

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

No. SJC-10744

THE REAL ESTATE BAR ASSOCIATION FOR MASSACHUSETTS, INC.,

Plaintiff

v.

NATIONAL REAL ESTATE INFORMATION SERVICES and
NATIONAL REAL ESTATE INFORMATION SERVICES, INC.

Defendants.

CERTIFICATION OF QUESTIONS FROM UNITED STATES
COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF OF AMICUS, THE NEW ENGLAND CHAPTER OF THE
AMERICAN IMMIGRATION LAWYERS ASSOCIATION, IN
SUPPORT OF PLAINTIFF

*For the New England Chapter of the
American Immigration Lawyers Association*
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Introduction

Not so long ago, William Ansara was practicing law without a license in Massachusetts. His victims, all immigrants and all confused about his status to provide legal advice, may have lost their chances to regularize their immigration status, may have been subjected to deportation, and lost a lot of money. See 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, 115-116 (2004). Mr. Ansara was not the only one engaging in the practice of law illegally. *Id.* at 130-131.

What it means to engage in the “unauthorized practice of law” is not precisely defined in Massachusetts. While individuals like Mr. Ansara grab headlines and capture the attention of the authorities, there is a more pernicious problem afoot in Massachusetts caused by this lack of precision. What Mr. Ansara did was illegal and plainly so under the laws of the Commonwealth – *id.* at 115 n3 (reporting complaint filed by the Office of the Massachusetts Attorney General) – what others do at the margins of what it means to illegally practice law causes confusion, disorder, and damage to our Commonwealth’s vibrant immigrant communities.

Amicus, the New England Chapter of the American Immigration Lawyers Association (AILA), submits this brief to explain how a judicial ruling clarifying what it means to engage in “unauthorized practice of law” in violation of Mass. Gen. Laws ch. 221, § 46 et seq will impact the immigrant communities and the regulation and administration of immigration law practice. This issue is of particular interest to AILA since the “unauthorized practice of law” has such a profound impact on immigrants and their families. *What's In A Name?*, 7 Harv. Latino L.Rev. at 1 (describing the New

England Chapter of AILA's efforts to remedy Mr. Ansara's misconduct). The narrow issue before the court is whether the National Real Estate Information Service's activities, as related to real estate transactions and as described by the parties, constitute the unauthorized practice of law. What happens at the boundaries of what it means to practice law or not matters a great deal in immigration circles. In this brief, AILA explains why the Court ought to define the "unauthorized practice of law" in Massachusetts broadly so that it eliminates any doubt that only duly licensed attorneys should be involved in assisting immigrants before the United States immigration agencies and courts.

Statement of Interest of Amicus Curiae

AILA is a voluntary bar association of more than 11,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. AILA has thirty-six (36) chapters throughout the United States and Worldwide. The New England Chapter of AILA consists of members from Massachusetts, Vermont, Rhode Island, Maine and New Hampshire. AILA members regularly represent respondents in removal proceedings before the Executive Office for Immigration Review and before various agencies within the Department of Homeland Security (DHS) that administer and enforce the immigration laws of the United States and before the Department of Labor, the Department of State and the Federal District Courts and Courts of Appeals. AILA attorneys' collective expertise in immigration and nationality law makes the organization particularly well-qualified to offer views that will benefit the court in its deliberations in this case.

Fighting fraud by unlicensed individuals is a key AILA program and falls within its mission. See AILA, *How and Where to File Complaints Against Notarios and Immigration Consultants* (Massachusetts excerpt) (available at <http://www.aila.org/content/default.aspx?docid=26784>). Immigrant communities throughout the Commonwealth are inundated by “notarios” and other non-attorneys who provide services to immigrants that often result in irreparable harm to the immigrant and his or her family.

Argument

The unauthorized practice of law can cause permanent harm to those seeking immigration benefits. Unacquainted with this country’s legal system, immigrants routinely pay thousands of hard-earned dollars to shady consultants and unscrupulous con artists, in exchange for false promises, ineffective or no assistance or outright harmful actions. More importantly, they often forfeit, temporarily or permanently, the very benefits they seek, potentially losing the ability to earn a living for themselves and their families or to remain in the United States. Recognizing the importance of the issue, many courts have specific provisions in their rules dealing with the unauthorized practice of law in the immigration context. See e.g. *Virginia Sup. Ct. R. UPC 9-7*, stating that “aliens are especially vulnerable to the unauthorized practice of law,” and that “such unauthorized practice, which may include incompetent or fraudulent legal services, can cause serious economic harm, may result in the separation of families, and may even result in the death of an individual forcibly repatriated to another country. . . .” Although M.G.L. Chapter 221 § 46A prohibits anyone other than an attorney from holding himself out as competent, qualified, or able to practice law, notarios continue to thrive in

immigrant communities because they tend to operate at the murky ends of where non-legal assistance and legal advice meet.

