

REFUGEE, ASYLUM, AND INTERNATIONAL OPERATIONS DIRECTORATE (RAIO)



U.S. Citizenship and Immigration Services

RAIO DIRECTORATE – OFFICER TRAINING

RAIO Combined Training Program

DECISION MAKING

TRAINING MODULE

DATE (see schedule of revisions): 12/20/2019

- P.11 从在某国经历不可取
P.12 BIA, IJ 跟AO made decision - 致
P.17 穆哈拉比 test (PACI)

Decision Making

P.18 persecutor has the ability to enforce throughout the country

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P.24 persecution ~~最好~~ escalate.

DECISION MAKING

Training Module

P.26 Safety relocation 太早能证明没有 persecution

MODULE DESCRIPTION

回答也要 clear & concise

This module describes the general factual, legal and analytical considerations involved in constructing legally sufficient decisions.

P.39 credibility ① inconsistency

TERMINAL PERFORMANCE OBJECTIVE(S)

② lack of details → 无可信

Given the field situation in which you have a request to adjudicate, you will be able to identify the relevant legal elements and apply them to relevant evidence to construct legally sufficient determinations and decisions.

ENABLING PERFORMANCE OBJECTIVES

1. Identify general writing and style techniques, including USCIS Plain Language principles that improve comprehensibility.
2. Explain the purposes of legal analysis.
3. Distinguish proper from improper factors in legal decision making.
4. Distinguish relevant from irrelevant facts and issues in decision making. Explain the different components of legal decision making.
5. Construct a legally sufficient argument to support a determination or conclusion.

INSTRUCTIONAL METHODS

- Interactive presentation
- Practical exercises

METHOD(S) OF EVALUATION

Throughout this training module, you will come across references to adjudication-specific supplemental information located at the end of the module, as well as links to documents that contain adjudication-specific, detailed information. You are responsible for knowing the information in the referenced material that pertains to the adjudications you will be performing.

For easy reference, supplements for international and refugee adjudications are in pink and supplements for asylum adjudications are in yellow.

You may also encounter references to the legacy Refugee Affairs Division (RAD) and the legacy International Operations Division (IO). RAD has been renamed the International and Refugee Affairs Division (IRAD) and has assumed much of the workload of IO, which is no longer operating as a separate RAIO division.

1 INTRODUCTION

As an officer in the RAIO Directorate, you will make different types of eligibility decisions. Your decisions must be made and communicated in a legally sound, professional, and comprehensible manner. For this reason, you should become familiar with the processes used in legal decision making. Even where your decisions will not result in a written explanation of eligibility, following these processes will assist you in preserving clarity and quality in the adjudication process.

This module provides an overview of the analytical processes for making eligibility determinations. The module does not provide the legal criteria for making such determinations. Instead, the RAIO Training Modules and the division-specific training materials constitute primary field guidance for all officers who make legal eligibility decisions for the RAIO Directorate.

2 GENERAL CONSIDERATIONS

Each decision you will make involves the life of an individual. Although you may be under time constraints to complete a decision, each decision you make is an important one and cannot be made lightly. You have a duty to be a neutral, unbiased adjudicator and to give adequate and appropriate consideration to every decision you make.

2.1 Definition of Analysis and Legal Analysis

Dictionaries have several definitions of “analysis,” all of which involve the breaking down of a complex whole into separate parts for study.

Legal analysis breaks down a determination that an applicant does or does not qualify for a benefit requested into short explanations and conclusions that reveal how you reached this determination. Legal analysis makes clear to others the rationale behind your determination.

2.2 Every Adjudication Involves Legal Analysis

Legal analysis confirms what facts a petitioner or applicant (USCIS “customers”) must establish in order to prove eligibility under the law, and then assesses whether those facts have been established. Sometimes you will adjudicate benefits that do not call for a written explanation of your analysis; however, you should still engage in a careful legal analysis in every case in order to accurately determine each customer’s eligibility for the benefit requested.

You have a duty to follow the law as it is set forth by statute, regulation, policy guidance, precedent decisions, and the USCIS Office of Chief Counsel. You cannot develop your own standards on the basis of what you think the law should be.

2.3 Case-by-Case Basis

There are no “magic formulas” to determine whether or not an applicant is eligible for an immigration benefit. Although many claims are similar, they are never identical, and each applicant is unique. Therefore, each request must be evaluated on its own merits.

