

October 12, 2022

Submitted via Federal Express and via email to PAO.EOIR@usdoj.gov

Lauren Alder Reid
Assistant Director
Office of Policy
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 2500
Falls Church, Virginia 22041

**Re: Comments on OMB No. 1125-0013, Agency Information
Collection; Request by Organization for Accreditation or Renewal of
Accreditation of Non-Attorney Representative (Form EOIR-31A)**

Dear Ms. Alder Reid:

The New York Legal Assistance Group ("NYLAG"), submit these comments in opposition to the proposed revisions in the Executive Office for Immigration Review's (EOIR) Information Collection for Form EOIR-31A, Request by Organization for Accreditation or Renewal of Accreditation of Non-Attorney Representative.

NYLAG is a leading non-profit that provides free civil legal services and financial counseling, and engages in policy advocacy efforts to help people experiencing poverty. NYLAG's Immigrant Protection Unit provides free legal services -- affecting 38,200 immigrants in Fiscal Year 2020 alone -- to immigrants with low income seeking representation in immigration matters before the Department of Homeland Security ("DHS") or the Department of Justice. NYLAG has long participated in the Recognition and Accreditation ("R & A") program of the Department of Justice. At this time, NYLAG employs 11 non-attorney case handlers who are partially accredited by the Department of Justice. Approximately 35% of NYLAG's immigration clients are represented by accredited representatives.

NYLAG notes that in the currently proposed Form EOIR-31A, the agency has incorporated changes that were previously included in a 2020 version of the form that was not implemented after various agencies objected to deficiencies in the revision process. NYLAG objects to the incorporation of those revisions and will comment in opposition to all changes in Form EOIR-31 since the 2017 revision, which is the version of the form currently accepted by the Executive Office for Immigration Review ("EOIR") and used by NYLAG in seeking accreditation for its employees. NYLAG requests that that EOIR withdraw both the 2022 and 2020 proposed changes to this form and revert to the 2017 edition of the form, as the currently proposed edition of the form is unduly burdensome and beyond of the requirements of the regulations authorizing the R & A program.

In the remainder of these comments, the term "proposed changes" refers not only to the redlined changes in the 2022 version, but also the changes made in the 2020 version which were not properly introduced for notice or comment.

We urge EOIR to rescind the proposed form revisions and revert to the 2017 version of the form for several reasons. First, some of the questions added to the form go beyond the scope of information required by regulation. Thus, the form revisions would have the effect of expanding regulations without first going through the requisite notice and comment process, as required by the Administrative Procedures Act.

Second, this Information Collection would conflict with the goals of the Paperwork Reduction Act (PRA), which seeks to reduce the paperwork burden on individuals and organizations, by requiring a significant increase in document and information collection in order for NYLAG and other agencies to continue to participate in the R & A program, as more fully detailed below.

Previous Applications (Part 2A)

Part 2A of the proposed form requires applicants to describe any previous applications that have been submitted to the R&A Program on this representative's behalf, by the sponsoring organization or any other, and list the date submitted, the name of the applicant organization, and the outcome

of the application. This request is burdensome and asks for information that EOIR should already have in its records and that NYLAG does not have in its records.

NYLAG currently employs 11 accredited representatives. Of those representatives, four have been accredited for more than seven years. Three of those have been accredited for more than 20 years. Several of our accredited representatives' employment at NYLAG has spanned several office moves, and predates widespread digitization of records. NYLAG retains records in accordance with the requirements of the New York State Rules of Professional Conduct, which requires records to be retained for seven years.¹ Two of our currently employed accredited representatives were previously accredited at other organizations, one of which is now defunct.

It would be impossible for NYLAG to collect all past dates on which an employee has sought accreditation through any organization, and the result, which is information required by the currently proposed form EOIR-31A. NYLAG would simply be unable to continue to apply for renewal of accreditation for our most experienced accredited representatives, who are currently able to expertly represent hundreds of immigrants in their immigration applications before DHS. This would be a loss to NYLAG, its clients, and DHS, which also benefits from increased efficiency when its officers are able to adjudicate well-prepared applications for benefits.

This loss is completely unnecessary, because EOIR is in possession of the information sought, and because it is not required by the regulations. The regulations only require that an applicant demonstrate that they meet the same requirements needed for initial accreditation and that they have continued to receive training in immigration law and procedure. Therefore, we recommend that EOIR remove this question as it is unnecessary and burdensome.

