



U.S. Citizenship and Immigration Services

RAIO DIRECTORATE – OFFICER TRAINING

RAIO Combined Training Course

SOURCES OF AUTHORITY

TRAINING MODULE

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RAIO Directorate – Officer Training / *RAIO Combined Training Course*

SOURCES OF AUTHORITY

Training Module

MODULE DESCRIPTION:

This module describes the legal sources that provide officers in the RAIO Directorate with the authority to make case decisions and determinations. It also describes the sources of law you must follow when making those decisions and determinations and demonstrates how to properly cite to them.

TERMINAL PERFORMANCE OBJECTIVE(S)

When interviewing, adjudicating, eliciting information, or making determinations in the field, you will be able to determine the sources of authority that apply and will cite or refer to these sources correctly whenever appropriate.

ENABLING PERFORMANCE OBJECTIVES

1. Identify the sources of law from which you derive the authority to make decisions and determinations.
2. Identify the sources of law you must follow when making decisions and determinations.
3. Cite to relevant sources of law in your decisions and determinations.

INSTRUCTIONAL METHODS

- Interactive Presentation
- Discussion
- Practical exercises

METHOD(S) OF EVALUATION

- Written exam

- Practical exercise exam

REQUIRED READING

1. Title 8 of the Code of Federal Regulations 8 C.F.R. § 2.1
2. The Immigration and Nationality Act ([INA](#)) 101(a)(42)

[Division-Specific Required Reading - Refugee Division](#)

[Division-Specific Required Reading - Asylum Division](#)

[Division-Specific Required Reading - International Operations Division](#)

ADDITIONAL RESOURCES

None

[Division-Specific Additional Resources - Refugee Division](#)

[Division-Specific Additional Resources - Asylum Division](#)

[Division-Specific Additional Resources - International Operations Division](#)

CRITICAL TASKS

Task/ Skill #	Task Description
ILR1	Knowledge of the United Nations High Commissioner for Refugees (UNHCR) 1951 convention relating to the status of refugees (2)
ILR2	Knowledge of the relevant international human rights conventions related to refugees (2)
ILR3	Knowledge of the relevant sections of the Immigration and Nationality Act (INA) (4)
ILR4	Knowledge of the relevant sections of 8 Code of Federal Regulations (CFR) (4)
ILR6	Knowledge of U.S. case law that impacts RAIO (3)
RI3	Skill in conducting research (e.g., legal, background, country conditions)

SCHEDULE OF REVISIONS

Date	Section (Number and Name)	Brief Description of Changes	Made By

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Throughout this training module you will come across references to division-specific supplemental information located at the end of the module, as well as links to documents that contain division-specific, detailed information. You are responsible for knowing the information in the referenced material that pertains to your division. Officers in the International Operations Division who will be conducting refugee interviews are also responsible for knowing the information in the referenced material that pertains to the Refugee Affairs Division.

For easy reference, each division's supplements are color-coded: Refugee Affairs Division (RAD) in pink; Asylum Division (ASM) in yellow; and International Operations Division (IO) in purple.

1 INTRODUCTION

This training module introduces the statute, regulations, case law, and other sources that provide you, an officer in the RAIO Directorate, with the authority to make decisions and determinations and the fundamental principles you must follow to make those decisions and determinations. The module also provides you with guidance on how to access those sources and use them in your work.

You will refer to the sources listed below in your day-to-day work to varying degrees. In some cases, you will need to cite to these sources in your decisions, determinations, or even in discussions with your supervisors or coworkers. Citing to an authority can often help establish the validity of your argument. When citing to a particular source, you may want to re-read the specific section of the source you are citing to ensure that it supports or substantiates the point or points you are trying to make.

Authority can either be mandatory or persuasive. Mandatory authority is an authority that you are required to follow. Persuasive authority need only be consulted for guidance or where mandatory authority does not exist in a particular area or jurisdiction. You may not rely on persuasive authority if it conflicts with authority that is mandatory.

