

Adopted November 8, 2006

Pennsylvania Bar Association Unauthorized Practice of Law (UPL) Committee Formal Opinion 2006-01

Unauthorized Practice of Immigration Law by Non-Attorneys and Unauthorized Practice of Law Generally by Notaries Public

The Pennsylvania Bar Association Unauthorized Practice of Law (UPL) Committee has received complaints over the past several years concerning practice of immigration law by non-attorneys who have not been authorized by the federal government to represent persons in immigration proceedings or to practice immigration law.¹

In addition, to formal complaints to the committee, community agencies, consular representatives of the Mexican government, and attorneys active in immigrant communities have informally indicated that this problem is widespread in scope in many areas in the state.

The Committee has received information suggesting that non-attorneys including “visa consultants” based outside of the Commonwealth of Pennsylvania are practicing or seeking to practice immigration law in Pennsylvania. This includes internet advertising soliciting such business.

Some of the complaints received by the Committee and county bar associations in relationship to non-attorney practice of law in immigrant communities have involved Pennsylvania licensed notary publics who have sought to benefit from the fact that “notarios” or “notario publico” in many civil law countries, particularly in Latin America, are required to be attorneys.²

The Committee issues this formal opinion to clarify the extremely limited scope of non-attorney practice of law and legal representation permissible under federal law and to provide notice of its intention to actively pursue unauthorized practiced of immigration law by any persons not authorized to practice law by federal regulations.

The Committee shall pursue the unauthorized practice of law generally by notaries public and others misrepresenting themselves to consumers as having legal skills or knowledge.

The Pennsylvania Bar Association Unauthorized Practice of Law (UPL) Committee finds:

1. Except to the limited extent that federal regulations permit accredited representatives of qualified non-profit organizations³ to practice and represent persons in immigration related proceedings, persons who are not attorneys licensed to practice law⁴ may not provide legal advice or regular⁵ representation in relationship to immigration proceedings.⁶

2. Notaries public, visa consultants or any other person who is not a licensed attorney or authorized representative pursuant to federal regulations⁷ may not engage in the representation of persons as defined in federal immigration regulations. The scope of the term "representation" is a very broad one. It includes activities which range from incidentally preparing papers for a person, selecting the appropriate government forms, to giving a person advice about his or her case, or to appearing before immigration officials on behalf of a person.⁸
3. Any persons, including notaries public and visa consultants, other than licensed attorneys or accredited representatives of qualified non-profit organizations who assist in the completion of blank spaces on printed United States Customs and Immigration Service forms shall charge remuneration, if any, that is nominal.⁹
4. Any persons other than licensed attorneys or accredited representatives of qualified non-profit organizations, including notaries public and visa consultants, who assist in the completion of blank spaces on printed United States Customs and Immigration Service forms or other government forms related to immigration related applications¹⁰ shall advise all persons to whom they provide assistance that the individual is not qualified in legal matters or in immigration and naturalization procedure.¹¹
5. Persons who assist others in preparing federal government immigration forms must at all times sign the forms as preparers of such forms where required to do so by the forms or regulations.¹² Where a notary public, visa consultant or other person apart from an accredited representative or attorney prepares forms without signing such forms as preparers where required to do so, the preparer is fraudulently hiding a role as a preparer of such forms and preventing a determination as to whether they are engaged in unauthorized practice of law.¹³
6. Persons who are authorized to be a "notaries public"¹⁴ shall not describe themselves in writing or orally as "notarios" or as a "notario publico" particularly when any person to whom they are providing or seeking to provide services are persons from Spanish speaking countries.¹⁵ Such terminology is in direct violation of 42 Pa. C.S.A. § 2524 forbidding the "equivalent in any language" of the title of lawyer or attorney at law.
7. Violation of these restrictions constitutes unauthorized practice of law contrary to 42 Pa. C.S.A. Chapter 25 and constitutes violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law.¹⁶
8. Persons alleging violations of this Formal Opinion may forward written complaints of violations of this opinion to the Pennsylvania Bar Association Unauthorized Practice of Law (UPL) Committee, 100 South Street - P.O. Box 186 - Harrisburg, PA 17108-0186, Fax: (717) 238-7182.

**BRIEF IN SUPPORT OF PENNSYLVANIA BAR ASSOCIATION UNAUTHORIZED
PRACTICE OF LAW COMMITTEE OPINION ON UNAUTHORIZED PRACTICE
OF IMMIGRATION LAW BY NON-ATTORNEYS AND UNAUTHORIZED
PRACTICE OF LAW GENERALLY BY NOTARIES PUBLIC**

PENNSYLVANIA STATUTORY PROVISIONS

42 Pa. C.S.A. Chapter 25 establishes by statute the persons permitted to represent litigants and at 42 Pa. C.S.A. § 2524 establishes the penalties for unauthorized practice of law. That section provides:

(a) General rule.--Except as provided in subsection (b), any person including, but not limited to, a paralegal or legal assistant, who within this Commonwealth shall practice law, **or who shall hold himself out to the public as being entitled to practice law, or use or advertise the title of lawyer, attorney at law, attorney and counselor at law, counselor, or the equivalent in any language, in such a manner as to convey the impression that he is a practitioner of the law of any jurisdiction,** without being an attorney at law or a corporation complying with 15 Pa.C.S. Ch. 29 (relating to professional corporations), commits a misdemeanor of the third degree upon a first violation. A second or subsequent violation of this subsection constitutes a misdemeanor of the first degree.

* * *

(c) Injunction. - In addition to a criminal prosecution, unauthorized practice of law may be enjoined in any county court of common pleas having personal jurisdiction over the defendant. The party obtaining such an injunction may be awarded costs and expenses incurred, including reasonable attorneys fees, against the enjoined party. **A violation of subsection (a) is also a violation of the act of December 17, 1968 (P.L. 1224, No. 387), known as the Unfair Trade Practices and Consumer Protection Law.**¹⁷

42 Pa. C.S.A. § 2524.

**FEDERAL REGULATION OF NON-ATTORNEY PRACTICE OF
IMMIGRATION LAW**

As a general matter the only persons authorized to fully practice immigration law and represent individuals in immigration law proceedings are licensed attorneys and representatives of qualified non-profit organizations accredited to practice immigration law.

Relevant federal regulations concerning practice of immigration law and representation in immigration proceedings include the following, the text of which is set forth in the accompanying Federal Regulation Appendix:

- 8 C.F.R. § 1.1 Definitions.
- 8 CFR § 103.2 Applications, petitions, and other documents.
- 8 C.F.R. § 292.1 Representation of others.
- 8 C.F.R. § 292.2 Organizations qualified for recognition; requests for recognition; withdrawal of recognition; accreditation of representatives; roster.

- 8 CFR § 1001.1 Definitions [relating to the Executive Office Of Immigration Review, Department Of Justice].
- 8 CFR § 1292.1 Representation of others [relating to the Executive Office Of Immigration Review, Department Of Justice].

Apart from accredited representatives of qualified non-profit organizations pursuant to 8 C.F.R. § 292.2, federal regulations do not authorize any persons other than attorneys licensed to practice law (see, 8 C.F.R. § 1.1(f)) to provide legal advice or regular¹⁸ representation in relationship to immigration proceedings.

