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**REFUGEE, ASYLUM, AND INTERNATIONAL OPERATIONS DIRECTORATE (RAIO)**



**U.S. Citizenship  
and Immigration  
Services**

**RAIO DIRECTORATE – OFFICER TRAINING**

**RAIO Combined Training Program**

**SOURCES OF AUTHORITY**

**TRAINING MODULE**

P.22 计划生育 因为 political opinion  
P.11 PRAO 做 affirmative Interview for  
Asylum 和 有 credible/reasonable fear  
interview の是因 - 技人.

P.17 联合国 和 U.S. law inconsistent 的地方,  
以 U.S 为准 (U.S 为大).

P.19. Case law 主要是 BIA の federal court の case.

Worldwide information, diplomatic, intelligence, military, political, economic, cultural, scientific, technical, and other sources of information, including those from international organizations, governments, and other entities, which may be used to support or defend the position of the United States in its relations with other countries and with international organizations.

International organizations, governments, and other entities, which may be used to support or defend the position of the United States in its relations with other countries and with international organizations.

Propriety of actions taken by the United States in its relations with other countries and with international organizations.

Code of conduct for members of the United States armed forces and other personnel serving abroad.

International agreements, treaties, and other instruments of international law.

Propriety of actions taken by the United States in its relations with other countries and with international organizations.

Discretion.

Procedural aspects.

International agreements, treaties, and other instruments of international law.

Propriety of actions taken by the United States in its relations with other countries and with international organizations.

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authority to determine the practices and procedures with which to exercise this authority. Therefore, USCIS, through the Secretary's authority, has been given great latitude in determining how refugees are to be processed.

As an officer adjudicating refugee cases, your responsibilities include conducting refugee admission interviews (Form I-590), as well as interviews related to Form I-730 Refugee/Asylee Relative Petitions. You may also review and adjudicate Requests for Review and Form I-602 Applications by Refugee for Waiver of Grounds of Excludability.

These topics and the specific sections of the INA and 8 C.F.R., case law, memoranda, and other sources of authority relevant to those topics will be discussed in greater detail in other RAIO and division training modules.

Because officers who conduct overseas refugee interviews do not always have access to the Internet or to the complete versions of the INA and 8 C.F.R., the entire text of relevant sections of the INA are reproduced throughout the RAIO and IRAD training materials. INA § 207 and 8 C.F.R. § 207 are included in their entirety in the International and Refugee Adjudications Supplement section of this module. The entire text of INA § 212(a) is located in the IRAD Lesson Plan on Grounds of Inadmissibility.

As an officer serving overseas, you derive authority from statute and regulations to adjudicate a variety of immigration benefits including, but not limited to Refugee Admissions interviews (Form I-590); Form I-730, Refugee/Asylee Relative Petition; Form I-130, Petition for Alien Relative; Form I-601, Application for Waiver of Grounds of Inadmissibility; Form I-600, Petition to Classify Orphan as an Immediate Relative; Form I-600A, Application for Advance Processing of Orphan Petition; Form N-400, Application for Naturalization for active-duty military members and their spouses and children; Form I-131, Application for Travel Document; Form I-407, Abandonment of Lawful Permanent Resident Status; Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant; and boarding letters.

These topics and the specific sections of the INA and 8 C.F.R., case law, memoranda, and other sources of authority relevant to those topics will be discussed in greater detail in other RAIO and division training modules.

### Asylum Adjudications

~~Officers within the RAIO Directorate derive authority from statute and regulations to adjudicate asylum requests, make credible and reasonable fear determinations, and adjudicate applications for suspension of deportation and special rule cancellation of removal under Section 203 of the Nicaraguan Adjustment and~~

Central American Relief Act ("NACARA 203")

~~As an officer, your responsibilities may include conducting asylum, NACARA 203, credible fear, and reasonable fear interviews.~~ These topics and the specific sections of the INA and 8 C.F.R., case law, memoranda, and other sources of authority relevant to these topics will be discussed in greater detail in other RAIO and division training modules. See INA § 208 and 8 C.F.R. § 208.

