



November 18, 2013

PM-602-0086.1

Policy Memorandum

SUBJECT: Precedent and Non-Precedent Decisions of the Administrative Appeals Office (AAO)

Purpose

This policy memorandum (PM) and accompanying revisions to the Adjudicator's Field Manual (AFM) guide U.S. Citizenship and Immigration Services (USCIS) officers on the distinction between and proper use of precedent and non-precedent Administrative Appeals Office (AAO) decisions. This PM revises Subchapter 14.4 of the AFM; AFM Update AD13-14. PM 602-0086 is hereby rescinded.

Scope

Unless specifically exempted herein, this PM applies to and binds all USCIS employees.

Authority

8 CFR 103.3(c)

Background

The regulation at 8 CFR 103.3(c) provides a mechanism by which the Secretary of Homeland Security may, with the Attorney General's approval as to the lawfulness of the decisions, designate Department of Homeland Security (DHS) decisions to serve as precedents in all future proceedings involving the same issue(s). Except as modified or overruled by later precedent decisions, statutory changes, or regulatory changes, these precedent decisions are binding on DHS employees in the administration of the Immigration and Nationality Act (the "Act").

Prior to the establishment of the AAO in 1983, the authority to issue precedent decisions was shared by the Immigration and Naturalization Service (INS) Commissioner, the four Regional Commissioners, and the District Directors. Upon creation of the AAO, all legacy INS precedent decisions were published under the authority of the INS Commissioner and the Associate Commissioner for Examinations. In 2003, with the creation of DHS, the authority to designate precedent decisions was vested in the Secretary of Homeland Security.

Like many administrative appellate entities, the AAO issues the vast majority of its appellate decisions in the form of non-precedent decisions.¹ While USCIS strives to issue more precedent decisions to guide both officers and the public, non-precedent decisions are and will remain the predominant vehicle for resolving appeals.²

Precedent vs. non-precedent decisions.

This PM guides officers on the proper role and use of precedent and non-precedent AAO decisions.

Precedent decisions:

Pursuant to 8 CFR 103.3(c), AAO decisions may be designated by the Secretary of Homeland Security or the General Counsel,³ with the Attorney General's approval as to the lawfulness of the decisions, to serve as precedents in future proceedings. Precedent decisions may announce new legal interpretations or agency policy, or may reinforce existing law and policy by demonstrating its application to a unique factual record. Like the designated decisions of the Board of Immigration Appeals (BIA) or the Attorney General, designated AAO decisions shall serve as a binding legal authority for determining later cases involving the same issue(s). Unless modified or overruled by a later statute, regulation, or precedent decision, officers and the public may rely upon and cite a designated AAO precedent decision as authority in subsequent cases involving the same issue(s).

Non-precedent decisions:

Non-precedent AAO decisions apply existing law and policy to a unique factual record in an individual case. The decision is binding on the parties to the case but does not create or modify agency guidance or practice. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.⁴ Thus, non-precedent decisions do not provide a basis for

¹ The AAO uses the term "non-precedent" instead of "unpublished" to avoid confusion regarding the status of non-precedent decisions that are discussed in immigration periodicals or available in electronic format on government and non-government websites.

² The AAO also reviews decisions through the certification process. See "Certification of Decisions to the Administrative Appeals Office (AAO)," PM-602-0087 (July 2, 2013). Because decisions certified to the AAO generally present unusually complex or novel issues of law or fact, the AAO carefully considers whether such issues warrant guidance through the issuance of a precedent decision. The AAO will entertain requests to re-issue a non-precedent decision as a precedent decision pursuant to 8 CFR 103.3(c), but such requests are granted sparingly.

³ In accordance with 8 CFR 103.3(c) and 1003.1(i), the Secretary designated the General Counsel as the official within DHS who may file precedential decisions with the Attorney General, and the Attorney General has approved that designation. The General Counsel may delegate that authority to a Deputy General Counsel.

