

“Is Your Immigration/Visa Consultant Legal?”

• By James R. LaVigne and Joseph B. McFarland •

Is your Immigration/Visa Consultant legal? NOT in the State of Florida, unless your Immigration/Visa Consultant is a qualified lawyer. Florida law now requires all Immigration/Visa Consultants to be qualified lawyers.¹ Otherwise Immigration/Visa Consultants are engaged in the unauthorized practice of law.

The Florida legislature has just passed a new law making the unauthorized practice of law a third degree felony punishable by five (5) years in prison and a fine of up to \$10,000.00. Anyone who aids, assists, or abets the unauthorized practice of law may also be criminally prosecuted.

Prior to July 1, 2004, the unauthorized practice of law was just a misdemeanor punishable by one (1) year in jail and a \$1,000.00 fine.

The new penalties were imposed by the Florida Legislature, in part as a result of the increasing number of complaints against Immigration/Visa Consultants who were not lawyers.

The Florida Bar, which governs lawyers in Florida, has been actively prosecuting those who hold themselves out as Immigration or Visa Consultants as engaging in the unauthorized practice of law.

This approach is not really new. The Florida Supreme Court has, through the Florida Bar, prosecuted many Immigration/Visa Consultants for practicing law without a license.

As noted by Jacquelyn P. Needelman, the Florida Bar Unauthorized Practice of Law Counsel in Miami:

“What constitutes the unlicensed practice of law in immigration matters?”

In the area of immigration, the only assistance that a non-lawyer can provide to another person is to sell forms and/or type information provided to him or her in writing.

This means that if a customer completes an immigration form in writing, the non-lawyer can then type it verbatim. He or she cannot recommend any changes and cannot recommend what relief can be sought. The non-lawyer cannot provide any advice or legal assistance. Also, it is

misleading if the non-lawyer calls him or herself a consultant as this implies that he or she is authorized to consult. A non-lawyer cannot consult with or discuss a legal matter verbally.

Great public harm has occurred to persons who have gone to a non-lawyer for immigration assistance. What is or is not placed on immigration forms is very important, affects significant legal rights, and has led to the deportation of immigrants.

The Bar has also assisted in a federal prosecution where an individual is now serving a long prison sentence for taking advantage of immigrants.”

As reported in the Florida Bar News, March 15, 2004, p.10.

The new law increasing the penalties was sponsored by Florida Senate Judiciary Chairman Senator Alex Villalobos, (R)-of Miami, saying:

“If you [a non-lawyer] are giving them legal advice, you would be guilty of a felony,” Villalobos said. “If you are giving them legal advice today, you are guilty of a misdemeanor.”

He also advised anyone who might have questions about whether they are violating the law to contact The Florida Bar’s Unlicensed Practice of Law Department, at (850) 561-5840, or check the Bar’s Web site at www.flabar.org.”

As reported in Florida Bar News, March 10, 2004.

As far back as 1988, the Florida Supreme Court has prohibited nonlawyers from doing immigration consulting, advising, or performing immigration services.

In a 1988 case, *Florida Bar v. Mavus*, the Florida Supreme Court noted:

- A. “Nonlawyer who holds himself out as legally qualified to perform immigration services, including tourist visa extensions, student visas, political asylum, and residency, engages in unauthorized practice of law; preparation of forms to effect change in immigration status requires legal training

and familiarity with immigration laws, and failure to properly prepare forms could result in great harm, including deportation.”

Accepting the uncontested allegations in this petition as true, the Court held that the respondent held himself out as legally qualified to perform immigration services, which constitutes the unauthorized practice of law in Florida. The Court therefore permanently enjoined and restrained Immigration/Visa Consultant from engaging in the practice of law in this state.”

Previously in 1987, in the case of *Florida Bar v. Rodriguez*, the Florida Supreme Court stopped a nonlawyer from doing immigration related work, ruling that:

“An individual who was not a member of the Florida Bar and not licensed to engage in the practice of law in the State was permanently enjoined from representing that she was an attorney or person capable of advising and handling matters requiring legal skills, filing immigration forms on behalf of others or representing persons before [the] immigration and naturalization service, advising persons of their rights, duties and responsibilities under the law except in limited circumstances, forming corporations for others, and otherwise engaging in practice of law.”

This ruling was based upon the fact that Rodriguez, the Immigration/Visa Consultant:

1. “Was not a member of The Florida Bar, and was not licensed to engage in the practice of law in the State of Florida.
2. That on or about April 4, 1985, an advertisement appeared in a Dade County newspaper, in Spanish, regarding ABC General Services. The advertisement indicated ABC General Services employed a “Notario Publico,” and offered services in immigration, corporations, divorce, and income tax.
3. That on or about June 20, 1985, Immigration/Visa Consultant was interviewed in the presence of her attorney by the chairman of the Eleventh Circuit UPL Committee “C.” and admitted to:
 - a. filing immigration forms for clients;
 - b. assisting clients in forming corporations;

- c. preparing articles of incorporation;
- d. advertising immigration and corporation services along with other services.

4. That sometime in August, 1985, the Immigration/Visa Consultant met with Carlos and June Otero at her office at 10518 West Flagler Street, Miami, Florida.
5. That during the August, 1985, meeting, the Immigration/Visa Consultant identified herself to the Oteros as a notary public and immigration consultant.
6. That during August, 1985, meeting, the Immigration/Visa Consultant informed the Oteros that she would fill out the immigration papers necessary for Mr. Otero to obtain a “green card.”
7. That in December, 1985, the Oteros telephoned the Immigration/Visa Consultant to inquire about the immigration matter. The Immigration/Visa Consultant informed the Oteros that she had referred Mr. Otero’s case to a lawyer for processing.
8. That in February, 1986, the Oteros went to the United States Immigration and Naturalization Service in Miami, Florida to obtain Mr. Otero’s alien number. Mr. Otero was given a piece of paper with Mr. Otero’s name on it in care of a person by the name of Nashid Sabir.
9. That the Oteros never met or consulted with Mr. Sabir, an attorney, regarding the immigration matter.”

