world relief

STAND/WITH THE VULNERABLE

September 10, 2020

Submitted via Federal Express

Lauren Alder Reid
Assistant Director, Office of Policy
Executive Office for Immigration Review
U.S. Department of Justice
5107 Leesburg Pike, Suite 2500
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Re: Comments on OMB No. 1125-0012, Agency Information Collection; Request for New Recognition, Renewal of Recognition, Extension of Recognition of a Non-Profit Religious, Charitable, Social Service, or Similar Organization (Form EOIR-31); and OMB No. 1125-0013, Agency Information Collection; Request by Organization for Accreditation or Renewal of Accreditation of Non-Attorney Representative (Form EOIR-31A)

Dear Assistant Director Alder Reid:

On behalf of World Relief, we are writing in response and opposition to the Department of Justice's (DOJ) Information Collection published on July 13, 2020, revising Form EOIR-31, Request for New Recognition, Renewal of Recognition, Extension of Recognition of a Non-Profit Religious, Charitable, Social Service, or Similar Organization, and Form EOIR-31A, Request by Organization for Accreditation or Renewal of Accreditation of Non-Attorney Representative.

World Relief is a national Christian nonprofit recognized by the Department of Justice for 32 years, that has more than 50 offices and affiliates that provide immigration legal services in 20 states, and provides immigration legal services to more than 10,000 clients annually. As such, we are keenly aware of the consequences of the proposed changes to the EOIR-31 and EOIR-31A forms.

World Relief is the humanitarian arm of the National Association of Evangelicals. Its mission is to empower the local church to serve the most vulnerable and it does this in both international and domestic contexts. Our mission to empower the local church to serve the most vulnerable is rooted in the biblical mandate to welcome the foreign born and to serve the most vulnerable people among us. As such, our work and our position is that we as a nation must welcome immigrants, no matter their national origin or socioeconomic status, out of respect for the dignity of the human person. Our welcome must include immigrant's access to legal representation as they navigate our complex and rapidly changing immigration system. World Relief is whole-heartedly committed to these principles, welcoming and serving our neighbors throughout their immigrant journey.

World Relief's programs offered in the U.S. include, but are not limited to refugee resettlement, immigration legal assistance, mental health programs, and English as a second language and citizenship classes. The Department of Justice has recognized World Relief since 1987 and currently recognizes 19 of World Relief's office locations along with 30+ accredited staff members. In addition, World Relief's Immigration Programs division provides technical legal support to empower local churches and church denominations across the country to directly serve immigrants in the context of DOJ recognized, immigration legal services programs. World Relief leads denominations and churches in discernment of immigration legal ministry, education surrounding church-based immigration legal services clinics, and training opportunities for church-based clinic sites and staff/volunteers. World Relief currently provides technical legal support to more than 40 faith-based DOJ recognized agencies. World Relief has been a key leader and participant in a number of national collaborations dating back to 1999 including being a founding member of the DOJ Recognition and Accreditation Working Group. This working group is comprised of national networks with affiliates and partners that hold DOJ recognition. Our longstanding role as a DOJ recognized agency, technical support provider, and Working Group member provides us with a wide breadth of knowledge and experience with the DOJ Recognition and Accreditation Program.

Any changes made by the Executive Office for Immigration Review (EOIR) and the Office of Legal Access Programs (OLAP) regarding R&A are of great importance to World Relief and its network. On account of our extensive experience with the DOJ Recognition and Accreditation Program and on behalf of our agency, our network, and the national network of DOJ recognized agencies, we implore the Department of Justice to rescind the proposed revised forms EOIR-31 and EOIR-31A.

World Relief Urges the Rescission of Revised Forms EOIR-31 and EOIR-31A

World Relief urges the rescission of the proposed revised forms, as they attempt to create policy change through the form revision process. The amount of information required in the revised forms is burdensome to nonprofit agencies and their staff, goes far beyond the requirements in the regulations, and will make the recognition and accreditation process significantly more difficult for eligible organizations.

