

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

In Re: Petition to Take Enforcement)
Action, and Promulgate Industry)
_____)

FEDERAL TRADE
2009 FEB -3
DOCUMENT #

immigrant consumers, its non-regulatory team is focused on...

and direction of fraudulent consultants immigrant consumers miss deadlines, file incorrect petitions, and inadvertently provide the government false information.

Denying immigrant consumers of their ability to...

Service ("TISCIS") to change the immigrant consumer's residency status. Document 1

limited resources of many immigrant-consumers, a shortage exists of legal service providers willing to provide immigration related services to immigrant-consumers

A. The Population of Immigrant Consumers In the United States.

There are approximately 39 million documented and undocumented, foreign-born residents (hereinafter "immigrants") living in the United States.¹

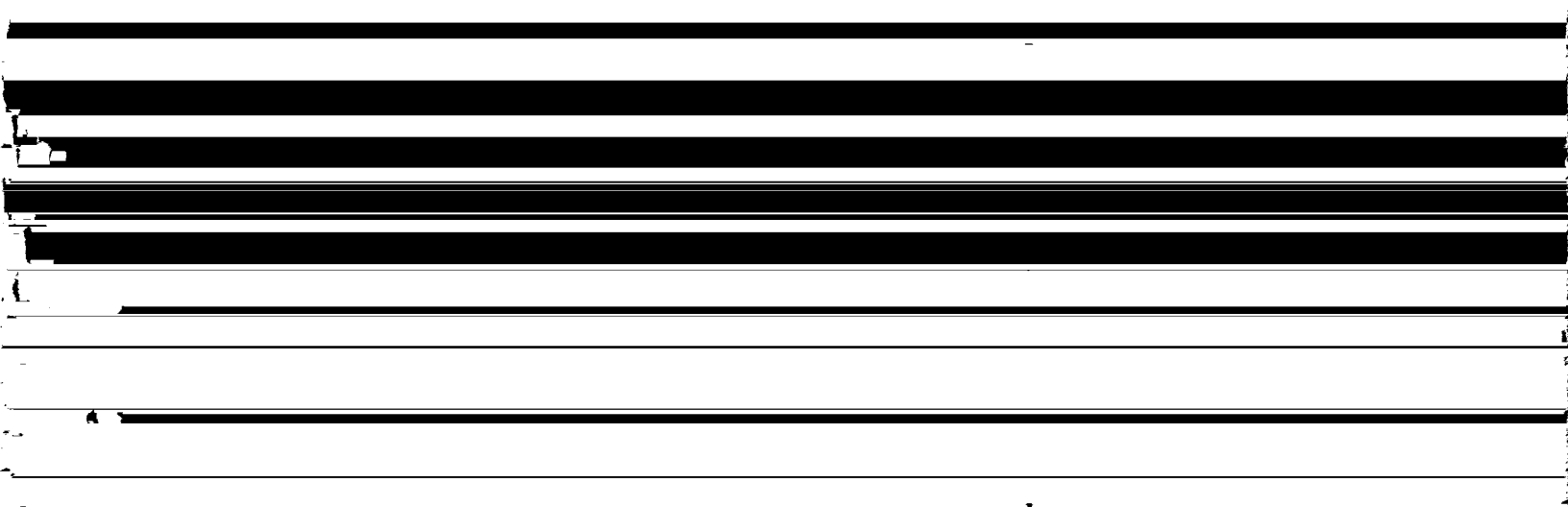
Although historically the immigrant population in the United States has been concentrated in urban areas, recent reports indicate that significant immigrant population

laws, the process for petitioning the USCIS, and the selection, completion, and filing of forms to the USCIS. In addition, some immigrants require a person to be physically present to represent them in hearings before an immigration judge or the Board of Immigration Appeals ("BIA"). The USCIS has established clear rules concerning the