You should be mindful of the facts of each particular case without allowing previous cases to unduly influence your decision-making. For example, when adjudicating asylum or refugee claims, the fact that one applicant has suffered severe persecution should not prevent you from finding that another applicant, who suffered less severe harm, also suffered persecution. Likewise, a parole applicant who demonstrates a particularly compelling urgent humanitarian need for parole should not prevent you from finding urgent humanitarian need in less compelling cases. Each case must be analyzed on its own facts.

Although each of your decisions must be made on a case-by-case basis, you should strive for consistency in applying the law from one case to another.

2.4 Appropriate Considerations

When making a decision, you must consider all relevant evidence and give that evidence the appropriate weight due to it.¹ What is relevant, however, will depend on what benefit the applicant is requesting and what the applicable law indicates he or she must establish in order to prove eligibility for that benefit. [Asylum Adjudications Supplement]

¹ See RAIO Training Module, Evidence.

every case is different.

2.5 Inappropriate Considerations

- Similarities or differences with other cases
- Foreign policy considerations:
 - That the applicant is from a country whose government the United States supports or with which it has favorable relations
 - That the United States government agrees or disagrees with the political or ideological beliefs of the individual
- Your personal opinions and beliefs
 - That you may disagree with the applicant's political ideology
 - That you may not have the same religious beliefs, sexual orientation, or cultural norms
 - Preconceived notions that applicants from a particular country are or are not truthful
 - Personal experience from living or traveling in an applicant's country
 (This can help you form lines of questioning, but does not substitute for objective country of origin information)
- Reports on the incidence of fraud by applicants of the same nationality

You will receive information and briefings on fraud and the use of fraudulent documents. This can provide very useful information you can use when interviewing an applicant and reviewing evidence. You should be careful, however, not to raise the standard of proof for an applicant based on incidences of reported fraud for that nationality.

2.6 **Quality and Quantity**

Both quality and quantity are priorities in decision making for the RAIO Directorate. You may sometimes find it difficult to balance these priorities when under time constraints. For example, when doing protection work, you may be unable to research every unfamiliar detail of an applicant's claim, ask every question you might like to ask during an interview, or read all available country of origin reports. You will be required to work within designated timeframes, however, as delays can have negative repercussions for the immigration process, as well as for applicants and their families. It is therefore imperative that you train yourself to identify and focus on the critical legal and factual issues. Doing so will enable you to know when to stop—that is, to

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know when you have gathered enough evidence to render a decision. This is only part of the picture, however. You must also become skilled at making well-reasoned, legally sufficient decisions supported by the evidence you have gathered.

2.7 The Purpose of Legal Analysis

Legal analysis promotes and ensures timeliness and quality in the decision making process in the following ways:

Ensures that Decisions Are Based on Appropriate Factors and the Correct Application of the Law

The process of explaining a decision encourages you to examine the facts and applicable legal standards and discourages you from jumping to conclusions or relying on "gut feelings." This process safeguards applicants with genuine claims while prevents others from erroneously being granted relief.

Allows for Review that Enhances Quality

Written legal analysis conveys to the reviewer -- most often your supervisor or someone from quality assurance locally or at headquarters -- the reasons behind your decision. This allows the reviewer to determine if you properly applied the law in your decision and ensures you make consistent and quality decisions.

Adds Transparency to the Decision-Making Process

Written decisions serve to inform USCIS "customers" about the adjudication of their case. Whether part of a written decision or encompassed in a properly completed adjudication form, the rationale for your decision should be set forth so that the customer and any reviewer (such as your supervisor, headquarters, the Administrative Appeals Office (AAO), the Board of Immigration Appeals (BIA), Immigration Judges (IJs), and the federal courts) can understand the rationale for the decision.²

Provides a Meaningful Opportunity to Respond

Clear legal analysis can also explain to the applicant why you intend to deny or have denied the applicant's request for relief. The applicant is then in a much better position to formulate a relevant response or rebuttal that specifically addresses the shortcomings or concerns you have identified. If the applicant understands the reason(s) behind your decision, the applicant can address your specific concerns, rather than merely reiterating the facts already presented, hoping to cover all bases.

3 THE LEGAL DECISION MAKING PROCESS

² See RAIO Training Module, *Evidence*.

SAP - 2019-02-14

You are adjudicating a Form I-600 Petition to Classify Orphan as an Immediate Relative ("orphan petition") pursuant to INA § 101(b)(1)(F). An issue in the case before you is whether the child beneficiary is an orphan due to the disappearance of his parents.