The EOIR-31 and EOIR-31A forms are the primary documents that nonprofit organizations are required to use in order to apply for and renew organizational recognition and staff accreditation, in addition to applying for and renewing extension of recognition to additional office locations. The proposed form changes directly impact efficient management of and compliance with the Recognition and Accreditation Program for more than 750 current recognized agencies, more than 2000 accredited representatives, and hundreds of nonprofits that are likely to apply for the program in the future.

Historically EOIR and OLAP have engaged stakeholders in potential changes to the R&A program, including changes to the form, with much success. As such, it is unfortunate that EOIR published these proposed changes without prior dialogue with stakeholders and without any explanation

or justification for the individual changes. It was also difficult to meaningfully respond to the proposed changes when drafts of the proposed forms were not included with the Federal Register notice and instead had to be requested. The lack of rationale provided for the proposed changes to these forms is particularly concerning due to the numerous proposed requirements that exceed the scope of the regulations. We hope that proper notice, clear justification, and more stakeholder engagement will take place before any changes to these forms go into effect. We always welcome the opportunity to engage with OLAP and EOIR and to provide insight and expertise from the field.

Procedural Concerns

The proposed forms should be withdrawn in their entirety because they do not meet the standards of the APA and would drastically increase time, expense, and paperwork burdens on applicants for the R&A program and on EOIR itself, without the agency stating a sufficient reason or benefit for such change.

As detailed later in this comment, a number of the proposed changes increase the evidence required in order to qualify for recognition or accreditation in ways that are not supported by the current regulations at 8 CFR § 1292. This Information Collection attempts to change policy through the form revision process, rather than going through the notice and comment process under the Administrative Procedures Act (APA). As such, if the Department of Justice wishes to increase the evidence required to qualify for the program, it would need to introduce these changes as a notice of proposed rulemaking under the APA.

In addition, the proposed Information Collection violates the Paperwork Reduction Act (PRA). The PRA seeks to reduce the paperwork burden on individuals and organizations but these proposed forms create a significant increase in information and documentation.

OLAP has not communicated what issues, if any, they were experiencing with the 2017 versions of the forms that led to the development of these new versions. This DOJ Information Collection adds questions that suggest EOIR is concerned about representatives engaging in fraud yet fails to provide evidence that is cause for concern. This would turn a highly successful capacity-building program into a fraud investigation program, which is duplicative of EOIR's current functions to investigate any allegations of fraud in the R&A program. The Federal Register Notices do not attempt to justify why collecting significant amounts of information and evidence beyond that collected by the previous version of the form would be necessary, or what has changed that would make it necessary. Nor do they address under what authority they can require evidence that is ultra vires to the regulations. The addition of these questions would have a chilling effect on applications as the process becomes more complex and laborious, contradicting the purpose of the program to increase capacity.

The Proposed Changes to Form EOIR-31 Are Inconsistent with the Regulations

World Relief has compared the January 2017 version of the forms with the proposed version of the forms provided by EOIR, and the regulations. Our analysis leads us to wholeheartedly oppose many of the proposed changes to Form EOIR-31.

Below we describe our analysis of the time and cost for completion of the form and our objections to the added requirements regarding;

- state non-profit status,
- description of legal services,
- fee policies,
- technical legal support,
- extension of recognition to other locations.

The Estimated Time and Cost for Completion of Form EOIR-31

In the Federal Register Notice for the proposed changes to Form EOIR-31, the estimated time for completion of Form EOIR-31 is two hours per response for initial applications for recognition, and seven hours per response for renewal of recognition. This is the same amount of time EOIR estimated for the January 2017 version of the EOIR-31, yet the proposed form requires considerably more information and details than the old form. For example, we estimate that each of the following new requirements in the form and instructions would require substantial amounts of time to respond: "detailed description of the scope, nature, and history of [the legal] services, and by whom they have been provided"; the detailed documentation requested for extension of recognition; as well as the additional time to organize and assemble the supporting documentation for the application packet. While not a comprehensive list, these are a few representative examples of requirements that would substantially add to the burden on applicants and organizations. To properly address these burdens, EOIR needs to provide a comprehensive analysis of its estimates for the time that it would take to complete all of the new requirements in its initial Federal Register Notice in order to be transparent and justify the additional burdens.