Notaries public, visa consultants or any other person who is not a licensed attorney or authorized representative pursuant to federal regulations may not engage in the representation of persons as defined in federal immigration regulations.¹⁹ See, Immigration and Naturalization Service, General Counsel Op. No. 92-29, *supra*. The scope of the term “representation” is a very broad one. It includes activities which range from incidentally preparing papers for a person, selecting the appropriate government forms, to giving a person advice about his or her case, or to appearing before immigration officials on behalf of a person. *Id.*

Any persons other than licensed attorneys or accredited representatives of qualified non-profit organizations, including notaries public and visa consultants, who assist in the completion of blank spaces on printed United States Customs and Immigration Service forms shall charge remuneration, if any, that is nominal. See, 8 C.F.R. § 1.1(k) requiring that a notary public or service must receive “...remuneration, if any, [that] is nominal...”

Any persons other than licensed attorneys or accredited representatives of qualified non-profit organizations, including notaries public and visa consultants, who assist in the completion of blank spaces on printed United States Customs and Immigration Service forms or other government forms related to immigration related applications shall advise all persons to whom they provide assistance that the individual is not qualified in legal matters or in immigration and naturalization procedure. See, 8 C.F.R. § 1.1(k) requiring that a notary public or service “... not hold himself out as qualified in legal matters or in immigration and naturalization procedure.”

Persons who assist others in preparing federal government immigration forms must at all times sign the forms as preparers of such forms where required to do so by the forms or regulations.²⁰

Where a notary public, visa consultant or other person apart from an accredited representative or attorney prepares forms without signing such forms as preparers where required to do so, the preparer is fraudulently hiding a role as a preparer of such forms and preventing a determination as to whether they are engaged in unauthorized practice of law.

POINT ONE

The Regulation of Unauthorized Practice of Immigration Law by Persons Not Authorized by Federal Agencies to Practice Immigration Law Before Them is Within the Regulatory Power of the Commonwealth of Pennsylvania

The American Bar Association in February 2006 stated that it supports:

... vigilant enforcement against the unauthorized practice of law and ineffective assistance of counsel in immigration matters, and the development of mechanisms to ensure that substantive and procedural rights are not prejudiced for applicants for

immigration relief or benefits who have been victimized by the unauthorized practice of law or ineffective assistance of counsel.

See, American Bar Association Resolution No. 107D February 2006 at paragraph (c).²¹ The ABA report supporting this resolution stated:

Protection from Unauthorized Practice of Law and Ineffective Assistance of Counsel

As is true throughout our American system of justice today, persons pursuing claims for immigration relief or benefits—particularly lower-income applicants unable to afford counsel—are often unable to obtain competent counsel to assist them. This problem, however, is particularly acute in immigration matters. Immigrants, refugees and asylum seekers often are unfamiliar with our language, culture, and legal system, and as a result are especially vulnerable to being deceived by persons who are not authorized to practice law, or harmed as a result of mistakes by attorneys who lack sufficient familiarity with our nation’s complex and often unforgiving immigration laws. These problems are compounded in the immigration context by the grave consequences that can result when applicants make errors in the process, and by the very limited means that currently exist to correct mistaken decisions.

The serious problem of unauthorized practice of law in immigration matters is so pervasive that the term “notario fraud” is often specifically recognized in state consumer fraud laws. Throughout the country, “notarios” and other unauthorized “document preparers” prey on unsuspecting immigrants by charging them seemingly reasonable fees to prepare applications for immigration relief or benefits. These notarios, however, often either fraudulently or negligently assist applicants in filing improper immigration claims that can have severe consequences for the applicants. For example, under current law, filing the wrong claim for immigration relief or benefits can lead to a ten-year ban, and even a permanent ban, from legally staying in this country.

A related problem arises when attorneys who may be skilled in other areas of the law but who lack familiarity with immigration law inadvertently make similar errors in the process, which again can have long-lasting or even permanent negative consequences for the applicants.

The common thread in these circumstances is that innocent victims of fraud or negligence should not be subject to the often severe penalties that otherwise would attach under our current immigration laws. There must be vigilant enforcement against those who engage in the unauthorized practice of law in immigration matters, and appropriate measures should be taken against those attorneys who negligently provide ineffective legal assistance to the detriment of their clients. More importantly, just as ineffective assistance of counsel can be grounds for overturning improper convictions in criminal matters, the substantive and procedural rights of applicants for immigration relief or benefits should be protected when they are victimized by the unauthorized practice of law or ineffective assistance of counsel.

American Bar Association, Commission on Immigration, Report Resolution No. 107D, February 2006.

There has been widespread recognition in many states both by Courts and legislatures as well as by academic legal commentators that the unauthorized practice of immigration law, particularly by non-attorney immigration consultants has lead to widespread abuse of persons in immigrant communities.²²

The Office of General Counsel of the then Immigration and Naturalization Service in 1992 issued an opinion affirming the right of states to apply their unauthorized practice of law statutes to persons representing individuals in immigration related proceedings who were not authorized by federal regulations to represent persons in such proceedings.²³ That opinion noted:

If a person is not authorized by federal law to practice in immigration proceedings, the question remains whether he or she is subject to state regulation of the practice of law. The District of Columbia Court of Appeals has implied that the answer to this question is yes. *In In Re Amalgamated Development Co., Inc.*, 375 A.2d 494 (D.C.), *cert denied*, 434 U.S. 924 (1977), the court concluded that "[I]f the federal government has not granted a license in this area [of patent law], a state is free to enforce its own licensing regulations." 375 A.2d at 497 (emphasis in original). Analogous reasoning would lead to the conclusion that if a person is not authorized by federal law to practice in immigration proceedings, then he or she is subject to state regulations. *Oregon State Bar v. Ortiz*, 713 P.2d 1068, 1070 (Or.Ct.App. 1986).

Whether or not representation by a visa consultant in violation of federal immigration regulations also violates state laws can only be determined by applying the statutes and regulations that govern the practice of law in each particular state. A review of the case law in this area reveals a number of cases involving visa consultants and immigration-related services.

The practice of law embraces in general all advice to clients and all action taken for them in matters connected with the law. *Quarles v. State Bar of Texas*, 316 S.W.2d 797, 803 (Tex. Civ. App. 1958). The controlling purpose of all laws, rules, and decisions forbidding unlicensed persons to practice law is to protect the public against persons inexperienced and unlearned in legal matters from attempting to perform legal services. *Grievance Committee State Bar of Texas, Twenty-First Congressional District v. Coryell*, 190 S.W.2d 130, 131 (Tex. Civ. App. 1945). The objective is to protect the public against injury from acts or services, professional in nature, deemed by both the legislature and the courts to be the practice of law, done or performed by those not deemed by law to be qualified to perform them. *Grievance Committee State Bar of Texas, Twenty-First Congressional District v. Dean*, 190 S.W.2d 126, 129 (Tex. Civ. App. 1945). The character of the service and its relation to the public interest determines whether services performed by a lay person constitute the practice of law. *Id.*

Among the leading cases in this area is *Unauthorized Practice Committee, State Bar of Texas v. Cortez*, 692 S.W.2d 47 (Tex. 1985). In this case, the respondents (neither of whom were licensed attorneys) were engaged in the business of providing immigration and bookkeeping services, which included assistance to

persons who were seeking to obtain immigration visas and permanent residency. *Id.* at 48. The most common practice performed by Mrs. Cortez was the selection and completion of the I-130 form (Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa) for her customers. She conducted interviews with her customers in conjunction with filling out these forms, and charged \$400 for the total preparation. *Id.* She also completed several other types of Service forms for customers, including the I-140, I-600, N-600, and OF-230. *Id.*

The Supreme Court of Texas concluded that:

Although the act of recording a client's responses to the questions on the form I-130 probably does not require legal skill or knowledge, the act of determining whether the I-130 should be filed at all does require special legal skills. . . . [A]dvising a client as to whether to file an I-130 requires a careful determination of legal consequences.