The Code of Federal Regulations at 8 C.F.R. § 204.3(b) defines "disappearance of both parents" as follows:

Disappearance of both parents means that both parents have unaccountably or inexplicably passed out of the child's life, their whereabouts are unknown, there is no reasonable hope of their reappearance, and there has been a reasonable effort to locate them as determined by a competent authority in accordance with the laws of the foreign-sending country.

8 C.F.R. § 204.3(b) Broken into its Essential Elements:

- Both parents have unaccountably or inexplicably passed out of the child's life;
- [both parents'] Whereabouts are unknown;
- There is no reasonable hope of [both parents'] reappearance; and
- There has been a reasonable effort to locate [both parents] as determined by a competent authority in accordance with the laws of the foreign-sending country.

3.2.2 A Set of "Factors" for Consideration

Alternatively, the law may identify a number of factors to weigh or consider when making a particular legal determination. The law may specify that some factors should be given more weight than others, or that each factor is to be evaluated equally. Either way, you must indicate which (if any) factors exist in the case. Often, the law requires you to engage in a "balancing test" or to consider the "totality of the circumstances."

Example

Courts have identified various factors for consideration when evaluating whether past threats made against an asylum or refugee applicant constitute persecution. These factors include:

- Does the persecutor have the means to harm?
- Has the persecutor attempted to act on the threat?

- Is the nature of the threat itself indicative of its seriousness?
- Has the persecutor harmed or attempted to harm the applicant in other ways?
- Has the persecutor attacked, harassed, or threatened the applicant's family?
- Has the persecutor executed threats issued to others similarly situated to the applicant?
- Did the applicant suffer emotional or psychological harm as a result of the threat(s)? ⁴

3.2.3 Following An Analytical "Framework"

The law may also provide a systematic, step-by-step approach that you must follow when analyzing a particular legal issue. To make a proper determination, your legal analysis should reflect that you engaged in each of the steps outlined and did so in the order indicated.

Example

*Matter of A-G-G-*⁵ provides a four-step framework that must be followed in order to properly determine whether an asylum applicant is firmly resettled.⁶ This analytical framework consists of the following:

- **Step One:** Your burden to present *prima facie* evidence of an offer of permanent resettlement
- **Step Two:** If there is *prima facie* evidence, it is the applicant's burden to rebut such evidence
- **Step Three:** You weigh the totality of the evidence and make a determination whether the evidence of an offer of firm resettlement has been rebutted
- **Step Four:** If you find the applicant was firmly resettled, the burden shifts to the applicant to show an exception applies.

⁴ See RAIO Training Module, *Definition of Persecution and Eligibility Based on Past Persecution*.

⁵ *Matter of A-G-G-*, 25 I&N Dec. 486 (BIA 2011).

⁶ See RAIO Training Module, *Firm Resettlement*.

A law is typically comprised of several elements, with each element having one or more sub-elements. Each of these, in turn, may involve a test, a set of factors, or an analytical framework. This may sound complex, but your objective is a simple one. You need to understand the law you are dealing with, so you can effectively break it into elements and apply those elements to the facts of the case before you. The following example should help clarify this point.

Example

Matter of Mogharrabi, 19 I&N Dec. 439 (BIA 1987), laid out a four-part test for determining well-founded fear in protection cases. To establish a well-founded fear of future persecution, an applicant must establish all of the following elements.⁷

- Possession (or imputed possession of a protected characteristic)
- Awareness (the persecutor is aware or could become aware the applicant possesses the characteristic)
- Capability (the persecutor has the capability of punishing the applicant)
- Inclination (the persecutor has the inclination to punish the applicant)

Here, we have an overall “test” to be met in order to establish the existence of a well-founded fear. This test involving Possession, Awareness, Capability, and Inclination is sometimes referred to as “PACI.”

The first element of the PACI test is possession. “Possession” consists of sub-elements that an applicant must establish. These include that:

- he or she possesses or is believed to possess a characteristic
- the persecutor seeks to overcome that characteristic, [and]
- the characteristic falls within one of the protected grounds listed in the refugee definition (i.e., race, religion, nationality, membership in a particular social group, or political opinion)

Thus, the element of “possession” involves an additional three-part “test” to be met. Notably, when analyzing the characteristic at issue, further elements comprising the characteristic will likely need to be analyzed (e.g., establishing the existence of a particular social group and the applicant’s membership therein may well involve a combination of test(s), factors and/or an analytical “framework.”)

⁷ See RAIO Training Module, *Well-Founded Fear*.

