

The True Story Behind Matter of Bay Area Legal Services

CLINIC Legal, July 7, 2020

"The Recognition & Accreditation, or R&A, program governs how nonprofit organizations provide charitable immigration legal services. Nonprofits that meet certain requirements apply for recognition, and non-attorney staff members may apply for accreditation after completing rigorous training focused on immigration law. Accredited individuals can help clients with immigration matters before government agencies, including U.S. Citizenship and Immigration Services and the asylum office. Certain accredited representatives may represent clients in immigration court. CLINIC's network of affiliate organizations represents more than one-third of recognized agencies.

The Director of the Executive Office for Immigration Review James McHenry solicited amicus curiae briefs on questions relating to the R&A program on Feb. 21, 2020. EOIR Director McHenry posed four questions on the interpretation of regulations pertaining to the recognition of organizations and accreditation of non-attorney representatives. As a longtime advocate for a fair R&A program, CLINIC submitted an amicus brief to EOIR Director McHenry on March 13, 2020, providing answers to these questions. CLINIC was the sole organization to appear as amicus in this case.

On May 22, 2020, EOIR Director McHenry issued Matter of Bay Area Legal Services, 27 I&N Dec. 837 (DIR 2020). Unfortunately, EOIR Director McHenry's discussion of the skills needed to attain full accreditation was vague and, therefore, confusing. At worst, McHenry's discussion could lead one to infer that accredited representatives had to engage in unauthorized practice of immigration law to get the skills needed for full accreditation. CLINIC brought these concerns to McHenry's attention by email and then by letter. On July 2, 2020, McHenry disposed of CLINIC's concerns by issuing a second, published decision on this matter holding that "an amicus curiae is not a party in recognition and accreditation proceedings and has no authority to seek further action following the conclusion of an administrative review under 8 C.F.R. § 1292.18." However, despite the holding, McHenry clarified the very points that CLINIC informed him were confusing and problematic. It is unclear why EOIR Director McHenry felt it necessary to issue two precedential decisions in the same case. In the past, EOIR has issued amended decisions to correct minor errors and omissions or to clarify the meaning of a citation.

- [FOIA Disclosures on the EOIR Recognition and Accreditation \(R&A\) Program](#)
- [DOJ Recognition and Accreditation Toolkit](#)
- [Why Representation Matters: Stories About the Impact of the Recognition and Accreditation Program](#)
- [Partial to Full Accredited Representative Initiative 2020](#)