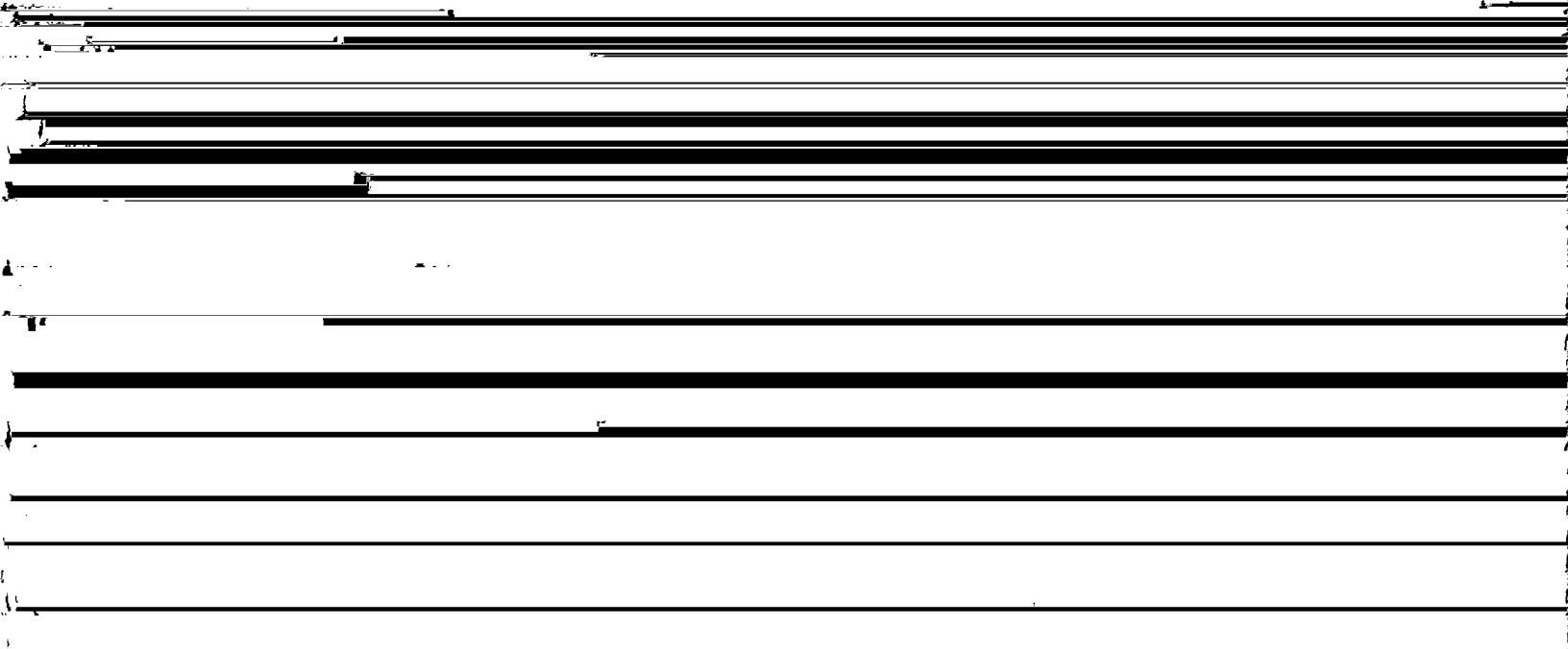
qualifications necessary to provide immigration related advice and what constitutes the "representation" of a client.⁴ Except for a limited number of exceptions, only individuals licensed to practice law, accredited by the BIA, or associated with agencies recognized by the BIA may provide such services.⁵

III. FALSE AND MISLEADING ACTS AND PRACTICES IN THE IMMIGRATION CONSULTING INDUSTRY.

Individuals who lack the licensing and accreditation necessary to perform immigration related legal services (hereinafter "immigration consultants" or "consultants") routinely fill the shortage of affordable and accredited representatives. As



is explained in greater detail below, immigration consultants routinely misrepresent themselves to the public as qualified to provide immigration services. Consultant fraud results in significant, and often irreparable, monetary and non-monetary harm to immigrant-consumers. Consultant fraud is particularly pernicious as it is difficult for



deceptively represent that a consultant is licensed to provide legal services. Although notario público literally translates from Spanish to English as “notary public,” to a Spanish speaker originating from Latin America the term describes a level of training, education, certification, and regulatory-monitoring fundamentally different from that of a notary public in the United States:¹¹

Latin notaries, in contrast to American notaries public, are state-appointed, private legal professionals who, whenever asked, are required to: (1) carry out

authenticate such transactions in an enforceable public document; and (3) maintain a permanent record of these transactions, for which they must provide certified copies, if requested.¹²