The third PACI element, “Capability” requires that an applicant establish that the persecutor has the capability to persecute him because he possesses (or is believed to possess) a protected characteristic. Some factors identified as appropriate for consideration in evaluating capability include:

- whether the persecutor is a governmental entity and, if so, the extent of the government’s power or authority;
- whether the persecutor is a non-governmental entity, and if so, the extent to which the government is able or willing to control it; and
- the extent to which the persecutor has the ability to enforce his or her will throughout the country

And while the four-part PACI test is not a strict “framework” in that the sequence of its steps are not rigidly defined, it is often used like one in practice because going through the elements in the order given is both logical and efficient.

3.3 Identify the Evidence in the Claim

When adjudicating an application, you may encounter different types of evidence including oral and written testimony and documents.⁸ Before engaging in the analysis, review the evidence in the record and, if necessary, conduct country of origin information research or other research to identify the material facts of the case.

Material facts are those facts that directly relate to one or more of the required legal elements to be analyzed. They have a direct bearing on the outcome of the decision.⁹

Relevant evidence means evidence having a tendency to make the existence of a material fact more or less probable than it would be without the evidence.¹⁰ If the presented evidence does not help to establish or refute a material fact, that evidence is irrelevant. You should not rely on irrelevant evidence in constructing your analysis.

All material facts must be considered in your analysis of whether the legal elements have been met. You may never ignore a material fact simply because it makes reaching a decision more difficult or fails to support your opinion about the applicant or his or her eligibility. Similarly, any factual conclusions you draw must be supported by the evidence (or the absence of evidence) in the record. Conclusions that rely on speculative, unsupported, equivocal, or irrelevant evidence should not be part of your analysis.

Example

⁸ See RAIO Training module, *Evidence*.

⁹ See Federal Rules of Evidence, Rule 401; see also “Notes of Advisory Committee on Proposed Rules.”

¹⁰ Federal Rules of Evidence, Rule 401; see also RAIO Training Module, *Evidence*, section on Types of Evidence.

~~Because the applicant was able to live safely in his country for several years without further incident, he failed to establish that the authorities have the inclination to carry out their threats. Therefore, his fear of future persecution is not well-founded. (material fact, analysis, and conclusion; may lead to final determination of ineligibility, if no past persecution)~~

- The fact that the applicant safely relocated to another part of the country for nearly four years indicates that the guerrillas do not have the inclination or capability to carry out their will on a nation-wide basis. Because the applicant can avoid persecution through relocation and the evidence demonstrates that it is reasonable to expect her to do so, her fear of future persecution is not well-founded. (material fact, analysis, and conclusion; may lead to final determination of ineligibility, if no past persecution)

Examples of incomplete legal analysis

- The applicant was able to live safely in his country for several years after he was threatened. Therefore, the applicant is not eligible for asylum. (*statement of fact and final determination; no analysis*)
- The applicant failed to establish that his fear is well-founded. (*conclusion only*)
- The applicant can avoid persecution within her country. (*conclusion only*)
- The applicant safely relocated to another part of her country. Therefore, she is not eligible for asylum. (*statement of fact, final determination of eligibility; no analysis*)

Being able to determine what to include and what not to include in your decision is important. Include in your decision all of the material facts necessary to come to a conclusion. Do not include facts that are irrelevant to the claim. The reviewer should not be left wondering how you came to your conclusion, or wondering why you included unnecessary facts.

3.5.2 Not All Untrue Statements Lead to a Denial

The fact that an applicant has made untrue statements during an interview raises questions about the veracity of the claim and should be considered. However, not all untrue statements lead to a denial or referral of the application. ~~The untrue statements must be evaluated in light of the totality of the circumstances and all the relevant factors in the case.¹³~~

Example

¹³ See RAIO Training module, *Credibility*.

- whether the persecutor
 - attempted to act on the threat;
 - attempted to harm the applicant in other ways;
 - attacked, harassed or threatened the applicant's family;
 - executed threats issued to others similarly situated to the applicant; and
- whether the applicant suffered emotional or psychological harm as a result of the threat(s)

What is ANALYSIS?

Analysis is the application of the rules to the facts. The analysis should include a discussion of the material facts in the record of proceeding and explain how they demonstrate that the issue has been favorably or unfavorably resolved. Analysis is what explains "why," and shows "how" you reached a given conclusion.

Examples

- **CASE A - FACTS:** The petitioner is a lawful permanent resident (LPR) grandparent seeking to petition for her foreign-born granddaughter. The petitioner has presented documentation of the petitioner's LPR status and the claimed relationship. The child has always resided with her married parents in the country of origin; there is no claim of adoption.