## 2 SOURCES OF AUTHORITY

### 2.1 U.S. Constitution

As officers in the RAIO Directorate, you have taken an oath to protect and defend the U.S. Constitution. The Constitution provides that “[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land. . .” Art. VI, cl. 2.

### 2.2 Treaties

As set forth in the Constitution, treaties are also part of the laws of the United States if the United States has signed and ratified, or acceded to the treaty. The following are examples of treaties that have been signed and ratified, or acceded to by the United States that affect RAIO adjudications.<sup>1</sup>

- The 1967 Protocol relating to the Status of Refugees (which incorporates by reference Articles 2 through 34 of the United Nations Convention Relating to the Status of Refugees (July 28, 1951))
- The United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT)
- The Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption

Courts have distinguished between treaties that are self-executing and those that are not. A self-executing treaty is one that creates a private right of action for enforcement in U.S. courts, without domestic implementing legislation. The vast majority of the treaties that the U.S. Government has signed are not self-executing, and the U.S. often ratifies treaties with a declaration of non-self execution. However, even if a treaty is not self-executing, it remains law, equal to a federal statute under the Constitution. As such, it can impose

<sup>1</sup> To find out if and when the United States has signed and ratified, or acceded to a treaty, visit the following website: <http://treaties.un.org/pages/ParticipationStatus.aspx>

obligations on the Executive Branch, including DHS, to ensure compliance with its terms, even if it creates no private right of action to enforce those terms in the courts.

For further discussion, see RAIO Training module, *International Human Rights Law*.

### 2.3 U.S. Statutes

The U.S. Congress, the Legislative branch of the U.S. Government, creates statutes which make up the laws of the United States.

#### **The Immigration and Nationality Act**

The Immigration and Nationality Act (“the INA” or “the Act”), found in the U.S. Code, is the federal statute that contains many of the laws related to how non-U.S. citizens can be admitted to, paroled into, or allowed to remain in the United States. Section 101 of the INA contains some helpful definitions of the key terms used throughout the statute, including the terms “admission and admitted,” “aggravated felony,” “child,” “immigrant,” and “refugee.” There are, however, many terms in the INA that are not defined. For clarification of those terms, you will refer to the regulations, case law, and other sources listed below.

The INA was enacted by the U.S. Congress in 1952 and has been amended by Congress through the passage of additional legislation. For example, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), the REAL ID Act of 2005, and the Lautenberg Amendment to the Foreign Operations Appropriations Act are all examples of legislation that have amended specific provisions of the INA that you will encounter in your adjudications and determinations.

#### **Citing to the INA**

A citation to the INA, for example,

#### **INA § 208(a)**

consists of two parts:

1. The letters “INA” followed by a space; and,
2. The section symbol (§) and a space followed by the specific section and sub-section.

No punctuation separates these parts. Nothing is italicized or underlined.<sup>2</sup>

Sections of the INA can be lengthy. When citing to or referring to the INA, you

<sup>2</sup> *Introduction to Basic Legal Citation* (online ed. 2010), by Peter W. Martin. Cornell Law School.

(OCC) may issue legal memoranda that explain their interpretation of particular legal issues.

A citation to these legal memoranda should include the name and title of the official who issued it, the title of the memo, who the memo is directed to, the office it was issued from, the city where it was issued, the date it was issued, and if you are citing to a specific part of the memo, the page you are citing to.

**Example**

Lynden D. Melmed, Chief Counsel. *Guidance on Matter of C-A-*, Memorandum to Lori Scialabba, Associate Director, Refugee, Asylum and International Operations Directorate (Washington, DC: 12 Jan 2007), p. 2.