Id. at 50. The court's conclusion effectively found that the respondents' actions constituted the unauthorized practice of law. *Id.* at 51.²⁴

Another case involving a visa consultant is the *Ortiz* case mentioned above. In *Ortiz*, the court noted that virtually no immigration case is routine and that immigration law is complex and constantly changing. *Ortiz*, 713 P.2d at 1070. Knowledge of immigration benefits, and the Service forms and procedures which are required to obtain these benefits, requires legal training and judgment. *Id.* Any error in the advice given or the steps taken in this regard could result in deportation, loss of continuous resident status, and permanent loss of entry right. *Id.* The court concluded that Mr. Ortiz had engaged in the unauthorized practice of law when he advised and assisted an alien in obtaining his permanent resident status. *Id.* See also, *The Florida Bar v. Moreno-Santana*, 322 So.2d 13 (Fla. 1975) (unauthorized practice of law when respondent rendered legal advice, filed papers, and held himself out as qualified in immigration matters); *The Florida Bar v. Retureta-Cabrera*, 322 So.2d 28 (Fla. 1975) (unauthorized practice of law when respondent maintained immigration consultant business and appeared in immigration cases, either personally or in the preparation of or filing of documents on behalf of other persons); but see *Bennett v. Goldsmith*, 6 N.Y.S.2d 748 (N.Y. App. Div. 1938), *aff'd*, 19 N.E.2d 927 (N.Y. 1939) (defendant's business of preparing papers and documents for immigration visas was not practice of law under the New York statutes then in force.)

Immigration and Naturalization Service, General Counsel Op. No. 92-29, 1992 WL 1369368 (INS).²⁵

To the extent that federal law does not authorize a person other than an attorney to practice immigration law, Pennsylvania law establishes that such unauthorized practice of law is in violation of 42 Pa. C.S.A. § 2524. The Court of Common Pleas in Philadelphia in 1969 addressed this under the prior Act of April 28, 1899, P.L. 117 sec. 1²⁶ and reached the conclusion that individuals not authorized by federal regulations to represent persons in immigration proceedings engaged in unauthorized practice of law by interviewing clients, rendering advice on immigration rights and remedies, and selecting forms for petition of preference, all done for substantial amount of money. See, *McCarthy v. Panaccio*, *supra*.²⁷

A review of decisions involving the unauthorized practice of immigration law establishes that those jurisdictions which have considered the matter have concluded that state laws restricting unauthorized practice of law may be applied to those persons not authorized by federal law to practice immigration law.²⁸

POINT TWO

Notaries Publics Are Not Authorized to Practice Law and the Usage of the Spanish language Term “Notario” or “Notario Publico” For Such Persons Falsely Conveys that Such Persons Have the Legal Expertise of Attorneys

The usage of the phrase “notario” or “notario publico” is in direct violation of the provisions of 42 Pa. C.S.A. § 2524(a) defining unauthorized practice of law as including any person who holds himself out to the public as being entitled to practice law, or use or advertise the title of lawyer, attorney at law, attorney and counselor at law, counselor, or the equivalent in any language, in such a manner as to convey the impression that he is a practitioner of the law.

In *McCarthy v. Panaccio, supra*, the Court of Common Pleas in Philadelphia held that under the predecessor unauthorized practice of law statute, the Act of April 28, 1899, P.L. 117 sec. 1,²⁹ a defendant engaged in unauthorized practice of law by holding himself out as himself out as “Avvocato” and “Notary Public,” both of which would convey to people with Italian background that he is a lawyer. *McCarthy v. Panaccio*, 49 Pa. D. & C.2d at 508 and 515.³⁰

In *State of Indiana v. Ludy Diaz*, 838 N.E.2d at 447-448 the Indiana Supreme Court held that the usage of the term “notario” or “notario publico” was intentionally misleading to Spanish speaking persons and held that the usage of the phrase constituted unauthorized practice of law. The Indiana Court stated:

The requirements to become a notary public in Indiana are not stringent. An applicant for a notary public commission must be at least eighteen years of age, a legal resident of Indiana, and must secure an official bond in the sum of five thousand dollars (\$ 5,000). See Ind. Code § 33-42-2-1(a) & (e) (2004). No specific education or training is required. The notary public application, found on the website of Indiana's Secretary of State, is just four pages long, including instructions.... A notary's powers consist primarily of certifying acknowledgments of deeds and other legal instruments, administering oaths, and certifying affidavits and depositions. See I.C. § 33-42-2-5 (2004). A notary public may charge no more than two dollars (\$2) for each notarial act. See I.C. § 33-42-8-1 (2004).

By contrast, in many Latin American countries "notarios publicos" are a select class of elite attorneys, subject to rigorous examinations, regulation, and codes of professional responsibility, who perform quasi-judicial and other functions, including certifying and authenticating legal acts that they witness. See [Anne E.] Langford, [Note, What's In A Name?: Notarios In The United States And The Exploitation Of A Vulnerable Latino Immigrant Population, 7 *Harv. Latino L. Rev.* 115 (2004)], at 116. Some notaries public in the United States have exploited Latinos' expectations about their functions and legal knowledge, creating an illusion of expertise to mislead those who depend on them. See *id.*. Plying on the implicit misrepresentation of their credentials, some notaries charge

excessive amounts for services that should be free or nominal in cost, in some cases destroying immigrants' ability to pay for legitimate legal assistance. See *id.* at 124. See also Milagros Cisneros, Legislative Development, H.B. 2659: Notorious Notaries-How Arizona Is Curbing Notario Fraud In The Immigrant Community, 32 *Ariz. St. L.J.* 287 (2000); Alexandra M. Ashbrook, Note, The Unauthorized Practice Of Law In Immigration: Examining The Propriety Of Non-Lawyer Representation, 5 *Geo. J. Legal Ethics* 237 (1991).

Indiana is not the first state to be confronted with the misleading use of "notary public" or "notario publico." See, e.g., *Florida Bar v. Lugo-Rodriguez*, 317 So.2d 721 (Fla. 1975); *McCarthy v. Panaccio*, 49 Pa. D. & C.2d 501 (1969); Langford, *supra*; Cisneros, *supra*. By 1999, eleven jurisdictions had enacted legislation specifically aimed at curbing this practice. See Cisneros, *supra*, at 311. On July 1, 2001, the following Indiana statute took effect: ...I.C. § 33-42-2-10 (2004) (formerly I.C. § 33-16-2-10 (Supp. 2001), added by P.L. 64-2001, § 1).

