

Lesson Plan Overview

Course	Asylum Officer Basic Training
Lesson	<i>Decision Writing Part II: Legal Analysis</i>
Rev. Date	January 9, 2006
Lesson Description	This lesson explains the legal analysis component of an assessment or Notice of Intent to Deny (NOID), the components of the analysis itself, and how to correctly write a legal analysis.
Field Performance Objective	Given a request for asylum in which a preliminary decision has been reached, the asylum officer will write an assessment or Notice of Intent to Deny (NOID) that is clear, concise, complete, and legally correct, within one hour.
Interim (Training) Performance Objectives	<ol style="list-style-type: none"> 1. Determine the factors to include in the legal analysis. 2. Effectively communicate in writing the basis for finding an applicant eligible or not eligible for asylum. 3. Accurately determine when it is necessary to cite country conditions and legal sources. 4. Identify information and statements that are not relevant or appropriate to include in an assessment or NOID. 5. Within specific time constraints, write an assessment in language that is easily understood.
Instructional Methods	Discussion, practical exercises
Student Materials/References	<ol style="list-style-type: none"> 1. Interview notes from exercise #3 in Interviewing Part III and the practice exercise in <i>Overview of the Asylum Program</i> (Tatyana Mikhailovna Alieva) 2. Country conditions information handouts 3. Participant Workbook 4. Decision Writing Templates <ul style="list-style-type: none"> • Assessment to Grant (App. A 44 in Affirmative Procedures Manual (AAPM)) • Notice of Intent to Deny (NOID) (App. A 45 in <i>AAPM</i>) • Assessment to Refer (App. A 46 in <i>AAPM</i>) 5. Standard Referral Notice (App. A 51 in <i>AAPM</i>) 6. Sample Assessments (in Supplemental Information binder) 7. Decision Making Flowcharts (in Supplemental Information binder)
Method of Evaluation	Practical exercise exam, Written test

CRITICAL TASKS

SOURCE: Asylum Officer Validation of Basic Training Final Report (Phase One), Oct. 2001

Task/ Skill #	Task Description
010	Conduct country conditions research.
011	Conduct legal research.
012	Identify issues of claim.
013	Determine one-year filing deadline eligibility.
021	Determine credibility of applicant and materiality to claim.
024	Determine if applicant is a refugee.
025	Determine whether any bars apply.
034	Make final decision to grant, refer or deny
035	Recognize altered, counterfeit, or other fraudulently obtained documents and determine materiality to claim.
036	Review all evidence and determine materiality to claim.
045	Communicate professionally with the public.
SS 2	Ability to make quick and accurate decisions.
SS 3	Ability to work independently and effectively.
SS 4	Ability to write clearly, concisely, and grammatically in the English language.
SS 8	Ability to read and interpret statutes, precedent decisions and regulations.
SS 9	Ability to analyze and apply country conditions information.
SS 11	Ability to effectively organize and manage one's time and work environment.
SS 13	Ability to analyze complex issues.
SS 14	Ability to work effectively with computers.
SS 16	Ability to type, with reasonable accommodations for qualified individuals.
E 1	Relevant reference materials and databases.
E 2	Internet and INS Intranet.