Instructions

In the Instructions, Part 1 (p. 2), the third sentence should be clarified as follows: "*If already recognized*, check the R&A Rosters to see how your organization's name currently appears."

State Non-Profit Status

The first question in Part 3 of the form is about current non-profit status. The instructions (Part 3, p. 2) state, "Your organization must have currently valid non-profit status granted by the appropriate state agency (usually from the Attorney General or Secretary of State of your state) to qualify for recognition. Submit a printout from this agency's website or a contemporaneous letter from the agency, confirming that status." This instruction narrows the evidence to demonstrate non-profit status from a pool of documents describing the entity that an organization can choose from, to one single acceptable document. We object to this narrowing of the evidentiary requirements.

The 2016 rule amending the regulations governing the requirements and procedures for R&A included new provisions that require an organization to establish that it is federally tax-exempt

in addition to the requirement that the organization be a non-profit religious, charitable, social service, or similar organization. It is important to note that federal tax-exemption, which is granted by the Internal Revenue Service, is related to but different from non-profit status. Non-profit status is generally regulated under state law and often a precursor to applying for federal tax exemption. Further, state law and individual requirements for non-profit organizations vastly differ depending upon the organization's underlying corporate structure and activities concerning the solicitation of funds.[1] While some states require incorporated entities to file an annual report with the department of state or commerce, others states require a simple application/registration form or special tax filing. For this reason, the regulation at 1292.11(b) provides a list of evidence that an organization may provide in order to prove its status.

The requirement to submit a valid non-profit status granted by a state agency is too narrow of an evidentiary standard because non-profit status is not always confirmed in this way. For example, where a religious organization gains its tax-exempt status through a group ruling, it may not be required to seek separate, non-profit status from the state where it is located. Many of World Relief's affiliates are church or parachurch organizations and fall under the 501(c)(3) group tax exemption of their national denomination. Some states, Texas for example, do not issue state non-profit status to an organization that is a subordinate of a federal group exemption. An organization applying for recognition that does not have a traditional, state non-profit status may incorrectly believe that it does not qualify for recognition based on this question.

The wording of the question must reflect the breadth and flexibility of the regulatory language. The regulations state, "The organization must submit: A copy of its organizing documents, including a statement of its mission or purpose.... 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)."[2] The regulations do not specify which organizing documents are required, beyond the statement of mission or purpose, and the current form instructions state, "PLEASE NOTE: A mission statement or statement of purpose of the organization *must* be included. Additional proof *may* include... state non-profit status." (Part 5, p. 4). Unlike the proposed new language, the prior edition's wording of this question accurately reflects the regulations.

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[1] *See, State Filing Requirement for Nonprofits*, National Council of Nonprofits, (last accessed Sept. 1, 2020), www.councilofnonprofits.org/tools-resources/state-filing-requirements-nonprofits, and *State-By-State Registration and Compliance*, Hurwit & Associates, (last accessed Sept. 1, 2020), www.hurwitassociates.com/states-reporting-requirements.

[2] 8 C.F.R. § 1292.11(b) (2003).

EOIR has not offered any rationale for adding this requirement. Documentation requests should remain flexible because not all states require non-profit organizations to have this status, and it is not required for federal 501(c)(3) status. State non-profit status is generally required for organizations that wish to receive charitable contributions, but not all organizations wish to do this. There is no need for EOIR to require state non-profit status, since organizations can prove their non-profit status with other organizing documents such as the constitution, charter, by-laws, or articles of incorporation.

Finally, by requiring evidence of valid state non-profit status, DOJ is excluding from eligibility any organization that does not need to file for state non-profit status under the applicable state law. If DOJ wants to make a substantive change that would impact the eligibility of organizations for recognition, the agency would need to make that change through notice and comment rulemaking under the APA and not through a revision of forms.