.... The statute notwithstanding, however, this Court finds Diaz's use of the title "Notary Public" or "Notario Publico" to be inherently misleading. One of her business cards contained the title not once, but twice. The title was prominently displayed after her name on the awning of her office. She displays her notary certificate prominently in her office, akin to the manner one might display a diploma. Although Diaz corrects people who refer to her as an attorney by telling them she is a notary public, not an attorney, there is no indication Diaz corrects any misperception those people might have about the authority that comes with that title in Indiana. There is no indication that any substantial part of Diaz's business involves legitimate services as a Notary Public, and the fees she charges for her services are far above those permitted for notarial acts. Under these circumstances, the Court concludes Diaz's use of the titles "Notary Public" and "Notario Publico" in advertisements, on business cards, on her office wall, and on her awning constitutes the unauthorized practice of law. See *[In re] Mitterer*, 693 N.E.2d [555], at 558 [(Ind. 1998) (holding oneself out as an attorney by the use of misleading labels may constitute the unauthorized practice of law)].

State of Indiana v. Diaz, 838 N.E.2d at 447-448.³¹

The requirements to become a notary public in Pennsylvania are not significantly stricter than those in Indiana.³² The reality is that usage of terms such as "notario publico" in Spanish or other foreign languages for a Pennsylvania notary public where the term refers to a person who is an attorney in the country of origin of such persons is equivalent to the Pennsylvania notary public holding themselves out to be an attorney in the language of such persons. This is in violation of 42 Pa. C.S.A. § 2524(a).

Federal Regulation Appendix

Federal Regulation of Non-Attorney Practice of Immigration Law

Relevant federal regulations concerning practice of immigration law and representation in immigration proceedings including the following:

8 C.F.R. § 1.1 Definitions:

* * *

(f) The term attorney means any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia, and is not under any order of any court suspending, enjoining, restraining, disbaring, or otherwise restricting him in the practice of law.

(g) Unless the context otherwise requires, the term case means any proceeding arising under any immigration or naturalization law, Executive order, or Presidential proclamation, or preparation for or incident to such proceeding, including preliminary steps by any private person or corporation preliminary to the filing of the application or petition by which any proceeding under the jurisdiction of the Service or the Board is initiated.

* * *

(i) The term practice means 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.

(j) The term representative refers to a person who is entitled to represent others as provided in § § 292.1(a)(2), (3), (4), (5), (6), and 292.1(b) of this chapter.

(k) The term preparation, constituting practice, means 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.

* * *

(m) The term representation before the Board and the Service includes practice and preparation as defined in paragraphs (i) and (k) of this section.

8 CFR § 103.2 Applications, petitions, and other documents.

(a) Filing

* * *

(3) Representation. An applicant or petitioner may be represented by an attorney in the United States, as defined in § 1.1(f) of this chapter, by an

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attorney outside the United States as defined in § 292.1(a)(6) of this chapter, or by an accredited representative as defined in § 292.1(a)(4) of this chapter.³³ A beneficiary of a petition is not a recognized party in such a proceeding. An application or petition presented in person by someone who is not the applicant or petitioner, or his or her representative as defined in this paragraph, shall be treated as if received through the mail, and the person advised that the applicant or petitioner, and his or her representative, will be notified of the decision. Where a notice of representation is submitted that is not properly signed, the application or petition will be processed as if the notice had not been submitted.

8 C.F.R. § 292.1 Representation of others.

(a) A person entitled to representation may be represented by any of the following:

(1) Attorneys in the United States. Any attorney as defined in § 1.1(f) of this chapter.

(2) Law students and law graduates not yet admitted to the bar. A law student who is enrolled in an accredited law school, or a law graduate who is not yet admitted to the bar, provided that:

(i) He or she is appearing at the request of the person entitled to representation;

(ii) In the case of a law student, he or she has filed a statement that he or she is participating, under the direct supervision of a faculty member, licensed attorney, or accredited representative, in a legal aid program or clinic conducted by a law school or non-profit organization, and that he or she is appearing without direct or indirect remuneration from the alien he or she represents;

(iii) In the case of a law graduate, he or she has filed a statement that he or she is appearing under the supervision of a licensed attorney or accredited representative and that he or she is appearing without direct or indirect remuneration from the alien he or she represents; and

(iv) The law student's or law graduate's appearance is permitted by the official before whom he or she wishes to appear (namely an immigration judge, district director, officer-in-charge, regional director, the Commissioner, or the Board). The official or officials may require that a law student be accompanied by the supervising faculty member, attorney, or accredited representative.

(3) **Reputable individuals.** Any reputable individual of good moral character, provided that:

(i) He is appearing on an individual case basis, at the request of the person entitled to representation;

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(ii) **He is appearing without direct or indirect remuneration and files a written declaration to that effect;**

(iii) He has a **pre-existing relationship or connection with the person entitled to representation** (e.g., as a relative, neighbor, clergyman, business associate or personal friend), provided that such requirement may be waived, as a matter of administrative discretion, in cases where adequate representation would not otherwise be available; and

(iv) His appearance is permitted by the official before whom he wished to appear (namely, a special inquiry officer, district director, officer-in-charge, regional commissioner, the Commissioner, or the Board), provided that such **permission shall not be granted with respect to any individual who regularly engages in immigration and naturalization practice or preparation, or holds himself out to the public as qualified to do so.**

(4) Accredited representatives. A person representing an organization described in § 292.2 of this chapter who has been accredited by the Board.

(5) Accredited officials. An accredited official, in the United States, of the government to which an alien owes allegiance, if the official appears solely in his official capacity and with the alien's consent.

(6) Attorneys outside the United States. An attorney other than one described in § 1.1(f) of this chapter who is licensed to practice law and is in good standing in a court of general jurisdiction of the country in which he/she resides and who is engaged in such practice. Provided that he/she represents persons only in matters outside the geographical confines of the United States as defined in section 101(a)(38) of the Act, and that the Service official before whom he/she wishes to appear allows such representation as a matter of discretion.

(b) Persons formerly authorized to practice. A person, other than a representative of an organization described in § 292.2 of this chapter, who on December 23, 1952, was authorized to practice before the Board and the Service may continue to act as a representative, subject to the provisions of § 292.3 of this chapter.

(c) Former employees. No person previously employed by the Department of Justice shall be permitted to act as a representative in any case in violation of the provisions of 28 CFR 45.735-7.

(d) Amicus curiae. The Board may grant permission to appear, on a case-by-case basis, as amicus curiae, to an attorney or to an organization represented by an attorney, if the public interest will be served thereby.

(e) Except as set forth in this section, no other person or persons shall represent others in any case.

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8 C.F.R. § 292.2 Organizations qualified for recognition; requests for recognition; withdrawal of recognition; accreditation of representatives; roster.

