

## **APPENDIX 12-2: WORKSHEET FOR REQUESTS FOR RECOGNITION AND ACCREDITATION PROCESSING AND PROCEDURES**

### I. Recognition Process:

- A. Is the Organization a non-profit religious, charitable, social service, or similar organization?

Examples of supporting documentation include:

- Articles of Incorporation, Charter, Constitution and by-laws, which may indicate the purpose of the organization or under what authority it is being incorporated;
- Evidence of tax-exempt status such as letters or statements from the IRS, tax returns, etc.;
- Balance sheets and/or financial statements showing source(s) of funding and income;
- Newspaper articles or other information showing the organization's community activities.

Notes:

- If the information shows that the majority of the organization's operating expenses are borne by the fees charged to the organization's clients for services rendered, it is less likely that it is a non-profit organization;
- Consider the services to be rendered by the organization. For example, if an organization indicates that it will engage in completing employment based petitions, it is unlikely that the clients seeking these types of services would be low-income or indigent aliens for whom the accreditation process was designed to assist;
- If the organization is affiliated with an attorney or law firm, examine the nature of their relationship. For example, whether the attorney is an employee of the organization, whether the attorney works for the organization on a *pro bono* basis; or is the organization a means for the referral of clients to the attorney. *See, i.e., Matter of Baptist Education Center, 20 I&N 723 (BIA 1993):* the Board of Immigration Appeals terminated the organization's status as a recognized organization, finding that the organization had failed to establish by clear, unequivocal or convincing evidence that it was a non-profit organization, independent of and separate and apart from its founder and representative, who was a non-lawyer who used the organization's recognition as a means of continuing his immigration counseling practice to receive income for himself; *see also Matter of EAC, Inc., 24 I&N 556 (BIA 2008);*

- B. Does the Organization charge nominal fees?

Examples of supporting documentation include:

- List of fees;
- Balance sheets and/or financial statements showing source(s) of funding and income.

Notes:

- The Board of Immigration Appeals defines a “nominal” fee as “a very small quantity or something existing in name only, as distinguished from something real or actual. *See Matter of American Paralegal Academy*, 19 I&N Dec. 386, 387 (BIA 1986); consideration should also be given to the rates and fees charged for like services by the private sector in the district’s community or area, however, the organization may not rely upon the fact that its fees are substantially less than those charged by law firms, or that its fees are one of the means by which it is able to fund itself..
- Statements which fail to specify an amount certain to be charged for services may be too vague or indefinite to establish a “nominal fee.” For example, statements indicating that clients are not charged a fee but instead are asked to provide suggested donations may be too speculative and indefinite to establish that the fees are nominal. Likewise, statements indicating that fees can or may be waived in the exercise of discretion or that fees are “proposed” fees likewise may be too speculative and indefinite.
- If the majority of an organization’s funding comes from the fees it charges its clients, the fees the organization charges are probably not nominal.
- *See, i.e. Matter of American Paralegal Academy, Inc. supra.* In that case the applicant provided the Board with a detailed fee schedule for each of the services provided. The fee schedule included, inter alia a submission indicating that the fees charged to clients would be based on income and family size. The Board denied accreditation because, among other reasons, the organization had failed to establish that the fees charged were “nominal.” In support of this conclusion the Board noted that, “the applicant’s characterization of the amounts it requests in payment for services as ‘donations’ is not persuasive in a determination of ‘nominal charges.’”
- If a fee schedule is submitted, consider the proposed fees charged for the specific application in question. For example, if the agency is charging an unreasonable amount of money for the completion of an application for asylum or a petition for battered spouse, not only may the amount charged not be nominal, but it may also suggest that the organization is not truly a social service, religious or charitable organization. *See Section A, supra.*

C. Is the organization an affiliate, branch or satellite office of a Board recognized organization?

- If so, each physically separate office of the organization must demonstrate by individual application that each office independently has at its disposal adequate knowledge, information, and experience in immigration law and procedure and that it makes only nominal charges and assesses no excessive membership dues for persons given assistance. *See Matter of Florida Rural Legal Services, Inc.*, 20 I&N 639 (BIA 1993).

D. Does the Organization have at its disposal adequate knowledge, information and experience?

Examples of supporting documentation include:

- Resumes of the organization's staff members;
- Diagram of the Organizational structure of the organization;
- Letters of Recommendation;
- List of books and other resources regarding immigration law and procedure at the organization's disposal;
- List of classes, trainings, agendas or certificates of completion for courses taken by the staff on immigration law and procedure;
- Explanation of how the employees are supervised and by whom.

Note:

- *See Matter of Lutheran Ministries of Florida*, 20 I&N 185 (BIA 1990): An application of a nonprofit organization seeking recognition should include detailed information as to how the organization will operate and by whom it will be staffed, as well as other evidence regarding the organization's qualifications such as resumes for the staff members and information as to the availability of legal resource materials, training programs in immigration law and procedure, and supervised employment for the staff.

## II. Accreditation Process:

- An organization recognized by the Board pursuant to section I, *supra*, may apply for the accreditation of one or more individuals to serve as its representative(s). *See* 8 CFR § 292.2(d) and § 1292.2(d). An individual may not apply for accreditation on his/her own behalf.
- The request for accreditation may be filed simultaneously with an EOIR-31 "Request for Recognition as a Non-Profit Religious, Charitable, Social Service, or Similar Organization" or may occur subsequent to approval of the EOIR-31 by the BIA.

### A. Partial versus Full Accreditation;

Partial: allows the accredited representative to appear before DHS only;

Full: allows the representative to appear before DHS, the Board, and the immigration courts. The DD's response to a request for full accreditation should include input from ICE;

- Once approved, an individual's status as an accredited representative is valid for three years (absent withdrawal of the recognition of the organization or practitioner discipline imposed on the accredited representative by the BIA);
- Renewal of an individual's status as an accredited representative is not automatic. The recognized organization must apply for renewal of the accreditation of its

representative(s) prior to the expiration of his or her accredited status and must establish that the individual continues to fulfill the requirements of accreditation.

B. Does the individual have good moral character?

Examples of supporting documentation include:

- Resumes;
- Letters of Recommendation;
- Police clearance letters.

Notes:

- An individual who has engaged in the unauthorized practice of law or is being prosecuted by the state bar may be unable to establish good moral character.
- An individual with a criminal background may be unable to establish good moral character.
- The regulations do not define “good moral character” nor do they specify a time period during which a person must establish good moral character.

C. Does the individual have sufficient experience and knowledge of immigration and naturalization law and procedure?

Examples of supporting documentation include:

- The individual’s resume;
- List of classes, trainings agendas or certificates of completion for courses taken by the individual;
- Letters of Recommendation; and
- List of books and other resources regarding immigration law and procedure at the individual’s disposal.

Notes:

- The District may wish to consider the individual’s responsibilities on behalf of the recognized organization, the types of services to be rendered by the individual on behalf of the recognized organization, who will be supervising the individual and how, and with what frequency will they be supervised. For example, an individual who will be providing assistance in completing N-400s and N-600s but who has had no specific training in naturalization would probably have difficulty in establishing sufficient knowledge of immigration law and procedure.
- The District may wish to explore the individual’s reputation with USCIS staff, including information officers, community relations officers and adjudicators.