

Falls Church, Virginia 22041

Comite Nuestra Senora de Loreto
Sobre Asuntos de Inmigracion Hispana
(Brooklyn, NY)

Date: **MAY - 6 2011**

Application for accreditation of
representative pursuant to Title 8, Section
1292.2(d), Code of Federal Regulations

RE: Reverend Robert Vitaglione

Comite Nuestra Senora de Loreto Sobre Asuntos de Inmigracion Hispana ("Comite"), an organization recognized by the Board under 8 C.F.R. § 1292.2(a), has applied for a renewal of the accreditation of Rev. Robert Vitaglione as its representative under 8 C.F.R. § 1292.2(d). For the reasons set forth below, that application will be disapproved.

I. ACCREDITATION GENERALLY

Federal regulations restrict which non-attorneys can represent aliens in immigration matters before the Executive Office for Immigration Review (EOIR), which includes this Board and the immigration courts, and the Department of Homeland Security (DHS). *See* 8 C.F.R. § 1292.1. The vast majority of non-attorneys who are authorized to represent aliens in immigration matters are "accredited representatives" and work for a "recognized organization." *See* 8 C.F.R. § 1292.2. The purpose behind the recognition and accreditation program is to provide low-income or indigent aliens, who are unable to hire an attorney and unable to locate pro bono counsel, with an alternative to seeking legal advice from unscrupulous persons who engage in the unauthorized practice of law. *See, e.g., Canaveral Toban v. Ashcroft*, 385 F.3d 40 (1st Cir. 2004)(describing misconduct by a sham attorney but finding no prejudice); *Fajardo v. INS*, 300 F.3d 1018 (9th Cir. 2002)(describing misconduct of non-attorney immigration consultants leading to the issuance of an *in absentia* deportation order).

Pursuant to 8 C.F.R. § 1292.2(a), a recognized organization may apply for accreditation of a person of good moral character to act as its representative in representing aliens. An application for accreditation must demonstrate the representative's experience and knowledge of immigration law and procedure. *See Matter of EAC, Inc. (Accreditation)*, 24 I&N Dec. 563 (BIA 2008). The purpose of evaluating the qualifications is to ensure that the interests of aliens are safeguarded and that only persons with the adequate knowledge and training can represent aliens in immigration matters. *See* 8 C.F.R. § 1292.2; *Matter of EAC, Inc. (Accreditation)*, *supra*.

In applying for renewal of a representative's accreditation, the recognized organization must provide adequate information to assess the nature and extent of the representative's recent experience. The application should include evidence of continued broad knowledge of immigration law and procedure. Similar to continuing legal education for attorneys, accredited representatives

should have training subsequent to their last application. Furthermore, the renewal of accreditation status is predicated on the representative maintaining the skills necessary to represent aliens in immigration proceedings, i.e., adequate case preparation, timely filing of court papers, and effective case presentation. *See Matter of EAC, Inc. (Accreditation), supra.* Like all persons representing aliens in proceedings, the representative must be able to meet deadlines and manage the anticipated caseload. *See 8 C.F.R. § 1003.102(q)(1).* The burden of showing that the qualifications for accreditation continue to be met is on the applicant organization. *Matter of EAC, Inc. (Accreditation), supra.* The organization should maintain sufficient records to respond to inquiries from the Board.

II. APPLICATION HISTORY

A. Background

Rev. Vitaglione, in his position as the Comite Chairman, timely requested that the Board renew his status as an accredited representative.

The request was not supported by any documentation. Accordingly, the Board requested documentary evidence of his recent training and experience, but Comite provided only a general recommendation from a single judge in the New York City immigration court.¹

While the application was pending, the Board received unfavorable information about the quality of Rev. Vitaglione's representation. On December 4, 2009, the Board was forwarded a copy of an anonymous complaint received by the Office the District Attorney of the County of New York, which claimed that an unaccredited individual might be serving as a "Supervisor/Immigration Counselor" of the applicant organization, which would be under Rev. Vitaglione's supervision. On March 9, 2010, the agency received an Immigration Practitioner Complaint Form (Form EOIR-44), alleging ineffective assistance of counsel when Rev. Vitaglione failed to inform the respondent of a hearing date and she was ordered removed in absentia. Additionally, the Board discovered in its own files documentation that Rev. Vitaglione had failed to meet multiple filing deadlines and, at least on one occasion, filed an appeal brief almost a year after the Board had rendered a final decision.

Given the gravity of this unfavorable information, the Board sent Comite all documentation related to each of the matters cited and provided the organization with an opportunity to respond. The application record contains a series of limited responses to these documents, the most recent of which being a letter received on June 26, 2009. In that response, Rev. Vitaglione explained that Comite did not maintain client records after an appeal had been dismissed and he would have to

¹ Comite requested that the Board review EOIR computer records to confirm Rev. Vitaglione's continuing representation of many aliens in proceedings in three different immigration courts and asserted that his training and knowledge of immigration laws has never been questioned by a judge. However, the burden is on the applicant to maintain records and provide evidence in support of the application. *See Matter of EAC, Inc. (Accreditation), supra.*

"respond by memory," thus qualifying any answers he could provide. None of his responses adequately addressed our concerns.