(a) Qualifications of organizations. A non-profit religious, charitable, social service, or similar organization established in the United States and recognized as such by the Board may designate a representative or representatives to practice before the Service alone or the Service and the Board (including practice before the Immigration Court). Such organization must establish to the satisfaction of the Board that:

(1) It makes only nominal charges and assesses no excessive membership dues for persons given assistance; and

(2) It has at its disposal adequate knowledge, information and experience.

(b) Requests for recognition. An organization having the qualifications prescribed in paragraph (a) of this section may file an application for recognition on a Form G-27 directly with the Board, along with proof of service of a copy of the application on the district director having jurisdiction over the area in which the organization is located. The district director, within 30 days from the date of service, shall forward to the Board a recommendation for approval or disapproval of the application and the reasons therefor, or request a specified period of time in which to conduct an investigation or otherwise obtain relevant information regarding the applicant. The district director shall include proof of service of a copy of such recommendation or request on the organization. The organization shall have 30 days in which to file a response with the Board to a recommendation by a district director that is other than favorable, along with proof of service of a copy of such response on the district director. If the Board approves a request for time to conduct an investigation, or in its discretion remands the application to the district director for further information, the organization shall be advised of the time granted for such purpose. The Service shall promptly forward the results of any investigation or inquiry to the Board, along with its recommendations for approval or disapproval and the reasons therefor, and proof of service of a copy of the submission on the organization. The organization shall have 30 days from the date of such service to file a response with the Board to any matters raised therein, with proof of service of a copy of the response on the district director. Requests for extensions of filing times must be submitted in writing with the reasons therefor and may be granted by the Board in its discretion. Oral argument may be heard before the Board in its discretion at such date and time as the Board may direct. The organization and Service shall be informed by the Board of the action taken regarding an application. Any recognized organization shall promptly notify the Board of any changes in its name, address, or public telephone number.

(c) Withdrawal of recognition. The Board may withdraw the recognition of any organization which has failed to maintain the qualifications required by §

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292.2(a). Withdrawal of recognition may be accomplished in accordance with the following procedure:

(1) The Service, by the district director within whose jurisdiction the organization is located, may conduct an investigation into any organization it believes no longer meets the standards for recognition.

(2) If the investigation establishes to the satisfaction of the district director that withdrawal proceedings should be instituted, he shall cause a written statement of the grounds upon which withdrawal is sought to be served upon the organization, with notice to show cause why its recognition should not be withdrawn. The notice will call upon the organization to appear before a special inquiry officer for a hearing at a time and place stated, not less than 30 days after service of the notice.

(3) The special inquiry officer shall hold a hearing, receive evidence, make findings of fact, state his recommendations, and forward the complete record to the Board.

(4) The organization and the Service shall have the opportunity of appearing at oral argument before the Board at a time specified by the Board.

(5) The Board shall consider the entire record and render its decision. The order of the Board shall constitute the final disposition of the proceedings.

(d) Accreditation of representatives. An organization recognized by the Board under paragraph (b) of this section may apply for accreditation of persons of good moral character as its representatives. An organization may apply to have a representative accredited to practice before the Service alone or the Service and the Board (including practice before immigration judges). An application for accreditation shall fully set forth the nature and extent of the proposed representative's experience and knowledge of immigration and naturalization law and procedure and the category of accreditation sought. No individual may submit an application on his or her own behalf. An application shall be filed directly with the Board, along with proof of service of a copy of the application on the district director having jurisdiction over the area in which the requesting organization is located. The district director, within 30 days from the date of service, shall forward to the Board a recommendation for approval or disapproval of the application and the reasons therefor, or request a specified period of time in which to conduct an investigation or otherwise obtain relevant information regarding the applicant. The district director shall include proof of service of a copy of such recommendation or request on the organization. The organization shall have 30 days in which to file a response with the Board to a recommendation by a district director that is other than favorable, with proof of service of a copy of such response on the district director. If the Board approves a request for time to conduct an investigation, or in its discretion remands the

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application to the district director for further information, the organization shall be advised of the time granted for such purpose. The district director shall promptly forward the results of any investigation or inquiry to the Board, along with a recommendation for approval or disapproval and the reasons therefor, and proof of service of a copy of the submission on the organization. The organization shall have 30 days from the date of service to file a response with the Board to any matters raised therein, with proof or service of a copy of the response on the district director. Requests for extensions of filing times must be submitted in writing with the reasons therefor and may be granted by the Board in its discretion. Oral argument may be heard before the Board in its discretion at such date and time as the Board may direct. The Board may approve or disapprove an application in whole or in part and shall inform the organization and the district director of the action taken with regard to an application. The accreditation of a representative shall be valid for a period of three years only; however, the accreditation shall remain valid pending Board consideration of an application for renewal of accreditation if the application is filed at least 60 days before the third anniversary of the date of the Board's prior accreditation of the representative. Accreditation terminates when the Board's recognition of the organization ceases for any reason or when the representative's employment or other connection with the organization ceases. The organization shall promptly notify the Board of such changes.

(e) Roster. The Board shall maintain an alphabetical roster of recognized organizations and their accredited representatives. A copy of the roster shall be furnished to the Commissioner and he shall be advised from time to time of changes therein.³⁴

* * *

8 CFR § 1001.1 Definitions

As used in this chapter [five relating to the Executive Office Of Immigration Review, Department Of Justice]:³⁵

* * *

(f) The term attorney means any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia, and is not under any order of any court suspending, enjoining, restraining, disbaring, or otherwise restricting him in the practice of law.

(g) Unless the context otherwise requires, the term case means any proceeding arising under any immigration or naturalization law, Executive order, or Presidential proclamation, or preparation for or incident to such proceeding,

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including preliminary steps by any private person or corporation preliminary to the filing of the application or petition by which any proceeding under the jurisdiction of the Service or the Board is initiated.

* * *

(i) The term practice means 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.

(j) The term representative refers to a person who is entitled to represent others as provided in § § 1292.1(a) (2), (3), (4), (5), (6), and 1292.1(b) of this chapter.

(k) The term preparation, constituting practice, means 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.

* * *

(m) The term representation before the Board and the Service includes practice and preparation as defined in paragraphs (i) and (k) of this section.

8 CFR § 1292.1 Representation of others.³⁶

(a) A person entitled to representation may be represented by any of the following:

(1) Attorneys in the United States. Any attorney as defined in § 1001.1(f) of this chapter.

(2) Law students and law graduates not yet admitted to the bar. A law student who is enrolled in an accredited law school, or a law graduate who is not yet admitted to the bar, provided that:

(i) He or she is appearing at the request of the person entitled to representation;

(ii) In the case of a law student, he or she has filed a statement that he or she is participating, under the direct supervision of a faculty member, licensed attorney, or accredited representative, in a legal aid program or clinic conducted by a law school or non-profit organization, and that he or she is appearing without direct or indirect remuneration from the alien he or she represents;

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(iii) In the case of a law graduate, he or she has filed a statement that he or she is appearing under the supervision of a licensed attorney or accredited representative and that he or she is appearing without direct or indirect remuneration from the alien he or she represents; and

(iv) The law student's or law graduate's appearance is permitted by the official before whom he or she wishes to appear (namely an immigration judge, district director, officer-in-charge, regional director, the Commissioner, or the Board). The official or officials may require that a law student be accompanied by the supervising faculty member, attorney, or accredited representative.