The responsibilities of each of the three divisions in the RAIO Directorate - the Refugee Affairs Division, the Asylum Division, and the International Operations Division - are described briefly below:

Refugee Affairs Division

The laws pertaining to refugee adjudication focus on the establishment of the DHS Secretary's authority to admit certain aliens, under certain circumstances, with wide 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 officers in the Refugee Corps and officers from other RAIO divisions and USCIS components detailed overseas with the Refugee Affairs Division (RAD), your responsibilities include conducting refugee admission interviews, including interviews related to Form I-730 Refugee/Asylee Relative Petitions. You will 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 RAD training materials. [INA § 207](#) and [8 C.F.R. § 207](#) are included in their entirety in the RAD Supplement section of this module. The entire text of INA §212(a) is located in the Refugee Officer Basic Training Course lesson - Grounds of Inadmissibility.

Asylum Division

Asylum Officers 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 officers in the Asylum Corps your responsibilities 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.

International Operations Division

As Adjudication Officers you derive authority from statute and regulations to adjudicate a variety of immigration benefits including, but not limited to Form I-130, Petition for Alien Relative; Refugee Admissions interviews (Form I-590) and Form I-730, Refugee/Asylee Relative Petition; 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.

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.¹

- 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

¹ 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>

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 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 RAI0 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.²

Sections of the INA can be lengthy. When citing to or referring to the INA, you must cite to the specific subsection.

For example, if you are referring to the mandatory bars to asylum, cite to:

INA § 208(b)(2), not merely INA § 208.

2.4 Regulations

The agency or agencies within the Executive branch of the U.S. Government charged with administering a statute are also responsible for providing regulations by which the law is administered. DHS and the Department of Justice (DOJ) are the primary federal agencies responsible for publishing regulations that correspond to the laws set forth in the INA.

The Code of Federal Regulations

The Code of Federal Regulations (CFR) is “the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government. It is divided into 50 titles that represent broad areas subject to Federal regulation. Each volume of the CFR is updated once each calendar year and is issued on a quarterly basis.”³ Title 8 of the Code of Federal Regulations (“8 C.F.R.”), *Aliens and Nationality*, provides procedures for administering the laws set forth in the INA and supplements, defines, and further explains those laws.⁴

Title 8 of the C.F.R. contains (DHS and DOJ) regulations that provide not only basic procedures but also address substantive eligibility issues. It consists of two chapters, “Department of Homeland Security,” and “Executive Office for Immigration Review (EOIR).” Parts 1 to 499 correspond to DHS and Parts 1000 to 1399 correspond to EOIR.

Generally the 8 C.F.R. part and section correspond to the same section number and content in the INA.

Example

8 C.F.R. § 207.1 corresponds to **INA § 207**, which governs overseas refugee processing.

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

³ U.S. Government Printing Office, Home Page, Executive Branch, Code of Federal Regulations, <http://www.gpoaccess.gov/cfr/>.

⁴ See 8 C.F.R. § 1.1.

Citing to 8 C.F.R.

A citation to the C.F.R. for example,

8 C.F.R. § 207.1

consists of two parts:

1. The title number, 8, followed by a space and "C.F.R.," (for "Code of Federal Regulations") followed by a space; and,
2. The section symbol (§) followed by a space and the part number.

No punctuation separates adjudications.

Example

8 C.F.R. § 208.1(a) corresponds to **INA § 208**, which governs asylum adjudications.

Nothing is italicized or underlined.

Like the INA, 8 C.F.R. can be lengthy. You must cite to a specific subsection of 8 C.F.R. For example, when citing to the section on firm resettlement in the overseas refugee context, cite to:

8 C.F.R. § 207.1(b), not merely 8 C.F.R. § 207.

2.5 Case Law

Case law is made up of published decisions from:

- The federal courts, which consist of the U.S. Supreme Court, the U.S. Courts of Appeals, and U.S. District Courts, all of which are part of the Judicial Branch of the U.S. Government; and
- The Board of Immigration Appeals (BIA), which is part of the Executive Branch of the U.S. Government.

