

DEPARTMENT OF JUSTICE**Immigration and Naturalization Service**

[EOIR No. 115I; A.G. Order No. 2058-96]

8 CFR Part 292

RIN 1125-AA16

Representation and Appearances: Law Students and Law Graduates

AGENCY: Executive Office for Immigration Review, Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule with request for comments revises two of the current restrictions supervising and compensating law students and law graduates who wish to represent aliens before the Immigration and Naturalization Service and the Executive Office for Immigration Review, including the Board of Immigration Appeals and the Immigration Courts. The number of immigration cases, and thus the number of representatives needed, has increased in recent years. This revision will expand the pool of law students and law graduates eligible to represent aliens in such hearings.

DATES: *Effective Date:* October 15, 1996.

Comments: Written comments must be received on or before December 16, 1996.

ADDRESSES: All comments concerning this interim rule should be addressed to both Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, and Janice B. Podolny, Associate General Counsel, Immigration and Naturalization Service, 425 I Street, NW., Suite 6100, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 305-0470, or Janice B. Podolny, Associate General Counsel, Immigration and Naturalization Service, 425 I Street, NW., Suite 6100, Washington, DC 20536, telephone (202) 514-2895.

SUPPLEMENTARY INFORMATION: This interim rule with request for comments amends 8 CFR part 292 by revising two of the current restrictions on law students and law graduates who wish to represent aliens before the Immigration and Naturalization Service (INS) and the Executive Office for Immigration Review (EOIR), including the Board of

Immigration Appeals and the Immigration Courts. Currently section 292.1(a)(2) requires that a law student who wishes to appear before INS and/or EOIR file a statement that he or she is participating, under the direct supervision of a faculty member or an attorney, in a legal aid program or clinic conducted by a law school. This interim rule amends this provision to also allow a law student to appear before INS and/or EOIR if he or she is under the direct supervision of an attorney in a legal aid program or clinic conducted, by a non-profit organization. This amendment merely permits law students, like law graduates, to appear while participating in an independent legal aid program.

In addition, sections 292.1(a)(ii) and (iii) of the current regulations require that law students and law graduates appear before INS and/or EOIR without direct or indirect remuneration. This interim rule amends this provision by requiring that law students and law graduates appear before INS and/or EOIR without direct or indirect remuneration from the alien who they represent.

This interim rule expands the pool of competent, properly supervised representatives for individuals who might otherwise be unable to obtain legal representation by removing these two restrictions upon law students and law graduates. The number of immigration cases completed in fiscal year 1995 totaled more than 168,000, and the need for individuals to represent these aliens has increased. Under this revised regulation, more law students and law graduates will be available to represent aliens in immigration proceedings because participants in legal aid clinics or programs sponsored by both law schools and non-profit organizations will be eligible. These law students and law graduates will also be able to accept compensation for their work so long as they are not paid, either directly or indirectly, by the alien whom they represent. This will allow law students and law graduates to work through legal aid clinics or programs which provide representation to aliens in immigration proceedings on a pro bono basis. The law student or law graduate still must have the permission of the official before whom he or she is appearing. A law student must be appearing under the direct supervision of a faculty member or licensed attorney. A law graduate may appear under the supervision of a licensed attorney or an accredited representatives. These safeguards ensure that those individuals who have yet to be admitted to a state bar are closely supervised by an

experienced attorney, a professor, or an accredited representative while representing aliens.

EOIR's and INS's implementation of this rule as an interim rule, with provisions for post-promulgation public comment, is based upon the "good cause" exceptions found at 5 U.S.C. 553 (b) and (d). The reasons and the necessity for immediate implementation of this interim rule are as follows: The immediate implementation of this rule will expand the pool of competent, properly supervised representatives while also maintaining the supervision requirement for law students and law graduates. This interim rule provides a benefit to aliens who seek legal representation by enabling them to more easily identify, retain, and afford such representation. A notice and comment period for a proposed rule therefore would have been unnecessary and contrary to the public interest.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule affects only individuals in need of legal representation before INS and/or EOIR and does not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

The Attorney General has determined that this rule is not a significant regulatory action under Executive Order No. 12866, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12612

This rule has no Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order No. 12612.

Executive Order 12988

The rule complies with the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order No. 12988.

List of Subjects in 8 CFR Part 292

Administrative practice and procedure, Immigration, Lawyers, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, part 292 of chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 292—REPRESENTATION AND APPEARANCES

1. The authority citation for part 292 continues to read as follows:

Authority: 8 U.S.C. 1103, 1252b, 1362.

2. In § 292.1, paragraphs (a)(2) (ii) and (iii) are revised to read as follows:

§ 292.1 Representation of others.

(a) * * *

(2) * * *

(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 or an attorney, 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

* * * * *

Dated: October 7, 1996.

