

## The Visitor Volunteer Role & the Practice of Law

**Objective:** Learn to distinguish what visitor volunteers can and cannot do with regards to supporting someone in their immigration case and understand what is BIA accreditation.

**Overview:** In our society many people distinguish the work lawyers do from the work of nonlawyers. What lawyers do is called practicing law. When nonlawyers practice law, it is called unauthorized practice of law.

**Practice of law defined:** “the act or acts of any person appearing in any case, either in person or through the preparation or filing of any brief or other document, paper, application, or petition on behalf of another person or client before or with the Service, or any officer of the Service, or the Board.” 8 CFR § 1.1(i)

- According to the federal government, even just advising people on whether they should file an immigration application and which immigration forms to complete would be practicing law for federal purposes.

### EXERCISE 1

Is this the practice of law? (See answers on pages 6 and 7)

1. Providing general information to group of people? To an individual?
2. Handing out naturalization forms at group session on how to apply for naturalization?
3. Person in detention says, “I’m afraid to return to my home country and I want to apply for a asylum, which forms do I need? Can you give them the forms? Can you answer their question as to which forms?”
4. Person in detention brings you forms and asks help filling it out?
5. Person in detention brings you forms or letters and asks you to translate them?
6. Person in detention asks you to submit the completed forms to DHS or the Immigration Court at the request of the applicant?
7. Person in detention says, “I want to remain in the United States, and I think I might be eligible for asylum and cancellation of removal. The asylum application is too hard for me. Should I just apply for cancellation of removal?”

**Nonlawyers Authorized to Represent Clients under the Federal Regulations:** Three types of nonlawyers can represent clients under immigration regulations: BIA accredited representatives; law school graduates and supervised law students; and “reputable individuals” who help a friend or family member.

### **Can Visitor Volunteers be considered reputable individuals?**

No, unless an immigration judge approves you. The “reputable individual” category is meant to allow immigrants to be helped by someone who knows them such as a friend, family member, etc. To represent someone based on this provision, you must not regularly represent people in immigration matters, you must not charge the person you represent, and you must file a written declaration stating that you are not charging the person. The official before whom he or she wishes to appear must permit the appearance as a representative under this category. 8 CFR §§ 292.1(a)(3) & 1292.1(a)(3).

How can I get an immigration judge to approve me? Under this category, an immigration judge may approve you to represent someone, but the judge will only do this once. To act as a person’s representative, you must “enter an appearance” before a DHS immigration agency, the immigration court, or the BIA. To do this, you submit a Notice of Entry of Appearance form. Form EOIR-28 is used for appearances before the immigration court. Form G-28 is filed for applications and appearances with the CIS, ICE or CBP. Form EOIR-27 is filed for appearances with the BIA.

Once you have filed the appropriate Notice of Entry of Appearance form, DHS or EOIR should treat you like a lawyer in the sense of sending all of its notices to you and contacting you about any problems with the case. This means that you also have a duty to inform DHS or EOIR if your office moves, as well as the duty to inform your clients of all developments in their cases and to take appropriate action for each of your clients in response to all correspondence received from DHS or EOIR regarding their cases.

### **Can visitor volunteers become BIA accredited representatives?**

Yes. However, they must work for or be a volunteer of a recognized BIA agency, and then they must take the steps to be accredited.

Agency Recognition Requirements:

- Must be a nonprofit religious, charitable or social services agency – 501(c)(3), legally incorporated as nonprofit, not just non-profit status;
- Any fees an agency charges for immigration work may only be “nominal” – there is no formal definition, but BIA looks at whether agency can support itself apart from client fees. Therefore, if the budget show significant funding for the agency is derived from client fees, then BIA will determine that it is unlikely the fees are nominal;
- Must have knowledge, information, and experience on immigration law and procedure – usually someone on staff, the person applying to get accreditation, has knowledge and experience in immigration law;
- Must have independent existence apart from its proposed representative.