The BIA is “the highest administrative body for interpreting and applying immigration law.” It has “been given nationwide jurisdiction to hear appeals from certain decisions rendered by immigration judges” (IJs) and by USCIS district directors “in a wide variety of proceedings in which the Government of the United States is one party and the other party is an alien, a citizen, or a business firm.” BIA decisions “are binding on all USCIS

officers and IJs unless modified or overruled by the Attorney General (AG) or a federal court. Most BIA decisions are subject to judicial review in the federal courts.”⁵

Case law develops when individuals apply for benefits under the INA and a dispute arises over the meaning of key terms contained in the INA or the 8 C.F.R. One of two parties can appeal the decision to approve or deny the benefit. The courts and the BIA publish opinions that analyze whether the decision was legally correct and interpret the terms and issues more clearly. These opinions are referred to collectively as “case law” and are the source of authority most cited to in our legal system. As such, case law is the source of authority you will refer and cite to most in your work.

In some situations, your adjudications and determinations may make their way through our legal system and can become part of case law. A recent example is the case of Daniel Girmai Negusie. An Asylum Officer made a credible fear determination and referred Mr. Negusie to the Immigration Judge (IJ) for an asylum hearing. The IJ denied his asylum claim and Mr. Negusie appealed the decision first to the Board of Immigration Appeals (BIA), then to the U.S. Court of Appeals for the Fifth Circuit, and eventually to the U.S. Supreme Court.⁶

A binding decision is one that a court or administrative body issues and that must be followed by the courts and administrative agencies below. The issuing court or administrative body is also bound by its own published decisions. However, on occasion, courts can reverse their previous decisions.

In the immigration context, case law consists of both administrative law and federal court decisions issued by, in order of descending precedential authority:⁷

- U.S. Supreme Court
- U.S. Court of Appeals, also called U.S. Circuit Court of Appeals
- U.S. District Court (in very limited circumstances)
- Attorney General
- Board of Immigration Appeals
- Administrative Appeals Office

For general guidance regarding the U.S. court system, how to read and use case law, how to cite to a case, and the binding nature of case law, see the RAIO Training module, *Reading and Using Case Law*.

2.6 Legal Memoranda

⁵ United States Department of Justice, Executive Office for Immigration Review, Board of Immigration Appeals. <http://www.justice.gov/eoir/biainfo.htm>

⁶ *Negusie v. Holder*, 555 U.S. 511 (2009).

⁷ *American Jurisprudence*, “[Judicial Precedents as Binding or Persuasive](#),” 20 Am. Jur. 2d Courts § 129 (2010).

If the INA, 8 C.F.R., and case law do not address a specific legal issue or the issue needs clarification, DHS Office of General Counsel (OGC) and USCIS Office of Chief Counsel (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 Refugees⁸

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."⁹

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

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

⁹ *INS v. Cardoza-Fonseca*, 107 S.Ct. 1207, 1217, n. 22 (1987); *INS v. Aguirre-Aguirre*, 119 S.Ct 1439, 1446-47 (1999); *Matter of Frentescu*, 18 I&N Dec. 244 (BIA 1982).

humanitarian law may provide guidance when evaluating whether particular acts constitute persecution.¹⁰

2.9 Other Guidance

2.9.1 Adjudicator's Field Manual (AFM)

This manual 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 or RAD, Asylum, or IO 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 (placeholder)

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

¹⁰ See RAIO Training module, *International Human Rights Law*.

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.

PRACTICAL EXERCISES

Practical Exercise – 1

Where is it Written That...?

Find the exact language in the statute, regulation, opinion, or memorandum where the following legal principles are found. You may use the materials in this module, the internet, or any other available resource for this exercise.