TABLE OF CONTENTS

I. INTRODUCTION	4
II. DEFINITION OF ANALYSIS	4
A. Basic Definition	4
B. Application to Asylum	4
III. PURPOSE OF LEGAL ANALYSIS	4
A. Ensures that Decisions are Based on Appropriate Factors and Correct Application of the Law	4
B. Allows for Review which Enhances Quality	4
C. Provides the Applicant with Meaningful Opportunity to Rebut, if in a Notice of Intent to Deny (NOID)	5
IV. COMPONENTS OF ANALYSIS	5
A. Eligibility to Apply for Asylum	5
B. Materiality of any Aspects of the Claim that Were Found Not Credible	7
C. Past Persecution on Account of a Protected Ground	8
D. Well-Founded Fear of Future Persecution on Account of a Protected Ground	10
E. Mandatory Bars and Discretion	12
V. CONSTRUCTING THE ANALYSIS	14
A. Identify Legal Issues to Be Addressed in the Legal Analysis	14
B. Identify Facts that Have a Direct Bearing on the Legal Issues	15
C. Apply the Law to the Material Facts to Explain the Decision	16
VI. STYLE OF ANALYSIS	18
A. Is Focused	18
B. Contains Only Objective Analysis, Not Personal Opinions, Assumptions, or Speculations of the Officer	18
C. Is Explanatory in Tone, Not Argumentative	18
D. Reflects Appropriate Legal Standards without Use of Legal Jargon that is Difficult to Understand	19
VII. CITATIONS	20
A. Citations to Cases	20
B. Citations to Country Conditions Reports	20
VIII. NOTICE OF INTENT TO DENY (NOID)	20
A. Make the Opportunity to Rebut Meaningful	21
B. Use Language that a Lay Person Can Understand	21
IX. SUMMARY	21

Presentation**References****I. INTRODUCTION**

This lesson explains the legal analysis component of an assessment or Notice of Intent to Deny (NOID), the components of the analysis itself, and how to correctly write a legal analysis. Additionally, the lesson will cover specific factors to consider when drafting the analysis in a NOID.

II. DEFINITION OF ANALYSIS**A. Basic Definition**

Webster's has several definitions of "analysis," which all involve the breaking down of a complex whole into separate parts for study.

B. Application to Asylum

The legal analysis in the assessment or NOID breaks down a determination that an applicant does or does not qualify for asylum into short explanations and conclusions that reveal how the determination was reached. This makes clear to the reviewer or recipient the rationale behind the final determination.

See chart at end of lesson.

III. PURPOSE OF LEGAL ANALYSIS**A. Ensures that Decisions are Based on Appropriate Factors and Correct Application of the Law**

The process of explaining the reason for a decision discourages arbitrary decision-making based on unconscious assumptions or "gut feelings." It forces the decision-maker to consider the underlying reasons for a decision and to support the decision with objective facts. This not only helps to protect genuine refugees and prevent ineligible asylum seekers from erroneously being granted asylum, but also upholds the integrity of the overall asylum process.

B. Allows for Review which Enhances Quality

The legal analysis conveys to the reviewer (usually a supervisor or someone from quality assurance locally or at headquarters) the reasons behind the decision. This allows the reviewer to

determine that the decision was based on neutral, objective factors and that the law was properly applied. The quality of decision-making is thus enhanced.

C. Provides the Applicant with Meaningful Opportunity to Rebut, if in a Notice of Intent to Deny (NOID)

The legal analysis in a NOID explains to the applicant the reason(s) USCIS intends to deny the request. The applicant can then formulate a rebuttal that specifically addresses the reasons USCIS has found the applicant ineligible.

IV. COMPONENTS OF ANALYSIS

As noted in the first part of the lesson on decision writing, the assessment or NOID can be broken down into several components. Similarly, there are several components within the legal analysis itself, each of which must be discussed in the legal analysis section of an assessment or NOID. The required components are as follows:

- Eligibility of applicant to apply for asylum
- Materiality of any aspects of the claim that were found not credible
- Past persecution on account of a protected ground
- Well-founded fear of future persecution on account of a protected ground
- Mandatory bars and discretion

A. Eligibility to Apply for Asylum

For applicants who filed on or after April 1, 1997, an assessment or NOID must address whether the applicant was eligible to apply for asylum.

1. Previous Denial by IJ or BIA

If an applicant has been previously denied asylum by an Immigration Judge (IJ) or the Board of Immigration Appeals (BIA), the asylum officer must address the following issues:

See, Langlois, Joseph E. Asylum Division, Office of International Affairs. [*Procedures for Implementing the One-Year Filing Deadline and Processing Cases Previously Denied by EOIR*](#), Memorandum to Asylum Office Directors, et al. (Washington, DC: Jan. 4, 2002), 11 p. plus attachments.

