

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 670 (Caballero)
Version: March 10, 2021
Hearing Date: April 27, 2021
Fiscal: Yes
Urgency: No
MEC

SUBJECT

Immigration form assistants

DIGEST

As proposed to be amended, this bill revises the Immigration Consultant Act.

EXECUTIVE SUMMARY

Some immigrants consult with attorneys or Board of Immigrant Appeals (BIA) accredited representatives for immigration advice. An attorney trained in immigration law and a BIA accredited representative can hear an immigrant's story and ask the correct questions to figure out which forms of relief, if any, an immigrant may be eligible for. The attorney or BIA accredited representative can then fill out the necessary applications and guide the process, including the gathering of documents.

In California, there is another group of individuals who are authorized by statute to complete immigration forms. Their title is "immigration consultant." Immigration consultants can only give nonlegal assistance or advice on immigration matters. Assistance or advice includes the following: (a) completing forms provided by a federal or state agency but not advising a person as to their answers on those forms; (b) translating a person's answers to questions posed in those forms; (c) securing for a person supporting documents, such as birth certificates, which may be necessary to complete those forms; and (d) submitting completed forms on a person's behalf and at their request to the United States Citizenship and Immigration Services.

A person can become an "immigration consultant" in California by passing a background check and submitting the following items to the Secretary of State: a copy of a current surety bond in the amount of \$100,000 obtained from a corporate surety admitted to do business in California; a completed immigration consultant

disclosure form; copy of a valid and current photo identification; a passport photo; and a \$30 filing fee.¹

When an immigrant is deported due to an error by an immigration consultant, the immigrant is not meaningfully able to seek justice because the consequence of the error is removal of the immigrant from this country.² Federal regulations provide that only five classes of people may fill out immigration forms for more than a nominal fee.³ However, an entire industry that charges more than a nominal fee to fill out immigration forms, currently exists in California. This bill revises the California Immigration Consultant law with the goal of further regulating immigration consultants.

There have been two bills that attempted to repeal California's Immigration Consultant Act.⁴ Those bills were supported by immigrant rights organizations, the Los Angeles County District Attorney's Office, Los Angeles County Board of Supervisors, and the Attorney General of California. Those bills were passed by the Senate Committee on Judiciary. One was held on suspense in the Senate Appropriations Committee and the other failed passage on the Senate Floor. Last year, an immigration consultant industry supported bill was introduced and set to be heard in this Committee but the bill was pulled at the author's request prior to the hearing.⁵

The author has agreed to amend the bill as specified in Comment 1, below. The bill is author sponsored and supported by La Cooperativa Campesina, the National Notary Association, and immigration consultants. It is opposed by a coalition of immigrant rights organizations, legal aid organizations, SEIU California, and the Los Angeles County Board of Supervisors who seek additional amendments.

¹ See Secretary of State website's *Immigration Consultant Checklist* available at <https://www.sos.ca.gov/business-programs/special-filings/immigration-consultant-checklist> [as of April 22, 2021].

² For detailed examples of immigration consultants harming immigrants, please see Senate Judiciary Committee analysis of AB 638 (Caballero, 2017) available at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB638 [as of April 22, 2021] and the analysis of AB 1753 (Carrillo, 2019) available at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200AB1753 [as of April 22, 2021].

³ The following five classes of people are authorized to provide "representation" as federally authorized persons: (1) attorneys in good standing; (2) accredited representatives, who have been authorized by the Executive Office for Immigration Review (EOIR); (3) unpaid law students supervised by an attorney; (4) reputable individuals, who are of good moral character, provided they have a preexisting relationship with the client and do not receive compensation; and (5) accredited officials of the client's foreign government. (8 C.F.R. §§ 1.2 & 292.1.)

⁴ AB 1753 (Carrillo, 2017); AB 638 (Caballero, 2017).

⁵ SB 1382 (Hueso, 2020).