Where is it written that:

1. a child, for immigration purposes, must be under 21 and unmarried?
2. there are three grounds of inadmissibility that do not apply to individuals seeking admission as refugees?
3. a person can qualify as a refugee if he or she was never harmed in the past?
4. persecution can mean psychological harm not just physical harm?

Practical Exercise – 2

Which Came First?

To put these sources of authority into perspective, you will chart the chronology of the term “well-founded fear” in U.S. and international law. Below is a list of authorities that mention or define well-founded fear. In this exercise, you will put this list in chronological order, identify the source, and indicate whether the source is binding or persuasive authority for your determinations.

- *INS v. Cardoza-Fonseca*

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=480&page=421>

- Convention relating to the Status of Refugees

<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>

OTHER MATERIAL

Refugee Definition

INA § 101(a)(42)

In order to be eligible for refugee resettlement, an applicant for refugee status must show that he or she is a refugee as defined in the INA. This definition is the foundation of the refugee adjudication, though other eligibility criteria (e.g. admissibility) must also be considered. The refugee definition is replete with terms and concepts that are subject to specific interpretations and will be discussed in the RAI0 Training modules: *Refugee Definition and Past Persecution, Well-Founded Fear, Nexus and the Five Protected Characteristics*. In 1996, the refugee definition was amended to address the issue of coercive population control programs, though such claims do not commonly arise in the overseas refugee resettlement context. See Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) Section 601(a)(1), Div. C., Pub. L. No. 104-208 (1996) (codified as amended at 8 U.S.C. Section 1101(a)(42)).

INA § 101(a)(42) defines the term “refugee” as:

(A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or

(B) in such circumstances as the President after appropriate consultation (as defined in section 207(e) of this Act) may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term "refugee" does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. For purposes of determinations under this Act, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has

a well founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of political opinion.

SUPPLEMENT A – REFUGEE AFFAIRS DIVISION

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

REQUIRED READING

1. INA § 207 (Reproduced in its entirety below).
2. 8 C.F.R. § 207 (Reproduced in its entirety below).
3. INA § 212(a) (Reproduced in RAD *Grounds of Inadmissibility* lesson).

ADDITIONAL RESOURCES

None

SUPPLEMENTS

RAD Supplement – Refugee Affairs Division

INA § 207 – Annual Admission of Refugees and

Admission of Emergency Situation Refugees (August 2011)

Sec. 207. [8 U.S.C. § 1157]

(a)(1) Except as provided in subsection (b), the number of refugees who may be admitted under this section in fiscal year 1980, 1981, or 1982, may not exceed fifty thousand unless the President determines, before the beginning of the fiscal year and after appropriate consultation (as defined in subsection (e)), that admission of a specific number of refugees in excess of such number is justified by humanitarian concerns or is otherwise in the national interest.

(2) Except as provided in subsection (b), the number of refugees who may be admitted under this section in any fiscal year after fiscal year 1982 shall be such number as the President determines, before the beginning of the fiscal year and after appropriate consultation, is justified by humanitarian concerns or is otherwise in the national interest.

(3) Admissions under this subsection shall be allocated among refugees of special humanitarian concern to the United States in accordance with a determination made by the President after appropriate consultation.

(4) In the determination made under this subsection for each fiscal year (beginning with fiscal year 1992), the President shall enumerate, with the respective number of refugees so determined, the number of aliens who were granted asylum in the previous year.

(b) If the President determines, after appropriate consultation, that (1) an unforeseen emergency refugee situation exists, (2) the admission of certain refugees in response to the emergency refugee situation is justified by grave humanitarian concerns or is otherwise in the national interest, and (3) the admission to the United States of these refugees cannot be accomplished under subsection (a), the President may fix a number of refugees to be admitted to the United States during the succeeding period (not to exceed twelve months) in response to the emergency refugee situation and such admissions shall be allocated among refugees of special humanitarian concern to the United States in accordance with a determination made by the President after the appropriate consultation provided under this subsection.

