



**U.S. Department of Homeland Security  
Citizenship and Immigration Services**

# **Administrative Appeals Office**

**CIS Ombudsman Third Annual Conference  
October 24, 2013**

# Administrative Appeals Office (AAO)

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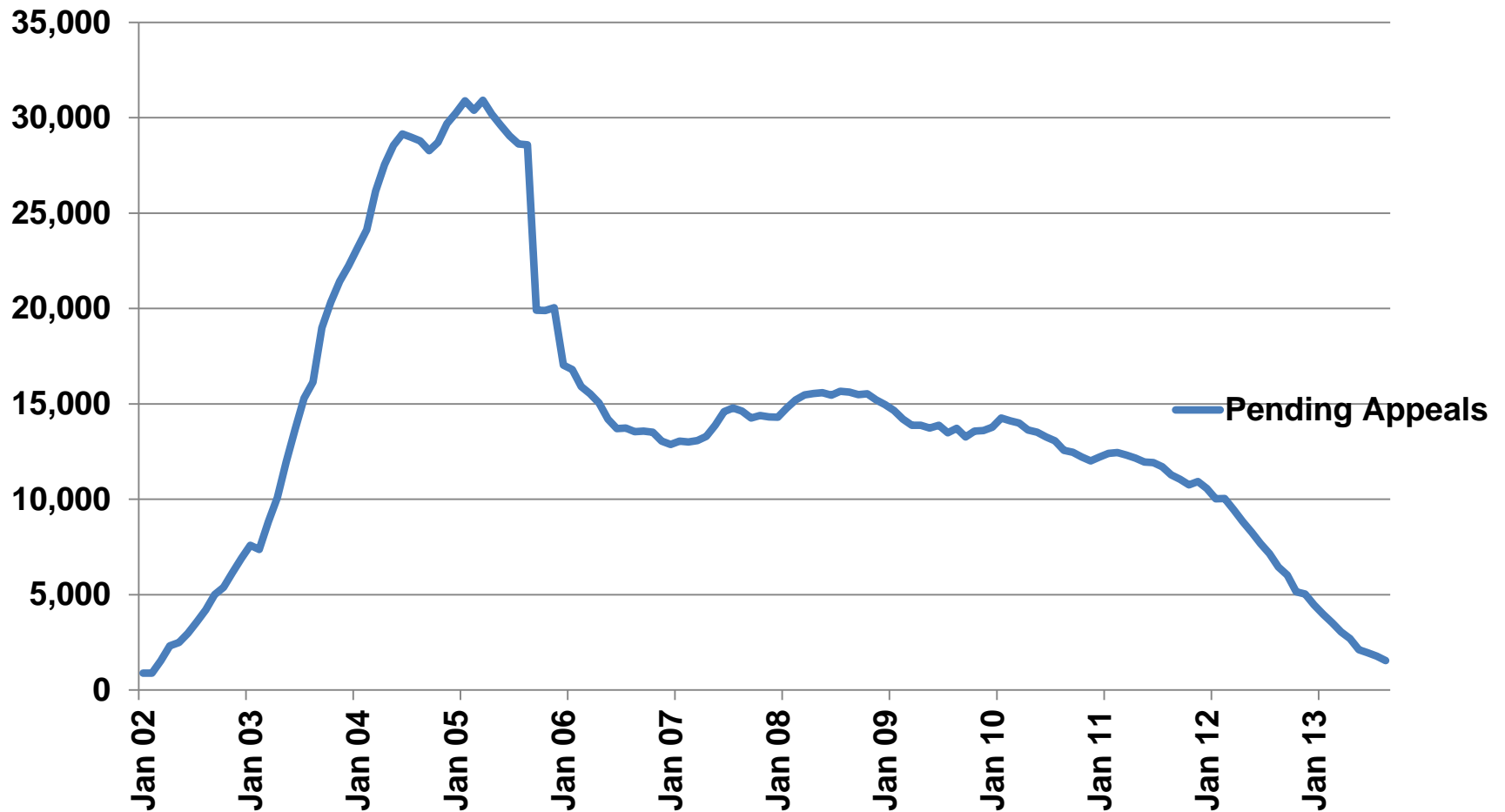
AAO adjudicates appeals and renders the final administrative decision on certain denied petitions & applications