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Prohibits the federal government from returning to their home countries people whose life or freedom would be threatened because of the person's race, religion, nationality, membership in a particular social group, or political opinion. (8 U.S.C. § 1231(b)(3).)
- 2) Provides for the protection of people who have fled persecution on account of race, religion, nationality, political opinion, or membership in a particular social group. (UN General Assembly, *Universal Declaration of Human Rights*, Dec. 10, 1948, 217A(III), Art. 14.)
- 3) Protects all asylum seekers by prohibiting the federal government from returning to their home countries people who have fled persecution on account of race, religion, nationality, political opinion, or membership in a particular social group. (8 U.S.C. §1101(a)(42)(A).)
- 4) Provides that youth may have temporary protection from deportation and work authorization for two-year periods, as specified.⁶
- 5) Provides that victims of certain crimes may obtain immigration relief through a Victim of Crime Visa (U-Visa) and victims of human trafficking may obtain immigration relief through a Victim of Trafficking Visa (T-Visa). (8 U.S.C. § 1101(a)(15)(U); 8 U.S.C. § 1101(a)(15)(T).)
- 6) Provides immigration relief that relies on a state's interest in the welfare of children by providing for Special Immigrant Juvenile Status where a state determines that reunification with one or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or similar basis found under state law and that it would not be in the child's best interest to return to their home country. (8 U.S.C. § 1101 (a)(27)(J).)
- 7) Provides that no person shall practice law in California unless the person is an active member of the State Bar. (Bus. & Prof. Code § 6125.)
- 8) Provides that anyone engaged in the unauthorized practice of law is guilty of a misdemeanor punishable by up to one year in a county jail or by a fine of up to

⁶ See Janet Napolitano, June 15, 2012 policy memorandum announcing the DACA program, <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf> [as of April 22, 2021].

\$1,000, or by both. Existing law provides for increased penalties for second or subsequent convictions. (Bus. & Prof. Code § 6126.)

- 9) Provides that it is unlawful for any person, for compensation, other than persons authorized to practice law or authorized by federal law, to represent persons before the Board of Immigration Appeals or the United States Citizenship and Immigration Services (USCIS), to engage in the business or act in the capacity of an immigration consultant within this state except as provided under the Immigration Consultants Chapter. (Bus. & Prof. Code § 22440.)
- 10) Establishes that a person engages in the business or acts in the capacity of an immigration consultant when that person gives nonlegal assistance or advice on an immigration matter. Assistance or advice includes, but is not limited to, the following:
 - completing a form provided by a federal or state agency, but not advising a person as to their answers on those forms;
 - translating a person's answers to questions posed in those forms;
 - securing for a person supporting documents, such as birth certificates, which may be necessary to complete those forms; and
 - submitting completed forms on a person's behalf and at their request to the USCIS. (Bus. & Prof. Code Sec. 22441(a).)
- 11) Defines "immigration matter" as any proceeding, filing, or action affecting the immigration or citizenship status of any person which arises under immigration and naturalization law, executive order or presidential proclamation, or action of the USCIS, the United States Department of State, or the United States Department of Labor. (Bus. & Prof. Code § 22441(b).)
- 12) Provides that a person engaged in the business or acting in the capacity of an immigration consultant shall only offer nonlegal assistance or advice in an immigration matter. (Bus. & Prof. Code § 22441(d).)
- 13) Provides that a person must pass a background check by the Secretary of State, as specified, to engage in the business or act in the capacity of an immigration consultant. (Bus. & Prof. Code § 22441.1(a).)
- 14) Provides that every person engaged in the business, or acting in the capacity of an immigration consultant who enters into a contract or agreement with a client to provide services shall, prior to providing any services, provide the client with a written contract, as specified. (Bus. & Prof. Code § 22442(a).)
- 15) Specifies that an immigration consultant's written contract must include the following:

- an itemization and explanation of the purpose and process of each service to be performed;
- the cost of each itemized service to be performed;
- a 10-point boldface type statement that the immigration consultant is not an attorney and may not perform the legal services that an attorney performs;
- a list of documents to be prepared with the purpose, process, and cost for preparing each document;
- a statement of the purpose for which the immigration consultant has been hired and the actions to be taken by the immigration consultant regarding each document, including the agency and office where they will be filed and the approximate processing times according to current published agency guidelines;
- information regarding where the client may report complaints related to immigration consultants and the unauthorized practice of law (Bus. & Prof. Code § 22442(b).); and
- a statement that the client shall have the right to rescind the contract within 72 hours of signing the contract. (Bus. & Prof. Code § 22442(f).)

16) Prohibits an immigration consultant from making the following statements to a client orally or including the following provisions in the written contract: any guarantee or promise, unless the immigration consultant has some basis in fact for making the guarantee or promise; or any statement that the immigration consultant can or will obtain special favors from or has special influence with the USCIS, or any other governmental agency, employee, or official, that may have a bearing on a client's immigration matter. (Bus. & Prof. Code § 22442(c).)

17) Provides that the written contract must be in English and the client's native language, and is void if not in both languages. (Bus. & Prof. Code § 22442(d) & (e).)

18) Provides that the contract requirements do not apply to employees of nonprofit, tax-exempt corporations who help clients complete application forms in an immigration matter free of charge or for a nominal fee, as specified. (Bus. & Prof. Code § 22442(h).)

19) Provides that immigration consultants shall provide receipts and statements of accounting, as specified. (Bus. & Prof. Code § 22442.1 (a) & (b).)