**2.7 The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugee (UNHCR Handbook)**

The UNHCR *Handbook*, produced by the Office of the United Nations High Commissioner for Refugees, provides guidance to government officials concerned with the determination of refugee status pursuant to their obligations under the 1951 United Nations Convention relating to the Status of Refugees and the 1967 United Nations Protocol relating to the Status of Refugees.<sup>8</sup>

The interpretations provided in the UNHCR *Handbook* do not have the force of law and are not binding on you. However, the Supreme Court has stated that the UNHCR *Handbook* "provides significant guidance in construing the Protocol, to which Congress sought to conform."<sup>9</sup>

 Explanations in the *Handbook* are often referred to by both the BIA and federal courts. Where guidance in the UNHCR *Handbook* is inconsistent with U.S. law, as interpreted by precedent decisions, you must follow U.S. law.

**2.8 International Law**

International law may assist in determining whether an applicant is a refugee, unless it directly conflicts with binding U.S. law. In particular, international human rights and humanitarian law may provide guidance when evaluating whether particular acts constitute persecution.<sup>10</sup>

<sup>8</sup> Office of the United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria For Determining Refugee Status* (Geneva, 1979, reedited 1992), p. 2.

<sup>9</sup> *INS v. Cardoza-Fonseca*, 480 U.S. 421, 439 n. 22 (1987); *INS v. Aguirre-Aguirre*, 516 U.S. 415, 426-427 (1999); *Matter of Frentescu*, 18 I&N Dec. 244 (BIA 1982).

<sup>10</sup> See RAIO Training module, *International Human Rights Law*.

## 2.9 Other Guidance

### 2.9.1 Adjudicator's Field Manual (AFM)

The **Adjudicator's Field Manual (AFM)** is a comprehensive "how to" manual detailing policies and procedures for all aspects of USCIS adjudications. The AFM is intended to be used in concert with the INA, 8 C.F.R., and the agency's *Administrative Manual* (AM), among others.

### 2.9.2 Headquarters Memoranda

RAIO Headquarters, IRAD Headquarters, and Asylum Headquarters issue memoranda on a variety of topics. These memoranda are official forms of internal communication between headquarters and the field that offer guidance on how to address substantive legal or procedural issues.

### 2.9.3 Division Procedures Manuals

Procedures manuals and Standard Operating Procedures (SOPs) set forth the essential procedures that you must follow to perform certain tasks. They provide those of you who are new to the adjudication process the necessary information and tools to perform your jobs effectively and efficiently. Procedures manuals and SOPs also serve as useful reference guides for experienced officers who need to remain current with changes in policy and law.

### 2.9.4 RAIO Training Modules and Division Lesson Plans

RAIO training modules and division training materials not only provide a curriculum for their corresponding training courses, they are also designed to be used as reference tools in your day-to-day work.

### 2.9.5 Foreign Affairs Manual (FAM)

The **Foreign Affairs Manual (FAM)** is a multi-volume guidance document that details the policies and structure of the Department of State (DOS) and provides operational instruction for DOS employees. Details about DOS administration are found in the accompanying notes. Title 9 of the FAM relates to visas and provides useful information to USCIS adjudicators. The FAM does not govern USCIS staff but is often consulted by USCIS staff and other U.S. Government agencies, in particular in the overseas context.

## 3 CONCLUSION

When adjudicating cases, look to the statute, regulations, case law, and other sources of authority. These sources address the legal and procedural issues you will encounter in your field work. Understanding how to read, interpret, and use these sources in your adjudications is important for all officers within the RAIO Directorate.

## 4 SUMMARY

### 4.1 The U.S. Constitution

The U.S. Constitution sets forth the fundamental principle that the statutes passed by Congress are the “supreme Law of the Land.” Art. VI, cl. 2.

### 4.2 The INA and 8 C.F.R.

Officers derive authority from statute and regulations to gather information, adjudicate benefits and requests, and make determinations. The INA and 8 C.F.R. also define key terms, set forth procedures and standards, and explain requirements, bars, and waivers for a variety of immigration benefits.

### 4.3 Case Law

Case law is the aggregate of reported cases that form a body of jurisprudence on a particular subject. Case law resolves ambiguities that are discernable in statutes, regulations, and even prior case law. On occasion, case law reverses or overrules previous case law.