ANALYSIS: There is no provision under the INA providing for an LPR grandparent to petition for his/her foreign-born grandchild. See INA §§ 201(b), 203(a), 101. Grandchildren of LPRs are not among those listed as "immediate family members," nor are they eligible to receive an immigrant visa as either a primary or derivative beneficiary. Furthermore, there is no indication that the grandparent here has adopted the child in question.

- **CASE B - FACTS:** The applicant has credibly testified that anti-government insurgents controlled much of the countryside near his home. For several years, he volunteered with the local community watch group. Some watch members, including the applicant, reported suspected insurgent activities to regional government officials. The applicant made three such reports, the last of which dealt with the location of an insurgent training camp. Weeks afterward, friends warned the applicant that known insurgents had been asking about him. A month later, insurgents left a letter outside the applicant's home indicating that they knew he was a government supporter and advising him to shut his mouth. The letter also contained a picture of a skull, which the applicant understood to be a death threat. Applicant asserts that several people (one, a watch leader) who received similar letters were later killed. Applicant received two more letters over the next three months: one left on his doorstep,

and another tied to a rock thrown through the window of his workplace. The last letter (tied to the rock) warned that the applicant would "not live to report [them] again." Upon receiving this letter, the applicant quit his job and went into hiding. He left for the United States two weeks later.

ANALYSIS: The applicant received increasingly serious death threats over a period of several months. The threats escalated both in their nature and in the seriousness of the threat made. For example, the initial letters advised applicant to be quiet and only implied physical harm (i.e., a skull image), while the last letter explicitly threatened applicant with assassination. Also, the initial threatening notes were left at the applicant's home, while the last was delivered to applicant at his work place using violent means that damaged property associated with the applicant. In addition, the insurgents executed comparable threats made against others similarly situated to the applicant. This is evidenced by the fact that others -- including at least one person from applicant's community watch group -- were killed after receiving similar threatening letters from the insurgents.

What is a CONCLUSION?

A conclusion states the results from the application of the rule to the case facts. It should not introduce new ideas to the decision, but rather should briefly summarize the legal answer to the question posed by the issue in the case.

A conclusion will always elicit the question, "why?" And the "why" should always be explained in your analysis.

Examples

- **CASE A – CONCLUSION:** The Form I-130 Petition for Alien Relative must be denied as a matter of law.
- **CASE B – CONCLUSION:** The threats that the applicant experienced are sufficiently serious as to constitute past persecution.

IRAC can be especially helpful in cases involving multiple issues. In such cases, you should "stack the issues," dealing with each in turn, so that your analysis is clear and no issue is overlooked. Normally, you should begin with the strongest or most important issue, and conclude with the weakest. This is especially important in denials, where an applicant may seek further review or appeal.

In the absence of a template, a decision with multiple issues generally follows the following structure:

- Introduction and Procedural History
- Case Facts

- Law
- Issue #1 (presented in IRAC format)
- Issue #2 (presented in IRAC format)
- Burden of Proof
- Disposition / Conclusion

4 WRITING STYLE

4.1 Make Your Written Decision Readable

Individuals who read your decisions should be able to understand them the first time they read them. You have a duty to communicate clearly. Your decisions should be concise and logically organized. Whenever possible, you should use the active voice, short paragraphs and sentences, and simple words and pronouns. These are not only sound principles of writing, these principles are part of U.S. law through the Plain Writing Act of 2010.¹⁸

Some written decisions are intended for the applicant (e.g., asylum or orphan Notice of Intent to Deny), while others are intended for administrative reviewers who are familiar with the legal standards and terms you use as an officer. Applicants usually have little understanding of the complexities of the law. You must therefore take care when preparing decision documents that will be provided to the applicant. Be sure that the explanations within your legal analysis effectively communicate your ideas using words the applicant will understand.

Example

It may be sufficient to state in an asylum assessment, “the applicant failed to establish a nexus between the feared harm and a protected ground.” The reviewer of an assessment will know what you mean by “protected ground.” An asylum applicant may have quite a different notion of those two words (picture a piece of land with an armed guard).

In a Notice of Intent to Deny (NOID), it would be better to state, “you failed to make a connection between the harm you fear and a protected characteristic in the refugee definition (race, religion, nationality, membership in a particular social group, or political opinion).”

You should also avoid using certain legal terminology (“legalese”), such as Latin terms that would be difficult for a lay person to understand.

¹⁸ Plain Writing Act of 2010, Pub. L. No. 111-274, 124 Stat. 2861 (Oct. 13, 2010). For further guidance on plain language principles, see USCIS’s Plain Language Guide (May 2011).