- Other points about recognition:
  - Once agency gets recognized, it never expires, but BIA has discretion to withdraw recognition if agency no longer meets requirements;
  - Agency with satellite office (branch offices) need to apply for each office separately;
  - There is an online roster on the Dept. of Justice's website of all BIA recognized agencies and accredited representatives.

#### Accreditation Requirements:

- To be accredited, you need to be an employee or volunteer of a nonprofit agency that is recognized and you need to have knowledge and training or some knowledge and training in immigration law. There is no specific number of hours of training and/or experience a candidate should have prior to application. But you should have sufficient training and experience in immigration law before applying for accreditation;
- Partially accredited – represent before USCIS only;
- Fully accredited – represent before USCIS, Immigration Court, and BIA;
- Accreditation lasts for three years. You need to renew after three years so make sure you keep yourself up to date with immigration law;
- Your accreditation does not go wherever you go. If you leave the agency that you were accredited at, you lose accreditation and will need to reapply at the new agency if they are recognized;
- Need to renew for accreditation three (3) months before it expires so there is no gap in accreditation status.

#### **What can visitor volunteers do?**

Visitor volunteers can refer people in immigration detention to attorneys who agree to take on their cases! In fact, having access to a Freedom for Immigrants visitor volunteer has a huge effect on whether a person is able to secure legal representation. Some attorneys will not take on the cases of people in detention who lack family or community support because communication between attorneys and clients in detention can be so difficult.

Visitor volunteers also can provide “non-legal advice” on immigration matters. Freedom for Immigrants visitor volunteers are able to assist people in detention that do not have legal representation and must represent themselves. Detained pro se litigants must amass documentation to aid their case, and this is impossible for them to do without the support of someone on the outside. Freedom for Immigrants volunteers are able to make calls to administrative offices, former employers and family members to help people in detention collect the documentation that is essential to winning their legal cases. Freedom for Immigrants visitor volunteers also write affidavits of support to attest to a person's good moral character, which is a factor in many immigration cases.

Freedom for Immigrants and its affiliated groups also play a direct role in securing the release of individuals in detention in a number of ways. First, we launch localized advocacy

campaigns where we call on the local field office to release people who do not fit into one of the federal government's deportation priorities. Second, we raise funds and pay the immigration bonds for people who are granted an immigration bond. Third, volunteers open up their homes for asylum seekers who pass their credible fear interview and need a place to live in order to be released from immigration detention.

Here are some additional examples of how visitor volunteers can provide “non-legal advice”:

- Provide general information (e.g. “Know Your Rights” packets created by the Florence Project) without identifying for what the individual might qualify;
- Translate a person’s supporting documents: All documents submitted to immigration court must be in English, yet sometimes people receive letters of support or other important documents in other languages. You can help translate these documents to English for the individual. At the end, identify the document, state that you understand both languages and translated the documents to the best of your ability, sign it, and date it;
- Obtain the supporting documents, (e.g. birth or marriage certificates);
- Ask the person questions about their case to provide this information to an attorney for referral: While this is not the practice of law, Freedom for Immigrants strongly advises against asking questions in the visitation room about the person in detention’s case because the conversations are monitored and anything said in that setting can be used against the person in court. People around you might also hear, which can lead to problems for the person who is detained (i.e. discrimination, poor treatment by inmates or other people in immigration detention). If you want to ask questions about the person’s case, consider working with Freedom for Immigrants to start a pro bono hotline. While general calls to people in immigration detention are monitored, calls made on ICE’s pro bono telephone system are supposedly unmonitored and cannot be used against the person in court;
- Refer the person to someone who can legally represent the client in an immigration matter.

Recommendation: If you do decide to provide support in the above ways, it might be a good idea to have your friend in detention sign a Privacy Waiver so that you can inquire on his or her behalf as to the status of his or her case. This privacy waiver does not mean you are acting as his representative. This is a different form from the G-28. Instead, this form allows ICE to tell you information that they would normally only be able to tell a family member or the person in detention. Here is a link to ICE’s form:

<http://www.ice.gov/doclib/news/library/forms/pdf/60-001.pdf>.

