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Rescue.org

September 9, 2020

Ms. 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. 1125-0012, 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 Ms. Alder Reid,

The International Rescue Committee, Inc. (IRC) submits these comments in response and opposition to the Department of Justice's 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.

The IRC responds to the world's worst humanitarian crises, helping to restore health, safety, education, economic wellbeing, and power to people devastated by conflict and disaster. Founded in 1933 at the call of Albert Einstein, the IRC is at work in over 40 countries and 25 U.S. cities helping people to survive, reclaim control of their future and strengthen their communities. In the U.S., IRC maintains a network of 25 recognized offices which provide resettlement assistance to refugees through the U.S. Department of State Refugee Admission Program, as well as other services to refugees, asylees, victims of human trafficking and other vulnerable immigrants. IRC was first recognized by the Department of Justice in 1958 for the purpose of providing essential legal assistance to refugees in the U.S. Since that time, 24 additional offices have been recognized, which currently employ a total of 41 partially accredited representatives, one fully accredited representative and several attorneys. Accredited staff provide legal guidance and representation to refugees, asylees and others seeking to adjust to lawful permanent resident status, reunite with family members and become naturalized U.S. citizens, among other benefits. Last year, IRC offices around the U.S. assisted over 13,700 individuals to apply for over 15,600 immigration benefits.

The growth of IRC's immigration legal services programming speaks to the fact that there is an overwhelming need for immigration legal services, particularly for low-income immigrants and vulnerable populations. The limited availability of affordable attorneys, the threat of unauthorized practitioners of immigration law and the dispersion of low-income immigrants to a wider number of communities, is why IRC relies on Recognition and Accreditation (R&A) as an invaluable tool to increase the availability of competent non-lawyer representation for underserved immigrant

populations. As such, 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 IRC.

IRC appreciates the opportunity to provide comments on this Information Collection, and urges the withdrawal of these 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, goes far beyond the requirements in the regulations,¹ and will make the recognition and accreditation process significantly more difficult for eligible organizations.

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

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."² To meet this requirement, we submitted a brief, general statement along with a fee schedule. In contrast, the proposed form would require a lengthy essay that would greatly increase the burden on applicants for no apparent reason.³

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,"⁴ 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.

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)

¹ 8 C.F.R. § 1292 (2003).

² 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).

³ 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.

⁴ 8 C.F.R. § 1292.11(b) (2003).

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.⁵

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. IRC 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

⁵ 8 C.F.R. § 1292.15 (2003).

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

DOJ 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.

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 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

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. Furthermore, 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.⁶

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

⁶ 8 C.F.R. § 1292.16 (c)(2) (2003).

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.

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." 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)).

In addition, the form contains new questions regarding qualifications not found in the regulations:

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

⁷ 8 C.F.R. § 1292.12(b) (2003).

Furthermore, as a New York based organization, we are concerned that completing this portion of the form would actually bring a New York-based nonprofit organization in conflict with New York State law.

New York State Human Rights Law §296(16) provides protections to people with prior arrest records that were favorably resolved or resulted in sealed convictions or youthful offender adjudications. Under New York State Human Rights Law §296(16), it is unlawful for an employer to ask an applicant or employee whether he or she has ever been arrested or had a criminal accusation filed against him or her. It is also unlawful to require any individual to divulge information pertaining to any such arrest or criminal accusation.

The regulations require the organization's authorized officer to review and sign the request for accreditation, which in the new form would include information pertaining to an applicant's prior arrests, even when those arrests did not result in conviction. Responding to this question on the new form EOIR-31A would require IRC to engage in action in violation of New York State's Human Rights Law.

Conclusion

IRC 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.

Sincerely,

A handwritten signature in black ink, appearing to be 'C. Picker', with a stylized flourish at the end.

Catherine Picker, Immigration Program Officer
On behalf of Olga Byrne, Immigration Director; Authorized Officer for R&A