As an example, in Mexico, Argentina, Peru, and Honduras, having a law degree *is a prerequisite* for applying to become a notario público.¹³ In other Latin American countries

the curriculum required for becoming a notario público substantially mirrors the curriculum required to obtain a law degree.¹⁴

established for attorneys in the United States.¹⁶ For instance, if a Mexican notario público abuses her office she may be subject to civil and criminal liability.¹⁷ Due to the stringent requirements for becoming a notario público, the position carries with it immense prestige, and the education and experience that the title conveys is a valuable advertising tool in recruiting consumers.¹⁸

Although several examples of deceptive advertising by consultants have been included in Exhibit B, the following advertisement, which was recently brought to Catholic Charities' attention, illustrates the type of deceptive claims routinely made by consultants:¹⁹

SOCORRO CENTRO

[TRANSLATION]
CENTRAL AMERICAN HELP
MARIA F. MEJIA

SALVADORANS AND HONDURANS:

· RENEWALS · PACKS RETURNED BY TPS · CITIZEN · FAMILY PETITION
CITIZENSHIP · IMMIGRATION RECORD · APPEALS · VISA RENEWALS ·
RESIDENCE RENEWAL · WE HAVE AN ATTORNEY FOR EACH CASE

NOTARIO PÚBLICO WITH TPS
DOMESTIC & SOCIAL SECURITY

I'LL GET YOU TRAVEL PERMIT I'LL GET YOU AN ITIN #
FOR YOUR TAXES-IRS

TAXES

MARIA MEJIA E. LEGAL ASSISTANT STRATFORD CONNECTICUT

amount to thousands of dollars and often exceed fees charged by licensed attorneys.²⁰ Second, immigrant-consumers often submit filing fees to the USCIS based upon the advice and direction of a consultant. In many situations, these non-refundable fees amount to hundreds, or thousands, of dollars, and are made in connection with unnecessary applications, or petitions that have no possibility of success.²¹ Third, immigrant-consumers are often forced to retain immigration attorneys to attempt to rectify inaccurate or unnecessary filings made by consultants to the USCIS. In the best cases, subsequently retained attorneys do file consumer's petition which

asylum seekers) ²⁴ or may be forced to wait ten years before re-applying for legal

immigrant-consumers are not the only victims of consultant fraud. Incomplete

unwarranted, unnecessary, or inaccurate petitions filed by consultants to the USCIS burden the administrative and judicial docket increasing administrative cost and delaying the processing of other immigrants' applications.²⁶ As an extreme example, consultants have reportedly advised immigrant-consumers to file forms or applications that the consultant knew, or should have known, were frivolous, for the purpose of giving the immigrant-consumer the impression that the consultant had performed services on their

behalf and that the immigrant-consumer's application was moving forward. Federal agencies are forced to spend time and limited resources to investigate and

of immigrants reported retaining an immigration consultant to provide legal advice on

D. Inability for Consumers to Discover or Report Fraud.

Several factors inhibit immigrant-consumers from discovering that a consultant lacks represented licensing, qualifications, or accreditation.

First, immigrant-consumers are often unfamiliar with the United States legal system. Based upon their experience and education in their countries of origin, they reasonably assume that individuals who represent themselves as notario públicos are qualified, certified, monitored, and regulated by a state or federal government to provide

legal services. They do not know that the notario público is not regulated by a state or federal government to provide

government, certify or accredit notario públicos, and that the certification process for becoming a “notary public” does not qualify an individual to provide legal services.

Second, immigrant-consumers are often non-English speakers. As a result, they

are unable to locate, or access, English language consumer education concerning the

summoned or detained for business or domestic purposes.

consultant's inaccurate, or incorrect, filings. Other immigrant-consumers never realize

that their consultant has filed false information with the immigration authorities.