(c)(1) Subject to the numerical limitations established pursuant to subsections (a) and (b), the Attorney General may, in the Attorney General's discretion and pursuant to such regulations as the Attorney General may prescribe, admit any refugee who is not firmly resettled in any foreign country, is determined to be of special humanitarian concern to the United States, and is admissible (except as otherwise provided under paragraph (3)) as an immigrant under this Act.

(2)(A) A spouse or child (as defined in section 101(b)(1)(A), (B), (C), (D), or (E) of this Act) of any refugee who qualifies for admission under paragraph (1) shall, if not otherwise entitled to admission under paragraph (1) and if not a person described in the second sentence of section 101(a)(42) of this Act, be entitled to the same admission status as such refugee if accompanying, or following to join, such refugee and if the spouse or child is admissible (except as otherwise provided under paragraph (3)) as an immigrant under this Act. Upon the spouse's or child's admission to the United States, such admission shall be charged against the numerical limitation established in accordance with the appropriate subsection under which the refugee's admission is charged.

B) An unmarried alien who seeks to accompany, or follow to join, a parent granted admission as a refugee under this subsection, and who was under 21 years of age on the date on which such parent applied for refugee status under this section, shall continue to be classified as a child for purposes of this paragraph, if the alien attained 21 years of age after such application was

filed but while it was pending.

(3) The provisions of paragraphs (4), (5), and (7)(A) of section 212(a) shall not be applicable to any alien seeking admission to the United States under this subsection, and the Attorney General may waive any other provision of such section (other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3)) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. Any such waiver by the Attorney General shall be in writing and shall be granted only on an individual basis following an investigation. The Attorney General shall provide for the annual reporting to Congress of the number of waivers granted under this paragraph in the previous fiscal year and a summary of the reasons for granting such waivers.

(4) The refugee status of any alien (and of the spouse or child of the alien) may be terminated by the Attorney General pursuant to such regulations as the Attorney General may prescribe if the Attorney General determines that the alien was not in fact a refugee within the meaning of section 101(a)(42) of the Act at the time of the alien's admission.

(d)(1) Before the start of each fiscal year the President shall report to the Committee on the Judiciary of the House of Representatives and of the Senate regarding the foreseeable number of refugees who will be in need of resettlement during the fiscal year and the anticipated allocation of refugee admissions during the fiscal year. The President shall provide for periodic discussions between designated representatives of the President and members of such committees regarding changes in the worldwide refugee situation, the progress of refugee admissions, and the possible need for adjustments in the allocation of admissions among refugees.

(2) As soon as possible after representatives of the President initiate appropriate consultation with respect to the number of refugee admissions under subsection (a) or with respect to the admission of refugees in response to an emergency refugee situation under subsection (b), the Committees on the Judiciary of the House of Representatives and of the Senate shall cause to have printed in the Congressional Record the substance of such consultation.

(3)(A) After the President initiates appropriate consultation prior to making a determination under subsection (a), a hearing to review the proposed determination shall be held unless public disclosure of the details of the proposal would jeopardize the lives or safety of individuals.

(B) After the President initiates appropriate consultation prior to making a determination, under subsection (b), that the number of refugee admissions should be increased because of an unforeseen emergency refugee situation, to the extent that time and the nature of the emergency refugee situation permit,

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

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

RAD Supplement – Refugee Affairs Division

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.

(a) Forms. Each applicant who seeks admission as a refugee shall submit an individual Form I-590 (Registration for Classification as Refugee). Additionally, each applicant 14 years old or older must submit completed forms G-325C (Biographical Information) and FD-258 (Applicant Card).

(b) Hearing. Each applicant 14 years old or older shall appear in person before an immigration officer for inquiry under oath to determine his/her eligibility for admission as a refugee.

(c) Medical examination. Each applicant shall submit to a medical examination as required by sections 221(d) and 234 of the Act.