(3) Reputable individuals. Any reputable individual of good moral character, provided that:

(i) He is appearing on an individual case basis, at the request of the person entitled to representation;

(ii) He is appearing without direct or indirect remuneration and files a written declaration to that effect;

(iii) He has a pre-existing relationship or connection with the person entitled to representation (e.g., as a relative, neighbor, clergyman, business associate or personal friend), provided that such requirement may be waived, as a matter of administrative discretion, in cases where adequate representation would not otherwise be available; and

(iv) His appearance is permitted by the official before whom he wished to appear (namely, a special inquiry officer, district director, officer-in-charge, regional commissioner, the Commissioner, or the Board), provided that such permission shall not be granted with respect to any individual who regularly engages in immigration and naturalization practice or preparation, or holds himself out to the public as qualified to do so.

(4) Accredited representatives. A person representing an organization described in § 1292.2 of this chapter who has been accredited by the Board.

(5) Accredited officials. An accredited official, in the United States, of the government to which an alien owes allegiance, if the official appears solely in his official capacity and with the alien's consent.

(6) Attorneys outside the United States. An attorney other than one described in § 1001.1(f) of this chapter who is licensed to practice law and is in good standing in a court of general jurisdiction of the country in which he/she resides and who is engaged in such practice. Provided that he/she represents persons only in matters outside the geographical confines of the United States as defined in section 101(a)(38) of the Act, and that the Service

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official before whom he/she wishes to appear allows such representation as a matter of discretion.

(b) Persons formerly authorized to practice. A person, other than a representative of an organization described in § 1292.2 of this chapter, who on December 23, 1952, was authorized to practice before the Board and the Service may continue to act as a representative, subject to the provisions of § 1292.3 of this chapter.

(c) Former employees. No person previously employed by the Department of Justice shall be permitted to act as a representative in any case in violation of the provisions of 28 CFR 45.735-7.

(d) Amicus curiae. The Board may grant permission to appear, on a case-by-case basis, as amicus curiae, to an attorney or to an organization represented by an attorney, if the public interest will be served thereby.

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¹ Significantly in terms of the authority of states including Pennsylvania to regulate unauthorized practice of federal immigration law at least one of the complaints received by the Pennsylvania Bar Association Unauthorized Practice of Law Committee came from an Associate Ethics Officer of the United States Customs and Immigration Service (USCIS).

² See, New Jersey Committee on Unauthorized Practice of Law, Opinion No. 41: Notaries Public and the Unauthorized Practice of Law, 178 *N.J.L.J.* 444, 13 *N.J.L.* 2273 (2004):

“Considerable confusion has resulted when notaries in New Jersey have advertised themselves in the language of the potential consumer, with such words as “notario.” In Mexico and other civil law countries, “notario” has a very different meaning from a “notary public” in the United States. While “notario” or “notario publico” in civil law countries may be synonymous with “attorney,” in the United States notaries public hold strictly a “witness” position. There have been many victims of “notario fraud” because persons come to notaries thinking that they will receive legal advice as they may have received in their native land. ([Miguel Cisneros, Legislative Development, H.B. 2659: Notorious Notaries-How Arizona Is Curbing Notario Fraud in the Immigrant Community, 32 *Ariz. St. L.J.* 287, (2000)] at 299).

See also: Pedro A. Malavet, Counsel for the Situation: The Latin Notary, a Historical and Comparative Model, 19 *Hastings Int'l & Comp. L. Rev.* 389 (1996); and Anne E. Langford, Note, What's In A Name?: Notarios In The United States And The Exploitation Of A Vulnerable Latino Immigrant Population, 7 *Harv. Latino L. Rev.* 115, 118 (2004).

In *State of Indiana Ex Rel. Indiana State Bar Association And Attorney General For The State Of Indiana, Relators, v. Ludy Diaz*, 838 N.E.2d 433 (Indiana, 2005) the Indiana Supreme Court concluded that the Spanish phrases “notario” and “notario publico” were tantamount to intentional misrepresentation that a U.S. notary public was an attorney.

³ See, 8 C.F.R. § 292.2. Immigration jargon refers to such organizations as “VOLAG”’s. Links to lists of such organizations are posted by USCIS on the internet at: The internet link to the roster is: <http://www.usdoj.gov/eoir/statspub/raroster.htm>.

⁴ See, 8 C.F.R. § 1.1(f).

⁵ See, 8 C.F.R. § 292.1(a)(3) establishing limited circumstances under which non-commercial “reputable individuals” may appear without remuneration in extremely limited circumstances as representatives in immigration proceedings even though they may not prepare filings on behalf of such persons. Compare, 8 C.F.R. § 103.2 which does not authorize such “reputable persons” to represent persons in relationship to filing immigration documents.

⁶ See, *McCarthy v. Panaccio*, 49 Pa. D.& C.2d 501 (Phila. Comm. Pl. 1969) where the court held under the prior unauthorized practice of law statute (the Act of April 28, 1899, P.L. 117 sec. 1) that the defendant engaged in unauthorized practice of law. The court noted that merely filling out forms would not constitute practice of law, but if such work is accompanied with an interpretation of the law or an application of law to the particular facts, it would be unauthorized practice of law. *Id.* at 511. Defendant clearly engaged in unauthorized practice of law by interviewing clients, rendering advice on immigration rights and remedies, and selecting forms for petition of preference, all done for substantial amount of money.

See also, *Oregon State Bar v. Ortiz*, 713 P.2d 1068 (Or. Ct. App. 1986) where the court held that the state should and can control the unlawful practice of law by unregistered practitioners if such person is not otherwise authorized by federal rules. *Id.* at 1069-70. Because defendant does not qualify under any of the federal exceptions for lay representation in immigration proceedings, he is subject to state regulation. The court further found that advices rendered by defendant to his clients constituted practice of law because it “went beyond merely filling in blanks under the direction of a customer,” and involved instructions of which forms to use and how to fill them out, which required legal skills and judgment. *Id.* at 1070-71.

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⁷ See, 8 C.F.R. § 292. See also, endnote 5 above, concerning the extremely limited role for non-commercial “reputable persons” that does not authorize the practice of law by such persons even when they are permitted to appear for limited purposes at a hearing.

⁸ See, Immigration and Naturalization Service, General Counsel Op. No. 92-29, 1992 WL 1369368 (INS). Indeed:

... the mere selection of an INS Form I-130 by a visa consultant for a client's use could satisfy the "advice" element in the term "preparation," as defined in 8 C.F.R. Sec. 1.1(k) (1992). As such, a visa consultant could be required to satisfy the accreditation requirements of 8 C.F.R. Sec. 292.

Immigration and Naturalization Service, General Counsel Op. No. 93-25, 1993 WL 1503972 (INS).

