

September 7, 2020

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Lauren Alder Reid
Assistant Director, Office of Policy
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 2500
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**Re: Comment in Response to the Information Collection at OMB
Control Number 1125-0013**

Dear Assistant Director Reid,

The Tahirih Justice Center¹ (Tahirih) submits the following comments in response to the Information Collection, OMB Control Number 1125-0013, issued by the Department of Justice on July 13, 2020 pursuant to the Paperwork Reduction Act.

Introduction

Tahirih is a national, nonpartisan policy and direct services organization that has answered calls for help from nearly 29,000 immigrant survivors of gender-based violence (GBV) since its inception twenty-three years ago. Our clients are primarily women and girls who endure horrific human rights abuses such as domestic violence, rape and sexual torture, widow rituals, forced marriage, human trafficking, female genital mutilation/cutting (FGM/C), and “honor” crimes.² We provide free legal and social services to help our clients find safety and justice as they engage in the daunting, courageous, and rewarding work of rebuilding their lives and contributing to their communities.

Tahirih’s Virginia office has been a recognized agency since March 22, 2010, and its Houston office has been recognized since December 7, 2010.³ On July 10, 2020, Tahirih’s agency recognition was renewed and its request to extend its recognition to all of its four branch offices (Houston, TX; Baltimore, MD; San Bruno, CA; and Atlanta, GA) was approved.⁴ Tahirih currently has three fully accredited representatives on staff, who provide critical support to expand Tahirih’s capacity to provide pro bono immigration legal services to survivors of

¹ <https://www.tahirih.org/>

² For background information on these types of gender-based violence, see, e.g., UNHCR, *Guidelines on the Protection of Refugee Women* 17, <https://www.unhcr.org/3d4f915e4.html>; UN Women, *Defining “honour” crimes and “honour” killings*, <https://endvawnow.org/en/articles/731-defining-honourcrimes-and-honour-killings.html>; https://en.wikipedia.org/wiki/Female_genital_mutilation; https://en.wikipedia.org/wiki/Forced_marriage.

³ <https://www.justice.gov/eoir/recognized-organizations-and-accredited-representatives-roster-state-and-city>

⁴ *Id.*

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gender-based violence.⁵ Two of Tahirih’s fully accredited representatives were approved in 2020, and their accreditation is valid until 2023. One accredited representative is working on renewing her accreditation prior to expiration in 2020.

As further explained below, Tahirih objects to the Information Collection’s proposed revisions to the Form EOIR-31A Application for New, Renewed, or Extension of Agency recognition because its use: (1) exceeds the requirements set forth in regulations for agencies seeking recognition and representatives seeking accreditation, (2) place undo time and resource burdens on non-profit organizations and their staff and (3) disproportionately impacts less well-resourced organizations. On the whole, the proposed revisions to the form are contrary to the purpose of the R&A program, which is to “increase the availability of competent immigration legal representation for low-income and indigent persons, thereby promoting the effective and efficient administration of justice.”⁶

The agency’s estimate of the burden of the proposed collection of information is artificially low, and the proposed revisions would unnecessarily further increase the burden on applicant organizations.

The agency estimates that 818 respondents will complete the form annually with an average of 2 hours per response. This estimate does not comport with Tahirih’s recent experience submitting both an application for a partially accredited representative to acquire full accreditation, and an application for initial full accreditation for a staff member who was not previously accredited. Tahirih’s full accredited representatives report that they spent approximately 20-25 hours each to prepare the EOIR-31A form and compile supporting documentation and letters of recommendation, excluding time spent on substantive training and learning about the accreditation process and requirements. Other staff spent multiple hours drafting or coordinating letters of recommendation for the applicants. It is estimated that Tahirih staff spent at least 30 hours on the EOIR-31A form and corresponding documentation. The agency’s estimate of an average of 2 hours to complete the form is significantly underestimated.

We expect that staff in organizations that are less well-resourced or have less experience in the R&A program would spend even more time to complete the form and relevant documentation as required by the proposed revisions.

Proposed Revisions to and Comments on the Information Collection Instrument – Form EOIR-31A

Part 1 - Representative’s Information – Work Location

The proposed revisions require an applicant to list the address(es) of any of the organization’s office locations where the representative works or intends to work. This revision creates unnecessary, duplicative data collection for an applicant. The regulations governing recognition and accreditation already permit the organization’s accredited representatives to provide immigration legal services out of extension offices or locations upon the OLAP Director’s determination to extend recognition to those locations identified on Form EOIR-31.⁷ In requiring that applicants list locations where the prospective

⁵ *Id.*

⁶ <https://www.justice.gov/eoir/recognition-and-accreditation-program>

⁷ 8 CFR 1292.15

representative works or intends to work, it creates unnecessary data collection and inhibits the flexibility nonprofit organizations need, particularly in a global pandemic and increased virtual work environments, to work in multiple extension offices should they fail to list them on Form EOIR-31A. Furthermore, the extension office locations would be indicated on the applicant's résumé and/or organizational chart, which is already collected under the January 2017 version of the EOIR-31A.