- a. whether the Asylum Division has jurisdiction over the applicant; and
- b. whether circumstances changed after the previous denial materially affecting the applicant's eligibility for asylum such that the bar to applying is overcome.

See also, lesson, [Mandatory Bars to Asylum and Discretion](#)

2. Compliance with the One-Year Filing Deadline

- a. general analysis

The discussion of the one-year filing deadline requires an analysis of:

See, lesson, [One-Year Filing Deadline](#)

- (i) whether the one-year filing deadline applies to the applicant;
- (ii) whether the applicant established by clear and convincing evidence either an entry within the applicable one-year period, or that he or she was outside of the country during the year immediately preceding the filing date;
- (iii) if not timely filed, whether a changed or extraordinary circumstances were established; and
- (iv) if there changed or extraordinary circumstances were established, whether the applicant filed the application within a reasonable period of time, given all the circumstances.

- b. assessments to refer

If referring an application on the basis of the one-year filing deadline, the discussion does NOT require a full account of the applicant's claim to asylum or an analysis into whether the applicant established past persecution or a well-founded fear.

However, the assessment to refer must include each of the following, or an explanation as to why a required item is missing.

- (i) brief biographical information, including date, place, and manner of last arrival, and filing date

See, Langlois, Joseph E. Asylum Division, Office of International Affairs. [Procedures for Implementing the One-Year Filing Deadline and Processing Cases Previously Denied by EOIR](#), Memorandum to Asylum Office Directors, et al. (Washington, DC: Jan. 4, 2002), 11 p. plus attachments.

See, lesson, [Decision Writing I: Overview](#), section IV.A., *Biographic/Entry Information*

- (ii) identification of basis of applicant's claim *See, lesson, [Decision Writing I: Overview](#), section IV.B., [Basis of Claim](#)*
- (iii) a statement and supporting analysis of the finding that the applicant is ineligible for an exception based on changed circumstances relating to country conditions because:
- (a) there was no change in country conditions
 - (b) the change occurred before April 1, 1997
 - (c) the change did not materially affect the applicant's asylum eligibility, OR
 - (d) the I-589 was not filed within a reasonable time after the change, considering delayed awareness, if applicable

The finding that a changed circumstances exception relating to country conditions does not apply usually requires citation of supporting country conditions information. Though the circumstances of a particular case may dictate otherwise, in general the relevant country conditions cited would cover the period beginning approximately 24 months before the date of filing and ending on the date of the decision in the case.

- (iv) a statement demonstrating that:
- (a) any other possible changed or extraordinary circumstances relating to the applicant's case were examined, that none of those circumstances warranted an exception and why they did not, OR
 - (b) the applicant did establish the existence of a changed or extraordinary circumstance, but that the officer found that the delay in filing from the time of the changed or extraordinary circumstance was unreasonable, and an explanation as to why

B. Materiality of any Aspects of the Claim that Were Found

Not Credible

In an assessment or NOID, the credibility finding is generally separate from the legal analysis, though the credibility finding itself may involve analysis. If the applicant is credible, then the asylum officer should simply state as much and proceed to the legal analysis. If the applicant was found not credible in material respects, then the analysis should explain the reasons for the negative credibility finding and how the part of the testimony found not credible is material to the claim. This is discussed in detail in lesson, *Credibility*.

See, lesson, [Credibility](#)

C. Past Persecution on Account of a Protected Ground

The assessment or NOID must state whether or not the applicant has established past persecution on account of a protected ground.

1. Past harm claimed

If the applicant suffered some form of harm in the past (physical, economic, or psychological) and this harm is part of the applicant's claim (not, for example, harm resulting from a random event, like an earthquake), then legal issues are raised that must be addressed in the analysis:

- a. Does the severity of the harm warrant a finding of persecution?
- b. Was the harm on account of a protected ground?
- c. If the persecutor is a non-governmental entity, was the government unable or unwilling to protect the applicant?

