

U.S. Citizenship and Immigration Services  
Administrative Appeals Office  
Stakeholder Engagement  
May 28, 2014

On May 28, 2014, the Administrative Appeals Office (AAO) hosted an in-person and telephone engagement to provide updates on the AAO and answer questions from participants. During the session, the AAO provided information on: the history and role of the AAO; processing times; the new Form I-290B and instructions; the updated AAO website; faster posting of AAO non-precedent decisions; two new policy memos; and the precedent decisions process. After the stakeholder question and answer session, the AAO also conducted a listening session on a future proposed rulemaking relating to motions and appeals.

### **Background**

The AAO is responsible for issuing immigration appeals decisions, working with USCIS leadership in issuing precedent decisions, and providing the public with clear and accessible information about the AAO and the immigration appeals process.

The AAO conducts appellate review of approximately 50 benefit categories. The AAO's jurisdiction derives from the authority delegated to U.S. Citizenship and Immigration Services (USCIS) by the Secretary of Homeland Security. Prior to 1983, appellate authority was shared concurrently by the then-commissioner of the Immigration and Naturalization Service (INS), four regional commissioners and three overseas district directors. In 1983, the INS centralized appellate review in the Administrative Appeals Unit (AAU) to promote timeliness and consistency. INS later established the Legalization Appeals Unit (LAU) to adjudicate Legalization and Special Agricultural Worker appeals. In 1994, INS consolidated the two units to create the AAO.

### **Processing Times**

In Fiscal Year 2013, the AAO eliminated a longstanding case backlog. Throughout Fiscal Year 2014, the AAO has maintained current processing times, which means that the AAO is issuing case decisions within six months of the AAO receiving the file. Throughout this fiscal year, the AAO received a lower than normal number of appeals, so it has been able to issue decisions in many benefit categories within three to four months of the AAO receiving the file.

Once an immigration appeal is filed with USCIS, there are two steps to the appeals process. To understand AAO processing times, it is crucial to understand both steps. Under the regulations, when an appeal is filed with USCIS, the office that denied the original application or petition – this could be a USCIS Field Office, a USCIS Service Center, the National Benefits Center or a USCIS International Office – will determine whether to take favorable action to grant the benefit request. This first step in the appeals process is called the “initial field review.” The initial field review should be completed within 45 days. If the original office does not take favorable action

during the initial field review, it will promptly forward the appeal to the AAO for appellate review, which is the second step of the appeal process. The AAO's appellate review should be completed within six months of the date that the AAO receives the appeal from the original office.

From time to time, the AAO receives status queries from customers whose appeals remain with the field office in the initial field review step of the process, and their appeals have not yet arrived at the AAO. The AAO cannot answer queries regarding appeals that it has not yet received; these inquiries must be directed to the office conducting the initial field review. USCIS components are working to address delays in initial field review processing.

The AAO encourages stakeholders to contact the office that made the initial decision in your case or the National Customer Service Center (1(800) 375-5283) if you have not received any correspondence (e.g., a notice of transfer to the AAO) within 75 days of filing the appeal. Specific guidance and contact information are available on the [AAO website](#).

### **Access to Appeals-Related Information**

The AAO strives to provide clear and accessible information to the public about the AAO and the appeals process.

In January 2014, USCIS released a new [Form I-290B](#) and associated [instructions](#). The revised form instructions clarify the process, standards, and filing requirements for both motions and appeals. Drop down boxes were added to the form to capture the underlying benefit type and original field office. This will improve USCIS's ability to track cases through the initial field review stage of appeal and to align staffing with projected receipts.

In March 2014, the AAO launched a revamped [website](#) that explains the role of the AAO, the appeals process, and the difference between precedent and non-precedent decisions. It also lists the form types over which the AAO has appellate jurisdiction, and it includes a "[Contact Us](#)" page and [Quick Links](#) page.

The AAO also streamlined the process for redacting and posting AAO non-precedent decisions on the website. AAO non-precedent decisions are now posted on the [website](#) within two to three weeks of issuance; previously, it took up to a year to post after issuance of the decision. The AAO is working on additional enhancements to improve public access to the decisions.

In the Fall of 2014, the AAO anticipates the release of a new AAO Practice Manual. Similar to the BIA's Practice Manual, the AAO's manual will provide guidance to the public and to immigration practitioners on all aspects of the appeals process.

The AAO invited stakeholders to provide feedback so we can continue to improve upon these informational services.

### **Role of the AAO**

On November 18, 2013, the AAO issued a [Policy Memorandum](#) to clarify to USCIS officers the role of the AAO and the distinction between and proper use of the AAO's non-precedent and precedent decisions. The AAO does not independently establish policy or legal interpretations; it defers to the USCIS Senior Policy Council to prescribe agency policy and to the USCIS Office of the Chief Counsel (OCC) on matters of legal interpretation. Reviewing thousands of appeals per year, we have a unique perspective to identify gaps and ambiguities in law and policy to help USCIS and DHS resolve and provide clear guidance to officers and the public.

While the AAO does not independently change or otherwise establish agency policy, the appeals process is a viable mechanism by which an advocate can suggest a new or different legal interpretation or policy. When the AAO identifies a novel issue or receives persuasive arguments for changing existing interpretations or policies, the AAO will elevate the issue(s) within USCIS for deliberation and resolution.