Instructions, Page 3, Form Part 2A

The proposed revisions require the applicant to indicate the representative's status with the organization and "how frequently the representative has worked with your organization's legal services program." The requirement to indicate frequency of work with the organization's legal services program is unsupported by the applicable regulation, which requires only that the organization must demonstrate the person seeking accreditation "is employed by or is a volunteer of the organization."⁸ We are concerned that this proposed revision would create a chilling effect on otherwise qualified employees or volunteers of an organization who, for a variety of reasons, may not already work extensively with the organization's legal services program. For example, there may be a staff member in an administrative or other function within the organization that obtains the necessary training and is otherwise qualified, but who does not yet work significantly with the legal services program. This could deter qualified, diverse staff members from pursuing professional growth opportunities within organizations to seek accreditation, reducing the pool of individuals accredited and contributing to the expansion of access to competent legal services for indigent immigrants.

Qualifications – Previous Applications & Employment

We oppose the proposed revision requiring applicants to describe any previously applications submitted on the representative's behalf, whether by the applicant organization or any other, including the date submitted, the name of the organization, and the outcome of the application, and the reason for leaving if the representative is no longer affiliated with any of the organizations listed. This is not required by the applicable regulations, and expands unnecessarily upon the information collected in the January 2017 version of Form EOIR-31A, wherein individuals seeking accreditation must list the names of prior organizations for which they served as an accredited representative and the date of last approval of accreditation. Requiring the reasons for departure from an agency prys unnecessarily into the personal employment or volunteer service of an applicant for accreditation. Such information exceeds the regulatory requirement that the applicant establish by attestation of prospective representative and authorized designated official they are not subject to disciplinary orders nor have resigned while a disciplinary investigation or proceeding is pending.⁹

Renewal, Instructions Page 5, Form Part 2B

We object to the proposed revision that would require an indication of how frequently applicants for renewal entered Forms G-28, EOIR-28, or EOIR-27 during the prior three years. This information is not required by the governing regulation, which requires only that they remain eligible, continue to receive formal training, and provide a

⁸ 8 CFR § 1292.12(a)(2)

⁹ 8 CFR §1292.12(a)(4), 8 CFR §1292.12(b)

description of the individual's qualifications, including education and immigration law experience.

The purpose of the R&A program is to enable non-profit organizations to utilize qualified non-lawyers to expand access to competent immigration legal services, thereby increasing access to critically needed services for indigent immigrants. Tahirih's accredited representatives support legal services in many ways in addition to entering their appearance before USCIS, EOIR, or the BIA. Accredited representatives assist with legal screenings, legal intakes, the provision of limited advice and counsel, and mentorship and technical assistance to volunteer attorneys. All of these activities are critical to Tahirih's ability to maximize its services to indigent immigrants, though none of them involve the filing of a G-28, EOIR-28, or EOIR-27. The proposed requirement to specify frequency of these filings infers that OLAP will assess suitability for renewal based, in part, upon frequency of formal entries of appearance. OLAP should not consider frequency of appearance in renewal applications because it is not supported by regulation and is an overreach into the programmatic and human resources decision making of non-profit organizations to utilize their accredited representatives as most appropriate to meet community needs.

Form Page 2, Part 2(C), Representative's Background – Crimes

The proposed revision would require applicants to indicate on the form whether the representative has ever committed a crime of any kind, even if he or she was not arrested, cited, charged with, or tried for the crime. This question is vague and unsupported by the governing regulation, which requires the prospective representative and authorized officer to sign an attestation that the individual satisfies the requirements set forth in 8 CFR § 1292.12(a).¹⁰ Those requirements, as related to criminal history, require only that the individual has not been found guilty of, or pleaded guilty or nolo contendere to a serious crime.¹¹ There is no requirement that an applicant never have committed *any* crime. Revising the form to include the proposed question collects information not required for the proper administration of the R&A program. Furthermore, it introduces unnecessary ambiguity. For example, an applicant who at any time drives a vehicle in Virginia at an excessive speed in may have committed the crime of reckless driving, but only a trier of fact is suited to determine whether the individual has engaged in acts that constitute commission of the crime of reckless driving.¹² The revised question seeks information not required for a determination of accreditation, it forces applicants to either check "no" and risk the allegation that their application was not accurate and truthful, or to check "yes" and concede commission of a crime when, by definition, they are not attorneys licensed in the applicable jurisdiction to assess whether their actions constitute commission of a crime.

The governing regulation require only an attestation by the applicant and the authorized officer that the applicant has not been convicted of or plead guilty or nolo contendere to a serious crime. The Form EOIR-31A should continue to require only such attestation, and not introduce unnecessary and overly intrusive questions such as this. The introduction of such a question will serve to deter otherwise qualified, competent

¹⁰ 8 CFR § 1292.12(b)

¹¹ 8 CFR § 1292.12(a)(5)

¹² Va. Code Ann. § 46.2-862

applicants from seeking accreditation, thereby reducing the availability of critical legal services to indigent immigrants.

Conclusion

Use of the revised Form EOIR-31A and corresponding instructions will significantly increase the burden on legitimate non-profit organizations and applicants for renewed or initial accreditation. Such increased burden exceeds the requirements set forth in governing regulations and would make it more difficult and costly of time and resources for non-profit organizations to participate in the R&A program. The proposed revisions are unnecessarily burdensome and would not improve efficiency or efficacy of the R&A program in furtherance of its purpose to expand access to competent legal services to indigent immigrants.

We appreciate your careful consideration of these comments, look forward to your detailed feedback, and urge the agency to retain the January 2017 version of Form EOIR-31A. Please contact me at kurstenp@tahirih.org or 571-356-9492 for additional information.

Respectfully,



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