(d) Sponsorship. Each applicant must be sponsored by a responsible person or organization. Transportation for the applicant from his/her present abode to the place of resettlement in the United States must be guaranteed by the sponsor.

§ 207.3 Waivers of inadmissibility

(a) Authority. Section 207(c)(3) of the Act sets forth grounds of inadmissibility under section 212(a) of the Act which are not applicable and those which may be waived in the case of an otherwise qualified refugee and the conditions under which such waivers may be approved. Officers in charge of overseas offices are delegated authority to initiate the necessary investigations to establish the facts in each waiver application pending before them and to approve or deny such waivers.

(b) Filing requirements. The applicant for a waiver must submit Form I-602, Application by Refugee for Waiver of Grounds of Inadmissibility, with the Service office processing his or her case. The burden is on the applicant to show that the waiver should be granted based upon humanitarian grounds, family unity, or the public interest. The applicant shall be notified in writing of the decision, including the reasons for denial, if the application is denied. There is no appeal from such decision.

§ 207.4 Approved application.

Approval of Form I-590 by an officer in charge outside the United States authorizes the district director of the port of entry in the United States to admit the applicant conditionally as a refugee upon arrival at the port within four months of the date the Form I-590 was approved. There is no appeal from a denial of refugee status under this chapter.

§ 207.5 Waiting lists and priority of handling.

Waiting lists are maintained for each designated refugee group of special humanitarian concern. Each applicant whose application is accepted for filing by the Immigration and Naturalization Service shall be registered as of the date of filing. The date of filing is the priority date for purposes of case control. Refugees

or groups of refugees may be selected from these lists in a manner that will best support the policies and interests of the United States. The Attorney General may adopt appropriate criteria for selecting the refugees and assignment of processing priorities for each designated group based upon such considerations as: Reuniting families, close association with the United States, compelling humanitarian concerns, and public interest factors.

§ 207.6 Control over approved refugee numbers.

Current numerical accounting of approved refugees is maintained for each special group designated by the President. As refugee status is authorized for each applicant, the total count is reduced correspondingly from the appropriate group so that information is readily available to indicate how many refugee numbers remain available for issuance.

§ 207.7 Derivatives of refugees.

(a) Eligibility. A spouse, as defined in section 101(a)(35) of the Act, and/or child(ren), as defined in section 101(b)(1)(A), (B), (C), (D), or (E) of the Act, shall be granted refugee status if accompanying or following-to-join the principal alien. An accompanying derivative is a spouse or child of a refugee who is in the physical company of the principal refugee when he or she is admitted to the United States, or a spouse or child of a refugee who is admitted within 4 months following the principal refugee's admission. A following-to-join derivative, on the other hand, is a spouse or child of a refugee who seeks admission more than 4 months after the principal refugee's admission to the United States.

(b) Ineligibility. The following relatives of refugees are ineligible for accompanying or following-to-join benefits:

- (1) A spouse or child who has previously been granted asylee or refugee status;
- (2) An adopted child, if the adoption took place after the child became 16 years old, or if the child has not been in the legal custody and living with the parent(s) for at least 2 years;
- (3) A stepchild, if the marriage that created this relationship took place after the child became 18 years old;
- (4) A husband or wife if each/both were not physically present at the marriage ceremony, and the marriage was not consummated (section 101(a)(35) of the Act);
- (5) A husband or wife if the U.S. Attorney General has determined that such alien has attempted or conspired to enter into a marriage for the purpose of evading immigration laws; and

(6) A parent, sister, brother, grandparent, grandchild, nephew, niece, uncle, aunt, cousin or in-law.

(c) Relationship. The relationship of a spouse and child as defined in sections 101(a)(35) and 101(b)(1)(A), (B), (C), (D), or (E), respectively, of the Act, must have existed prior to the refugee's admission to the United States and must continue to exist at the time of filing for accompanying or following-to-join benefits and at the time of the spouse or child's subsequent admission to the United States. If the refugee proves that the refugee is the parent of a child who was born after the refugee's admission as a refugee, but who was in utero on the date of the refugee's admission as a refugee, the child shall be eligible to accompany or follow-to-join the refugee. The child's mother, if not the principal refugee, shall not be eligible to accompany or follow-to-join the principal refugee unless the child's mother was the principal refugee's spouse on the date of the principal refugee's admission as a refugee.