⁴ The AAO 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. If an officer nonetheless believes that a non-precedent decision appears to depart from or create new agency policy or legal interpretation, the officer is encouraged to raise the matter through his or her chain of command. Also, officers are encouraged to consult with counsel if they have questions related to the legal requirements as stated in the decision.

applying new or alternative interpretations of law or policy. A USCIS officer may not rely upon, nor cite to, a non-precedent decision as guidance or legal authority in other decisions. However, a USCIS officer may consider a non-precedent decision for instructional value in addressing the issue(s) in that same case.

On the transmittal page of non-precedent decisions, the AAO will include similar text to guide both officers and the public on the proper role and use of non-precedent decisions.

Distinguishing precedent and non-precedent decisions in practice.

Precedent decisions may be recognized and ultimately located by their unique citation format. Precedent decisions are generally designated using the phrase “Matter of,” followed by the name of the affected party. All precedent decisions are collected and published in the Administrative Decisions Under Immigration and Nationality Laws of the United States, which is indicated as “I&N Dec.” and accompanied by volume and page number. Proper citations conclude with a parenthetical statement to indicate the office that authored the decision and the year of publication. The following are examples of proper precedent decision citations:

- *Matter of Skirball Cultural Center*, 25 I&N Dec. 799 (AAO 2012);
- *Matter of Caron Int’l, Inc.*, 19 I&N Dec. 791 (Comm’r 1988); and
- *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981).

Although non-precedent decisions are frequently discussed in immigration periodicals or posted on websites, such decisions are not considered published or precedential for purposes of 8 CFR 103.3(c) or 1003.1(i). These publications often reference non-precedent decisions by A-number or receipt, frequently in a citation format similar to an official precedent decision. To reduce confusion, effective upon issuance of this PM, AAO non-precedent decisions will clarify that the decision is not a precedent.

Policy

USCIS officers will follow the policy stated in the AFM, as amended by this PM, in considering the force and effect of precedent and non-precedent decisions of the AAO.

Implementation

The AFM is revised as follows:

☞ 1. Subchapter 14.4 is revised to read as follows:

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14.4 Decisions of Administrative Appellate Bodies.

(a) Administrative appellate bodies may issue precedent and non-precedent decisions. Each type of decision has a distinct role, as follows:

(1) Precedent decisions

Designated DHS, BIA, and Attorney General precedent decisions shall serve as binding legal authority for determining later cases involving the same issue(s). Unless modified or overruled by a later statute, regulation, or precedent decision, officers and the public may rely upon and cite a designated precedent decision as authority in subsequent cases involving the same issue(s).

(2) Non-precedent decisions

Non-precedent decisions apply existing law and policy to a unique factual record in an individual case. The decision is binding on the parties to the case but does not create or modify agency guidance or practice. A USCIS officer may not rely upon, nor cite to, a non-precedent decision as guidance or legal authority in other decisions. However, a USCIS officer may consider a non-precedent decision for instructional value in addressing the issue(s) in that same case.

(b) Distinguishing precedent and non-precedent decisions in practice.

Precedent decisions may be recognized and located by their unique citation format. Precedent decisions are generally designated using the phrase “Matter of,” followed by the name of the affected party. All precedent decisions are collected and published in the Administrative Decisions Under Immigration and Nationality Laws of the United States, which is indicated as “I&N Dec.” and accompanied by volume and page number. Proper citations conclude with a parenthetical statement to indicate the office that authored the decision and the year of publication. The following are examples of proper precedent decision citations:

- *Matter of Skirball Cultural Center*, 25 I&N Dec. 799 (AAO 2012);
- *Matter of Caron Int’l, Inc.*, 19 I&N Dec. 791 (Comm’r 1988); and
- *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981).

Although non-precedent decisions are frequently discussed in immigration periodicals or posted on websites, such decisions are not considered published or precedential for purposes of 8 CFR 103.3(c) or 1003.1(i).