Example

"Because the applicant failed to establish a well-founded fear of future persecution, *a fortiori*, the applicant failed to establish eligibility for withholding of removal."

This is better stated using plain language, such as: "Because the applicant failed to establish a well-founded fear of future persecution, he necessarily failed to meet the higher standard of proof required to establish eligibility for withholding of removal."

4.1.1 Be Focused

Your explanation should not be long and detailed, but rather short and to the point. Avoid repetition. Discuss only facts that have a direct bearing on the case at hand.

4.1.2 Include Objective Analysis, Not Personal Opinions, Assumptions, or Speculation

Your analysis should contain only evidence presented by the applicant, including any relevant statements made by the applicant and other witnesses, and information from reliable sources. Your analysis should be free of your personal opinions, assumptions, or speculations about the applicant or his or her claim.

4.1.3 Use an Explanatory Tone

The purpose of the analysis is to inform, not to argue a point or persuade an adversary. Your analysis should be explanatory, not argumentative in tone.

Examples

- (*Argumentative*) The fact that the applicant safely relocated to another city in his country where he lived and worked for two years before coming to the United States clearly shows, without a doubt, that it is reasonable for him to relocate within his home country. Therefore, it is manifestly contrary to law to find that the applicant has a well-founded fear of future persecution.
- (*Explanatory*) Because the applicant was able to relocate safely within his country for two years prior to coming to the United States, he has not established a well-founded fear of persecution.

4.2 Use Language that Reflects the Appropriate Legal Standard

Take care to choose words that accurately reflect the law being applied; some words used in common dialogue may have specific legal connotations that may alter the legal meaning of the text.

Safely relocate 太乙能证明 没有 persecution

回答也要 short & to the point.

You should not rely on anecdotal or other unofficial country conditions information in your written decisions.

5 CONCLUSION

Your adjudication decisions must be made, and where applicable communicated, in a legally sound, professional, and understandable way. Knowing and using proper legal analysis in your decision making will help ensure this goal. Even where a decision does not result in a written explanation of eligibility, adherence to the principles outlined in this module will help you to make quality adjudications that are legally sufficient and clearly communicated. Consistently well-reasoned decisions that rely on appropriate and permissible considerations bolster confidence in, and the integrity of, the RAIO Directorate and the U.S. immigration process.

6 SUMMARY

6.1 General Considerations

Each decision you make is important, as it involves someone's life. You should make decisions in a neutral, unbiased manner according to the law. Using legal analysis, the breaking down of a complex whole into separate parts for study, helps ensure that you give each decision due consideration.

Legal analysis breaks down an eligibility determination into short explanations and conclusions that make clear to others how you reached your final determination. Whether or not you write your decision, you must still engage in careful legal analysis in every case to determine accurately each applicant's eligibility for the benefit.

You must consider the particular facts of each case, and not be unduly influenced by your previous cases. Your duty as an officer is to be neutral and unbiased, and you should strive for consistency in your application of the law from one case to another.

You must apply the law as it is set forth by statute and interpreted by regulation, precedent decisions, and policy guidance. You should consider all relevant evidence and give that evidence the weight due to it. You cannot develop new standards based on what you think the law should be. Nor should your personal opinions and beliefs enter into your decision-making. Other inappropriate considerations include foreign policy concerns, the state of relations (favorable or unfavorable) between the U.S. Government and an applicant's home country, and generalized reports on fraud within the applicant's nationality (although such reports can assist in determining lines of questioning during the interview).

At times, you may find it difficult to balance quality with quantity while under time constraints to complete your cases. For this reason, it is particularly important that you

train yourself to focus on the critical legal and factual issues and to become skilled at making well-reasoned, supportable decisions.

Legal analysis promotes and ensures timeliness and quality by focusing on appropriate factors and the correct application of the law. It allows for review and transparency, and provides a meaningful opportunity, where applicable, for the applicant to respond.

6.2 The Legal Decision Making Process

When determining eligibility for a benefit: know the law you are applying, break the law into its elements, identify the evidence in the claim, evaluate the evidence to determine the facts, and apply the law to the facts to explain your decision.

Start your decision making by reviewing the relevant statute, regulation, case, or policy guidance. If you are using a template or shell, make sure that it is current. Determine whether the language in the law is mandatory or permissive and break the law into its elements. The law may follow one of three basic formulas: a legal “test,” a set of “factors” to consider, or an analytical framework to be followed. A law typically consists of several elements, with each element having one or more sub-elements. Each of these in turn may involve a test, set of factors, or an analytical framework. This may sound complex, but your objective is simple: to understand the law.

