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September 12, 2022

Submitted by Federal Express to:
Lauren Alder Reid
Office of Policy, Executive Office for Immigration Review
5107 Leesburg Pike, Ste 2500
Falls Church, VA. 22041
cc: David Neal
Director, Executive Office for Immigration Review

Re: OMB 1125-0031 Agency Information Collection
Activities; Proposed eCollection;
Comments Requested; Request by
Organization for Accreditation or
Renewal of Accreditation of Non-
Attorney Representative (Form EOIR 31A)
87 Fed. Reg. 50123 (August 15, 2022) and

OMB Number 1125-0012]
Agency Information Collection
Activities; Proposed eCollection of
eComments Requested; Request for
New Recognition, Renewal of
Recognition, Extension of Recognition
of a Non-profit Religious, Charitable,
Social Service, or Similar Organization
(Form EOIR 31) 87 Fed. Reg. 50123 (August 15, 2022)

Dear Office of Policy:

The following comments are submitted in response to the Notices of Information Collection on Forms EOIR 31 and 31A specified above. These forms are used by non-profit organizations who represent low-income immigrants to obtain permission from the Department of Justice to have qualified non-lawyers represent persons in immigration matters. The EOIR 31 is used to obtain DOJ "recognition" of the program as qualified to provide these services, and the EOIR 31 A is used by a qualified person with those organizations to obtain "accreditation."

EOIR should withdraw the proposed 2022 version of the EOIR 31 and 31 A. In addition to the changes exceeding the regulations, they have not been properly presented to the public for notice and comment. The 2017 forms EOIR 31 and 31A should continue in use until the agency engages in proper rulemaking if it wishes to change the eligibility standards for recognition and accreditation.

Background on the Immigrant Legal Resource Center (ILRC)

The ILRC is a national non-profit organization that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The ILRC's mission is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people.

Since its inception in 1979, the ILRC has provided technical assistance on hundreds of thousands of immigration law issues, trained thousands of advocates and pro bono attorneys annually on immigration law, distributed thousands of practitioner guides, provided expertise to immigrant advocacy efforts across the country, and supported hundreds of immigration legal non-profit organizations in building their capacity.

The ILRC has published dozens of educational materials including manuals, practice advisories, community education materials and advocacy materials to support the non-profit Department of Justice (DOJ) recognized programs and accredited representatives serving low-income immigrants. We produce training materials for a week-long overview of immigration law course to train accredited representatives. The comments that follow are gleaned from the experiences of many recognized programs and accredited representatives whom we serve.

Lack of Electronic Filing for Comments and Lack of Public Record

Preliminarily, we note that the Federal Register notice titles this an e-collection of information, but there is no way to electronically submit comments described in the notice through [regulations.gov](https://www.regulations.gov), which is the procedure commonly followed by agencies.

The only comment submission directions given in the EOIR notice are to submit comments to a postal address for the EOIR Office of Policy. This is concerning because the employees of the EOIR Office of Policy have been working remotely since the inception of the pandemic in March 2020, and receipt of mail is uncertain. Also, this postal submission procedure does not allow for a public record of comments, which is standard procedure with other agencies. This lack of public access to a comments record, if one exists, poses due process problems because the public is not provided a meaningful opportunity to review the comments received by the agency.

We also note that the revised form itself is not posted by EOIR and the changes are not summarized in the notice. There is no docket folder with copies of the revised forms as is routinely provided by other agencies on [regulations.gov](https://www.regulations.gov). There is a contact number in the notice for further information, and we were able to contact the agency and ask for a copy of the revised forms. This indirect procedure provides less notice to the public than is normally provided by other agencies, since many concerned parties may not know how to retrieve the form changes if they are not posted with the notice.

Background on Forms EOIR 31 and 31 A

The previous forms from 2020 that are being used as the current template for the 2022 revisions were never properly presented to the public for notice and comment, as required by the Paperwork Reduction Act (PRA) and the Administrative Procedures Act (APA). Thus, the current proposed revisions have incorporated major changes that were made in 2020 without public review. The 2020 changes were incorporated unilaterally without redlining them in the 2022 proposed version, obscuring the fact that the language in the 2020 form is now being incorporated without comment.