A. Legislative Initiatives.

At least sixteen states have passed legislation that either regulates immigration

consultants or expands state immigration law to regulate immigration consultants.³⁵ Although the states' statutes differ in form, in general they indicate that an immigration consultant who does not possess a law license and is not accredited by the BIA may only

- Act as a scrivener,
- Translate immigrant-consumer's answers on immigration forms from the

the Texas Attorney General has brought at least forty investigations and suits under the Texas Deceptive Trade Practices Act and the Texas Immigration Consulting Act (the "Texas Notary Statute") against immigration consultants who represented themselves to consumers as being qualified to prepare immigration related forms for filing with the USCIS.³⁹ These suits have resulted in judgments and settlements ranging from \$1,000 to

has been attached as Exhibit C.

conjunction with Catholic Charities is considering additional use for [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Third, consumer litigation against immigration consultants is often cost prohibitive. In addition to normal court costs and attorneys fees, litigation against consultants often requires the additional expense of translating foreign documents and hiring interpreters for non-English speaking deponents. Furthermore, evidence as to a reasonable consumer's understanding of foreign language terms such as the term "notario publico" may require the assistance of expert witnesses, especially in states that have not prohibited the use of that term within the state consumer protection act. In addition,

to courts leniency in allowing *pro se* litigants additional time and additional opportunities to engage in pre trial proceedings. Although many state consumer protection acts

about the problem of immigration consultant fraud.⁴⁶ At the request of the ABA, Catholic Charities, and the American-Arab Anti-Discrimination Committee, Bryan Cave

JJP has participated in two of these trainings in the Washington, D.C. area. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

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[REDACTED]

enforcement would deter industry members from future deceptive practices and would ensure that industry members do not migrate from jurisdictions with relatively high consumer protection enforcement to jurisdictions with relatively low consumer protection enforcement.

B. Industry Guidance.

Wide-spread abuse in the immigration consulting industry suggests that industry participants may benefit from a rule or guide concerning specific acts that the Commission believe are misleading and deceptive. Catholic Charities requests that the Commission consider adopting the following proposed industry guidance:

[RULE/GUIDE] FOR THE IMMIGRATION CONSULTING INDUSTRY

1. Purpose, Scope and Application.

- (a) This [Rule/Guide] applies to persons, firms, corporations, or organizations that offer assistance, advice, or services relating to consumer immigration matters.
- (b) This [Rule/Guide] represents an administrative interpretation of laws administered by the Federal Trade Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. This [Rule/Guide] specifically address the application of section 5 of the FTC Act (15 U.S.C. 45) to the advertising, promotion, marketing, and sale of immigration related

services. [The Guide provides the basis for voluntary compliance with the law by members of the industry. Practices inconsistent with the Guides may result in corrective action by the Commission under section 5 if, after investigation, the Commission has reason to believe that the practices fall within the scope of conduct declared unlawful by the statute.]

2. Definitions.

- (a) *Immigration Consulting Services.* The term "immigration consulting services" refers to one or more of the following services:

- (1) Advising a consumer in connection with an immigration matter;
- (2) Selecting a government agency form in connection with an immigration matter;
- (2) Transcribing a consumer's responses to a

(6) Representing a consumer before a government agency in connection with an immigration matter;

(7) Referring a consumer to an attorney who could represent him

(8) Filing, or transmitting, a government agency form in connection with an

- (d) To complete, file, or submit forms in connection with an immigration matter without disclosing to a government agency that such forms have been completed, filed, or submitted by the immigration consultant on the consumer's behalf;


promises a specific immigration benefit or result.

- (f) To refuse to provide to a consumer any documents which were supplied by the consumer, prepared on behalf of the consumer by the immigration consultant, or received from the USCIS in connection with the consumer's immigration matter, within a reasonable amount of time;
- (g) To state, or imply, that the immigration consultant has been certified, accredited, or licensed as an immigration consultant unless the immigration consultant has, in fact, received certification, accreditation, or licensure from a state or federal agency.

deceptive acts and practices in the immigration consulting industry, Catholic Charities
requests that the Commission initiate an enforcement sweep in conjunction with

promulgating industry guidance and consumer education.

Respectfully submitted,



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February 2, 2009

Table of Exhibits

Description Total

Relevant USCIS Regulations	A
Various examples of immigration consultant's advertisements.....	B
<i>Texas v. Diaz</i> , Case No. 2005-07308 (Dist. Ct. Tex [Harris County] 2005) (Complaint and Judgment)	C
ILNS Study	D
<i>Argueta v. Mejia</i> , Case No. CAL08-22004 (Md. Cir. Ct. [PG County] 2008) (Complaint, Settlement and Affidavit).....	E