Next identify the evidence in the claim. In adjudicating an application for a benefit, you may encounter oral testimony, written testimony, and documentary evidence. Before engaging in legal analysis, review the evidence in the record and, if necessary, conduct country of origin research to identify and evaluate the relevant and material facts in the case. You must consider *all* material facts, *i.e.*, those related to the required legal elements, in your decision. You cannot ignore a material fact, nor may you rely on speculative, unsupported, equivocal, or irrelevant evidence in your legal analysis.

Lastly, apply the law to the facts to explain your decision. Compare each individual piece of evidence that is linked to the same material fact. Weighing the different pieces of evidence against each other is a delicate task. Determine if the pieces of evidence support each other or if they are contradictory. Then determine whether enough material facts are supported by evidence to meet the standard of proof. Your overall analysis will contain reference to material facts, explanatory statements, and conclusions. Taken together, these will lead to a final determination on the applicant’s eligibility for the benefit.

The IRAC method is a simple, objective means of organizing your legal analysis in a clear and logical way. It can be used to organize a paragraph or your entire decision. IRAC has four basic parts:

- Issue – the legal question presented
- Rule – the applicable law
- Analysis – the application of law to facts
- Conclusion – the results of the application of law to facts

Decision Making

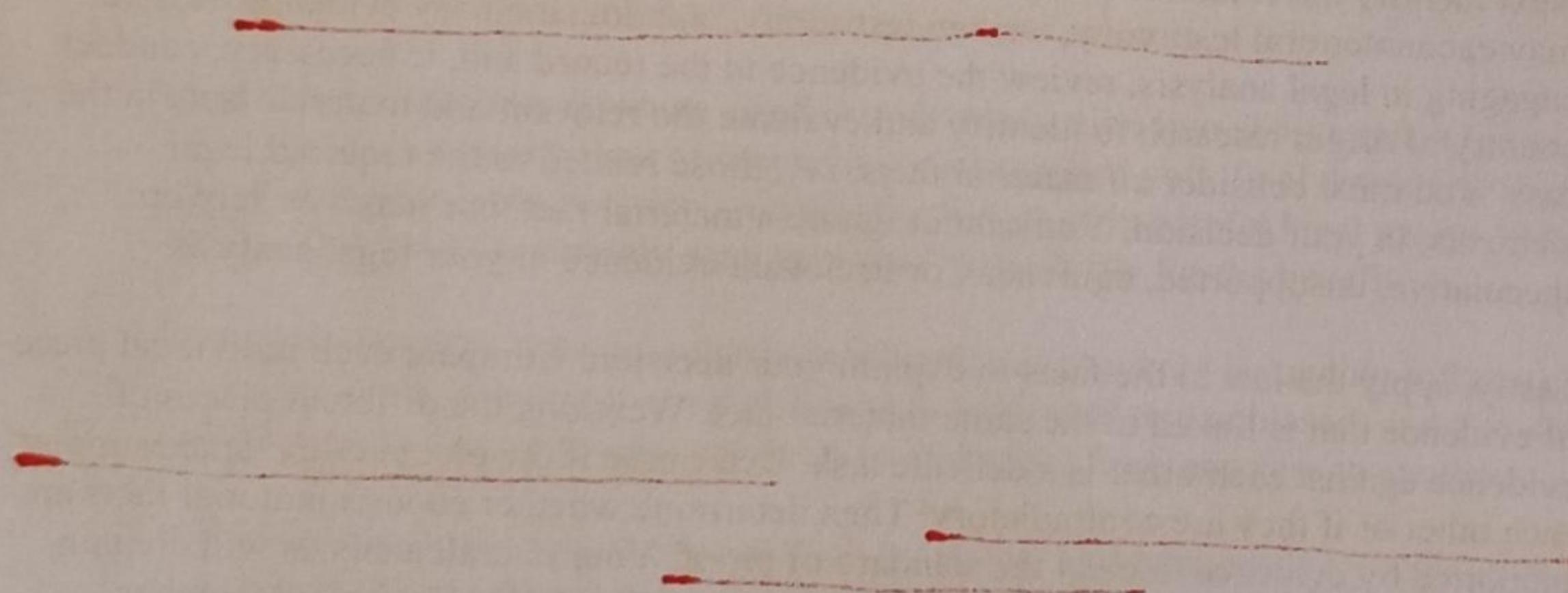
6.3 Writing Style

Your decisions should be understood the first time they are read. They should be concise and logically organized. Whenever possible, you should use the active voice, short paragraphs and sentences, and simple words and pronouns. These are sound writing principles which ensure compliance with the Plain Writing Act of 2010.

