

Getting Immigration Help and Advice: Lawyers vs. "Notarios"/Immigration Consultants

Immigration law is one of the most complicated areas, if not the most complicated area of law in the United States. When seeking help with your immigration problems it is of paramount importance that you keep this in mind. Many people do not understand how complicated this area of law is nor do they understand how important it is to seek the professional advice of an attorney who has a thorough knowledge of immigration law and its workings.

Unfortunately, there are a number of unscrupulous individuals who have set up business in the immigrant communities in the United States who sell themselves as “Notarios”, Visa Consultants, Immigration Consultants or Paralegals. These people are not attorneys. The service they provide to their community, be it Hispanic, Korean, Chinese, German or Phillipino is inadequate, often erroneous, and very often illegal. They prey on the confusion and innocence and fears of people who have just arrived in this country who do not speak English and do not know the laws of this country. They take their money and file documents that are so inadequate that the people are deported when in fact they may have been qualified to stay in the United States.

Unfortunately for many immigrants, attorneys and document preparers -- notarios, visa consultants, immigration consultants or paralegals -- may appear to provide similar services, but in this case appearances are quite deceiving. The differences are quite significant. This article will outline the key differences, benefits and advantages to shed some light for anyone deciding what kind of help they need.

What Service Does a Document Preparer, or "Notario", Visa Consultant, Immigration Consultant or Paralegal Provide ?

To put it simply a document preparer, -- whether they call themselves a Notario, Visa Consultant, Immigration Consultant, or Paralegal -- by law may provide only one service, that of a typing service. Nothing more. These individuals can fill out an immigration forms based on the information given to them by the immigrant/applicant. This is all they can do. They can translate into English exactly the answer provided by the applicant to each of the questions on the immigration forms. They can do nothing more. They cannot provide legal advice. They cannot make a decision as to how best to answer a question. They cannot give advice as to what immigration status should be applied for. They cannot make up an answer for the applicant. They cannot coach an applicant. All they are allowed to do by law is translate the question for the applicant and then type out exactly what the applicant says in response to the question asked on the immigration

form. If the person claims to be a paralegal, they cannot provide paralegal services except under the supervision and direction of an attorney.

What constitutes the practice of law without a license. Any advice given to an individual regarding a legal matter constitutes the practice of law. Any time a choice is made as to which form is to be used or how best to answer a question on the legal form on behalf of an individual constitutes the practice of law without a license. Any time advice is given to an individual as to what legal strategy to use in a legal matter constitutes the practice of law without a license. As does negotiating for a client, drafting legal documents, representing in legal negotiations or in court. In short, a petition preparer or paralegal can provide nothing more than a typing service unless they are working under the direction and supervision of an attorney.

The services provided by such petition preparers are in general inadequate, often erroneous and most often illegal. California Business and Professions Code Section 6162 restricts the practice of law to active members of the State Bar of California. Paralegals and petition preparers are prohibited under California law section 6450 (b)(5) from engaging in conduct that constitutes the unlawful practice of law. Anyone other than an attorney is prohibited from performing the following activities:

- a. Providing legal advice
- b. Representing a client in court
- c. Selecting, explaining, drafting, or recommending the use of any legal document to or for any person
- d. Acting as a runner or capper
- e. Engaging in conduct that constitutes the unlawful practice of law
- f. Contracting with or being employed to provide legal services
- g. Establishing the fees to charge a client for the services the paralegal or petition preparer performs
- h. Inducing a person to purchase legal services or enter into a transaction from which income or profit or both, may be derived.

Immigration Consultants Cannot Give Legal Advice or Represent a Client in Court,

Unlike an immigration attorney, a document preparer is neither qualified, nor legally allowed to provide legal advice or legal guidance of any kind. If they do provide legal advice they are practicing law without a license and such action constitutes a crime. This is an extremely important distinction between what an attorney can offer and what a document preparer can offer.

To those in the Hispanic community this distinction may be very confusing because in their country the term "notario" refers to an attorney who can deal with certain legal issues. This is not the case in the U.S. In the United States a notary or notario is simply a

“Notary Public”, who is someone that can administer oaths and verify the authenticity of signatures.

Notarios, visa consultants and immigration consultants cannot represent anyone in court. To get around this restriction, many Notarios and consultants will hire an attorney for their clients when the client has a court appearance or interview. Such actions on the part of the Notarios and consultants are against the law and again put them into the category of practicing law without a license. Notarios, Visa Consultants and Immigration Consultants are limited to filling out forms, and nothing more.

More specifically, Notarios and consultants and paralegals cannot select, explain, draft or recommend the use of any legal document to or for any person. They cannot contract with or be employed by a person other than an attorney. They cannot establish fees to charge a client for services that constitute legal services.

Implications of Poor Legal Advice in Immigration Cases

I have seen firsthand how inadequate legal advice, poor client preparation and shoddy strategy in court can turn an otherwise good case into a failed attempt, or worse, a deportation proceeding. Immigrants seeking help with an immigration issue should be aware of the limitations of choosing a document preparer over a qualified immigration attorney. The cost benefit may seem appealing, but the potential risks involved far outweigh the additional expense of competent legal counsel, especially when potential deportation, denial of visa, loss of employment or denial of residency or citizenship are at stake.

It's unfortunate that many immigrants become unsuspecting victims of misleading advertisements and other business solicitation efforts on the part of immigration document preparers. Recently in Southern California, several "notarios" were charged criminally for the unlawful practice of law and one respected immigration judge denounced their business practices in an immigration court proceeding.

The bottom line is always consult with a qualified immigration attorney before making any important decisions regarding immigration.