2. Past persecution on account of a protected ground established

If past persecution on account of a protected ground was established, a well-founded fear of future persecution based on the same ground is presumed (the asylum officer does not need to apply the *Mogharrabi* test).

- a. USCIS, bearing the burden of proof, may rebut the presumption on two grounds:

- (i) Has there been a fundamental change in circumstances such that the applicant's fear of future persecution is no longer well founded?

See [Example A](#) at end of lesson plan. (All examples are found at end of the lesson.)

Changes in circumstances to rebut the presumption of a well-founded fear can include both changes in country conditions with regard to the applicant's protected characteristic, and/or changes involving the applicant himself.

- (ii) Could the applicant avoid future persecution by relocating to another part of the country, and if so, is it reasonable to expect the applicant to do so?

Rebuttal of the well-founded fear presumption on this point requires an analysis into both components. An argument that an applicant can avoid persecution by relocating will fail if it is not established that it is reasonable to expect the applicant to relocate.

See [Example B](#) at end of lesson plan.

- b. There may be circumstances in which USCIS will grant asylum even though an applicant's fear is no longer well-founded.

Asylum will be granted in such circumstances on the basis of one of two determinations:

- (i) Has the applicant demonstrated compelling reasons for being unable or unwilling to return arising out of the severity of the past persecution?

This analysis is separate from the analysis to determine whether harm suffered is severe enough to be considered persecution. A grant in the absence of a well-founded fear requires a higher threshold of harm suffered.

- (ii) Has the applicant established that there is a reasonable possibility that he or she may suffer other serious harm upon return?

This harm does not have to be on account of one of the protected grounds.

Note: These issues involve whether asylum should be granted to a refugee who no longer has a well-founded fear. It should be addressed only if it is determined that the applicant does not have a well-founded fear of future persecution.

3. No past harm claimed

If the applicant has not suffered harm in the past, then the assessment may include a simple statement, such as “the applicant does not claim to have been harmed in the past. She bases her claim on fear of future persecution.” A similar statement in the second person, “you,” is appropriate for a NOID.

D. Well-Founded Fear of Future Persecution on Account of a Protected Ground

The asylum officer must explain whether or not the fear of future persecution is well founded and whether it is connected to a protected ground. An analysis of well-founded fear is conducted along the following path, when past persecution on account of a protected ground is NOT established.

1. Reasonable possibility of suffering persecution in the future

a. all four prongs of the modified *Mogharrabi* test met

See [Example C](#) at end of lesson plan.

If all four prongs of the modified *Mogharrabi* test have been met, then explain which facts in the case satisfy each prong of the modified *Mogharrabi* test.

b. pattern or practice found

The applicant does not need to establish that he or she would be singled out individually if the applicant establishes:

See [Example D](#) at end of lesson plan.

- (i) that there is a pattern or practice of persecution of a group of individuals similarly situated to the applicant, and
- (ii) that the applicant’s inclusion and identification with the group makes his or her fear of persecution reasonable.

The analysis of a pattern or practice must include an explanation as to how a pattern or practice was found and how the applicant is similarly situated to the group.

Note that this analysis may also fit within the *Mogharrabi* analysis, since a pattern or practice of persecution of individuals similarly situated to the applicant may establish that the persecutor has the inclination and the ability to persecute the applicant for possessing a particular characteristic.

- c. all four prongs of modified *Mogharrabi* test not met

If one or more of the four prongs of the modified *Mogharrabi* test have not been met, then at least one of the missing prongs must be addressed with a brief explanation as to why the applicant failed to establish that part of the test.

See [Example E](#) at end of lesson plan.

- d. unable or unwilling to protect

If the harm feared would be at the hands of a non-governmental entity, the asylum officer must address whether the government will be able or willing to protect the applicant from persecution upon return.