20) Provides that an immigration consultant shall conspicuously display in their office a notice that shall be at least 12 by 20 inches with boldface type or print, as specified, in English and in the native language of the immigration consultant's clientele, that contains specified information, including a statement that the

immigration consultant is not an attorney, evidence of compliance with any applicable bonding requirement, the particular services provided, and the current and total fee for each service. (Bus. & Prof. Code § 22442.2(a).)

- 21) Establishes certain requirements on immigration consultants when they advertise services, including that they are not an attorney, as specified. Attorneys licensed in other states shall include in any advertisement for immigration services a clear and conspicuous statement that they are not a California licensed attorney but are licensed in another state or territory of the United States and are authorized by federal law to represent persons before the USCIS or Board of Immigration Appeals. If the advertisement is in a language other than English, the required statements must also be in the other language. (Bus. & Prof. Code § 22442.2(c).)
- 22) Provides for the licensure and regulation of attorneys by the State Bar of California. Existing law provides it is a violation of specified provisions of law relating to the unauthorized practice of law for any person who is not an attorney to literally translate from English into another language the phrases “notary public,” “notary,” “licensed,” “attorney,” “lawyer,” or any other terms that imply that the person is an attorney. Existing law requires that a civil action brought under those provisions be commenced within 4 years after the cause of action accrues. (Bus & Prof. Code Secs. 6000 et. seq. & 6126.7.)
- 23) Provides for enforcement mechanisms including the ability of “any other party” who claims a violation of the Immigration Consultants Act to bring a civil action for injunctive relief on behalf of the general public, as specified.
- 24) Requires a person seeking to engage in the business or act in the capacity of an immigration consultant in this state to file a bond for \$100,000, and other related forms, with the Secretary of State. (Bus. & Prof. Code § 22443.1(a), (c), (f), (g) & (h).)
- 25) Requires the Secretary of State to conduct a background check of any person who files a bond of that nature, and requires the Secretary of State to post on its website information on any person who has complied with the requirement to file a bond and passed the requisite background check. (Bus. & Prof. Code § 22441.1 & 22443.1(e).)
- 26) Specifies, through regulations that the Department of Homeland Security (DHS) has adopted, who can provide representation before the USCIS. (8 C.F.R. §§ 1.1, 1.2, 292.1.) Under these regulations, “representation” is defined as including both “practice” and “preparation.” (8 C.F.R. § 1.2). “Practice” means “appearing in any case, either in person or through the preparation or filing of any brief or

other document, paper, application, or petition on behalf of another person or client before or with DHS.” (8 C.F.R. § 1.2)

27) “Preparation” means “the study of the facts of a case and the applicable laws, coupled with the giving of advice and auxiliary activities, including the incidental preparation of papers...” (8 C.F.R. § 1.2) Preparation does not include “service consisting solely of assistance in the completion of blank spaces on printed DHS forms, by one whose remuneration, if any, is nominal and who does not hold themselves out as qualified in legal matters or in immigration and naturalization procedure.” (8 C.F.R. § 1.2)

28) “Case” means “any proceeding arising under any immigration or naturalization law, Executive Order, or Presidential proclamation, or preparation for or incident to such proceeding, including preliminary steps by any private person or corporation preliminary to the filing of the application or petition by which any proceeding under the jurisdiction of the Service or the Board is initiated. (8 C.F.R. § 1.2)

29) Provides that representation does not include solely assisting by completing blank spaces on DHS forms as long as the assistance is only for a nominal fee; and by one who does not hold themselves out to be qualified in legal matters or in the immigration and naturalization procedure. (8 C.F.R. § 1.2.)

30) The following five classes of people are authorized to provide “representation” as federally authorized persons:

- attorneys in good standing;
- accredited representatives, who have been authorized by the EOIR;
- unpaid law students supervised by an attorney;
- reputable individuals, who are of good moral character, provided they have a preexisting relationship with the client and do not receive compensation; and
- accredited officials of the client’s foreign government. (8 C.F.R. §§ 1.2 & 292.1.)

This bill as agreed to be amended:

- 1) Changes the name “immigration consultant” to “form preparer” throughout the code that regulates this industry.
- 2) Clarifies that an advertisement prohibition in translating words including “notary public” applies to the internet and broadcast media.
- 3) Specifies that form preparers shall not use the title immigration consultant or immigration specialist, or any other title that implies that the person has expertise in

immigration matters, in any document, including an advertisement, stationary, letterhead, business card, or other comparable written material, on the internet, or by broadcast media, describing the immigration form assistant. Provides that a violation is punishable pursuant to the unauthorized practice of law enforcement mechanism and subject to a civil penalty in an action brought by the injured person or by the Attorney General, District Attorneys, or City Attorneys.