Legal Services

Part 3 of the proposed form asks about the legal services the organization offers, and the instructions state, "An organization that does not currently offer immigration legal services must include a detailed description of the types of services it intends to provide if recognized. An organization that does currently offer immigration legal services must provide a detailed description of the scope, nature, and history of these services, and by whom they have been provided" (Part 3, p. 3). This level of detail is not consistent with the regulations. The regulations and current form merely require a "description of the immigration legal services."[3] To meet this requirement, our affiliates currently submit a brief, general statement along with a list of the specific immigration forms they will assist with, usually in the form of a fee schedule. In contrast, the proposed form would require a descriptive essay that would increase the burden on applicants to provide information in a narrative form, where a chart or table would provide the same information.[4]

When the final version of the R&A regulations was published, the final rule described changes to the wording of the relevant section: "the information required to be submitted is more concise and has shifted to a focus on the legal services provided by the organization as a whole, rather than by its accredited representatives individually."[5] Despite the stated intentions of the final

[3] *See* 8 C.F.R. § 1292.11(e) (2003); and U.S. Department of Justice, *Request for New Recognition, Renewal of Recognition, Extension of Recognition of a Non-Profit Religious, Charitable, Social Service, or Similar Organization*, Form EOIR-31, Part 7, p. 5 (Edition: Jan. 2017).

[4] *See supra* section titled Estimated Time for Completion of EOIR-31 for a description of the burden caused by the time to complete the revised version of the form.

[5] Recognition of Organizations and Accreditation of Non-Attorney Representatives, 81 Fed. Reg. 92,346, 92,355.

rule that is currently in effect, the revised form requires more information to be submitted and shifts the focus of the legal services back to the individuals providing them. These changes are not consistent with the regulations, requiring concise information and broader organizational services. There is no stated reason for the additional requirements or the change in focus. The additional requested information is not related to the proper performance of the agency's duties under the regulation, and do not support the purpose of minimizing the burden of information collection and submission on behalf of the applying or renewing organization or applicant.

Fees

In Part 3 of the proposed form on page 1 there is a question about fees that states, "Attach fee schedule and fee waiver/reduction policy." This is consistent with the regulations and current form. However, the corresponding instructions in the proposed form (p. 3) add the following requirement: "Include a copy of the fee waiver or reduction application your organization uses, if any." There is no need for this additional documentation, which adds unnecessary paperwork to the process. The regulation only requires the "fee schedules and ***organizational policies*** or guidance regarding fee waivers or reduced fees based on financial need,"[6] not the applications or forms used to implement such policies. Requiring this documentation is *ultra vires* to the regulations; if the agency wants to require documentation in addition to that currently required by the regulations, it would need to introduce the change under the APA with notice and comment.

Technical Legal Support

In Part 4 of the proposed form on p. 2 the last question is about technical legal support and requires a "Description of other party's qualifications, experience, and breadth of immigration knowledge." The corresponding instructions on p. 4 mention this description as well as another requirement: "If the other party is a private attorney, also attach his or her resume." This additional information is *ultra vires* to the regulations. The regulations state, "The organization must submit... any agreement or proof of a formal arrangement... for consultations or technical legal assistance."[7] The current form in Part 7d states, "Attach all agreements with name(s) of private counsel and bar admission(s)" (p. 2). The detailed description of qualifications and resume are an added documentation burden that is unnecessary.

If the agency wishes to impose a requirement for applicants to document the qualifications, experience, and breadth of immigration knowledge not only for themselves, but for their advisors as well, then the agency would need to go through notice and comment rulemaking under the

[6] 8 C.F.R. § 1292.11(b) (2003).
[7] 8 C.F.R. § 1292.11(e) (2003).

Administrative Procedures Act. Such a change cannot be made by revising a form under the Paperwork Reduction Act.