When the INA and corresponding regulations do not define some of their own key terms, or when disputes arise over the meaning of terms in the INA, the BIA and federal courts issue opinions that interpret the terms and issues more clearly. This is referred to as “case law.”

### 4.4 Legal Memoranda

You must apply the law as interpreted in the memoranda of DHS Office of General Counsel and USCIS Office of Chief Counsel.

### 4.5 UNHCR Handbook

You should seek guidance from the UNHCR *Handbook*. However, the guidance in the UNHCR *Handbook* does not have the force of law and may not be followed where it is inconsistent with U.S. law.

### 4.6 International Law

If no domestic law addresses a specific legal issue, international human rights and humanitarian law may provide guidance in determining whether an applicant meets the definition of refugee.

### 4.7 Other Guidance

Memos by the division chiefs, procedures manuals, and RAIO and division training modules are also sources you should follow and refer to in your work.

<http://www.unhcr.org/3b66c2aa10.html>

- 8 C.F.R. § 208.13(b)(2)

<http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-11261/0-0-0-14927/0-0-0-15161.html>

- Refugee Act – defining “refugee” under the INA

- Matter of Mogharrabi

<http://www.justice.gov/eoir/vll/intdec/vol19/3028.pdf>

- Protocol relating to the Status of Refugees (acceded to by the U.S. in 1968)

<http://www.unhcr.org/3b66c2aa10.html>

- Matter of Acosta

<http://www.justice.gov/eoir/vll/intdec/vol19/2986.pdf>

- UNHCR Handbook, paras. 37-50

<http://www.unhcr.org/publ/PUBL/3d58e13b4.pdf>

USCIS: RAIO Directorate – Officer Training  
RAIO Combined Training Program

**Supplement A**  
**International and Refugee Adjudications**

Sources of Authority

a hearing to review the proposal to increase refugee admissions shall be held unless public disclosure of the details of the proposal would jeopardize the lives or safety of individuals.

(e) For purposes of this section, the term "appropriate consultation" means, with respect to the admission of refugees and allocation of refugee admissions, discussions in person by designated Cabinet-level representatives of the President with members of the Committees on the Judiciary of the Senate and of the House of Representatives to review the refugee situation or emergency refugee situation, to project the extent of possible participation of the United States therein, to discuss the reasons for believing that the proposed admission of refugees is justified by humanitarian concerns or grave humanitarian concerns or is otherwise in the national interest, and to provide such members with the following information:

- (1) A description of the nature of the refugee situation.
- (2) A description of the number and allocation of the refugees to be admitted and an analysis of conditions within the countries from which they came.
- (3) A description of the proposed plans for their movement and resettlement and the estimated cost of their movement and resettlement.
- (4) An analysis of the anticipated social, economic, and demographic impact of their admission to the United States.
- (5) A description of the extent to which other countries will admit and assist in the resettlement of such refugees.
- (6) An analysis of the impact of the participation of the United States in the resettlement of such refugees on the foreign policy interests of the United States.
- (7) Such additional information as may be appropriate or requested by such members.

To the extent possible, information described in this subsection shall be provided at least two weeks in advance of discussions in person by designated representatives of the President with such members.

(f)(1) The Attorney General, in consultation with the Secretary of State, shall provide all United States officials adjudicating refugee cases under this section with the same training as that provided to officers adjudicating asylum cases under section 208.

(2) Such training shall include country-specific conditions, instruction on the internationally recognized right to freedom of religion, instruction on methods of

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religious persecution practiced in foreign countries, and applicable distinctions within a country between the nature of and treatment of various religious practices and believers.

**International and Refugee Adjudications Supplement**

**Title 8 Code of Federal Regulations § 207 (August 2011)**

**§ 207.1 Eligibility.**

(a) **Filing jurisdiction.** Any alien who believes he or she is a refugee as defined in section 101(a)(42) of the Act, and is included in a refugee group identified in section 207(a) of the Act, may apply for admission to the United States by filing an application in accordance with § 207.2. In those areas too distant from a Service office, the application may be filed at a designated United States consular office.