(d) Filing. A refugee may request accompanying or following-to-join benefits for his/her spouse and unmarried, minor child(ren) (whether the spouse and children are in or outside the United States) by filing a separate Form I-730 Refugee/Asylee Relative Petition, for each qualifying family member with the designated Service office. The Form I-730 may only be filed by the principal refugee. Family members who derived their refugee status are not eligible to file the Form I-730 on behalf of their spouse and child(ren). A separate Form I-730 must be filed for each qualifying family member before February 28, 2000 or within 2 years of the refugee's admission to the United States, whichever is later, unless the Service determines that the filing period should be extended for humanitarian reasons. There is no time limit imposed on a family member's travel to the United States once the Form I-730 has been approved, provided that the relationship of spouse or child continues to exist and approval of the Form I-730 petition has not been subsequently revoked. There is no fee for filing this petition.

(e) Evidence. Documentary evidence consists of those documents which establish that the petitioner is a refugee, and evidence of the claimed relationship of the petitioner to the beneficiary. The burden of proof is on the petitioner to establish by a preponderance of the evidence that any person on whose behalf he/she is making a request under this section is an eligible spouse or unmarried, minor child. Evidence to establish the claimed relationship for a spouse or unmarried, minor child as set forth in 8 CFR part 204 must be submitted with the request for accompanying or following-to-join benefits. Where possible this will consist of the documents specified in § 204.2(a)(1)(i)(B), (a)(1)(iii)(B), (a)(2), (d)(2), and (d)(5) of this chapter. In addition, a recent photograph of each derivative must accompany the Form I-730. The photograph must clearly identify the derivative, and will be made part of the derivative's immigration record for identification purposes.

(f) Approvals--

(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

evidence to show why the alien's refugee status should not be terminated. There is no appeal under this chapter from the termination of refugee status by the district director. Upon termination of refugee status, the district director shall process the alien under sections 235, 240, and 241 of the Act.

SUPPLEMENT B – ASYLUM DIVISION

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

REQUIRED READING

Statute and Regulations

[INA § 101\(a\)\(42\)](#) – definition of refugee

[INA § 208](#) – asylum

[INA § 209](#) – refugee and asylee adjustment

[INA § 235](#) – credible fear determinations

[INA § 241\(b\)\(3\)](#) – withholding of removal

[INA § 212\(a\)](#) – inadmissibilities

[INA §241\(a\)\(5\)](#) - reinstatement

[INA §238](#)- administrative removal for aggravated felons

[8 C.F.R. § 208.1](#) et seq. – process

[8 C.F.R. § 240.60](#) et seq. – suspension of deportation, special rule cancellation of removal, ‘NACARA 203’

ADDITIONAL RESOURCES

None

SUPPLEMENTS

ASM Supplement

A summary of Asylum Officer responsibilities is located at the beginning of this module in the light yellow Asylum Division text box. The required reading may be found using the internet link provided earlier in this chapter. Discussion of pertinent statutes and regulations, along with additional sources, will occur throughout the RAIO course and division specific training.

SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-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

None

SUPPLEMENTS

IO Supplement

There is no International Operations Division Supplement. A summary of the responsibilities an officer working for the International Operations Division is located at the beginning of this module in the light purple International Operations Division text box. It was deemed not necessary to include the entire text of the sections of the INA and 8 CFR IO Officers will refer to in the course of their work for several reasons: First, the list would be quite extensive. Second, IO Officers generally have access to hard copies or digital copies of the INA and CFR, unless they are on circuit rides adjudicating refugee applications in remote areas.