2. Nexus to a protected ground

If the fear of future harm is well founded, the asylum officer must determine whether the feared harm is on account of a protected ground. If no nexus is found, then the asylum officer must explain why.

See [Example F](#) at end of lesson plan.

When the nexus is to a particular social group, the officer must analyze whether the group in question meets the requirements to be considered a protected characteristic, and whether the applicant has established that the persecutor is motivated by the applicant's inclusion in that group.

See, lesson, [Eligibility III: Nexus](#), section VI., *Membership in a Particular Social Group*

3. Internal Relocation

An applicant does not have a well-founded fear of persecution if he or she can avoid persecution by relocating to another part of the country, and it is reasonable to expect the applicant to relocate.

See [Example G](#) at end of lesson plan.

The applicant bears the burden to establish that it would not be reasonable for him or her to relocate (either because he or she would not avoid persecution or it is otherwise unreasonable), UNLESS, the persecution is by a government or is government-sponsored. When the persecution is by a government or is government-sponsored, USCIS bears the burden to demonstrate that relocation is reasonable.

E. Mandatory Bars and Discretion

Asylum officers must analyze whether a mandatory bar applies in all assessments to grant and in negative decisions based on the application of a mandatory bar or discretionary ground for denial. In most decisions to refer or deny, the asylum officer need not discuss mandatory bars or other discretionary grounds. For example, if the applicant has not established eligibility on the basis of past persecution or a well-founded fear of persecution, and there is no evidence that a bar may apply, then a discussion of mandatory bars is not necessary.

However, in circumstances in which the referral or denial is based on reasons other than a mandatory bar, but there is evidence to suggest that a mandatory bar may apply, asylum officers should include a reference to the possible bar in the assessment or NOID. Such an action alerts the ICE trial attorney to the possibility of a mandatory bar if the case is referred and provides the applicant a full opportunity to rebut all grounds on which an asylum officer may base his or her final decision when a NOID is prepared.

1. Facts indicate that mandatory bar may apply

If the facts indicate that a mandatory bar may apply, then the assessment generally should contain an explanation as to whether or not the applicant has met his or her burden of proof to establish that the mandatory bar does not apply. There may be some cases in which the applicant clearly has failed to establish eligibility for other reasons, and it is

See [Example H](#) at end of lesson plan.

unclear whether a mandatory bar applies. In such cases, the decision can rest on the reasons for ineligibility unrelated to the mandatory bar issue, though it is recommended that the officer indicate the possible applicability of one of the mandatory bars so that the ICE Trial Attorney is properly alerted to the issue.

2. Facts include possible grounds for discretionary denial/referral

If the facts indicate that a discretionary denial/referral may be warranted, then the asylum officer must discuss the positive and negative factors considered in reaching that determination, and explain the reason for exercising discretion to grant, deny, or refer the case.

3. Facts do not indicate any grounds for mandatory bar or discretionary denial/referral
 - a. If the facts do not indicate that a mandatory bar may apply or that a discretionary denial/referral may be warranted, then these are not issues that need to be addressed in a NOID or negative assessment.
 - b. In most cases of assessments to grant, a simple summary, which is in most templates, may be used. Example: “There are no mandatory bars or discretionary grounds for denial.”

4. Applicants barred as persecutors

Unlike applicants barred from receiving asylum on other grounds, an applicant found to be a persecutor CANNOT also be said to be a refugee because this bar is included in the definition of a refugee.

[INA § 101\(a\)\(42\)](#)

When writing a decision involving an applicant barred as a persecutor, the AO must analyze all elements of the refugee definition and any other bars that may apply. Such an assessment should not include a statement that “the applicant met the definition of a refugee,” even when the applicant established that he or she suffered past persecution or has a well-founded fear of persecution on account of a protected ground. A possible substitute would be: “Though the applicant has been found to have a well-founded fear of persecution, he/she is ineligible for asylum because he/she has been found to have assisted in the

persecution of others on account of their [state the protected ground].” A discussion of why the applicant was found to be a persecutor must follow.

