

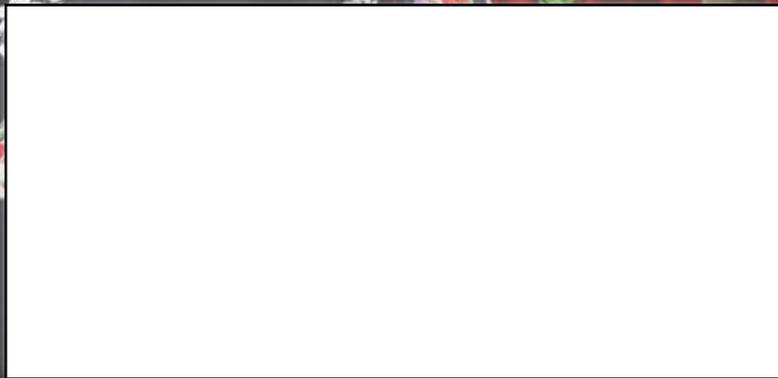
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## Immigration



# Closing the Justice Gap of Immigrants: The Role of Paralegals



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Immigrants are defined as any foreign-born individual living in the United States: a definition which includes no reference to legal status. For many, their immigration status creates barriers to services that would assist them in understanding what their rights are, and exerting those rights. Those immigrants without legal status are a significantly underserved population. If an immigrant is detained, the need for qualified representation is even more crucial, but harder to fill. Paralegals can play an active role in providing critical services to the immigrant population.

## NOTARIO FRAUD

Because the Immigration Code is so complex, there is great danger in immigrants being taken advantage of. Unfortunately, there are many who hold themselves out to this vulnerable community as being qualified to give legal advice and represent immigrants before legal authorities when they are not so qualified. These individuals call themselves “notarios” because in many Latin American countries notarios and lawyers are one in the same. Notario fraud is a significant problem because if an immigrant is given incorrect advice, takes inappropriate action, or fails to take necessary action, they can miss critical deadlines with the Department of Homeland Security (DHS) or immigration court, become subject to deportation, and/or be subject to civil and/or criminal liability for filing false claims. In many cases, immigrants spend thousands of dollars in fees to these notarios who are not in fact qualified to represent an immigrant before immigration authorities.

Federal regulation (8 C.F.R. § 1001.1) defines the practice of immigration law as “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 DHS, or any immigration judge, or the Board.” It further defines preparation, also vital in immigration law practice, as “the study of the facts of a case and the applicable laws, coupled with the giving of advice and auxiliary activities, including the incidental preparation of papers, but does not include the lawful functions of a notary public or service consisting solely of assistance in the completion of blank spaces on printed Service forms by one whose remuneration, if any, is nominal and who does not hold himself out as qualified in legal matters or in immigration and naturalization procedure.” Unfortunately, those who hold themselves out as notarios are doing more than merely filling in blanks on forms and instead are engaging in what federal regulation defines as “practicing immigration law.” Attorney General for the District of Columbia Karl A. Racine submitted a bill in 2016 to combat notario fraud. The Immigration Services Protection Act (ISPA) contains provisions to protect immigrants from being taken advantage of from individuals unqualified and services to be performed before fees can be collected. The bill also allows for fines and penalties under the District of Columbia’s Consumer Protection Procedures Act for violations of the act. This bill has not been passed.

Other similar efforts have been taken on both a federal

and state level to combat notario fraud: In New York State, a person can be found guilty under NY Penal Law §190.87 of Immigrant assistance services fraud in the first degree “when, with intent to defraud another person seeking immigrant assistance services, as defined in article twenty-eight-C of the general business law, from such person, he or she violates section four hundred sixty-d of the general business law with intent to obtain property from such other person by false or fraudulent pretenses, representations or promises, and thereby wrongfully obtains such property with a value in excess of one thousand dollars.” Immigrant services fraud in the first degree is a class E felony. Immigrant services fraud in the second degree is a class E misdemeanor, and the property obtained has a value less than one thousand dollars. Unfortunately, notario fraud remains a significant issue, largely due to the high fees that private immigration attorneys charge combined with the lack of funding for civil legal services for immigrants.

## BIA RECOGNITION AND ACCREDITATION PROGRAM

In order to improve immigrants access to legal services, the Bureau of Immigration Appeals (BIA) through the Department of Justice created the BIA Recognition & Accreditation (R&A) program. BIA Accredited Representatives assist individuals in immigration proceedings before the Department of Homeland Security (DHS) or the Executive Office for Immigration Review’s (EOIR) immigration courts and the Board of Immigration Appeals (BIA), or both. There are two types of accreditations: “partial” and “full.” A partial accredited representative may only represent aliens before DHS. A fully accredited representative may represent aliens before both DHS and EOIR. To be an accredited representative, an individual must be a member of an organization that has been approved as recognized by the BIA, which involves proving that the organization has adequate knowledge and experience to provide immigration legal services and that if the organization charges fees they are nominal. For more information on the BIA Recognition & Accreditation Program, visit: <https://www.justice.gov/eoir/recognition-and-accreditation-program>

Accredited representatives can then assist aliens in applying for immigration benefits before DHS, including adjustment of status and naturalization, asylum, and others. Those with full accreditation can represent aliens in immigration court and assist them with appeals from immigration court decisions. Accredited representatives

can give legal advice to immigrants, such as how to answer questions on immigration forms and what immigration options they may have available.

A paralegal or any non-attorney cannot file legal documents before U.S. Citizenship and Immigration Services (USCIS) unless they have filed a Form G-28 (Notice of Appearance) on behalf of the client; to file this form, a paralegal or other non-attorney must be an accredited representative. It is important to note that accredited representatives must be affiliated with a recognized organization in order to assist immigrants. Otherwise, representatives run the risk of committing the unauthorized practice of immigration law. Paralegals must also be aware of their ethical duties arising from a client relationship.

Accredited representatives must renew their accreditation with the BIA through their organization every three years. There is no requirement for additional training in order to renew, but the standard for accredited representatives is 40 hours of immigration law training a year. Accreditation is only valid for the organization the representative is approved at. If the representative leaves that organization, they will no longer be accredited and not authorized to represent aliens unless they receive accreditation through another authorized organization. In addition, recognized organizations must have at least one accredited representative on staff at all times or they will lose their recognition and staff members will no longer be authorized to practice before the BIA.

Especially in our current political climate, immigrants are more afraid than ever and seeking the assistance of qualified individuals to walk them through the complicated immigration system. Paralegals can help to fill the significant gap in affordable or free legal services available to immigrants, which often lead immigrants into the arms of fraudulent notarios, by seeking BIA accreditation to become an authorized representative.

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