What makes the unauthorized practice of law in the immigration context so egregious is the vulnerability of the immigration population in general. Because their lives and the lives of their families are often at stake, most immigrants are understandably anxious when it comes to their immigration status and desperate to hear that their immigration affairs can be handled and resolved. If one factor is the inevitable language and cultural barriers, the general unfamiliarity with the U.S. legal system and, in some cases, the inability to afford an experienced immigration attorney, it becomes clear why the unauthorized practice of law is so endemic in immigration. Immigrants are also less likely to complain to the authorities, especially if they end up in immigration detention without access to attorneys and eventually get deported. As one court of appeals put it:

All too often, vulnerable immigrants are preyed upon by unlicensed *notarios* and unscrupulous appearance attorneys who extract heavy fees in exchange for false promises and shoddy, ineffective representation. Despite wide-spread awareness of these abhorrent practices, the lamentable exploitation of the immigrant population continues. . . .”

Morales Apolinar v. Mukasey, 514 F.3d 893, 897 (9th Cir. 2008); *see also Mendoza-Mazariegos v. Mukasey*, 509 F.3d 1074, 1085 (9th Cir. 2007) (observing that “the immigration system in this country is plagued with “notarios” who prey on uneducated immigrants.”).

The pervasive nature of the problem is further evidenced by the latest efforts of several states to put “notarios” and other unscrupulous immigration consultants out of business. New York Attorney General Andrew Cuomo has recently led the way in combating the unauthorized practice of immigration law. As part of his broad

investigation into immigration fraud, Attorney General Cuomo has shut down seven New York companies and sued two other organizations this year alone for providing fraudulent legal services to immigrants. See Attorney General's Press Release (August 17, 2010) (available at: http://www.ag.ny.gov/media_center/2010/aug/aug17a_10.html). Similarly, the Supreme Court of Texas Unauthorized Practice of Law Committee successfully pursued a criminal contempt motion against a non-lawyer for representing hundreds of immigrants in the State of Texas, despite a previously issued injunction. Council, J. (2010). Criminal Contempt Charges Against Immigration Counseling Service Underline a Big Problem in Texas. *Texas Lawyer* (September 13, 2010) (available at: <http://www.law.com/jsp/article.jsp?id=1202471965159>). By broadening the definition of "unauthorized practice of law" to include notarios and completing immigration forms, this court can help protect an extremely vulnerable, yet vital, immigrant population in the Commonwealth of Massachusetts who have few tools to fight the scourge of unauthorized practice of law.

Fighting fraud committed by non-lawyers is a constant battle that consumes precious public resources. The American Bar Association's Commission on Immigration has launched a Fight Notario Fraud project to educate immigrant communities about the impact of trusting non-lawyers to do what only lawyers should be doing. *See* ABA, *Fight Notario Fraud* at <http://new.abanet.org/Immigration/Pages/FightNotarioFraud.aspx> (last visited Oct. 16, 2010). "Unscrupulous 'notarios' or 'immigration consultants' have become an increasingly serious problem in immigrant communities throughout the United States." *Id.* The Catholic Legal Immigration Network, Inc., a nationwide immigrant legal services organization, has set up a curriculum for community-based

education to fight to effects of the unauthorized practice of law in immigration settings. See CLINIC, *Immigration Consultant Fraud: Basic Information & What You Can Do if You Are a Victim of Fraud*, cliniclegal.org/sites/default/files/Basicinfovictimoffraud.pdf (last visited Oct. 16, 2010). “[D]ishonest immigration consultants and dishonest immigration assistance service providers adopt many guides to trick their clients. Some claim they are attorneys. Others adopt titles such as *notarios publicos* or *notario* to deceive people into believe that they are attorneys.” *Id.*

Immigration fraud impacts the mission of the United States Citizenship and Immigration Services (USCIS), the federal component agency of the U.S. Department of Homeland Security, which administers our nation’s immigration programs. USCIS takes the issue of the unlawful practice of law seriously because it is detrimental to their mission. See, e.g., Fact Sheet: USCIS Warns of Immigration Scams Targeting Haitian Applicants for Temporary Protected Status¹; USCIS, Don’t Be a Victim of Immigration Fraud (last updated Sept. 2009).²

The complexity of immigration law creates a volatile space for individuals illegally practicing law. The United States Court of Appeals for the Second Circuit explained once that:

[t]he Tax Laws and the Immigration and Nationality Acts are examples we have cited of Congress's ingenuity in passing statutes certain to accelerate the aging process of judges. In this instance, Congress, pursuant to its virtually unfettered power to exclude or deport natives of other countries, and apparently

¹ (available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=3449a57d86766210VgnVCM100000082ca60aRCRD&vgnnextchannel=8a2f6d26d17df110VgnVCM1000004718190aRCRD>)

² (available at <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=915c9ddf801b3210VgnVCM100000b92ca60aRCRD&vgnnextchannel=915c9ddf801b3210VgnVCM100000b92ca60aRCRD>)

confident of the aphorism that human skill, properly applied, can resolve any enigma that human inventiveness can create, has enacted a baffling skein of provisions for the I.N.S. and courts to disentangle.

Lok v. INS, 548 F.2d 37, 38 (2nd Cir. 1977). Many other courts have echoed the same sentiment. *See, e.g., Castro-O’Ryan v. INS*, 847 F.2d 1307, 1312 (9th Cir. 1987) (“With only a small degree of hyperbole, the immigration laws have been termed second only to the Internal Revenue Code in complexity”); *Drax v. Reno*, 338 F.3d 98, 99 (2d Cir. 2003) (describing “a maze of hyper-technical statutes and regulations that engender waste, delay, and confusion for the Government and petitioners alike.”).

There are few remedies when the immigration process is bungled. As one commentator points out, “[i]n the unforgiving world of immigration law, manipulation gone wrong can be disastrous.” David B. Thronson, *Custody and Contradictions: Exploring Immigration Law as Federal Family Law in the Context of Child Custody*, 59 *Hastings L.J.* 453, 474 (2008). A missed deadline or an improperly completed application, in many instances, makes one forever ineligible for the benefit one is seeking and often leads to deportation. For those who have United States citizen children, this means either leaving the children behind or taking them to a foreign country where the children have never lived and where they lack quality education, health care and employment opportunities.

At the margins, non-lawyers will assist in the selection of forms, provide advice on completing forms, and assist in the filing of applications. Immigrant communities are inundated with “notarios” and other non-attorneys and immigrant consultants who provide damaging services to immigrants. In fact, as noted by the Ninth Circuit Court of

Appeals, “[t]he immigration system in this country is plagued with ‘notarios’ who prey on uneducated immigrants.” *Mendoza-Mazariegos v. Mukasey*, 509 F.3d at 1077.

Notarios are especially skilled at targeting Latino immigrants who, “often mistakenly believe that ‘notarios’ are lawyers because in many Latin American countries, notarios are ‘a select class of elite attorneys subject to rigorous examinations, regulation, and codes of professional responsibility.’” *See Barroso v. Gonzales*, 429 F.3d 1195, 1196 fn. 2 (9th Cir. 2005).

Preying on some immigrants’ lack of understanding of the American legal system, English language skills or financial resources, notarios and other non-lawyers easily convince immigrants and communities alike that for exorbitant fees, the notario/non-lawyer will be able to produce green cards and citizenship faster than lawyers or with certain guarantees that lawyers generally will not provide. These acts are supported, in part, by the perception that applying for an immigrant benefit involves nothing more than a particular form. Yet, obtaining an immigration benefit is generally only possible after a thorough analysis of the facts in light of immigration law’s labyrinthine web of statutes, codes, administrative case law, federal case law, and agency memoranda that make up this confusing body of law.

Despite the complexity of the underlying laws and regulations, much of the immigration system relies on the preparation and filing of what are often and mistakenly perceived as simple applications. The United States Citizenship and Immigration Services lists and offers ninety-four (94) forms on its website, each available with lengthy, although often out-of-date, instructions. Each requires a different filing fee and a myriad of rules must be followed when sending the form to USCIS. All of these forms

are available free on the USCIS website located at www.uscis.gov. Since these forms are readily available at no cost, immigrants can be led to believe non-attorneys can easily guide them through the immigration maze.