The 2020 changes to the form that are now incorporated into the 2022 proposed form were extensive and went beyond the requirements of the regulations at 8 CFR § 1292. Advocates objected strenuously to the 2020 final forms EOIR 31 and 31 A because the proposed version that had been released with a Federal Register notice bore

little resemblance to the final form, thus depriving the public of any effective ability to comment.¹ After the final form was published in 2020 and advocates registered their objections with EOIR, EOIR decided to continue to allow the public to use the prior (January 2017) versions of the forms. EOIR has continued to date to publish both the 2017 and 2020 versions for use on its website.²

Because the new information and documentation requests in the forms contradict or exceed the regulatory requirements for recognition and accreditation, EOIR would need to engage in a rulemaking process under the APA to make these changes. Changes of this nature to eligibility requirements cannot be made in a new version of a form under the PRA without accompanying regulatory changes.³ Since that comment process has not happened here, the 2022 proposed forms should be withdrawn.

The 2020 and 2022 Changes to the Forms Should Be Withdrawn

We request that the 2020 and 2022 changes to the forms EOIR 31 and 31 A be withdrawn for two reasons: the changes have never been properly submitted for public comment under the APA and PRA and the changes exceed the regulatory eligibility requirements.

The changes to the forms request information or documentation that contradicts or exceeds the scope of the Recognition and Accreditation regulations. Substantive changes in eligibility should go through notice and comment rulemaking under the APA as opposed to information collection under the PRA.⁴ The changes that contradict or exceed the scope of the current regulations are: (1) a requirement that the organization name must be on file with the Secretary of State or other state agency; (2) the new requirements regarding “current and valid” non-profit

¹ For a detailed description of the form released in 2019 as proposed and the dramatically different forms that were released as final in 2020 see Catholic Legal Immigration Network and World Relief, Letter to the Office of Management and Budget and to EOIR Office of Policy, <https://cliniclegal.org/resources/federal-administrative-advocacy/clinic-and-world-relief-call-eoir-rescind-new-ra-forms>.

² See both the 2017 and 2020 versions of the forms on the EOIR website <https://www.justice.gov/eoir/recognition-and-accreditation-program>. For information on advocates’ objections to the 2020 form and subsequent decision by the government to publish both 2017 and 2020 forms on its website see <https://cliniclegal.org/toolkits/recognition-accreditation/preparing-apply>.

³ The Paperwork Reduction Act (PRA) requires the agency to provide “reasonable notice to the potential persons to whom the collection of information is addressed” of the proposed information collection to evaluate various aspects of the information collection and the burden it might impose. 5 C.F.R. § 1320.8(c)-(d). If the version of the form provided to the public during the public comment period does not reflect the content of the form as it is finalized and implemented, the public has not had “reasonable notice” of the nature of the information collection to meaningfully comment on the contents. Under the Administrative Procedures Act (APA), if a rule is not an interpretative rule; general statement of policy; or a rule of agency organization, procedure, or practice, and the agency does not have good reason to conclude that public commenting is impracticable, unnecessary, or contrary to the public interest, then it should go through notice and comment rulemaking. 5 U.S.C. § 553.

⁴ Todd Garvey, *A Brief Overview of Rulemaking and Judicial Review*, Congressional Research Service (March 27, 2017) <https://fas.org/sgp/crs/misc/R41546.pdf>.

status and related documentation of non-profit status on Form EOIR-31; (3) new and extensive documentation requirements for an extension request on Form EOIR-31; and (4) the character and fitness questions on Form EOIR-31A including imposition of a universal criminal background check requirement.

The new version of Form EOIR-31 requires that the name of the organization applying for recognition be on file with the Secretary of State or other state agency. This requirement does not appear in the recognition regulation.⁵ The names under which organizations operate are not a basis to disapprove an application for recognition. Further, many organizations are sub-offices of a larger organization and operate under different names (e.g., many Catholic Charities operate under the auspices of a local Archdiocese, which would be the tax-exempt entity on file with the relevant state authority). If EOIR wishes to make this a basis for disapproval, it would need to propose this change with notice and comment under the APA.

The 2022 version of the EOIR-31 also sets a new and more burdensome standard for non-profit status and requires documentation of non-profit status that is not required evidence under the regulations. The regulation requires:

*The organization **must** submit: A copy of its organizing documents, including a statement of its mission or purpose; a declaration from its authorized officer attesting that it serves primarily low-income and indigent clients; a summary of the legal services to be provided; if it charges fees for legal services, fee schedules and organizational policies or guidance regarding fee waivers or reduced fees based on financial need; and its annual budget (emphasis added).*

Organizing documents from the foundation of the organization are required evidence and serve as proof of non-profit status. However, requiring new and additional documentation of “currently valid” non-profit status from a state agency, including a notice or contemporaneous letter confirming that status, is redundant and exceeds the scope of the regulations. Should EOIR wish to collect this information, to the agency must use the notice and comment procedures under the APA to change these requirements.

