



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

Administrative Appeals Office: Precedent Decisions

Outline

- What is a precedent decision?
- Precedent History
- What can a precedent do?
- What can a precedent ***not*** do?
- DHS – DOJ Actions



What is a precedent decision?

A precedent decision is a decided case that furnishes a basis for determining later cases involving similar facts or issues.

- Black's Law Dictionary

AAO Precedent Decisions

- DHS may designate Administrative Appeals Office (AAO) decisions to serve as a precedent in future proceedings involving the same issues.
- Precedent decisions are binding on all DHS employees in the administration of the Immigration and Nationality Act.
- See 8 CFR 103.3(c)

What is a precedent decision?

A precedent decision must be “published” in accordance with the regulations before it is considered a binding precedent.

The precedent decisions of the Board of Immigration Appeals (BIA) and the AAO are published in the bound volumes of the “Administrative Decisions Under Immigration and Nationality Laws of the United States” (I&N Dec.).

What is a precedent decision?

Citation format:

Matter of X- M- C-, 25 I&N Dec. 322 (BIA 2010)

For USCIS cases: The parenthetical note would be (USCIS 2010).

What is a precedent decision?

In addition to the citation to the bound volumes of the I&N Dec. series, a precedent decision may also be referred to as an:

“Interim Decision”

Interim Decisions are identified by a unique number that is assigned by the Executive Office for Immigration Review.

What is a precedent decision?

- Originally, the “Interim Decision” number provided a uniform citation format for use until the decision was included in the bound volumes of the I&N Decisions.
- Now, the I&N Dec. citation is usually available immediately upon publication on the EOIR website.
- Interim Decision number is still assigned, but not as important as it once was.

History of Precedent Decisions

The first INS precedent decision was published in 1947. Prior to its dissolution, the INS published 370 I&N Decisions.

History of Precedent Decisions

- The INS averaged **6.6 precedent decisions** per year from 1975 to 1990.
- The highest number of precedent decisions authored by the Administrative Appeals Unit (predecessor to the AAO) in a single year: **12** in 1988.
- The **largest volume** of INS precedents occurred during the years after INA Amendments of 1965: 1965 (48 precedents), 1966 (55), 1967 (55), and 1968 (32).

History of Precedent Decisions

On February 28, 2003 the USDOJ amended title 8 of the Code of Federal Regulations by adding provisions relating to the issuance of DHS precedent decisions. 68 FR 9824.

In anticipation of the transfer of the functions of the INS to DHS in accordance with the Homeland Security Act of 2002, USDOJ reassigned the authority to designate a precedent from the INS Associate Commissioner for Examinations to the Secretary of Homeland Security.

8 C.F.R. § 103.3(c) (2003)

“The Secretary of Homeland Security . . . may file with the Attorney General decisions relating to the administration of the immigration laws of the United States for publication as precedent in future proceedings, and upon approval of the Attorney General as to the lawfulness of such decision, the Director of the Executive Office for Immigration Review shall cause such decisions to be published in the same manner as decisions of the Board and the Attorney General.”

What can a precedent decision do?

- **Binding.** By regulation, precedents bind all DHS officers in the administration of the Immigration and Nationality Act.

What can a precedent do?

- Precedent decisions can interpret and clarify existing statutes and regulations.
- Precedent decisions can correct agency error or overturn previous precedent.

DHS & DOJ Reviewing Components

Proposed precedent decisions are reviewed by the following prior to publication:

- USCIS Administrative Appeals Office (AAO)
- USCIS Office of Chief Counsel (OCC)
- USCIS Director
- DHS Office of General Counsel (OGC)
- DOJ Executive Office for Immigration Review (EOIR)
- DOJ Office of Legal Counsel (OLC)
- DOJ Board of Immigration Appeals (BIA)

DHS – DOJ Process: AAO

1. A designated team within AAO meets periodically to identify and discuss cases in which the issuance of a precedent decision may be appropriate.
2. When such cases are identified, a proposed precedent decision is drafted by the AAO and reviewed by other Headquarters components, with final review and clearance by the USCIS Director.
3. The draft decision is then forwarded to DHS Office of the General Counsel for review and forwarding to DOJ
4. After final approval by the Attorney General, the decision is ready for publication.