- 4) Provides that notaries public that hold themselves out as being form preparers shall not use the title immigration consultant or immigration specialist, or any title or description reflecting an expertise in immigration matters.
- 5) Provides that beginning on July 1, 2022, and every two years thereafter, a form preparer shall complete a course on the limits of authorized services and prohibited activities of form preparers.
- 6) Prohibits form preparers from completing forms related to the following: applications for asylum and for withholding of removal; applications for T nonimmigrant status; petitions for U nonimmigrant status; petitions under the Violence Against Women Act; and petitions for Special Immigrant Juvenile Status.

COMMENTS

1. Author amendments⁷

The author proposes to amend the bill to:

- Change “immigration form assistant” to “form preparer” throughout the bill.
- Change the education requirement to instead require that beginning on July 1, 2022, and every two years thereafter, a form preparer shall complete a course on the limits of authorized services and prohibited activities of form preparers.
- Restore the enforcement mechanism that allows “any other party” to bring an action for injunctive relief.

2. Stated need for the bill

According to the author:

SB 670 is an important consumer protection bill. It would [. . .] ensure that individuals that help immigrants fill out their documents are appropriately regulated. It would place important safeguards to protect immigrants while preserving access to important community resources. Due to a new federal

⁷ The author amendments are detailed in the mock-up at the end of this analysis and may be revised to include nonsubstantive changes recommended by the Office of Legislative Counsel.

administration and momentum behind immigration reform, it is critical that we strengthen current law to protect immigrants from fraud and unscrupulous behavior that makes false promises, raises false expectations, and could endanger a person's immigration status permanently. SB 670 strikes a balance between consumer protection and community access to services and resources.

The Committee has received letters of support from immigration consultants, the National Notary Association, and La Cooperativa Campesina de California. Support generally details the need for low cost immigration form assistance, especially in anticipation of possible immigration reform at the national level. La Cooperativa Campesina de California writes the following in support of the bill:

This bill seeks to protect California's vulnerable immigrant population by striking a balance between stricter enforcement against unlawful immigration consultants and the need for certain low-cost immigration-related services. By adding more regulations and stricter requirements, this bill seeks to decrease fraudulent behavior through additional consumer protections.

Immigrants are living under a heightened sense of fear of persecution because of adverse actions by the current federal administration against immigrants. These actions have created a greater need for low-cost immigration related services.

At the same time, the immigrant community is vulnerable to fraud from notarios, or individuals who purport themselves as qualified to offer legal advice or services concerning immigration or other matters of law, who have no such qualification. This can have numerous adverse consequences, including missed opportunities to obtain legal residency, unnecessary deportation, or being subject to civil and/or criminal liability for the filing of false claims.

[. . .]

We are supporting SB-670 (Caballero) because this is a vulnerable population who is subject to fraudulent behavior related to unlawful immigration services. The lack of resources amongst this population makes it especially difficult for them to access appropriate and qualified legal services and SB 670 seeks to provide a balance between consumer protections and access to necessary services.

3. Immigration consultants

In 1986, the California Legislature passed the Immigration Consultant Act (the Act) authorizing and regulating services provided by non-attorneys. The Legislature passed the Act in order to address the influx of individuals who needed assistance filling out

immigration forms as a result of the Immigration Reform and Control Act of 1986, the federal law that provided legalization and citizenship for millions of immigrants.

Under the Act, a person engages in the business or acts in the capacity of an immigration consultant when that person gives nonlegal assistance or advice on an immigration matter. Assistance or advice is defined as including, but not limited to, the following:

- completing a form provided by a federal or state agency but not advising a person as to their answers on those forms;
- translating a person's answers to questions posed in those forms;
- securing for a person supporting documents, such as birth certificates, which may be necessary to complete those forms; and
- submitting completed forms on a person's behalf and at their request to the USCIS. (Bus. & Prof. Code § 22441(a).)

Immigration matter is defined under the Act as any proceeding, filing, or action affecting the immigration or citizenship status of any person, which arises under immigration and naturalization law, executive order or presidential proclamation, or action of the USCIS, the United States Department of State, or the United States Department of Labor.