Extension of Recognition

Despite being subject to the Paperwork Reduction Act, the proposed changes to Form EOIR-31 include no fewer than five additional documents that would be required with a typical recognition application that includes a request for extension: 1) documentation of state non-profit status; 2) detailed description of legal services; 3) fee waiver or reduction application used by organization; 4) resume of attorney providing technical legal support; and 5) documentation of periodic inspections, joint operations, joint management structure, and joint finances for extension.

Part 7 of the proposed form requires extensive documentation in order to obtain recognition for an extension office. The instructions on p. 5 state, "Attach detailed documentation that addresses the relationship between the designated office and the proposed extension office(s) in each of the following areas:

- Periodic Inspections: How often does the designated office inspect the extension office(s) and how do these inspections take place?
- Joint Operations: What types of immigration legal services does each office perform?
- Joint Management Structure: What is the management structure for the organization as a whole and for each office individually?
- Joint Finances: How is the immigration legal services program at each office funded and who oversees the finances at each office?
- Access to Legal Resources: What legal resources does the designated office have access to, and which of those resources can the proposed extension office(s) also access?

This level of detailed documentation is *ultra vires* to the regulations. The regulations state,

> To request extension of recognition, an organization... must submit a Form EOIR-31 that identifies the name and address of the organization's headquarters or designated office 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, exercises supervision and control over

its accredited representatives at those offices and locations, and provides access to adequate legal resources at each such office or location.[8]

The current form requires limited additional information *only* if there are differences between the main office and extension sites: "Check this box if you have additional relevant information regarding this office or location, such as other contact information, or a fee schedule or supervisory structure different than the organization's headquarters or designated office (attach additional sheets of paper to describe)" (Part 4, p. 1). The regulations state at 8 CFR 1292.15 that declarations on the form and in the authorized officer's declaration are sufficient to demonstrate eligibility for recognition. Requiring documentation from all organizations in addition to the declarations is unnecessary and burdensome to both the applicant and to the agency that would have to process this paperwork.

As stated in the proposed instructions, "The purpose of extension of recognition is to *simplify* the communication and application processes between EOIR and a qualifying organization with more than one location" (Part 7, p. 5). Requiring extensive, additional documentation for an extension request defeats the purpose for which extension was created. Eligibility for extension **is already** demonstrated in the standard documents that are submitted for recognition. For example, an extension would be listed in the organizational chart that is submitted for recognition of the primary organization. World Relief opposes efforts to make the application for extension more burdensome, as it is inconsistent with the purpose of the regulation: to increase the capacity of non-profit organizations to serve immigrant communities. The significant increase in information and documentation required by the proposed form is unnecessary and burdensome, as the application process is already thorough and consistent with the regulations.

Changes to Form EOIR-31A Are Inconsistent with the Regulations

World Relief has compared the January 2017 version of the forms with the proposed version of the forms provided by EOIR, and the regulations. Our analysis leads us to wholeheartedly oppose many of the proposed changes to Form EOIR-31. The Department of Justice has expanded the questions on the Form EOIR-31A to include a great deal of additional information not currently required. Similarly to the EOIR-31, the significant increase in information and documentation is unnecessary and burdensome, as the application process is already thorough and consistent with the regulations.

Below we describe our analysis of the time and cost for completion of the form and our objections to the added requirements regarding

- Representative's Work Location
- Status with the Organization

[8] 8 C.F.R. § 1292.15 (2003).

- Previous Applications
- Previous Employment
- Practice for Renewal
- Date of Birth
- Representative's Background - Character and Fitness