On July 2, 2013, the AAO issued a [Policy Memorandum](#) to guide USCIS officers on the proper use of the certification mechanism contained in 8 C.F.R. § 103.4. A USCIS field office may certify a decision to AAO for review when the case involves “unusually complex or novel issues of law or fact” pursuant to 8 CFR § 103.4. The AAO only receives a small fraction of the benefit requests considered by the agency, so the AAO does not necessarily see the full range of fact patterns or issues that are in the field. Field certification affords USCIS an opportunity to identify issues and cases that may warrant precedent guidance.

### **Precedent Decisions**

Under the regulations at 8 C.F.R. § 103.3(c), the Secretary of Homeland Security may refer selected decisions to the Attorney General, requesting publication as precedents in the same volumes as precedential decisions of the Board of Immigration Appeals. USCIS and DHS are committed to providing more AAO precedent decisions to promote consistency and quality in immigration benefit adjudications. Proposed AAO precedent decisions must be thoroughly vetted through DHS and then approved by the Attorney General before publication as a precedent. This process involves complex analysis and review and is often lengthy. The AAO has a number of proposed precedent decisions in various stages of review. As with the BIA and federal courts, precedent decisions need not be limited to announcing new legal interpretations and policies; AAO precedent decisions may also serve to reinforce existing law and policy to promote consistent adjudications.

While there is no formal motion mechanism in this regard, the AAO will consider correspondence requesting publication of a non-precedent decision as a precedent. The AAO also welcomes feedback on issues that the public believes would benefit from additional guidance through precedent decisions.

### **Contact and other AAO-Related Information**

Please visit the [AAO website](#) for additional information. The AAO strives to provide outstanding customer service and welcomes communication by telephone, fax, and mail (regular and express service).

Telephone: 1-703-224-4501

Fax: 1-703-778-7483

U.S. Citizenship and Immigration Services  
Administrative Appeals Office  
20 Massachusetts Ave., NW, MS 2090  
Washington, D.C. 20529-2090

*Do not mail new appeals or motions directly to the AAO at the mailing address above. This address is for submission of briefs and other correspondence. You must file appeals and motions as explained in the [Form I-290B instructions](#).*

### **Questions posed during the engagement period and AAO answers**

Q: How many precedent decisions are in the pipeline?

A: There are eight to ten proposed precedent decisions in various stages of review. There is a long pipeline that involves many components.

Q: What is the course of action if an EB-5 appeal was filed and no receipt notice was received?

A: The petitioner or attorney on record should contact the National Customer Service Center (1 (800) 375-5283) or the Immigrant Investor Program at [USCIS.ImmigrantInvestorProgram@dhs.gov](mailto:USCIS.ImmigrantInvestorProgram@dhs.gov).

Q: Are other components involved in the precedent decision vetting process aware of the need to publish precedent decisions and is there anything we can do to make the importance of the process known?

A: Those components involved understand the priority of publishing precedent decisions, but we certainly welcome stakeholder input drawing attention to the value of precedent decisions.

Q: The AAO previously requested *amicus* briefs on the Kazarian decision. Will a precedent decision come from that? Will the AAO request *amicus* briefs in the future?

A: We are unable to indicate whether a precedent decision will be issued on a particular matter or case. The AAO will solicit *amicus* briefs in the future as appropriate. Solicitations will be made according to the method detailed on our website.

Q: Why is Form I-192 (Application for Advance Permission to Enter as Nonimmigrant) not part of the AAO's jurisdiction?

A: The AAO's appellate jurisdiction derives from the Secretary's delegation pursuant to 8 CFR § 2.1, and appellate jurisdiction is not currently delegated with respect to the Form I-192. The AAO noted that the stakeholder may raise the issue of AAO's jurisdiction as it relates to specific forms in the portion of the engagement dedicated to the rulemaking listening session, including suggestions for USCIS to consider for future rulemaking.

Q: What is the best practice in filing a brief to supplement an appeal? If the brief is sent directly to the AAO, does that preclude the officer in the field from conducting the initial field review from seeing the supplemental brief?

A: Often, yes. While the regulations permit an affected party to file a brief separate from and subsequent to the filing of the Form I-290B appeal, non-concurrent filing of the appeal and brief complicates USCIS' ability to match the file and the brief in time for the field office to consider the brief during the initial field review stage. To ensure that the field office has the opportunity to consider arguments raised in a brief during the initial field review stage, you may submit the brief concurrently with the Form I-290B appeal filing.

Q: Is appealing a clear agency error without a filing fee possible?

A: Unless a fee is not required or is waived, the fee must accompany all motions and appeals filed on Form I-290B. On March 23, 2012, USCIS issued a memorandum entitled, "Expedited Case Review Process for Specifically-Defined Administrative Errors." This memo authorized correspondence-based reconsideration (i.e., without formal motion and appeal by filing Form I-290B with fee) for four specific categories of administrative error relating to situations where USCIS erroneously determined that the party failed to timely appear or respond to RFEs, NOIDs, and biometric appointments. Such requests for reconsideration are not "appeals" to the AAO and must be filed with the office that issued the unfavorable decision. This mechanism does not toll the prescribed timeframe for filing an appeal with the AAO.

Q: What identifying information should be put on correspondence sent to the AAO if an appeal receipt number has not been received? Is it best to include the receipt number of the underlying petition or the A-file number?

A: It is helpful to include as much identifying information as is available. If an appeal receipt number has not been received, please so explain and include the available receipt number for the underlying benefit request being appealed as well as any associated A-number.