Your decision should be short and to the point. Your analysis should only contain references to the evidence of record and country information from reliable sources.

Use an explanatory tone. The purpose of your analysis and decision is to inform, not to argue a point or persuade an adversary. Choose words that accurately reflect the law and legal standard you are applying. Whenever possible, use plain language rather than legal jargon or "legalese." Choose language the reader will understand.

RAIO Directorate decisions generally do not contain references to precedent case law; however, if you rely on a specific precedent case in formulating your decision, you should cite it. You should similarly cite country of origin information if it is from a reliable source and you rely on it to reach a conclusion within your legal analysis.



OTHER MATERIALS

Other Materials - 1

Adjudicator's Field Manual

General Adjudication Procedures

The following steps generally apply to all cases processed by the adjudications unit within a service center or local office (including all naturalization and nationality applications). Depending upon local procedures, these steps may be handled by a single adjudicator, or they may be broken down according to task with various tasks being handled by different employees.

...

(e) The Burden of Proof.

The burden of proof in establishing eligibility for an immigration benefit always falls solely on the petitioner or applicant. USCIS need not prove ineligibility.

...

(f) Inspection of Evidence.

The adjudicator can give a petitioner or applicant an opportunity to inspect and rebut adverse evidence used in making a decision. Prior to denying any application or petition based on such evidence, USCIS routinely issues a notice of intent to deny (NOID) letter, explaining the nature of the adverse information. The applicant or petitioner may choose to respond in writing or may ask to inspect the record of proceedings prior to submission of a rebuttal.

A NOID must specify the date by which a response must be received and instruct the applicant or petitioner that a failure to respond may result in a denial. The maximum time to submit a response to a NOID is 30 days. There are no extensions of time beyond the 30 day limit. 8 CFR 103.2(b)(8), (16).

...

(g) Decision: Approval.

If a case is ready for approval, the adjudicator must stamp the action block with his or her approval stamp and approved "security" ink. In some cases, the officer's signature is also required.

SUPPLEMENT B – ASYLUM ADJUDICATIONS

The following information is specific to asylum adjudications. Information in each text box contains adjudication-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

REQUIRED READING

None

ADDITIONAL RESOURCES

1. United States Citizenship and Immigration Services, Asylum Officer Basic Training Course Lesson 22: *Decision Writing Part I: Overview & Components, Focusing on the 1st Three Components*, 21 June 2004, available at:
http://raiov1.uscis.dhs.gov/docushare/dsweb/Get/Document-57757/Decision_Writing_Part_1_Overview_and_Components_31aug10.doc
2. United States Citizenship and Immigration Services, Asylum Officer Basic Training Course Lesson 23: *Decision Writing Part II: Legal Analysis*, 9 January 2006, available at: http://raiov1.uscis.dhs.gov/docushare/dsweb/Get/Document-57758/Decision_Writing_Part_2_Legal_Analysis_31aug10.doc

SUPPLEMENTS

Asylum Adjudications Supplement

Factors that Asylum Officers May Consider

The determination of whether an individual is eligible for asylum is usually a complex decision that involves consideration of a variety of factors. Factors that may be involved in making the decision are listed below.

Credibility - Evaluation of credibility may require:

- identification of inconsistencies and consideration of explanations for them
- awareness of trauma related symptoms and their potential effect on testimony
- assessment of the applicant's ability to communicate in a second-language

and of potential misunderstandings due to interpretation

- consideration of inter-cultural issues
- evaluation of testimony as it compares to known country conditions
- evaluation of the amount of detail an individual in the applicant's situation reasonably can be expected to provide

Country conditions - An understanding of country conditions may require an evaluation of several aspects of the situation in the country involved, especially when information is sparse or reports are conflicting. Some of the necessary information regarding the applicant's country includes:

- human rights abuses
- structure of the government and roles of the military and/or security forces
- identity of guerrilla forces, separatist groups, and terrorist organizations, and their activities and alliances
- structure and agendas of political organizations or parties
- laws and application of laws
- recent political events

U.S. asylum law - Application of asylum law requires knowledge and understanding of the following:

- statute and regulations
- precedent decisions and their interpretations
- general counsel opinions
- Asylum Division guidance

International human rights law - Application of international human rights law requires knowledge of the human rights protected by international treaties and customary international law, as well as an understanding of the relationship between international law and U.S. law.