(c) There are three primary administrative appellate bodies that review DHS immigration decisions: the Board of Immigration Appeals (BIA), Administrative Appeals Office (AAO) and the Office of the Chief Administrative Hearing Officer (OCAHO).

(1) The Board of Immigration Appeals (BIA)

The BIA is an appellate body within the Department of Justice. Located in Falls Church, Virginia, the BIA has the authority to designate BIA decisions as precedent. Such precedent decisions are binding on immigration judges and DHS officers and employees in immigration proceedings involving the same issue(s).

The majority of appeals reaching the BIA involve orders of removal and decisions on applications for relief from removal. Other appellate matters within the BIA's jurisdiction include visa petitions to classify alien relatives for the issuance of an immigrant visa (Form I-130 petitions) and fines imposed by CBP upon carriers for the violation of immigration laws. Certain decisions may be certified to the BIA by other immigration officials. BIA precedent decisions can be found at: http://www.justice.gov/eoir/vll/intdec/lib_indecitnet.html. The Board's organization and authorities are described in 8 CFR 1003.1.

(2) The Administrative Appeals Office (AAO)

Many cases not appealable to the BIA are appealable to the USCIS AAO. The immigration benefit types within the AAO's jurisdiction are listed in their entirety by form number at www.USCIS.gov on the "[When to Use Form I-290B](#)" webpage.

The AAO's jurisdiction includes: most employment-based immigrant and nonimmigrant visa petitions (Forms I-129 and I-140); immigrant petitions by alien entrepreneurs (Form I-526); applications for Temporary Protected Status (Form I-821); fiancé(e) petitions (Form I-129F); applications for waiver of certain grounds of inadmissibility (Form I-601); applications for permission to reapply for admission after deportation (Form I-212); certain special immigrant visa petitions (Form I-360 except for Form I-360 widower appeals, which are appealable to the BIA); orphan petitions (Forms I-600/800 and I-600A/800A); T and U visa petitions (Forms I-914 and I-918); and, applications to preserve residence for naturalization purposes (Form N-470).

Pursuant to 8 CFR 103.3(c), AAO decisions may be designated by the Secretary of Homeland Security or the General Counsel,¹ with the Attorney General's approval as to the lawfulness of the decisions, to serve as precedents in all future proceedings involving the same issues. Along with the designated decisions of the BIA or the Attorney General, AAO precedent decisions can be found at: <http://www.justice.gov/eoir/vll/intdec/aaocomm.html>. The AAO may also submit

decisions to the BIA for certification, which may, in turn, be designated by the BIA as a precedent decision and published.

NOTE

The AAO issues the vast majority of its appellate decisions in the form of non-precedent decisions. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. Thus, non-precedent AAO decisions do not provide a basis for changing adjudication standards. **USCIS officers may not rely upon, nor cite to, non-precedent AAO decisions as legal authority in other decisions.** Non-precedent AAO decisions carry a header or other annotation to clarify that the decision is not a precedent.

(3) The Department of Justice, Executive Office for Immigration Review, Office of the Chief Administrative Hearing Officer (OCAHO)

The OCAHO hears cases regarding certain fines and penalties imposed under INA sections 274A, 274B, and 274C. OCAHO may designate precedent decisions, which can be found at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm>.

¹ In accordance with 8 CFR 103.3(c) and 1003.1(i), the Secretary designated the General Counsel as the official within DHS who may file precedential decisions with the Attorney General, and the Attorney General has approved that designation. The General Counsel may delegate that authority to a Deputy General Counsel.

☞ 2. The AFM Transmittal Memoranda table is updated as follows:

AD13-14 11/18/2013	Subchapter 14.4	Guides USCIS officers on the distinction between and proper use of precedent and non-precedent AAO decisions
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Use

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information

Questions or suggestions regarding this PM should be addressed through appropriate directorate channels to the AAO.