The instructions to most immigration forms indicate some legal requirements, but ignore many vital legal issues and are in no way comprehensive guides to immigration law. Many have not been updated in many years, thus the law has often eclipsed the instructions. To the uneducated or inexperienced, many common procedures associated with completing immigration forms are deceptively simple. In reality, however, completing and filing immigration related forms requires knowledge of many complicated legal terms and concepts to determine, for example, which relatives and employers can petition for others and who will ultimately qualify for the benefit sought. To make this determination, the practitioner must understand how the Immigration and Nationality Act (INA) defines various familial and employer-employee relationships. Immigration law is not intuitive. For example, the term “immediate relative” includes the child of a United States citizen, but upon reaching twenty-one years of age that child may no longer be defined by the INA as a “child.” *See* INA § 201(b)(2)(A)(i); INA § 101(b)(1). Rather, a minor child who turns twenty-one will by law be defined as a “son” or “daughter” under the INA and will no longer meet the definition of an “immediate relative.” INA § 101(b)(1); 22 CFR § 40.1(s). Unbeknownst to many, this minor change in a beneficiary’s age can alter the legal relationship between a parent and offspring and cause disparate treatment under the INA. Add another layer to this analysis from the Child Status Protection Act (CSPA), which amends a child’s age for some immigrant categories, such as family-based petitions, employer-based petitions, diversity visa

applicants, asylees and refugees. PL 107-208, 116 Stat. 927 (Aug. 6, 2002), 2002 H.R. 1209. The CSPA amended INA §§ 201(f), 203(h), 207(c)(2), 208(b)(3)(B). Therefore, many offspring has a biological age and a “CSPA adjusted-age,” which are different and need to be calculated in determining whether the son or daughter will be eligible for benefits concurrent with the parent.

Additionally, in order to properly prepare and file a Form I-485 (Application to Adjust Status), the form used when seeking lawful permanent resident status in the United States, a practitioner must answer many questions such as: Is a visa available for the beneficiary?; Is the person eligible to apply for adjustment of status?; Does the individual qualify for adjustment of status under INA § 245(a) or some other section of the law, or must he or she seek an immigrant visa at a U.S. Consulate outside the United States?; Has the applicant been previously ordered removed from the United States? Is the beneficiary an “arriving alien” as defined under the INA?; and, Did the applicant enter the United States with a J-1 visa subject to the two-year foreign residency requirement?; Can the residency requirement be waived? These are legal questions with decisive impact on a person’s eligibility for permanent residence and for every application filed with the government, there is a serious and potentially devastating risk to that person.

Going further into a case, a practitioner must review several other criteria such as whether the beneficiary requires a waiver of grounds of inadmissibility under INA §212 to obtain residence and whether the person has been convicted of a crime involving moral turpitude or a drug related offense. See INA § 212 et seq. Additionally, the beneficiary may have made a material misrepresentation to a U.S. Official in the past or be a security

risk, a persecutor, or have a medical condition that renders that person ineligible for residence. In many cases, even if a waiver of some ground of inadmissibility is legally available, the practitioner must determine if and how the applicant can they meet the legal standard required to have the waiver approved. Multiple considerations come into play in this process, and only those trained and experienced in immigration law are equipped to manage these nuances and complexities because filing an immigration form with USCIS comes with a risk of removal from the United States. Weighing the risk of filing against the benefit of filing inherently requires legal analysis that is and should be beyond the scope of non-attorneys because every application sent to USCIS must be preceded by the evaluation of whether the risks outweigh the benefits for that person. This cannot be done if the preparer is unaware of or uncaring about the potential consequences.

Often times, the agency also requests non-specific information after the initial filing and the response, or lack there-of, can determine the outcome of the case. Additionally, once Immigration forms are completed and properly filed with the correct USCIS Service Center, the experienced representative will spend considerable time and energy preparing clients for interviews and hearings. Notarios who merely complete forms for immigrants often entirely neglect these critical functions and leave people on their own to manage complicated responses when additional evidence is requested and the rigors of what can be intense and probing interviews before immigration officers. Moreover, an interview without preparation can create such a bad record and so many problems that even a highly experienced attorney cannot rescue the case thereafter. Other immigration consultants use their own mailing addresses in lieu of the applicants' and

therefore control the entire process and either ignore requests for additional evidence to the detriment of the applicant or use the new information as leverage to extort more money from their victims. Only with the assistance of an attorney can immigrants fully understand the nature and seriousness of the immigration process and proceedings and can their rights be more completely protected. Moreover, it is virtually impossible to assist in the immigration process without rendering some legal advice, such as which form is proper, whether the applicant is eligible for the relief and how to answer some of the complex questions on the forms. Non-attorneys even assisting with forms render immigrants subject to scrutiny without proper preparation of the forms or themselves for the interviews or hearings. They will complete forms that are inappropriate, create unsolvable problems for the unsuspecting and begin a process that will in many cases, result in deportation for the applicants.

Conclusion

For the reasons stated herein AILA asks the court to clearly define what constitutes the unauthorized practice of law using an expansive definition to aid the public, public authorities, and the immigrant community in ending the immigration fraud epidemic.



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