In order to become an immigration consultant in California, a person must pass a background check and submit the following items to the Secretary of State: a copy of a current surety bond in the amount of \$100,000 obtained from a corporate surety admitted to do business in California; a completed immigration consultant disclosure form; copy of a valid and current photo identification; a passport photo; and a \$30 filing fee.⁸

Federal law provides more protection than the Act. For example, federal law does not recognize "immigration consultants" or permit non-attorneys to render many of the services that the Act allows. Federal law generally only recognizes attorneys, law students acting under the supervision of an attorney, clergy, consular officers, and representatives accredited by the U.S. Department of Justice and those who may provide the services allowed by the Act. The complexity of immigration law makes it unclear when an immigration consultant is engaging in the unauthorized practice of law. Immigration consultants in California are only authorized to provide non-legal assistance such as completing immigration forms and translation services. The mere act of deciding which form or forms to complete on behalf of an immigrant involves complex legal questions that can affect whether an immigrant is ultimately deported or authorized to remain in the United States. For a detailed discussion regarding

⁸ See Secretary of State website's *Immigration Consultant Checklist* available at <http://www.sos.ca.gov/business-programs/special-filings/immigration-consultant-checklist/> [as of April 22, 2021].

immigration consultants likely operating in violation of federal law, please see Comment 3 of the AB 1753 (Carrillo, 2019)⁹ Senate Judiciary Committee analysis on pages 9 through 10 entitled “immigration consultants are likely operating in violation of federal law.” Also see Comment 4 on pages 10 through 11 for a discussion about how selection of forms requires an exercise of legal judgment and is the practice of law.¹⁰

4. Opposition and requests for further amendments

Asian Americans Advancing Justice-Los Angeles, Bet Tzedek Legal Services, California Immigrant Policy Center, California Rural Legal Assistance Foundation, Central American Resource Center, Coalition for Humane Immigrant Rights, Public Counsel, SEIU California, and Western Center on Law and Poverty write the following in opposition to SB 670:

Under federal law, immigration attorneys and representatives accredited by the Department of Justice (DOJ) are able to represent immigrants before the Department of Homeland Security (DHS), the Executive Office for Immigration Review (EOIR), and the Board of Immigration Appeals (BIA). These representatives are accredited through the Recognition and Accreditation (R&A) for low-income and indigent immigrants. These accredited representatives can only provide immigration legal services through recognized organizations which must be non-profit, federally tax-exempt organizations. DOJ accredited organizations can only charge a nominal fee for any service. Nonprofits that meet the requirements to apply for recognition and non-attorney staff members may apply for accreditation after completing rigorous training focused on immigration law.

Despite this clear guidance by the federal government, California is currently operating under a vague law allowing for the flourishing of a rogue industry to unlawfully practice law and placing immigrants in deportation proceedings. In California, complaints about the unauthorized practice of immigration law doubled from December 2018 to June 2019. This industry is a wolf wearing sheep’s clothing as it sells immigrants with hope, and instead, it defrauds immigrant families.

SB 670 at best is a flawed proposal with significant unintended consequences that would amplify immigration fraud, and at worst it promotes the unlawful practice of law and undermines consumer protections. This proposal is simply changing the name of an “immigration consultant,” which won’t deter unscrupulous individuals from defrauding immigrants.

⁹ See Senate Committee on Judiciary analysis of AB 1753 available at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200AB1753 [as of April 22, 2021].

¹⁰ *Id.*

[. . .]

In 2016, California started to invest in strengthening legal services to ensure low-income immigrants have access to legal representation in immigration matters and to prevent immigration fraud. In order to qualify for funding from the state, a non-profit organization must be DOJ accredited and have an attorney on-site to comply with federal law and safeguard immigrant populations. SB 670 would undermine the outgoing investments [. . .]

The Los Angeles County Board of Supervisors (County) opposes the bill unless it is amended in seven ways. The author has agreed to three of the seven requested amendments. Specifically the author has agreed to amend the bill to: (1) change “immigration form assistant” to “form preparer” throughout the bill; (2) change the education requirement to instead require that beginning on July 1, 2022, and every two years thereafter, a form preparer shall complete a course on the limits of authorized services and prohibited activities of form preparers; and (3) restore the enforcement mechanism that allows “any other party” to bring an action for injunctive relief.

The other four amendments the County has requested would: (1) prohibit new immigration consultant registrations; (2) provide conspicuous and clear disclosures; (3) expand the list of prohibited immigration forms; and (4) set fee caps that reflect the strict clerical functions consultants are authorized to provide, ensuring the fee cap encompasses completion of forms and all ancillary services.

The County asserts that SB 670 should be amended to grandfather in existing businesses while preventing new individuals from registering as immigration consultants. The County notes that “some legislators are not comfortable with eliminating them entirely. However, other states have prohibited new entrants into the industry, as a broad consensus has emerged that immigration services are inherently legal services.” The author and Committee may wish to consider amending the bill to prevent new individuals from registering as immigration consultants.