The unauthorized practice of law in immigration includes the following: (1) advising persons or entities of their legal rights in immigration and naturalization matters, including advising concerning immigration status or benefit and the procedures for obtaining such status or benefit, except as allowed by the Code of Federal Regulations; (2) advising as to the availability of any legal remedy; (3) representing oneself, either directly or through advertisement, as being able to perform such legal matters; (4) allowing the public to rely on such services for preparing required immigration forms; (5) advertising in a way that any reasonable person may believe legal services are offered; (6) advising as to the selection of forms, how to fill out the forms and what supporting documentation to include in order to obtain the desired immigration status or benefit. *Florida Bar v. Becerra*, 661 So. 2d 299, 300 (Fla. 1995).

⁹ See, 8 C.F.R. § 1.1(k).

¹⁰ Employment related immigration proceedings may require the filing of forms with the U.S. Department of Labor or with state departments of labor. See: <http://www.workforcesecurity.doleta.gov/foreign/form.asp> and <http://www.workforcesecurity.doleta.gov/foreign/>.

Similarly beneficiaries of immigration petitions may be required to file documents through consular offices of the U.S. Department of State. See: http://travel.state.gov/visa/visa_1750.html.

Unless such other federal agencies explicitly authorize persons other than licensed attorneys or accredited immigration representatives, to engage in legal representation before those agencies, the same restrictions recognized by 8 C.F.R. § 1.1(k) should apply to the assistance of non-attorneys in the preparation of immigration related documents for such other federal departments. 8 C.F.R. § 1.1(k) only allows:

“...lawful functions of a notary public or service consisting solely of assistance in the completion of blank spaces on printed ... 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.”

¹¹ See, 8 C.F.R. § 1.1(k). See also: *Florida Bar v. Corpa Immigration Services*, 642 So. 2d 548, 549-50 (Fla. 1994) (requiring defendant, as part of Stipulation, to post a legible sign in its office in English and Spanish stating that they are not attorneys, that they may only perform limited services and advising individuals to seek the help of a licensed attorney if they have any questions regarding what forms to file); *Florida Bar v. Aberasturia*, 529 So. 2d 690, 691 (Fla. 1988) (enjoining defendant from practicing law or representing to the public that he was a licensed attorney and requiring defendant to advise individuals that his services were not legal in nature, but limited only to accounting and translating); *Florida Bar v. Becerra, supra* (requiring a defendant found to have engaged in unauthorized practice of immigration law to provide a statement on any advertising specifying that the immigration service provided is not legal and that services are limited to the sale of blank forms and the service of filling out forms).

¹² USCIS forms are available over the internet at: <http://www.uscis.gov/graphics/formsfee/forms/>. The requirement for a person preparing the form to sign the form is common to most USCIS forms. The Form I-130 Petition for Alien Relative includes at the end the following requirement:

F. Signature of person preparing this form, if other than the petitioner.

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I declare that I prepared this document at the request of the person above and that it is based on all information of which I have any knowledge.

Print Name _____ Signature _____ Date _____

Address _____ G-28 ID or VOLAG Number, if any. _____

See: <http://www.uscis.gov/graphics/formsfee/forms/files/i-130.pdf>. The G-28 is the official form for Notice of Entry of Appearance as Attorney or Representative. It can be found at: <http://www.uscis.gov/graphics/formsfee/forms/files/g-28.pdf>.

The Form I-129 Petition for a Nonimmigrant Worker at page 4, part 7 similarly includes a requirement for signature of person preparing the form if other than the petitioner employer. See: <http://www.uscis.gov/graphics/formsfee/forms/files/I-129.pdf>. Similar requirements exist for Form I-140 Immigrant Petition for Alien Worker at page 7, part 9. See: <http://www.uscis.gov/graphics/formsfee/forms/files/i-140.pdf>.

¹³ In *McCarthy v. Panaccio*, 49 Pa. D. & C.2d at 512 the usage by a notary public of an attorney's name on forms completed by him instead of his own was viewed as evidence that the defendant's effort to conceal from federal immigration authorities his activities in preparing immigration documents and as knowledge that his actions were not permitted by the immigration agency.

¹⁴ See "The Notary Public Law" Act of 1953, P.L. 1323, No. 373 as amended by Act 151 of 2002, effective July 1, 2003, 57 P.S. § 147 *et seq.*

¹⁵ See endnote 2 above. In *McCarthy v. Panaccio*, *supra*, the Court of Common Pleas in Philadelphia similarly found that a defendant engaged in unauthorized practice of law under the predecessor Pennsylvania unauthorized practice of law statute (the Act of April 28, 1899, P.L. 117 sec. 1) by holding himself out "Avvocato" and "Notary Public," both of which would convey to people with Italian background that he is a lawyer.

¹⁶ 42 Pa. C.S.A. §2524(c) establishes criminal penalties for unauthorized practice of law and authorizes injunctive proceedings against violators. 42 Pa. C.S.A. §2524(c) provides that unauthorized practice of law is also a violation of the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 *et seq.*

In addition to provisions for the Pennsylvania Attorney General or District Attorneys to enforce the Unfair Trade Practices and Consumer Protection Law that law and obtain penalties for violations of it, persons injured by such violations may bring civil actions where the Court may award:

... award up to three times the actual damages sustained, but not less than one hundred dollars (\$100), and may provide such additional relief as it deems necessary or proper. The court may award to the plaintiff, in addition to other relief provided in this section, costs and reasonable attorney fees.

73 P.S. § 201-9.2.

¹⁷ See, Unfair Trade Practices and Consumer Protection Law at 73 P.S. § 201-1 *et seq.* In addition, to provisions for enforcement by the Attorney General or District Attorney that act provides:

73 P.S. § 201-9.2. Private actions.

(a) Any person who purchases or leases goods or services primarily for personal, family or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by any person of a method, act or practice declared unlawful by section 3 of this act, may bring a private action to recover actual damages or one hundred dollars (\$100), whichever is greater. The court may, in its discretion, award up to three times the actual damages sustained, but not less than one hundred dollars (\$100), and may provide such additional relief as it deems necessary or proper. The court may award to the plaintiff, in addition to other relief provided in this section, costs and reasonable attorney fees.

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¹⁸ See endnote 5 above.

¹⁹ See, 8 C.F.R. § 1.1(i), (k) and (m) and 8 CFR § 1001.1(i), (k) and (m).

²⁰ See endnote 12 above.

²¹ American Bar Association Resolution No. 107D February resolution is available at: <http://www.abanet.org/intlaw/policy/humanrights/immigration2.06107D.pdf>.

²² See discussion in: Alexandra M. Ashbrook, The Unauthorized Practice Of Law In Immigration: Examining the Propriety of Non-Lawyer Representation, 5 *Geo. J. Legal Ethics* 237 (1991); Miguel Cisneros, Notorious Notaries-How Arizona Is Curbing Notario Fraud in the Immigrant Community, 32 *Ariz. St. L.J.* 287, (2000); Andrew F. Moore, Fraud, The Unauthorized Practice Of Law And Unmet Needs: A Look At State Laws Regulating Immigration Assistants, 19 *Geo. Immigr. L.J.* 1 (Fall 2004).

²³ Immigration and Naturalization Service, General Counsel Op. No. 92-29, 1992 WL 1369368 (INS).