V. CONSTRUCTING THE ANALYSIS

Prior to writing the analysis, the asylum officer should review all the facts and, if necessary, research country conditions to identify the legal issues raised in the case. The asylum officer should then apply the law to the facts to resolve the legal issues and make a decision in the case.

See lesson, [Making an Asylum Decision](#).

A. Identify Legal Issues to Be Addressed in the Legal Analysis

1. Issues that should be addressed in the legal analysis are those that can determine the outcome of the decision.

Examples:

- a. issue of firm resettlement raised

The applicant lived three years in a third country before coming to the United States. Whether the applicant was firmly resettled in that country should be discussed in the legal analysis.

- b. issue of resettlement not raised

The applicant spent several days in a third country in transit to the United States. The legal analysis does not need to contain an explanation as to whether or not the applicant was resettled.

2. There are often several legal issues raised in each case. If the decision is to grant asylum, then the applicant's ability to establish each element of the refugee definition must be addressed. A decision to deny or refer may be based on several reasons that the applicant fails to meet the definition of refugee. In such a case, not every issue needs to be addressed, since the failure to meet even one element necessarily results in a negative decision.

Example Q: An applicant claims to fear he will be harmed by a neighborhood gang member because the applicant reported to the authorities the gang member's theft of a car. Several legal issues are raised:

- a. whether there is a connection between the harm feared and a protected characteristic in the refugee definition;
- b. whether the government is able or willing to protect the applicant; and
- c. whether the applicant would be able to avoid harm through relocation and it is reasonable to expect him to do so.

B. Identify Facts that Have a Direct Bearing on the Legal Issues

1. The asylum officer should review the facts to identify the facts that have a direct bearing on resolution of the legal issues raised in the case -- the material facts.

Example: Building upon Example Q, material facts might include:

- a. The gang member seeks revenge against the applicant for reporting his criminal activities to the police and has no other reason to harm the applicant.
 - b. Applicant's friend once reported criminal activity by the same gang and, as a result, a gang member was prosecuted and imprisoned. The friend was placed in a witness protection program after testifying against the gang member.
 - c. The gang member belongs to a local gang that is active only in one neighborhood of one city.
2. Material facts cannot be ignored simply because they fail to support the asylum officer's decision. All material facts must be considered and evaluated.

Example: There may be evidence, in Example Q, that the friend who was placed in the witness protection program was discovered by other gang members and has received a written threat.

These facts should also be addressed in the legal analysis, because they have a direct bearing on the issue of whether the gang members have the inclination and ability to harm those who, like the applicant, report their illegal activities.

C. Apply the Law to the Material Facts to Explain the Decision

1. Connect the facts and the law

The law should be applied to the material facts to resolve the legal issues and explain the decision. The analysis should incorporate the relevant facts, not merely repeat them.

The asylum officer should bear in mind that the reviewer has already read the summary of the facts in the assessment and is aware of the fundamental aspects of the claim. The analysis should be focused and concise.

Examples: In Example Q above, the strongest reason to deny or refer the applicant probably would be the lack of nexus to a protected ground. It would be sufficient to address that issue alone. However, for the purpose of instruction, examples of an analysis of all three issues are provided here:

- a. The applicant's fear that he will be harmed by a gang member seeking revenge is based on a personal problem unrelated to any of the protected grounds in the refugee definition. Because the applicant failed to connect the harm he fears to a protected ground, he is not a refugee.
- b. The fact that the government provided protection to an individual who also reported the criminal activities of a gang member indicates that the government would be willing and able to protect the applicant. Although the friend was threatened after the government placed him in a witness protection program, there is no evidence that the government would fail to continue to take reasonable measures to protect him. Since the applicant failed to establish that the gang member has the ability to carry out his threat, the applicant's fear of future persecution is not well founded.
- c. The applicant could avoid harm by the gang member by relocating to another city where the gang has not presence. Further, it is reasonable that the applicant, a young man with skills required by many jobs, would be able to relocate. Therefore, the applicant does not

have a well-founded fear of persecution.