The Estimated Time and Cost for Completion of EOIR-31A

In the Federal Register Notice for the proposed changes to Form EOIR-31A, the estimated time for completion of Form EOIR-31A is two hours per response.[9] This is the same amount of time estimated for the January 2017 version of the form, yet the proposed form has 15 additional questions and is significantly more complex. This estimate does not capture the full time commitment to complete the form because some of the new questions will require considerable time to research and obtain the answer. For example, the questions on the history of previous accreditation applications and the number of G-28s/E-28s filed will add considerable time to the preparation of the application. In addition, the questions about unauthorized practice and criminal background in Part 2C will require considerable time for the preparer to consult with the Human Resources department and potentially legal counsel regarding state/local restrictions on asking employees for this information. While not a comprehensive list, these are a few representative examples of requirements that would substantially add to the burden on applicants and organizations. To properly address these burdens, EOIR needs to provide a comprehensive analysis of its estimates for the time that it would take to complete all of the new requirements in its initial Federal Register Notice in order to be transparent and justify the additional burdens. Considering that the purpose of the R&A program is to increase capacity to assist underserved immigrant communities, those hours gathering nonessential information would be better spent furthering the mission of the organization through legal services, consultations, and community engagements.

Representative's Work Location

Part 1 of the proposed form on p. 1 requires the organization address(es) where the non-attorney representative works or intends to work. We question the need to add a separate question for this information, since OLAP does not track or indicate work location on the roster of recognized locations, and all accredited staff are listed under the main office address and are authorized to practice at any other recognized extension office of the organization. We also note that this

[9] Agency Information Collection Activities; Proposed Collection; Comments Requested; Request by Organization for Accreditation or Renewal of Accreditation of Non-Attorney Representative (Form EOIR–31A), 85 Fed. Reg. 42009, 42010.

information is subject to change, as staff may be moved around to work in different extension offices as needed.

Status with the Organization

Part 2A of the proposed form has a new question requesting the representative's status with the organization (employee, volunteer, or other) and the corresponding instructions state, "the resume... should reflect how frequently the representative has worked with your organization's immigration legal services program" (p. 3). This additional information is irrelevant to the accreditation adjudication and therefore unnecessarily burdensome. First, the status of the representative does not matter, as both employees and volunteers are eligible for accreditation. Second, this status is not static. It is not uncommon in our experience for volunteers to become employees and employees to become volunteers. Third, often applicants have not worked with the organization's legal services program at all, if the program is not yet recognized. In these (frequent) cases, the applicant has received his/her hands-on training with an outside, authorized provider such as another recognized organization. Fourth, frequency is not relevant. There is no provision in the regulations that would require the agency to deny accreditation if the frequency of work is below a particular threshold. Requiring submission of information or documentation that would not affect the applicant's eligibility for accreditation is wasteful and burdensome to both the applicant and the agency.

Previous Applications

Part 2A of the proposed form also asks about previous applications submitted on the representative's behalf. The corresponding instructions on p. 3 state, "describe any previous applications that have been submitted to the R&A Program on this representative's behalf. Include all applications ever submitted, whether by your organization or any other. For each application, list the date submitted, the name of the applicant organization, and the outcome of the application." This request is burdensome and includes information that OLAP should already have in its records. Many of our affiliates and staff do not have this information easily available to them and would struggle to obtain it, especially for staff with many years of experience. For example, World Relief has a staff member that has been accredited for nearly 20 years and we do not have complete documentation for every accreditation renewal application submitted over that period of time. He would not be able to provide the date for each application submitted in the past. For him and others with a wealth of knowledge and experience, this new requirement would lead to significant delays in completing the application process thereby disincentivizing the best of the accredited representatives from renewing their accreditation. This would also take substantial time away from serving clients.

Submission of information about previous accreditation applications is not required by the regulations. In order to renew accreditation according to the regulations, an applicant need only demonstrate that they meet the same requirements as initial accreditation and that they continued to receive training in immigration law and procedure.[10] Requiring that the applicant also submit their accreditation history is not supported by the regulations. Any applicant who is unable to submit their accreditation history may inaccurately believe that they do not qualify to renew their accreditation. This revision would impact the outcome of accreditation applications; such changes should go through notice and comment as a proposed rule under the APA, rather than as a form change under the PRA.

