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**WRITTEN TESTIMONY OF
THE IMMIGRATION AND NATIONALITY LAW COMMITTEE
OF THE NEW YORK CITY BAR ASSOCIATION**

**NEW YORK CITY COUNCIL
COMMITTEE ON IMMIGRATION
COMMITTEE ON CONSUMER AFFAIRS
HEARING ON INT. NO. 0746-2015, PREVENTING THE
UNAUTHORIZED PRACTICE OF IMMIGRATION LAW**

November 17, 2016

The New York City Bar Association (“City Bar”) thanks the City Council for the opportunity to comment on Int. 0746-2015. The testimony below draws on the experience of members of the Immigration and Nationality Committee, which includes immigration judges, immigration attorneys and immigration law professors, and members with particular expertise in combating the unauthorized practice of law.

The City Bar has a longstanding mission to increase access to quality counsel for low-income New Yorkers and others in need. This mission has included advocacy to expand funding and right to counsel for those who cannot afford attorneys. Unfortunately, faced with a dearth of free and low-cost immigration representation and a dearth of information, many immigrant New Yorkers place their trust in non-attorney “immigration service providers,” travel agencies, or *notarios*, for services that require legal expertise. While the current law prohibits non-attorneys from engaging in the practice of immigration law, enforcement agencies often struggle to identify and prove such activity. Often *notarios* and other non-attorneys claim to be merely providing immigration forms or providing translation services, when in fact they are providing legal advice, determining which applications and forms a client should file, and making legal strategy decisions for clients.

With limited exceptions, federal regulations provide that only attorneys and Board of Immigration Appeals-accredited representatives can engage in the practice of immigration law, which includes preparation of immigration applications. The limited exceptions are for law students, law graduates and “reputable individuals” who have a pre-existing relationship with the client and do not receive financial remuneration. 8 C.F.R. §292.1.

In 2014, the New York State Legislature passed a bill similar to the one before the City Council.¹ We commend the City Council for taking further steps to increase enforcement and penalties against those who engage in the unauthorized practice of law. We hope that the passage of this bill will enable City agencies to aggressively enforce its provisions and issue violations for agencies that are not in compliance with the rules.

As a preliminary matter, we believe that “immigration service providers” as defined in this bill, routinely engage in the unauthorized practice of law. Unless the only service they provide is to transcribe answers to questions on forms that the client has selected herself, and without giving legal counsel or guidance while transcribing, the provider is engaged in the practice of immigration law. Thus, while we support this bill because it will make issuing violations against immigration services providers easier, we want to be clear that, with extremely limited exceptions, we do not believe these immigration services providers should be providing the services they are currently providing at all.

We support the proposal’s clear statement of what an “immigration assistance services provider” cannot do. Specifically, the bill forbids “immigration assistance services providers” from selecting forms. Immigration is one of the most complicated areas of law and, since virtually every application is completed on a specific form, form selection itself requires legal expertise and constitutes legal advice to clients. Likewise, we strongly support the language that forbids “immigration assistance services providers” from advising clients about their legal status or how to complete answers on immigration forms. Determining an individual’s immigration status, advising on possible applications to file, and selecting and completing forms are essential functions that experienced immigration law practitioners provide. Therefore, the clarity provided by the proposal—i.e., that such activities are unlawful for “immigration assistance services providers”—is crucial.

We further commend the proposal’s prohibition on “immigration assistance services providers” holding themselves out as immigration attorneys or qualified experts. The proposal forbids “immigration assistance services providers” from holding themselves out to be attorneys or *Notarios*, *Notarios Publicos*, Immigration Specialists, Immigration Consultants, or any term that “could cause a customer to believe that the person possesses special professional skills or is authorized to provide advice on an immigration matter.” Because many immigrants come from countries where “notaries” have greater training and legal authority than they do in the United States, it is important that the City Council act to prevent “immigration assistance services providers” from misleading clients as to their level of competence. Moreover, the provision requiring “immigration assistance services providers” to post signs explicitly informing clients that they are not attorneys and are not authorized to provide immigration legal advice is extremely important so that clients will not be duped into thinking they are meeting with a lawyer; the signage requirement will also enable enforcement agencies to determine more easily whether the “immigration assistance services provider” is in compliance with the law.

This bill appropriately recognizes the serious nature of *notario* fraud through varied penalties. Perhaps most critically, it provides a private right of action for clients who have been the victims of “immigration assistance services providers” who violate the law.

¹ Chp. 206 of Laws of 2014.

This bill also gives real teeth to enforcement agencies. With bright-line requirements for signage, contracts, and the posting of a surety, immigrants seeking assistance will have new tools to determine when an “immigration assistance services provider” is violating the law.

Nonetheless, the law can only be effective at combating fraud against immigrants if the Department of Consumer Affairs (“DCA”) and other City agencies tasked with enforcing the law have proper funding to do so. The City Council should provide additional funding for DCA agents to focus on “immigration assistance services providers.” These agents could quickly recoup their own salaries for the City by issuing fines against those who do not comply with the law.

In the current political climate, immigrant New Yorkers are more vulnerable than at any time in recent history. An “immigration assistance services provider” who improperly instructs a client to file an application for a benefit for which the client is not eligible may cause far worse consequences to the client than the cost of the services provided and the application fee. Filing a non-meritorious or error-filled immigration application places an undocumented New Yorker at serious risk of deportation by bringing him or her to the attention of the Department of Homeland Security without the benefit of having properly vetted his or her immigration status and options. With an incoming federal administration promising an enforcement-heavy regime, our City must do everything we can to protect vulnerable New Yorkers from erroneous and unlawfully-rendered legal advice that may have dire consequences for immigrants and their families.

Immigration and Nationality Law Committee
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