2. Include both explanation and conclusion

A conclusion states a decision that has already been made, while an explanation conveys the reason the decision was made, rendering the decision understandable. An analysis is an explanation leading to a conclusion. Thus, it contains both explanatory and conclusory statements. The analysis will lead to a final determination as to asylum eligibility.

Examples:

- a. The applicant failed to establish that his fear is well founded. (conclusion)

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)

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. (explanation and conclusion; may lead to final determination of ineligibility, if no past persecution)

- b. The applicant can avoid persecution within her country. (conclusion)

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)

Note again that the statement of fact does not necessarily explain the conclusion.

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

VI. STYLE OF ANALYSIS

A. Is Focused

The explanation should not be long and detailed, but rather short and to the point. The asylum officer should avoid repetition and discuss only facts that have a direct bearing on the issues addressed.

B. Contains Only Objective Analysis, Not Personal Opinions, Assumptions, or Speculations of the Officer

The analysis should contain only the facts presented by the applicant or information from reliable sources. The analysis should be free of any opinions, assumptions, or speculations made by the asylum officer.

C. Is Explanatory in Tone, Not Argumentative

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

Example:

The fact that the applicant safely relocated to another city in his country before coming to the United States clearly shows, without a doubt, that the applicant is not at risk of harm throughout his country. Therefore, it is manifestly unreasonable for the applicant to fear persecution throughout his country, and his fear is unfounded. (argumentative)

Because the applicant was able to safely relocate within his country prior to coming to the United States, he has not established a well-founded fear or persecution. (explanatory)

D. Reflects Appropriate Legal Standards without Use of Legal Jargon that is Difficult to Understand

1. Reflect appropriate legal standards
 - a. The asylum officer should choose words that accurately reflect the law being applied, because words that are used in common dialogue may have specific legal connotations that may alter the legal meaning of the text.
 - b. Examples
 - (i) The word “would” reflects a particular standard of proof in the asylum context. It implies a probability that an event will occur (which is the standard of proof for withholding of removal).

Compare:

“The applicant failed to establish that she would be persecuted if she returned to her country.”

with

“The applicant failed to establish that there is a reasonable possibility she would be persecuted if she returned to her country.”

- (ii) The words “persecution” and “torture” have specific legal meanings. The asylum officer should not indicate that the harm an applicant suffered is persecution or torture, unless the asylum officer has concluded that the harm actually meets the legal definition of those terms.
2. Avoid “legalese” (legal jargon, usually in Latin)

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: “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.”

VII. CITATIONS

A. Citations to Cases

Analyses in assessments and NOIDs rarely contain references to particular precedent decisions. A precedent decision should be cited only if the asylum officer relies on that decision in formulating his or her own legal conclusions.

Note, however, that there are some standard cites to precedent decisions in the boilerplate language in the templates. *See also* lesson [Sources of Authority](#)

B. Citations to Country Conditions Reports

1. If an asylum officer relies on a particular country conditions report in reaching a conclusion, then the country conditions report should be cited.

See lesson, [Country Conditions Research and the Resource Information Center \(RIC\)](#) for complete description of country conditions research.

Example: The applicant claimed to have been threatened because he campaigned and voted for the Freedom Party candidate for President in the 1992 elections, Mr. Jones. However, country conditions reports establish that the candidate for the Freedom Party in the 1992 Presidential elections was Ms. Smith. **Cite.**

2. The citation should be complete, containing the name of the source, the author, the date and place of publication, and the appropriate page numbers. The Resource Information Center (RIC) has produced a document that contains appropriate citation forms of most country reports used by asylum officers.
3. Asylum officers should not rely on anecdotal or other unofficial country conditions information in their written decisions.