The County requests that this bill “be amended to require conspicuous signage at business locations, on websites and in all advertising that highlights fee caps, prohibited forms, and the *non-legal* nature of services that form preparers may provide.” Additionally the County asserts that form preparers “should also be required to provide a Customer Bill of Rights that ensures clear, timely and effective disclosures to clients before they sign their contract for services.” The author and Committee may wish to consider amending the bill to require conspicuous and clear disclosures.

a. County request for a fee cap

In support of their request to impose a fee cap, the County explains that immigration consultants “often charge fees that far exceed the value of the

clerical form filling and document translating they are authorized to provide. In many cases, consultants lead consumers to believe that their services are comparable to those of attorneys and charge clients accordingly. A fee cap would alert unsuspecting consumers to the non-legal nature of the service form preparers can legally provide.” The author and Committee may wish to consider adding a provision that limits fees by prohibiting form assistants from charging clients fees in excess of an amount that is reflective of the clerical nonlegal nature of the service, including all ancillary services. In the alternative, the author and Committee may wish to consider setting a fee limit comparable to the City of Chicago’s limit.¹¹ The City of Chicago sets maximum charges allowed for immigration assistance service providers. Chicago’s maximum fee which may be charged to customers for the preparation and completion of forms, letters and affidavits, is the lower of either \$10.00 per page completed or \$5.00 per quarter hour (not including applicable filing fees). The maximum charges allowed in Chicago for transcribing responses to a government agency form that is related to an immigration matter is \$5.00 per quarter hour.

b. County request to prohibit additional forms from being prepared by form preparers

In line with a recommendation in the Senate Judiciary Committee analysis for AB 638 (Caballero, 2017), the County requests that the author expand the list of forms that form preparers are prohibited from completing. SB 670 prohibits form preparers from completing forms related to the following: application for asylum and for withholding of removal; application for T nonimmigrant status; petition for U nonimmigrant status; petition under the Violence Against Women Act; and petition for Special Immigrant Juvenile Status. The County requests an amendment to prohibit form preparers from completing two other forms they describe as “complex immigration forms that require legal advice and judgment.” These forms are the I-485 and waivers of inadmissibility forms. The author and Committee may wish to amend the bill to prohibit form preparers from completing the form I-485 and waivers of inadmissibility forms.

i. The problem with form preparers completing the form I-485

Form preparers should arguably be prohibited from completing form I-485, a form that was once fairly straightforward but is now complicated and usually requires legal advice to get right. Section 245(i) of the Immigration and Nationality Act (INA) provided a mechanism whereby a person who entered the United States without inspection or fell out of status could pay a penalty fee and obtain permanent residence through a

¹¹<https://www.chicago.gov/content/dam/city/depts/dol/rulesandregs/ImmigrationAssistanceProvider.pdf> [as of April 22, 2021].

family petition process. Beneficiaries of section 245(i) went through a fairly straightforward application process, the final stage of which included completion of form I-485. Form preparers commonly completed applications for these persons that were successful. INA section 245(i) expired on April 30, 2001. Since then, the adjustment of status process has become complicated and usually requires legal advice.

A small percentage of the undocumented population is still eligible to adjust their status through section 245(i). This includes persons still waiting for a visa to become current, and certain other individuals who are “grandfathered” through a previous petition process. However, most of the undocumented population is not eligible to adjust status in the U.S. because section 245(i) no longer exists and/or the immigrant has triggered other grounds of inadmissibility. For example, departing the U.S. after being out of status for a year and returning unlawfully permanently bars the immigrant from adjusting status.

Determining whether or not an undocumented person is eligible to adjust status in the U.S. by filing form I-485 now requires a complex analysis requiring substantial legal training and judgment. In many cases, immigrants are not eligible to adjust status in the US and must proceed abroad, a process which requires approval of discretionary inadmissibility waivers in order for them to return. Some immigrants require complex waivers of inadmissibility along with their I-485 application, or they are permanently barred from adjustment of status due to adverse immigration or criminal history. The I-485 application has also grown in length and complexity. Once a 4-page application, the recent version, that was updated on June 26, 2017, is now 18 pages and includes questions whose answers necessitate legal judgment. Removal proceedings are often initiated against ineligible immigrants who file form I-485. The I-485 application fee of \$1,225 is considerable, though the total fee in many cases is \$2,760 for a single applicant, when including a penalty fee and related I-130 fee.

ii. The problem with form preparers completing inadmissibility waivers

Inadmissibility waivers require legal advice and judgment at all stages of the application process. Filling out biographic information on a form is but a small part of the process for a successful applicant. Analyzing whether an immigrant is subject to a ground of inadmissibility and thus necessitating the waiver application, is a legal determination. The applicant’s answers to questions on the waiver, as well as the determination about what evidence to include in support of the waiver, are individualized determinations that require legal advice and judgment.

