

Immigration Information

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14.4 Decisions of Administrative Appellate Bodies.

While the statutes and regulations are the primary sources of immigration law, the application of the law regulations to actual cases (i.e., the interpretation of the laws and regulations) is also important because you guidelines for handling similar cases. The Board of Immigration Appeals (BIA), located in Falls Church, Virginia, is the major administrative appellate body that decides immigration matters. Published **BIA decisions** designated as precedent by the Board are binding on all USCIS officers and immigration judges unless overturned by the Attorney General or a Federal court.

The majority of appeals reaching the Board involve orders of removal and decisions on applications for removal. Other appellate matters within the Board's jurisdiction include the following: exclusion of aliens for admission to the United States; visa petitions to classify the status of alien relatives for the issuance of immigrant status; applications to preserve residence for naturalization purposes (Form N-470); fines imposed upon carriers for the violation of immigration laws; and motions for the reopening and reconsideration of previously rendered decisions. Certain decisions may be certified to the Board by other immigration officials.

BIA decisions can be found at <http://www.usdoj.gov/eoir/efoia/bia/biindx.html>. The BIA bulletin board (Interim Decisions) on cc:Mail contains recently published decisions. Your district may also have paper BIA decisions that have not yet been included on I-LINK. Significant BIA decisions are published and included on I-LINK to make them readily accessible by USCIS employees. Section 3.1 of 8 CFR, "Executive Office of Immigration Review," subpart A, "Board of Immigration Appeals," discusses the organization of the BIA authority.

When first published, **BIA precedent decisions** are designated with an "interim decision" number. Precedent decisions are collected and published chronologically. These are entitled Administrative Decisions under the Immigration and Nationality Laws of the United States. Once published in this format, precedent decisions may still be referred to by their interim decision number, but are more likely to be referred to by volume number. (For example, 19 I&N 234 is found in volume 19, beginning on page 234.) Volume 15 contains a cumulative index for cases published in volumes 1–15, and volume 20 contains a cumulative index for cases published in volumes 16–20. Volumes 16–22, along with those decisions issued since the publication of volume 22, are available on-line at the EOIR website: <http://www.usdoj.gov/eoir/vll/libindex.html>. You can find relevant cases by searching under a subject heading in the index.

Many cases not appealable to the BIA are appealable internally to the USCIS Administrative Appeals Council (AAO). The AAO may also publish precedent decisions, which are indexed and published in the same manner as those of the BIA. The AAO may also submit decisions to the BIA for certification, which may, in turn, be designated by the Board as a precedent decision and published.

The Office of the Chief Administrative Hearing Officer (OCAHO) only hears cases regarding certain fine penalties. Directives issued by the OCAHO designated with a "P" following their file number and issued in the form of memoranda and cables are binding on USCIS employees, as are other policy issuances such as materials contained in I-LINK.

14.5 Decisions of Federal Courts.

The Federal court system is divided into three levels: district courts, circuit courts of appeal, and the U.S. Supreme Court. USCIS is sometimes involved in litigation in these courts that may affect laws under which USCIS operates. Although not as common, judicial decisions not directly involving USCIS can affect USCIS operations. You need to understand these decisions and the authority of the federal courts in order to know which decisions affect various areas of immigration law you will be responsible for implementing.

The decision of a court has precedent value only within the court's territorial jurisdiction. For example, opinions of the Supreme Court have precedent value nationally because all lower courts must follow them. The decisions of a court of appeals bind the courts within the circuit's jurisdiction. However, decisions of a district court are not binding on federal courts in any other district.

District courts are the trial bodies of the federal court system. Some states have only one district court; other states have several district courts. Decisions by judges within the same district can influence rulings in similar cases. However, a district court judge will occasionally certify a case as a class action suit and issue an injunction that applies to all members of the defined class. If the members of the class are located nationwide, the injunction applies nationally. Thus injunctions or other orders requiring USCIS to act in a certain way are issued from the district courts. In addition, decisions in other districts can be persuasive and used by judges deciding a similar case in their district.

Appeals from a district court are taken to the courts of appeal in 13 circuits. Again, decisions by one of these courts are binding only upon the district and circuit court judges within that circuit. While an interpretation of the law is binding only on judges in that circuit, judges can look to other circuits for decisions which are similar to those being decided within their circuit. It is important for you to be aware of specific interpretations of the law in your district and circuit, as well as those applying nationwide.

The Supreme Court of the United States generally hears appeals from the circuit courts of appeal. Decisions of the Supreme Court are binding upon all U.S. courts. *Interpreter Releases*, described later, usually mention recent judicial decisions affecting the Service. Internal Service communications and transmittals will also refer to you of decisions affecting your duties. Read these carefully when you receive them, and store them for future reference.

14.6 Other USCIS and Governmental Publications.

There are a number of other publications available from the government which can be valuable in conducting research. The following list, while far from being all-inclusive, can be a useful starting point:

- General Counsel Opinions – As an adjudications officer, it is your duty to understand and apply the immigration laws to countless sets of individual facts or cases. These facts sometimes raise legal questions that may be difficult and unfamiliar. The Office of General Counsel (OGC) addresses some of these questions and advises USCIS officers on their proper response to them. Each year, OGC collects and publishes General Counsel Opinions that its office issues to other components of USCIS and DHS. (I-LINK contains General Counsel Opinions from 1989 –1999.) OGC encourages every officer who has a legal question to consult with local USCIS counsel.
- USCIS Uniform Subject Filing System (USFS) and Subject File Index – All policy memoranda, correspondence and other similar materials (but not material pertaining solely to an individual alien) created by USCIS must be housed chronologically in subject files organized in accordance with the subject file index. The USFS was established as of October 1, 1995, for all covered records created on or after that date.
- Yearbook of Immigration Statistics – Published annually, each edition of the Yearbook provides immigration data for a particular fiscal year along with related historical information. The major topics covered (

vary from edition-to-edition) generally include such areas as: immigrants admitted for legal permanent residence; refugees approved and admitted; nonimmigrant admissions; aliens naturalized; and aliens apprehended and removed.

- USCIS Fact Book (M-338) – Published by the USCIS Statistical Division (but necessarily annually pocket-sized booklet provides a summary of recent immigration data along with other useful information as organizational charts, addresses of DHS offices, a glossary of terms, and a chronology of immigration legislation.
- DOS Foreign Affairs Manual – Published by the Department of State, this multi-volume manual is commonly known as the FAM and provides extensive guidance to consular officers. Volume 9 of the FAM is of particular value to USCIS officers and key portions of volume 9 (9 FAM 40, 41, 42, 45 along with the visa office directory and a compendium of consular forms) are incorporated into *I-LINK*.
- DOL Occupational Outlook Handbook and Dictionary of Occupational Titles – These two publications from the Department of Labor are extremely useful in the adjudication of employment-based petitions. For each occupation listed, they provide information on such matters as the duties, training, and educational requirements involved.
- GPO Style Manual – Published by the Government Printing Office, this volume sets forth government standards on such matters as capitalization, punctuation, spelling, and much more. It is most valuable to anyone involved in writing memoranda, decisions, letters and other material for the government.

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