# A Brief History of the AAO

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- Pre-AAO: Concurrent appellate jurisdiction by 4 INS Regional Commissioners and 3 overseas District Directors
- 1983: **Administrative Appeals Unit** established to provide “a more expeditious appeals procedure with uniform, consistent decisions ... and additional precedent decisions available as guidance to the public.” 48 F.R. 43160 (9/22/83)
- Separate **Legalization Appeals Unit** established to adjudicate appeals of denied benefits based on the 1986 Immigration Reform and Control Act
- 1994: AAU & LAU consolidated into the **AAO**

# The backlog years



# Jurisdiction

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- Appellate authority delegated by DHS Secretary. DHS Delegation No. 0150.1
- Jurisdiction over some 50 distinct immigration case types. See 8 CFR 103.1(f)(3)(iii) (as in effect on 2/28/03)
- [www.uscis.gov/aao](http://www.uscis.gov/aao)

# Standard of Review

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- Standard of review: *de novo* (fact & law)
  - The AAO is not required to defer to findings made in the initial decision
  - The AAO's decision may address issues not raised in the initial decision

# Standard of Proof & Burden of Proof

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- Preponderance of the evidence
  - *Matter of E-M-*, 20 I&N Dec. 77 (Comm'r 1989);  
*Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010)
- Petitioner/applicant has the burden to establish eligibility for the immigration benefit sought
  - INA § 291; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013)

# Appeals Process

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- See 8 CFR 103.3
- USCIS officer denies benefit
- Affected party may appeal by filing:
  - Form I-290B (check “appeal” box)
  - with fee (\$630)
  - new, original Form G-28
  - within 33 days
  - to specified address
  - *in accordance with the form instructions*



# Appeals Process (cont'd)

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- Initial field review (IFR)
  - Field may take “favorable action” (approve benefit; reopen and RFE)
  - If favorable action *not* taken, field forwards appeal to AAO and issues Notice of Transfer

# Appeals Process (cont'd)

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- AAO adjudicates & issues written decision
  - Dismiss appeal
  - Sustain appeal
  - RFE or NOID prior to final decision
  - Remand to field office for additional action

# Motions

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- Upon receipt of an adverse AAO decision, affected party may file:
  - Motion to Reopen (new evidence), or
  - Motion to Reconsider (assert AAO error)
- In accordance with Form I-290B instructions (33 days; \$630 fee; proper address)
- *See generally* 8 CFR 103.5

# Certifications

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- Service Center and District Directors may certify a decision to the AAO for review when the case involves an “*unusually complex or novel issue of law or fact.*”  
See 8 CFR 103.4
- The initial decision certified to the AAO is not final until the AAO issues a decision

# Non-Precedent Decisions (NPDs)

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- Vast majority of AAO decisions are NPDs
- Apply existing law/policy to unique factual record
- Decision binds parties to the case but does not serve to create or modify USCIS guidance or practice

# Precedent Decisions (PDs)

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- DHS may file with DOJ an AAO decision for publication as precedent. 8 CFR 103.3(c)
- If DOJ approves the decision for lawfulness, EOIR will publish the AAO decision in the same manner as BIA precedent decisions
- PDs serve as binding legal authority in later proceedings involving the same issue(s)

# AAO Initiatives

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- Timely adjudication (backlog eliminated)
- Timely e-posting of redacted NPDs
- Improved I-290B form and instructions
- Improved web content; AAO Practice Manual
- Renewed effort to publish PDs
- Increased stakeholder engagement

# AAO Initiatives (Cont'd)

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- Proposed rulemaking (concepts under consideration...)
  - Restructure to facilitate understanding
  - Codify standard of review
  - Re-insert list of jurisdiction
  - Clarify deadlines and available exceptions
  - Address submission of briefs
  - Clarify evidentiary rules on appeal



# AAO Contact Information

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