The consequences of poor advice and judgment can be severe. Denied applicants often have no other means of obtaining legal status. The I-601A provisional unlawful presence waiver is arguably among the most likely waiver form completed by immigration consultants. But even when this waiver is approved by U.S. Citizenship & Immigration Services, the immigrant must still proceed abroad to complete the process of obtaining permanent residence. Information not revealed or properly addressed on the waiver application may still arise at the consular interview conducted by the U.S. Department of State and result in denial of residence despite the prior approval of the I-601A provisional waiver. This may result in prolonged family separation and in some circumstances even a permanent bar from returning to the United States.

SUPPORT

Hispanic Community Services
Immigration Secretarial Services
IPC, Inc.
La Cooperativa Campesina de California
Mehran Professional Services
National Notary Association
Nelly Reyes-Rosenberg Immigration Services
Pinedo Services
San & San Consultant
Santa Ana Professional Services
Sofia Immigration & Fingerprints Services
Tapia & Tapia
VCS Professional Services
Six individuals

OPPOSITION

Asian Americans Advancing Justice - Los Angeles
Bet Tzedek Legal Services
California Immigrant Policy Center
California League of Independent Notaries
California Rural Legal Assistance Foundation
Central American Resource Center
Coalition for Humane Immigrant Rights
Los Angeles County Board of Supervisors
Public Counsel
SEIU California
Western Center on Law and Poverty

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 1382 (Hueso, 2020) was substantially similar to SB 670. The bill hearing was cancelled at the request of the author and the bill died in the Senate Judiciary Committee.

AB 1753 (Carrillo, 2019) would have made it unlawful for a person, for compensation, other than a person authorized to practice law in this state, a person authorized to represent others under federal law in an immigration matter, or a supervised paralegal, as specified, to provide advice or services related to any immigration matter or to hold themselves out as an immigration consultant or as a person authorized to provide advice in immigration matters. The bill was held under submission by the Senate Appropriations Committee.

AB 638 (Caballero, 2017) would have repealed California's immigration consultant law and abolished the industry as of January 1, 2020. The bill failed passage on the Senate Floor.

Amendment Instructions and Mock up of SB 670

Amendment 1 is to change “immigration form assistant” throughout the entire bill to instead read “form preparer”

Amendment 2 is to revise 22443.1 as follows:

SEC. 13. Section 22443.1 of the Business and Professions Code is amended to read:

22443.1. (a) (1) Prior to engaging in the business, or acting in the capacity, of ~~an immigration form assistant~~ a form preparer, each person shall file with the Secretary of State a bond of one hundred thousand dollars (\$100,000) executed by a corporate surety admitted to do business in this state and conditioned upon compliance with this chapter. The total aggregate liability on the bond shall be limited to one hundred thousand dollars (\$100,000).

(2) The bond may be terminated pursuant to Section 995.440 of, and Article 13 (commencing with Section 996.310) of Chapter 2 of Title 14 of Part 2 of, the Code of Civil Procedure.

(b) The bond required by this section shall be in favor of, and payable to, the people of the State of California and shall be for the benefit of any person damaged by any fraud, misstatement, misrepresentation, unlawful act or omission, or failure to provide the services of the ~~immigration form assistant~~ form preparer or the agents, representatives, or employees of the ~~immigration form assistant~~ form preparer, while acting within the scope of that employment or agency.

(c) ~~An immigration form assistant~~ A form preparer who is required to file a surety bond with the Secretary of State shall also file a disclosure form with the Secretary of State that contains all of the following information:

(1) The ~~immigration form assistant's~~ form preparer's name, date of birth, residence address, business address, residence telephone number, and business telephone number.

(2) The name and address of the ~~immigration form assistant's~~ form preparer's agent for service of process if one is required to be or has been appointed.

(3) Whether the ~~immigration form assistant~~ form preparer has ever been convicted of a violation of this chapter or of Section 6126.

(4) Whether the ~~immigration form assistant~~ form preparer has ever been arrested or convicted of a crime.

(5) If applicable, the name, business address, business telephone number, and agent for service of process of the corporation or partnership employing the ~~immigration form assistant~~ form preparer.

(d) ~~An immigration form assistant~~ A form preparer shall notify the Secretary of State's office in writing within 30 days when the surety bond required by this section is renewed, and of any change of name, address, telephone number, or agent for service of process.

(e) The Secretary of State shall post information on its internet website demonstrating that ~~an immigration form assistant~~ a form preparer is in compliance with the bond required by this section and has satisfactorily passed the background check required under Section 22441.1, and shall also post a copy of the ~~immigration form assistant's~~ form preparer's photograph. The Secretary of State shall ensure that the information is current and shall update the information at least every 30 days. The Secretary of State shall only post this information and photograph on its internet website if the person has filed and maintained the bond, filed the disclosure form and photograph required to be filed with the Secretary of State, and passed the background check required by Section 22441.1.