Based on this conduct, the Florida Supreme Court stopped the Immigration/Visa Consultant as follows:

“By issuing a writ of injunction permanently enjoining Respondent, Isabel Rodriguez, individually, and d/b/a ABC General Services, and her agents, servants or employees or those acting in concert with her from:

- a. Representing to the public, either personally or by use of advertisement, that she is an attorney or a person capable of advising and handling matters requiring legal skills;

- b. Filing immigration forms on behalf of others or representing persons before the Immigration and Naturalization Service, unless and to the extent the regulations of the Immigration and Naturalization Service allow representation of such person before the Service by a nonlawyer;
- c. Advising persons of their rights, duties, and responsibilities under Florida law, or Federal law, on matters as those laws relate to Immigration and Naturalization matters, except to the limited degree permitted under the Code of Federal Regulations.
- d. Forming corporations for others, including the preparation of charters, by-laws, resolutions, and other documents incidental to the contractual rights of the corporation, its incorporators, and stockholders, and from advising others thereto.
- e. Otherwise engaging in the practice of law in the State of Florida, until such time as Respondent is duly licensed to practice law in this state."

The fact that an attorney may have reviewed the immigration documents was not sufficient. The actions of Ms. Rodriguez still constituted the unauthorized practice of law.

More recently in 1995, the Florida Supreme Court stopped Elida Becerra from doing immigration work. The Court wrote:

"In recognition that the preparation of forms to effect a change in immigration status requires legal training and familiarity with immigration laws and that failure to properly prepare the forms could result in great harm, including deportation, Respondent agrees as follows:

- A. Both parties agree that a Writ of Injunction shall issue permanently and perpetually in enjoining Respondent, Elida Becerra, and her servants and employees or those acting in concert with her from:

- 1. Advising persons and entities of their rights, duties and responsibilities under Florida law, or federal law, as those laws relate to immigration and naturalization matters, including advising persons and entities as to various immigration benefits or statuses, except to any limited degree permitted under the Code of Federal Regulations.
 - 2. Advising persons and entities as to any legal remedy which might be available to them.
 - 3. Representing to the public, either personally or by use of advertisement, that she or any persons she either employs or who act in concert with her are capable of advising and handling matter requiring legal skills.
 - 4. Allowing members if the public to rely on Respondent to properly prepare legal forms or legal documents affecting the legal rights of persons and entities.
 - 5. Advertising in any fashion which may lead a reasonable lay person to believe that Respondent offers to the public legal service, legal advice, or personal legal assistance regarding immigration and naturalization matters.
 - 6. Taking inquiries or answering questions from persons and entities as to which particular INS form or application is suited to the needs of the persons and entities, how to fill out the form or application, or what supporting documentation should accompany the form or application.
- B. Additionally, Respondent and her agents, servants, employees, and those acting in concert with her agree to take the following affirmative steps:
 - 1. In the event Respondent is contacted by any party seeking legal services, Respondent shall

refuse to perform such legal services.

2. In any advertising used by Respondent for immigration services, including, but not limited to, advertising which lists various types of immigration applications and petitions which may be made to the INS, Respondent shall include in such advertising a statement indicating that any "Immigration" services which may be provided are not legal services and are limited to the sale of blank forms and the service of typing the forms from information provided by the persons and entities seeking such services.
3. Respondent agrees that every present and future employee of any business or service of Respondent, and all persons acting in concert with her, shall be provided with a copy of this Stipulation by Respondent, and shall be instructed by Respondent to act in accordance with the Stipulation.

4. Respondent agrees to make restitution to the persons named in the Petition for repayment of fees taken from those persons as follows: \$115.00 to Mayra Pino; \$1,250.00 to Victor Manresa; \$600.00 to Rosalina Manresa; and \$400 to Maria Del Pino.
5. Respondent agrees to pay costs incurred by Petitioner in the investigation and prosecution of this matter in an amount not to exceed \$451.65.

Elida Becerra is hereby permanently enjoined from the unlicensed practice of law as set forth above and ordered to take the affirmative steps set forth above. In addition, judgment is entered against Elida Becerra for costs in the amount of \$451.65.

It is so ordered."

The new law maintains the Florida Bar's authority to prosecute the unauthorized practice of law cases, and now allows for serious criminal prosecution.

So if your Florida Visa/Immigration Consultant is not a qualified lawyer, think twice. Ask for proof of their credentials or go to www.flabar.org for further guidelines.

*Mr. James R. LaVigne, is a 29 year member of the Florida Bar and has his LL.M in London.

Mr. Joseph B. McFarland is a 22 year member of the Florida Bar and a member of the New York Bar. He has recently been appointed by the Florida Supreme Court to the Ninth Circuit Committee for Unauthorized Practice of Law.

Footnote

¹ Note also that an attorney who is admitted to a Bar of a state of the United States may practice immigration law in Florida. However, an attorney who is not admitted to the Florida Bar may not engage in any aspect of Florida state law. In other words, an attorney who is not a Florida Bar member may not set-up corporations, file law suits, or draft contracts.