Previous Employment

Part 2A of the proposed form asks about the representative's previous employment. The corresponding instructions on p. 3 state, "If the representative is no longer affiliated with any of the organizations listed, indicate his or her reason for leaving." The question about the reason for leaving a previous employer is not necessary. Reasons for leaving previous employers are not relevant to accreditation as a non-attorney representative. The only information resulting from this question that might be relevant is if the reason for leaving the organization had anything to do with moral character. There is a separate section of the form that asks all relevant questions about any past wrongdoing that would elicit any information that would impact on the eligibility criteria for accreditation. Requiring applicants to indicate a reason for leaving previous employment only adds additional burdensome data entry that is not required by the regulations.

Practice for Renewal

Part 2B of the proposed form has a new question for those who are renewing accreditation. The question is about 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." The regulations do not require demonstrating prior appearance in cases for renewal of accreditation. They only require that "Each request for renewal of accreditation must establish that the individual remains eligible for accreditation under 8 CFR § 1292.12(a) and has 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."[11] To establish eligibility, the regulations require "A description of the individual's qualifications, including

[10] 8 C.F.R. § 1292.16 (c)(2) (2003).
[11] 8 C.F.R. § 1292.16(c)(2) (2003).

education and immigration law experience."[12] Furthermore, we note that an individual may practice immigration law without entering an appearance before USCIS or EOIR, such as when screening clients for eligibility for an immigration benefit, answering questions about their cases, or staffing a naturalization clinic.

Date of Birth

In Part 2C of the proposed form, there is a new question requiring the applicant's date of birth. The corresponding instructions on p. 5 state, "The representative's date of birth may be used to conduct a criminal background check." In the instructions for Form EOIR-31A, there is a Privacy Act Notice that states in relevant part, "EOIR may share the information provided with this form with others in accordance with approved routine uses." An applicant's date of birth is personally identifiable information (PII). Because DOJ intends to collect additional PII on this form, more clarification is needed in the privacy notice to indicate what "routine uses" would justify sharing this information.

While revising this Privacy Act Notice, DOJ should also change the wording of the privacy notice on the EOIR-31A, as it applies only to organizations and recognition, and not to individuals and accreditation.

Representative's Background - Character and Fitness

In Part 2C, the proposed form has a series of eight new questions pertaining to the applicant's character and fitness. The regulations outline the requirements for character and fitness in 8 CFR § 1292.12 (a) (1-5). They only require an attestation from the authorized officer and the proposed representative: "The request for accreditation must be signed by the authorized officer and the individual to be accredited, both attesting that the individual satisfies these requirements."[13] The regulations also state, "The character and fitness requirement may be satisfied through attestations of the authorized officer of the organization and the proposed representative and letters of recommendation or favorable background checks" (Part III, B, 2 (a)).

Six of the eight new questions match the language in the regulations, but we are especially troubled by the first two questions that are not found in the R&A regulations:

- Has the representative ever practiced law, as defined in 8 CFR 1001.1(i), without authorization?

[12] 8 C.F.R. § 1292.12(c) (2003).
[13] 8 C.F.R. § 1292.12(b) (2003).

- Has the representative ever committed a crime of any kind, even if he or she was not arrested, cited, charged with, or tried for that crime?

With these questions, the revised form requires organizations to ask about and report on applicants' past actions such as unauthorized practice of law and possible criminal activity even if they were not arrested or charged with any crime. The regulation only requires that both applicants and authorized officers attest to the character and fitness of the applicant for accreditation. These questions are far too broad, and therefore are *ultra vires* to the regulations. The new questions would expose applicants to the risk of self-incrimination for matters that have not been before any court. Individuals may be unsure whether actions in their past amounted to a crime or not. They would need to seek legal advice to determine if a set of facts could be considered a crime or practicing law without authorization.