The proposed version of EOIR Form 31 also places new and burdensome requirements on organizations seeking extension of recognition and accreditation to multiple offices or locations pursuant to 8 C.F.R. 1292.15. The regulations require:

*To request extension of recognition, an organization that is seeking or has received recognition **must** submit a Form EOIR-31 that identifies the name and address of the organization’s headquarters or designated office and the name and address of each other office or location for which the organization seeks extension of recognition. The organization **must** also provide a declaration from its authorized officer attesting that it periodically conducts inspections of each such office or location... (emphasis added).*

The 2022 proposed EOIR 31 requirements exceed the enumerated requirements of the regulation and shift the standard from attestation or declaration to making burdensome documentation and evidence mandatory. The form now requires programs applying for extension to multiple offices to attach detailed documentation of periodic inspections, joint operations, joint management structure, joint finances, and legal resources available. The goal of the regulation was to ease the process of extension offices being recognized through a central office, and the proposed form with its additional burdens of proof has the opposite result.

⁵ See 8 C.F.R. § 1292.11.

Finally, the questions related to character and fitness on page two of Form EOIR-31A well exceed the scope of the regulations. These revised forms should be withdrawn. The final rule discussed the character and fitness requirement when assessing the comments received from the public and stated that it would not create administrative burdens for organizations, because the character and fitness requirement could be satisfied through “attestations of the authorized officer of the organization and the proposed representative and letters of recommendation or favorable background checks. Additional documentation beyond this would only be necessary if the proposed representative has an issue in the proposed representative's record regarding the proposed representative's honesty, trustworthiness, diligence, professionalism, or reliability.”⁶

Expanding the character and fitness criterion to require in an initial filing that organizations must conduct a legal analysis of the individual's past to determine if he or she “ever committed prior acts involving dishonesty, fraud, deceit or misrepresentation,” “ever resigned while a disciplinary investigation or proceeding was pending,” whether applicant is “subject to any order disbarring, enjoining, restraining, or otherwise restricting the individual in the practice or law or representation before a court or any administrative agency” or “ever been found guilty of, or pleaded guilty or nolo contendere to, a serious crime...in any court anywhere in the world” certainly creates an administrative burden for the organization before any issue has been raised in the individual's record as established by attestations. These questions are beyond the scope of the regulations, are vague and intrusive, and will discourage the applicants from going forward with seeking accreditation.

The proposed EOIR 31A also specifically states that the date of birth data now required of applicants “will be used to conduct criminal background checks.” The regulations contain no such requirement.

The final regulation described the character and fitness requirement and stated that it would not be burdensome because it could be satisfied through,“ attestations of the authorized officer of the organization and the proposed representative and letters of recommendation or favorable background checks. Additional documentation beyond this would only be necessary if there is an issue in the proposed representative's record regarding the proposed representative's honesty, trustworthiness, diligence, professionalism, or reliability.”⁷

The mention of background checks is preceded by the word “or,” indicating that attestations and letters of recommendation equally satisfy the character and fitness requirement. As noted above, additional documentation may be required when there is some identifiable issue in the applicant's record. But absent any such issue, the extensive questions in the revised EOIR-31 and the imposition of a requirement of universal background checks extend the documentation of the character and fitness requirement far beyond what was intended in the final rule.

Conclusion

The proposed 2022 changes and the 2020 changes which they incorporate are burdensome and unsupported by the regulations. The effect of these changes would be to drastically reduce capacity for providing expanded, charitable immigration legal services to the most vulnerable non-citizens in our country.

⁶ EOIR, Recognition of Organizations and Accreditation of Non-Attorney Representatives, 81 Fed. Reg. 92,346,92,351 (Dec. 19,2016).

⁷ EOIR, Recognition of Organizations and Accreditation of Non-Attorney Representatives, 81 Fed. Reg. 92,346,92,351 (Dec. 19,2016).

EOIR should withdraw the proposed 2022 version of the EOIR 31 and 31 A. In addition to the changes exceeding the regulations, they have not been properly presented to the public for notice and comment. The 2017 forms EOIR 31 and 31A should continue in use until the agency engages in proper rulemaking if it wishes to change the eligibility standards for recognition and accreditation.

Sincerely,

Peggy Gleason

Senior Staff Attorney

on behalf of Immigrant Legal Resource Center