Direct Legal Representation for Renewal (Part 2B)

¹ See, New York Rules of Professional Conduct, Rule 1.15, available at <https://www.nycourts.gov/ad3/AGC/Forms/Rules/Rules%20of%20Professional%20Conduct%2022NYCRR%20Part%201200.pdf>.

Part 2B of the proposed form asks how frequently the representative has provided direct legal representation before USCIS or EOIR. The corresponding instructions on p. 5 state, "For renewal of accreditation applications only, indicate approximately how often during the past three years the Accredited Representative has entered an appearance before USCIS and EOIR on Forms G-28, E-28, or E-27."

This question is unclear and would be difficult for NYLAG to answer accurately. NYLAG's accredited representatives have used their accreditation to work with approximately 1,000 clients and prospective clients over the past year in several different ways. To track over a period of three years the number of clients one of our accredited representatives has worked with would be a challenge, both because of the sheer number of people NYLAG's accredited representatives help, and because the question is not clear. For example, four of NYLAG's accredited representatives are focused almost exclusively on performing intakes of prospective clients and providing them with advice and counsel. This is an important use of their accreditation because they would not be able to provide advice and counsel without it. However, it would not be reflected in a count of submitted G-28 forms. Similarly, NYLAG's accredited representatives often attend interviews before USCIS on which a different NYLAG employee prepared the application. It is unclear how such cases should be counted. For these reasons, the new question is burdensome. It also serves no apparent regulatory function.

The regulations do not require demonstrating prior appearance in cases for renewal of accreditation. They only require that applicants continue to meet the requirements for initial accreditation and have continued to receive formal training in immigration law and procedure commensurate with the services the organization provides and the duration of the representative's accreditation. Because a description of past direct legal representation is not a requirement to renew accreditation under the regulations, this question is irrelevant and unnecessarily burdensome, and should be removed.

Representative's Background - Character and Fitness (Part 2C)

In Part 2C, the proposed form includes the first time five questions pertaining to the applicant's character and fitness. These questions should be removed, and EOIR should revert to the method used in the 2017 version of the form, which aligns with the regulations' reliance on the applicant's attestation and the authorized officer's attestation based on what an authorized officer can reasonably be expected to know about its employees.

NYLAG is concerned that the proposed character and fitness questions would create undue burden for organizations such as ours that seek accreditation for our staff members. Because form EOIR-31A must be signed by an authorized agent of NYLAG in addition to the staff person seeking accreditation, the proposed addition of character and fitness questions may require NYLAG to solicit information from its staff to respond to questions that are vaguely worded and extremely broad. Should NYLAG be required to answer these questions, staff upset about NYLAG's answers could potentially seek legal redress against NYLAG, regardless of the merits of such claims, which would subject NYLAG to legal uncertainty and liability. For this reason, NYLAG may need to seek advice from outside counsel prior to applying for initial or renewal accreditation for its staff. This would hinder NYLAG's ability to represent its clients and would create a significant and unnecessary burden for NYLAG in order to continue to participate in the accreditation program, a program that is intended to recognize the overburdened state of non-profit immigration legal service providers and ease that burden.

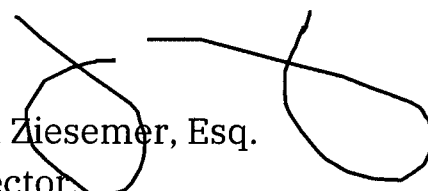
Conclusion

The proposed additions to Form EOIR-31A may not seem at first glance to be substantial, the impact of the effort required to respond to the proposed new questions would be significant for NYLAG and its employees that participate in the R & A program. Because the burden that these questions would add is not necessary under the regulations that govern the program, the effect of these changes is to require a significant and expansive amount of information collection by the applicants, none of which is necessary for the approval of recognition or accreditation. These questions would be an unnecessary burden to individual applicants, their employers, and the agency that would need to evaluate this complex and sensitive information.

If EOIR wishes to raise the evidentiary burden for applicants—which we strongly oppose—it would need to change the underlying regulations through the more rigorous APA notice and comment process, not by simply making changes to the form. EOIR should revert to the January 2017 edition of Form EOIR-31A, as it more closely aligns with the requirements set out by the regulations.

Thank you for the opportunity to submit comments on the proposed form changes.

Respectfully submitted,



Jodi Ziesemer, Esq.
Director,

Immigrant Protection

Unit