B. Remand

Accordingly, we remanded the renewal application to DHS on June 16, 2010, pursuant to 8 C.F.R. § 1292.2(d), for DHS to conduct an investigation into the quality of Rev. Vitaglione's representation, to provide the findings of its investigation to the Board, and to provide the Board with a recommendation regarding the renewal application.

On November 12, 2010, the Board received an investigative report from DHS' Acting Chief Counsel for U.S. Immigration and Customs Enforcement. That report contained detailed findings of inadequate representation by Rev. Vitaglione.

DHS records reflect that, in June 2010, Rev. Vitaglione was the representative of record in a staggering 646 non-detained cases and 115 detained cases at the immigration court level. In 221 of his pending non-detained cases, or roughly a third of his non-detained caseload, Rev. Vitaglione had at some time failed to appear for a scheduled hearing (without first requesting or being granted a continuance) or appeared unprepared (e.g., had forgotten or misplaced the client file, failed to bring necessary documents or the application for relief). Also, DHS reports that Rev. Vitaglione was ineffective in several detained cases, providing six specific examples of how he had failed to handle a detained case properly.

Moreover, as of July 2010, Rev. Vitaglione also had 65 cases pending before the Board. According to DHS records, Rev. Vitaglione either did not file an appellate brief or filed one that was untimely in 37 of those cases – more than half of his appellate caseload.

DHS concluded that the evidence demonstrates that Comite does not have at its disposal adequate knowledge, information, or experience to effectively represent over 800 aliens and that Rev. Vitaglione does not possess adequate skills for effective litigation, including the ability to advocate a client's position at a hearing. DHS recommended that the Board disapprove the application.

C. Response

On February 1, 2011, Comite responded to the DHS investigative report. Comite conceded that Rev. Vitaglione may not have appeared in roughly 30% of his cases without notice to the court. Rev. Vitaglione attributed these failures to appear to the conflict between his pastoral duties and his court duties, explaining that his obligations as a clergyman take precedence. Rev. Vitaglione also cited scheduling complications in explanation for his failures to appear, because his workload involves cases in different immigration courts.

On behalf of Comite, Rev. Vitaglione also conceded that the organization may have "overextended" itself due to the unavailability of pro bono counsel. In his own words, Rev. Vitaglione has "accepted the reality that he cannot cope with a system that has 6-7 judges

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hearing master calendar cases nearly every day," and he acknowledges that he has so many cases scheduled daily that he cannot physically represent all of his clients. In response to this situation, Comite reports it now has a panel of pro bono attorneys to help Rev. Vitaglione to reduce the caseload.² He also said he would retire within two or three years and explained that Comite will take no new cases after November 30, 2010.

III. ANALYSIS

As indicated above, the burden is on the applicant organization to demonstrate that its representative's accreditation should be renewed. Comite has not met that burden.

The purpose of evaluating the qualifications for accreditation of representatives is to ensure that the interests of aliens are safeguarded and that the persons given assistance receive adequate representation. *Matter of EAC (Recognition)*, 24 I&N Dec. 556, 557 (BIA 2008). An accredited representative must be able to litigate effectively, to advocate his client's position at a hearing before an Immigration Judge or on appeal to this Board, and to file timely briefs, motions, and appeals. *Matter of EAC (Accreditation)*, *supra*, at 564. Indeed, the regulations require all immigration practitioners to meet certain standards of professional conduct, and particular failings – such as the failure to act with reasonable diligence and promptness, failure to control and manage caseload, and repeated failure to appear for hearings – are unacceptable. *See* 8 C.F.R. § 1003.102(q). Where an accredited representative cannot serve his clients adequately, he should refer them elsewhere. *See Matter of EAC (Accreditation)*, *supra*, at 564.

Based on the record before us, we are not persuaded that Rev. Vitaglione continues to provide adequate representation to Comite's clients. Rev. Vitaglione has not managed his caseload responsibly, and he has not advocated effectively in a large percentage of his cases. His clients depend on him to appear for court, to prepare for court, and to file timely papers and applications for relief; and yet the application record contains more than ample evidence that he frequently fails to meet his clients' needs. We appreciate that Rev. Vitaglione has pastoral duties that sometimes interfere with his court obligations. While we respect Rev. Vitaglione's dedication to his vocation, we cannot excuse his failings as an accredited representative or overlook the impact his performance has had on the low-income and indigent aliens who have relied upon his services.

The Board appreciates the need for pro bono and low cost representation in the community that Comite serves. However, the Board cannot grant or extend accreditation to a non-attorney unless we are confident that that individual can effectively advocate on behalf of aliens in proceedings and will demonstrate due diligence in their representation. The potential unavailability of alternate representation does not relieve Rev. Vitaglione of his responsibility to provide competent representation in each case he accepts.

² Comite has not provided the Board with evidence of such an arrangement.

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Accordingly, while we recognize Rev. Vitaglione's good intentions and appreciate his years of dedication to his community, we cannot renew accreditation where there is so significant a record of inadequate representation.

IV. CONCLUSION

The applicant organization has not adequately addressed the concerns raised by DHS and has not met its burden of showing that the Rev. Vitaglione's status as an accredited representative should be renewed. The following order will therefore be entered:

ORDER: The application for renewal of accreditation of Reverend Robert Vitaglione for appearances before the DHS, the Immigration Courts, and this Board is disapproved.



FOR THE BOARD