(f) The Secretary of State shall develop the disclosure form required to file a bond under this section and make it available to any ~~immigration form assistant~~ form preparer filing a bond pursuant to this section.

(g) ~~An immigration form assistant~~ A form preparer shall submit all of the following with the disclosure form:

(1) A copy of valid and current photo identification to determine the ~~immigration form assistant's~~ form preparer's identity, such as a California driver's license or identification card, passport, or other identification acceptable to the Secretary of State.

(2) A photograph of the person with the dimensions and in the style that would be acceptable to the United States Department of State for obtaining a United States passport, as instructed by the Secretary of State.

~~(3) Satisfactory proof of completion of at least one of the following:~~

~~(A) A high school diploma or general equivalency diploma, and either a minimum of two years of law-related experience under the supervision of a licensed attorney, or a minimum of two years of experience, prior to January 1, 1999, providing service related to an immigration matter.~~

~~(B) A baccalaureate degree in any field and either a minimum of one year of law-related experience under the supervision of a licensed attorney, or a minimum of one year of experience, prior to January 1, 1999, providing service related to an immigration matter.~~

~~(C) A certificate of completion from a paralegal program that is institutionally accredited but not approved by the American Bar Association, that requires successful completion of a minimum of 24 semester units, or the equivalent, in legal specialization courses.~~

~~(D) A certificate of completion from a paralegal program approved by the American Bar Association.~~

~~(E) Exempted from this paragraph are all of the following:~~

~~(i) Immigration form assistants who have been registered and bonded with the state for at least 10 years.~~

~~(ii) Former employees of nonprofit, tax-exempt corporations that help clients complete application forms in an immigration matter free of charge or for a nominal fee, including reasonable costs, consistent with that authorized by the United States Board of Immigration Appeals.~~

~~(iii) Immigration form assistants who have the assistance of an attorney licensed to practice law in the State of California.~~

~~(4) Complete 40 hours of education on immigration law, procedure, and practice developed by a State Bar-approved provider.~~

~~(5) Complete 20 hours of continuing education courses every three years on immigration law, procedure, and practice.~~

~~(h) Beginning on July 1, 2022, and every two years thereafter, an immigration form assistant a form preparer currently registered with the Secretary of State shall file proof of completion satisfactory to the Secretary of State of 15 units of continuing legal education courses that meet the requirements of Section 6070 of a course on the limit of authorized services and prohibited activities of form preparers.~~

~~(i) The Secretary of State shall charge and collect a filing fee to cover the reasonable cost of filing the bond and submitting proof of completion of continuing legal education courses the course described in paragraph (h).~~

~~(j) The Secretary of State shall enforce the provisions of this chapter that govern the filing and maintenance of bonds and submitting proof of completion of continuing education courses the course described in paragraph (h).~~

(k) This section does not apply to employees of nonprofit, tax-exempt corporations who help clients complete application forms in an immigration matter free of charge or for a nominal fee, including reasonable costs, consistent with that authorized by the United States Board of Immigration Appeals under Section 292.2 of Title 8 of the Code of Federal Regulations.

Amendment 2 is to revise 22446.5 as follows:

SEC. 16. Section 22446.5 of the Business and Professions Code is amended to read:

22446.5. (a) A person claiming to be aggrieved by a violation of this chapter by ~~an immigration form assistant~~ a form preparer may bring a civil action for injunctive relief or damages, or both. If the court finds that the defendant has violated a provision of this chapter, it shall award actual damages, plus an amount equal to treble the amount of actual damages or one thousand dollars (\$1,000) per violation, whichever is greater. The court shall also grant a prevailing plaintiff reasonable attorneys' fees and costs.

(b) ~~The Secretary of State~~ Any other party, who, upon information and belief, claims a violation of this chapter has been committed by ~~an immigration form assistant~~ a form preparer, may bring a civil action for injunctive relief on behalf of the general public and, upon prevailing, shall recover reasonable attorneys' fees and costs.

(c) The Attorney General, a district attorney, or a city attorney who claims a violation of this chapter has been committed by ~~an immigration form assistant~~ a form preparer, may bring a civil action for injunctive relief, restitution, and other equitable relief against the ~~immigration form assistant~~ form preparer in the name of the people of the State of California.

(d) An action brought under this chapter shall be set for trial at the earliest possible date, and shall take precedence over all other cases, except older matters of the same character and matters to which special preference may be given by law.
