or attorney from the list. That decision is appealable to the BIA.

IV. MISCELLANEOUS

Some courts, in the interest of justice, have supplemented the official free legal services lists with names of attorneys who might take certain cases on a pro bono basis. Since the new regulation permits attorneys to be included on the official list, these supplemental lists shall be discontinued. Any questions concerning these procedures should be directed to your Assistant Chief Immigration Judge.

Michael J. Creppy
Chief Immigration Judge

Attachments

NOTICE
LIST OF FREE LEGAL SERVICES

As of March 31, 1997, the responsibility of maintaining the list of free legal services was transferred from the Immigration and Naturalization Service (INS) to the Executive Office for Immigration Review (EOIR). This list is provided to all aliens appearing in proceedings in the Immigration Courts. Each Immigration Court is now creating and disseminating such a list.

In accordance with 8 C.F.R. §§ 3.61 - 3.65, the following entities are eligible to be included on the list:

1. Organizations recognized by the Board of Immigration Appeals pursuant to 8 C.F.R. part 292, provided they have on their staff an attorney, or an accredited representative who is authorized to practice before the Immigration Court;
2. Other organizations not recognized under 8 C.F.R. part 292 but who meet the requirements of 8 C.F.R. § 3.62(b). These requirements are:
 - 1- that it is established in the United States;
 - 2- that it provides free legal services to indigent aliens; and
 - 3- that it has on its staff, or retains at no expense to the alien, attorneys who are available to render such free legal services by representation in immigration proceedings;
3. Bar associations which provide a referral service of attorneys who render pro bono legal assistance, and other organizations that provide such a referral service of attorneys who render pro bono legal assistance; and
4. Individual attorneys who demonstrate that they provide free legal services to indigent aliens. An attorney is defined as a person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia, and is not under any order of any court suspending, enjoining, restraining, disbaring, or otherwise restricting him or her in the practice of law.

If you or your organization can satisfy these requirements, and you would like to be included on the list of free legal services providers, please see the Court Administrator for further details.

APPLICATION FOR INCLUSION ON FREE LEGAL SERVICES LIST

The authority for collecting this information is sections 239(b)(2) and 208(d)(4)(B) of the Immigration and Nationality Act, as amended. This application is filed in accordance with 8 C.F.R. § 3.48. The information contained herein is used by the Executive Office for Immigration Review to create and maintain accurate lists of free legal services available to aliens in proceedings before the Immigration Courts. Submission of the information required in this form is voluntary. However, an organization or attorney may not be included in the free legal services list if the information is not provided.

1. Name of Organization/Bar Association/Attorney:

2. Street address:

Mailing address

(Indicate which address you would like listed)

3. Phone Number (Including area code)

4. Name of the individual filing this application

Relationship to organization

Address (If different from #2)

5. If you are an organization are you recognized by the Board of Immigration Appeals pursuant to 8 C.F.R. part 292? Y/N
- A. Do you have a representative authorized to practice before the Immigration Court? Y/N

If yes, please give name and basis for authorization to practice

- B. If the answer to #5A was “No,” complete the following:

Is your organization established in the United States? Y/N (Provide documentation to support a yes answer)

Do you provide free legal services to indigent aliens? Y/N

Do you have on staff or do you retain at no expense to aliens an attorney ?
Y/N

NOTE: An attorney is defined as a person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia, and is not under any order of any court suspending, enjoining, restraining, disbaring, or otherwise

restricting him or her in the practice of law.

6. If you are applying as a bar association or other referral organization, do you provide a referral service of attorneys who render pro bono assistance to aliens in immigration proceedings? Y/N

What are the requirements to be part of the referral service?

Must attorneys demonstrate some familiarity with Immigration Court procedures?

Approximately how many referrals do you estimate the association can make per month?

7. If you are applying as an attorney, are you a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia, and are not under any order of any court suspending, enjoining, restraining, disbaring, or otherwise restricting you in the practice of law? Y/N

List all bar memberships

Attach certificates of good standing for each bar

Do you agree to provide free legal services to indigent aliens? Y/N

Approximately how many cases do you anticipate that you will be able to accept per month?

8. Do you wish to be listed as available for representation at all hearing locations within the jurisdiction of this Court? Y/N

If "No," list hearing locations at which you will be available.

9. Do you wish to be listed as available to represent aliens in asylum proceedings? Y/N

10. Do you have any other limitations on the type of cases you will accept? Y/N

If "Yes," please describe the limitation.

WARNING: Federal law provides for imprisonment and/or fines for false statements or the use of false documents in connection with the completion of this form.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that all the foregoing is true and correct.

Executed on _____.

Signature of Authorized Officer of Attorney