(b) **Firmly resettled.** A refugee is considered to be "firmly resettled" if he/she has been offered resident status, citizenship, or some other type of permanent resettlement by a country other than the United States and has travelled to and entered that country as a consequence of his/her flight from persecution. Any applicant who has become firmly resettled in a foreign country is not eligible for refugee status under this chapter.

(c) **Not firmly resettled.** Any applicant who claims not to be firmly resettled in a foreign country must establish that the conditions of his/her residence in that country are so restrictive as to deny resettlement. In determining whether or not an applicant is firmly resettled in a foreign country, the officer reviewing the matter shall consider the conditions under which other residents of the country live: (1) Whether permanent or temporary housing is available to the refugee in the foreign country; (2) nature of employment available to the refugee in the foreign country; and (3) other benefits offered or denied to the refugee by the foreign country which are available to other residents, such as (i) right to property ownership, (ii) travel documentation, (iii) education, (iv) public welfare, and (v) citizenship.

(d) **Immediate relatives and special immigrants.** Any applicant for refugee status who qualifies as an immediate relative or as a special immigrant shall not be processed as a refugee unless it is in the public interest. The alien shall be advised to obtain an immediate relative or special immigrant visa and shall be provided with the proper petition forms to send to any prospective petitioners. An applicant who may be eligible for classification under sections 203(a)(1), (2), (3), (4), (5), (6), or (7) of the Act, and for whom a visa number is now available, shall be advised of such eligibility but is not required to apply.

**§ 207.2 Applicant processing.**

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- (1) Spouse or child in the United States. When a spouse or child of a refugee is in the United States and the Form I-730 is approved, the Service will notify the refugee of such approval on Form I-797, Notice of Action. Employment will be authorized incident to status.
- (2) Spouse or child outside the United States. When a spouse or child of a refugee is outside the United States and the Form I-730 is approved, the Service will notify the refugee of such approval on Form I-797. The approved Form I-730 will be sent by the Service to the Department of State for forwarding to the American Embassy or Consulate having jurisdiction over the area in which the refugee's spouse or child is located.
- (3) Benefits. The approval of the Form I-730 shall remain valid for the duration of the relationship to the refugee and, in the case of a child, while the child is under 21 years of age and unmarried, provided also that the principal's status has not been revoked. However, the approved Form I-730 will cease to confer immigration benefits after it has been used by the beneficiary for admission to the United States as a derivative of a refugee. To demonstrate employment authorization, the Service will issue a Form I-94, Arrival-Departure Record, which also reflects the derivative's current status as a refugee, or the derivative may apply under § 274a.12(a) of this chapter, using Form I-765, Application for Employment Authorization, and a copy of the Form I-797.
- (g) Denials. If the spouse or child of a refugee is found to be ineligible for derivative status, a written notice explaining the basis for denial shall be forwarded to the principal refugee. There shall be no appeal from this decision. However, the denial shall be without prejudice to the consideration of a new petition or motion to reopen the refugee or asylee relative petition proceeding, if the refugee establishes eligibility for the accompanying or following-to-join benefits contained in this part.

**§ 207.8 Physical Presence in the United States.**

For the purpose of adjustment of status under section 209(a)(1) of the Act, the required one year physical presence of the applicant in the United States is computed from the date the applicant entered the United States as a refugee.

**§ 207.9 Termination of refugee status.**

The refugee status of any alien (and of the spouse or child of the alien) admitted to the United States under section 207 of the Act shall be terminated by any district director in whose district the alien is found if the alien was not a refugee within the meaning of section 101(a)(42) of the Act at the time of admission. The district director shall notify the alien in writing of the Service's intent to terminate the alien's refugee status. The alien shall have 30 days from the date notice is served upon him/her or, delivered to his/her last known address, to present written or oral