World Relief opposes comparing the character and fitness requirement for accredited representatives to that applied to attorneys, as they are distinct licensing and credentialing programs with different motivations and expectations. However, these new questions on the form even go so far as to set a *higher* standard for accredited representatives than what is required of attorneys by state bars, which normally only evaluate incidents that have resulted in conviction or other formal procedures in the justice system.[14]

Asking the questions on this form of their employees may, in fact, cause some employers to violate state law or expose themselves to liability under state fair employment statutes. The proposed form would require employers to request information specifically about acts for which the employee was not convicted, without limitation of the type or relevance of the offense, and without regard to age or expungement. Employers may end up requiring employees to disclose information related to a past substance abuse problem that has been resolved, which may be

[14] For example, the three states with the highest number of registered attorneys each ask questions about convictions, but do not include any questions in the bar application about the possible commission of a crime for which no arrest was made. New York state's application asks, "Have you ever, either as an adult or a juvenile, been cited, ticketed, arrested, taken into custody, charged with, indicted, convicted or tried for, or pleaded guilty to, the commission of any felony or misdemeanor or the violation of any law, or been the subject of any juvenile delinquency or youthful offender proceeding?" Unified Court System, State of New York, *Application for Admission to Practice as an Attorney and Counselor-at-Law in the State of New York*, www.nybarexam.org/Admission/Part%20I_ApplicationQuestionnaire_3.4.2020.pdf (Mar. 2020). California's bar admission also inquires into "moral character" for bar admission including criminal convictions, but does not include any questions concerning the commission of crimes for which the applicant was not arrested. The State Bar of California, *Factors and Conduct Relevant to a Moral Character Determination*, http://www.calbar.ca.gov/Admissions/Moral-Character/Factors-and-Conduct#criminal%20history (last visited Sept. 1, 2020). And Texas precludes those with felony convictions or deferred adjudication of felonies from demonstrating good moral character and fitness, but also does not ask any questions about potential criminal conduct for which the applicant was not arrested. Texas Board of Law Examiners, *Rules Governing Admission to the Bar of Texas*, https://ble.texas.gov/rule04 (last visited Sept. 2, 2020).

considered a disability under the ADA. Requiring employers to ask these questions could result in fines and penalties or liability to employee lawsuits for employment discrimination.

All told, the changes to the EOIR-31A add requirements for work location, employment status, previous R&A applications, previous employment, use of accreditation for renewal, and many additional questions about character and fitness. While some of these changes may seem small, the cumulative effect of these changes is to require a significant amount of new information, none of which is necessary for the approval of 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.

Conclusion

The Department of Justice's Recognition and Accreditation (R&A) Program "aims to increase the availability of competent immigration legal representation for low-income and indigent persons, thereby promoting the effective and efficient administration of justice."[15] An efficient and straightforward R&A application process enables OLAP to efficiently accomplish its mission through successful partnership with nonprofit organizations across the nation. The role of the EOIR-31 and EOIR-31A forms and their corresponding instructions is to provide a clear, concise, and effective mechanism for nonprofit agencies to participate in the R&A Program. Changes pertaining to the R&A Program affect hundreds of nonprofit organizations, thousands of legal representatives, and hundreds of thousands of US citizen and immigrant clients.

The proposed changes to the EOIR-31 and EOIR-31A will burden hundreds of nonprofits providing immigration legal services and hinder their ability to efficiently serve low-income families in communities around the country. These changes are burdensome to applicants and will only increase the backlog in OLAP's adjudication process by requiring more documentation for OLAP staff to comb through. This is in direct conflict with the stated purpose of the Recognition & Accreditation Program. The proposed Form EOIR-31A has 15 additional questions not on the current form and the proposed Form EOIR-31 requires a number of additional documentation requirements. Most of these are unnecessary and/or increase the burden on the organization and its proposed representative.

World Relief opposes efforts to make the R&A process unnecessarily burdensome and to use the information collection process to make changes to regulatory requirements, rather than going through the notice-and-comment rulemaking process under the APA.

As such, we appreciate the opportunity to comment on these proposed form changes with the hope of strengthening the R&A Program and the vital partnership between OLAP and its recognized partners across the country.

[15] https://www.justice.gov/eoir/recognition-and-accreditation-program

Thank you for the opportunity to submit these comments. We appreciate your consideration. Please do not hesitate to contact Sarah Bankard at sbankard@wr.org should you have any questions about our comments or require further information.

Respectfully Submitted,

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