### **If visitor volunteers engage in the unauthorized practice of law, what can happen?**

The unauthorized practice of immigration law endangers the integrity of our immigration system and victimizes members of the immigrant community, whether or not the person engaged in the unauthorized practice of law has good intentions.

As in many other jurisdictions, the unauthorized practice of law in California is a crime. Business and Professions Code section 6126, subdivision (a) makes it a misdemeanor for any non-lawyer to advertise or hold himself or herself out as practicing or entitled to practice law or otherwise engage in the practice of law, unless the nonlawyer is otherwise authorized. A second conviction requires a minimum jail sentence of 90 days.

**Resources:**

Want to become BIA accredited? Here are three organizations that provide training and support to groups looking to become BIA accredited:

- Catholic Legal Immigration Network
- Immigrant Legal Resource Center
- World Relief

## Answers to EXERCISE 1:

1. Providing general information to group of people? To an individual?

Answer: Not the practice of law (e.g. The laws in California say that you should not drive drunk).

2. Handing out naturalization forms at group session on how to apply for naturalization?

Answer: Not the practice of law because everyone who has come for that session has come to learn about naturalization. You have not chosen the form based on what an individual has told you about his or her background.

3. Person in detention says, "I'm afraid to return to my home country and I want to apply for a asylum, which forms do I need? Can you give them the forms? Can you answer their question as to which forms?"

Answer: This is the practice of law. You cannot advise the person on what form to use, even if you believe you know what form to use. You cannot give them the form or answer any questions about the form. You could respond, "I am not an attorney or BIA rep. So, I cannot legally provide you with this information. I also am not an expert on immigration law. So, if I did try to help you, there is a chance that I would give you incorrect information that would only hurt you."

4. Person in detention brings you forms and asks help filling it out?

Answer: Technically, you can help a person fill out a form if you are only transcribing the form. However, we are not robots, and Freedom for Immigrants recommends that visitor volunteers do not help people in detention fill out their immigration forms. Even assuming the person in detention has selected the right form, straightforward answers can actually be more complex. For example, have you ever been admitted to the United States, have you ever been convicted of an aggravated felony – these are examples of questions that really should not be answered by a lay person because they can turn on complex legal issues. Instead, refer the person in immigration detention to *pro se* resources created by the Florence Project: <http://www.firrp.org/resources/prose/>.

5. Person in detention brings you forms or letters and asks you to translate them?

All documents submitted to immigration court must be in English. If a document must be translated into English, the original un-translated document and the English translation must be submitted together to court. Sometimes people receive letters of support or other important documents in other languages. You can help translate these documents to English for the individual. At the end, identify the document, state that you understand both languages and translated the documents to the best of your ability, sign it, and date it:

*I, (Interpreter's name), do hereby declare, under penalty of perjury, that I am fluent in oral and written English and (Language), and that I faithfully interpreted the attached (Legal Document Title) to the best of my ability on (date: day, month and year).*

\_\_\_\_\_ Interpreter \_\_\_\_\_ Date

6. Person in detention asks you to submit the completed forms to DHS or the Immigration Court at the request of the applicant?

Answer: This can be a slippery slope. Technically, placing legal documents for someone else in the mail is not the practice of law. However, people in detention are not going to ask you to place something just in the mail for them. In rare situations when time is of the essence, you may be asked to take legal documents and file them with the court. This is a tough situation because on the one hand, you want to help the person in detention who will be late filing if you do not help him or her. On the other hand, you may file the documents in the wrong court, which will not help the person in detention and could potentially get you into trouble. So, Freedom for Immigrants advises against this and encourages volunteers to let the person in detention know that you cannot provide legal advice or file legal documents on behalf of the person in detention.

7. Person in detention says, "I want to remain in the United States, and I think I might be eligible for asylum and cancellation of removal. The asylum application is too hard for me. Should I just apply for cancellation of removal?"

Answer: Answering this question would be the practice of law. Again, you can say, "I am not an attorney or BIA rep. So, I cannot legally help you answer this difficult question. I also am not an expert on immigration law. So, if I did try to help you, there is a chance that I would give you incorrect information that would only hurt you."