²⁴ Similarly, a person providing advice as to the type of nonimmigrant work visa for a foreign national to pursue is engaging in the practice of law. Similarly, a person providing advice as to whether to file an I-129 (Petition for a nonimmigrant worker), I-140 (Petition for Alien worker), or an ETA Form 9089 (Labor Certification Application) with the Department of Labor is also engaged in the practice of law.

²⁵ See also Immigration and Naturalization Service, General Counsel Op. No. 93-25, 1993 WL 1503972 (INS) elaborating on and reaffirming this 1992 opinion.

²⁶ See endnote 29 below as to the language of Act of April 28, 1899, P.L. 117 sec. 1.

²⁷ See endnotes 6 and 15 above.

²⁸ See: Ashbrook, 5 *Geo. J. Legal Ethics* at 253-256 (California), at 256-257 (Florida), at 257-259 (New York), at 259-260 (Texas). See also: *McCarthy v. Panaccio, supra*; *Unauthorized Practice Committee, State Bar of Texas v. Cortez, supra*; *Oregon State Bar v. Ortiz, supra*; and *State of Indiana v. Ludy Diaz, supra*.

Florida courts have held that the representation of individuals at hearings before the Immigration and Naturalization Service (INS) by non-attorneys, except to the extent allowed by the Code of Federal Regulations, constitutes the unlicensed practice of law. *Florida Bar v. Dobbs*, 508 So. 2d 326, 327 (Fla. 1987). In this case, the Court enjoined defendant from preparing immigration forms and sending letters of representation to INS. *Id.* See also: *Florida Bar v. Retureta-Cabrera*, 322 So. 2d 28, 29 (Fla. 1975) (enjoining defendant from appearing in immigration cases as representative and from preparing documents for immigration filings); *Florida Bar v. Flowers*, 320 So. 2d 809, 810 (Fla. 1975) (enjoining defendant from holding himself out as a licensed attorney and appearing before INS as a legal representative); *Florida Bar v. Abreu*, 833 So. 2d 752 (Fla. 2002) (enjoining defendant from holding himself out as qualified to provide assistance and representation in INS matters for remuneration).

In the State of Florida it has been established that the preparation of forms to effect a change in immigration status requires legal training and familiarity with immigration laws and the failure to properly prepare and file such documents may result in deportation of the individual involved. *Florida Bar v. Moreno-Santana*, 322 So. 2d 13, 15 (Fla. 1975). In this case, the Court enjoined defendant, not licensed in the practice of law, from holding himself out as an attorney, giving out legal advice and completing official immigration forms for substantial fees. *Id.* See also: *Florida Bar v. Matus*, 528 So. 2d 895, 896 (Fla. 1988) (enjoining defendant, owner of an immigration service firm, from preparing forms to effect changes in immigration status); *Florida Bar v. King*, 468 So. 2d 982, 982-3 (Fla. 1985) (enjoining defendant from conducting client interviews, making decisions that require legal expertise and contracting licensed attorneys to act as "counsel of record," essentially acting as co-counsel).

²⁹ In *McCarthy v. Panaccio, supra*, the court quoted the provisions of the Act of April 28, 1899, P. L. 117, sec. 1, 17 PS § 1608, as amended through 1969, as follows:

"From and after the passage of this act, it shall not be lawful for any person, partnership, association, or corporation, in any county in the State of Pennsylvania, to practice law, or to hold

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himself, herself, or itself out to the public as being entitled to practice law, or use or advertise the title of lawyer, attorney-at-law, attorney and counselor-at-law, counselor, or the equivalent in any language, in such manner as to convey the impression that he, she, or it is a practitioner of the law of this or any other State, Nation, Country or Land, or, in any manner, to advertise that he, she, or it, either alone or together with another person or persons, has, owns, conducts or maintains a law office, or law and collection office of any kind, for the practice of the law of this or any other State, Nation, Country or Land, without having first been duly and regularly admitted to practice law in a court of record of any county in this Commonwealth in accordance with the regularly established rules governing such admissions...."

McCarthy v. Panaccio, 49 Pa. D. & C.2d at 509.

³⁰ The court in *McCarthy v. Panaccio*, *supra*, noted that:

"Under Italian law, a notary public must be a lawyer who takes a special examination to qualify for the office, and has exclusive jurisdiction to prepare certain legal documents, such as wills and deeds."

McCarthy v. Panaccio, 49 Pa. D. & C.2d at 508.

³¹ Florida courts have held that a "notary" holding herself out as qualified in legal immigration matters, either in person or through advertising, and misleading individuals who equate the Notary title with that of a licensed attorney, is engaged in the unauthorized practice of law. *Florida Bar v. Rodriguez*, 509 So. 2d 1111, 1112 (Fla. 1987). See also: *Florida Bar v. Lugo-Rodriguez*, *supra* (enjoining defendant from counseling individuals as to their immigration status, charging for services related to effecting change in their immigration status, including arranging sham marriages, under the implication that as a "Notary" he was qualified to do so); *Florida Bar v. Escobar*, 322 So. 2d 25, 27 (Fla. 1975) (enjoining defendant claiming that he was licensed to practice law as a "Notario Publico," and from taking money promising in exchange to obtain a lawful immigration status); and *Florida Bar v. Borges-Caignet*, 321 So. 2d 550, 551-2 (Fla. 1975) (enjoining defendant from holding himself out as an attorney under the title "Notario Publico" and accepting money for legal services).

³² "The Notary Public Law" Act of 1953, P.L. 1323, No. 373 as amended by Act 151 of 2002, effective July 1, 2003, 57 P.S. § 147 *et seq.* See summary of requirements to be a notary public in Pennsylvania at the Pennsylvania Department of State website at:

<http://www.dos.state.pa.us/notaries/cwp/view.asp?a=1240&q=444909¬ariesNav=1>. Although newly licensed notaries must complete a three hour notary public education course, notaries licensed prior to July 2003 are exempt even from that requirement. *Tritt v. Cortes*, 578 Pa. 317, 851 A.2d 903 (2004).

³³ 8 CFR § 103.2 is most significant in relationship to the absence of "reputable persons" as defined in 8 CFR § 292.1(a)(3). A representative in relationship to a filing of a petition with the USCIS (United States Customs and Immigration Service) cannot be anyone other than an attorney or an accredited representative and does not include immigration consultants, notary publics or other persons who are not attorneys or accredited representatives.

³⁴ The internet link to the roster is: <http://www.usdoj.gov/eoir/statspub/raroster.htm>. An alphabetical listing of those organizations is available at: <http://www.usdoj.gov/eoir/statspub/recognitionaccreditationroster.pdf>. An alphabetical listing of individual accredited representatives is available at: <http://www.usdoj.gov/eoir/statspub/accreditedreproster.pdf>.

³⁵ 8 CFR Chapter 5 (8 CFR § 1001 *et seq.*) relates to the Executive Office of Immigration Review, Department Of Justice. Provisions at 8 CFR § 1001 and 8 CFR § 1292 mirror provisions at 8 CFR § 1 and 8 CFR § 292

³⁶ 8 CFR § 1292.1 mirrors provisions at 8 CFR § 292.1 as to practice before the Executive Office of Immigration Review, Department Of Justice.