Janet Reno,

Attorney General.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Docket No. 28311]

Review of Existing Rules

AGENCY: Federal Aviation Administration, DOT.

ACTION: Regulatory Review Program, disposition of comments and final guidelines.

SUMMARY: As provided for in its 1995 Strategic Plan, the Federal Aviation Administration (FAA) will undertake periodic reviews of its existing regulations. This action discusses and disposes of the comments received in response to the Federal Register notice of August 24, 1995, and sets forth the guidelines adopted by the FAA for the conduct of its Regulatory Review Program.

EFFECTIVE DATE: January 2, 1997.

FOR FURTHER INFORMATION CONTACT: Chris A. Christie, Director, Office of Rulemaking, 800 Independence Ave., SW., Washington, DC 20591, telephone (202) 267-9677, FAX (202) 267-5075.

SUPPLEMENTARY INFORMATION:

Background

On January 10, 1994, the FAA published in the Federal Register (59

FR 1362) a notice proposing to initiate a short-term regulatory review in response to a recommendation from the President's National Commission to Ensure a Strong Competitive Airline Industry.

Similarly, in early 1992, pursuant to an Executive Order issued by then-President Bush, the Department of Transportation (DOT) and each of its modal administrations reviewed all existing regulations.

The FAA's experience with the above two reviews has shown there is great value in obtaining public input in setting the agency's regulatory agenda and priorities regardless of whether such input is an affirmation of the agency's direction or an indication of a need to alter course.

Comments

On August 24, 1995 the FAA issued a Request for Comments on the Proposed FAA Regulatory Review Program (60 FR 44142). The comment period closed on November 22, 1995. Twelve comments were received. The Airport Council International, Bishop International Airport Authority, New Orleans International Airport, National Air Transport Association, Air Transportation Association of America, Regional Airline Association, Air Line Pilots Association, and the American Association of Airport Executives all support a periodic regulatory review program. Aerospace Industries Association, GAMA, and Sue A. Critz do not support the concept.

The Airport Council International endorses the FAA's proposal with a 3-year cycle and a conclusion document containing both summary and disposition. Mr. William C. Sandifer, AAE, Assistant Airport Director—Bishop International Airport Authority also endorses the proposal with the 3-issue limitation. The Assistant Supervisor of Operations, Matthew R. Zaranski, New Orleans International Airport, with his endorsement recommends a bi-annual review process, building an agenda of the most critical items published every year. The National Air Transportation Association generally supports the proposal with a 3-issue limitation, but rather than publishing a document containing a summary of comments, he suggests the FAA should initiate rulemaking to address the significant areas addressed in the comments. Mr. James L. Casey, VP, Air Transportation Association of America and Mr. Rudy Rudolph, AAAE, both support the FAA's proposal. Mr. Rudolph would like to see annual reviews. He feels the rulemaking process should not take so long. With

annual reviews, AAAE believes a priority system could be developed and resources deployed accordingly. Mr. Casey indicates limiting the review to 3 issues every 3 years may not produce an overall perspective.

The Regional Airline Association supports the proposal but would like the limitations expanded to 5 issues. Mr. John O'Brien, Director, Engineering & Air Safety, Airline pilots Association, generally supports the proposal and M. Theresa Coutu, Director, Regulatory Affairs, American Association of Airport Executives, endorses the proposal with the following input. The 3-year review system should not interfere with regulatory obligations, limitations should be expanded to 5 issues, and an annual status document should be processed during the 3-yr. cycle. She also recommends that the Aviation Rulemaking Advisory Committee (ARAC) review all comments as well as the FAA.

Those that did not support the proposal included Robert E. Roberson, Jr. VP, Civil Aviation, Aerospace Industries Association. Mr. Roberson feels ARAC and the petition for rulemaking process are sufficient and does not see an additional review having any added value to the process. Bill Schultz, VP Engineering & Maintenance, GAMA, would like to see more focus on improving the process and reinforces the input that ARAC is already industry's vehicle. He states that with the ARAC vehicle in place, any further process will be labor intensive for already scarce FAA resources. The final commentor, Sue A Critz, CFII, AGC, IGI does not support the FAA's proposal, stating it would create an unusual workload. She offers an alternate plan: A new form created, which the public would complete and return at 6-month intervals, thus creating a 6-month review of comments. On a regular basis, the FAA would formulate rule changes based upon these comments.

Conclusion

After review of all comments, there is general consensus that supports the concept of a review of existing rules on a 3-year cycle rather than on any other basis. Although there were a few suggestions for a 5-year cycle and the issue limitation be expanded to 5 issues, due to time constraint and limited resources, the FAA has determined a 3-issue, 3-year cycle will capture the input it is seeking from the public. A third of the commentors did not address the vehicle for concluding the review. Those who did supported a published summary and general disposition of