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Jean King
General Counsel
Office of the General Counsel
Executive Office for Immigration Review
U.S. Department of Justice
5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041
VIA: www.regulations.gov

Re: Comments on the Proposed Rule for Recognition of Organizations and Accreditation of Non-Attorney Representatives [RIN 1125-AA72; EOIR Docket No. 176]

Dear Ms. King:

The New York City Bar Association ("City Bar") has a longstanding commitment to promoting the fair and effective administration of justice, including in the immigration system. The City Bar Immigration and Nationality Law Committee ("Committee") has extensive knowledge of the removal system and deep expertise in representing clients in immigration court. Our members include attorneys at prominent immigration legal services and immigration policy organizations, leading private immigration attorneys, and immigration law scholars. Our committee regularly draws upon the expertise of its members to provide comments and reports to government officials, courts, and agencies; to encourage pro bono service; and to educate local attorneys and the public at large about immigration law and policy.

The Committee hereby submits comments on the Department of Justice's proposed changes to the Board of Immigration Appeals recognition and accreditation regulations. As a bar association for attorneys, the City Bar generally supports efforts by the federal government to expand access to qualified representation for immigrants. It also supports efforts to ensure that such representatives fully demonstrate that they have received adequate training and will continue to receive supervision, preferably by qualified immigration attorneys, as they represent non-citizens in applications which can have a profound impact on their future.

We are therefore generally supportive of the proposed changes, which provide greater oversight of recognized organizations and accredited representatives and provide clearer channels to discipline representatives and organizations which are not competently representing

their clients. We further support the change from the "good moral character" requirement for applicants for accreditation to a "character and fitness" requirement, thereby making the accreditation process more closely aligned with the process for attorneys to be admitted to their state bars to practice law.

We are, however, very concerned about the government's stated intention to include an applicant's immigration status as part of the inquiry into the applicant's character and fitness. The fact that the Department of Justice (DOJ) sees an "inherent conflict" (p.21) for a representative to appear before the same agency that may be adjudicating his or her own immigration application is without justification. For example, no ethical rules prevent divorce attorneys from seeking a divorce before the court that adjudicates such cases, nor is there a conflict for an employment lawyer to appear before the Equal Employment Opportunity Commission if she has faced discrimination in the workplace herself. In the immigration context, it is often the case that individuals who are themselves from immigrant backgrounds are more likely to have foreign language abilities necessary to provide linguistically and culturally competent representation.

Moreover, as the likelihood of comprehensive immigration reform being enacted grows fainter, it is even more important for non-citizens who do not have a current path to citizenship to be able to participate meaningfully in American society. Many non-citizens were brought to the United States as young children and should not be shut out from leading productive lives in which they can give back to their own communities.

Courts and researchers have found that immigration status does not affect law graduates' competency to practice law, and should not block bar admissions. For example, a recent New York University study found that undocumented law graduates "can and already have made substantial contributions to the legal field."[1] "By the time undocumented law graduates pass the bar exam, they have already overcome serious hardships to get to where they are, and bar admission is the last obstacle before being able to practice law."[2] The report concluded that undocumented law graduates should be permitted to practice law when they otherwise meet bar admission requirements.[3]

Subsequent to the issuance of that report, the New York Appellate Division addressed the issue of whether a law graduate who had passed the New York bar examination and who had received Deferred Action for Childhood Arrivals (DACA) status should be admitted to the New York bar. The Appellate Division determined that there is "no rational basis to conclude that Mr. Vargas' status as an undocumented immigrant reflects adversely on his competence to practice law in the State of New York." *In re Vargas*, 131 A.D.3d 4, 16, 10 N.Y.S.3d 579, 589 (N.Y. App. Div. 2015). A California court reached the same conclusion. "We conclude the fact that

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[1] Bickel & Brewer Latino Institute for Human Rights at New York University School of Law and LatinoJustice, Lifting the Bar: Undocumented Law Graduates and Access to Law Licenses (Feb. 2014), http://prbany.com/wp-content/uploads/2014/03/REPORT_Lifting_the_Bar_Undocumented_Law_Graduates__Access_to_Law_Licenses_Feb_21_2014_for_posting.pdf.
[2] *Id.*
[3] *Id.*

an undocumented immigrant is present in the United States without lawful authorization does not itself involve moral turpitude or demonstrate moral unfitness so as to justify exclusion from the State Bar, or prevent the individual from taking an oath promising faithfully to discharge the duty to support the Constitution and laws of the United States and California." *In re Garcia*, 315 P.3d 117, 130 (Cal. 2014).

Similarly there is no reason that an individual applying to be a BIA accredited representative should be prevented from succeeding based on his or her own immigration status. We therefore believe it is unnecessary and overly intrusive for the Department of Justice to take an applicant's immigration status into account as part of the accreditation process. It would seem that the only plausible reason to deny accreditation based on an individual's immigration status would be if he or she were not lawfully eligible to accept employment in the United States. However, the regulations permit organizations to seek accreditation for volunteers as well as employees, so even this potential explanation is unpersuasive.

In short, there is a critical need for immigrants to receive quality representation in their applications for immigration benefits. While DOJ can and should ensure that non-attorney representatives have appropriate "character and fitness" to receive accreditation, DOJ should not focus on the immigration status of applicants to serve as representatives, which is simply not relevant to the inquiry.

Respectfully,

Farrin Anello
Chair, Immigration and Nationality Committee