See, Immigration and Naturalization Service, Resource Information Center. [INS Resource Information Center. Bibliographic Citing Standards and Practices](#) (Washington, DC: Feb. 2001), 11 p. (found in the *Resource Information Center Field Reference Guide*)

VIII. NOTICE OF INTENT TO DENY (NOID)

The components of an analysis in a NOID are the same as in an assessment. However, some differences between a NOID and an assessment may affect the amount of detail included and the language used in the analysis.

A. Make the Opportunity to Rebut Meaningful

A NOID provides the applicant with an opportunity to rebut the reasons the asylum officer found the applicant not eligible for asylum and, in some cases, for withholding of removal. For this opportunity to be meaningful, the analysis must clearly explain the reason(s) USCIS intends to deny the request. If the applicant does not understand the reason behind the decision, then rather than addressing specific issues, the applicant can only reiterate the facts already presented, hoping to cover all bases.

B. Use Language that a Lay Person Can Understand

An assessment explains the decision to individuals who are familiar with the legal standards and jargon pertaining to asylum and withholding of removal. However, the NOID is directed to an individual who may have little understanding of the complexities of the law. Explanations that may communicate an idea to the reviewer of an assessment may fail to effectively communicate an idea to the recipient of a NOID.

Example:

It may be sufficient to state in an assessment, “the applicant failed to establish a nexus between the feared harm and a protected ground.” The reviewer of an assessment will know what the officer means 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 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).”

IX. SUMMARY**A. Definition of Analysis in Asylum Assessment/NOID**

The legal analysis in an assessment or NOID breaks down the final determination of eligibility into explanations and conclusions, revealing the reasons the final determination was reached.

B. Purpose

The purpose of the analysis is to ensure that decisions are based on appropriate objective factors and the correct application of the law and to convey to the reviewer or applicant (if a NOID) the rationale underlying the decision.

C. Components of Analysis

The elements that must be included in each analysis are legal determinations regarding the following:

1. eligibility of applicant to apply for asylum
2. materiality of any aspects of the claim that were found not credible
3. past persecution on account of a protected ground
4. well-founded fear of future persecution on account of a protected ground
5. mandatory or discretionary grounds for denial/referral

D. Constructing an Analysis

To write an analysis, the asylum officer should identify determinative legal issues raised by the facts of a case, identify the facts that have a direct bearing on those issues (material facts), and apply the law to those facts to explain how the issues are resolved -- for or against the applicant. The analysis refers to material facts, but is not simply a repetition of the facts. The analysis should contain both explanations and conclusions.

E. Style of Analysis

The analysis in the assessment should have the following characteristics:

1. Focuses on determinative issues
2. Contains only objective facts and legal conclusions, not personal opinions, assumptions, or speculations of the asylum officer
3. Is explanatory in tone, not argumentative

4. Reflects appropriate legal standards, but does not contain legal jargon that is difficult to understand

F. Citations

1. A precedent decision should be cited only when the asylum officer relies on that decision in formulating his or her own legal conclusions.
2. Reliable country condition reports should be cited when relied upon in reaching a conclusion regarding the applicant's eligibility for asylum or withholding of removal.
3. Asylum officers should not rely on anecdotal or other unofficial country conditions.

G. Notice of Intent to Deny

In a NOID, the analysis should provide the applicant with a meaningful opportunity to rebut by clearly explaining the reason for the decision. The asylum officer should bear in mind that the recipient of a NOID generally will be unfamiliar with the jargon routinely used by asylum officers; therefore, it is essential to discuss the decision in language that explains legal concepts to a layperson.

EXAMPLES

Example A: Past persecution on account of a protected ground, no change in country conditions

The torture and detention that the applicant experienced for participating in a rally to protest the military's human rights abuses constitute persecution on account of political opinion. Country conditions in X have not changed to such an extent that the applicant's fear of future persecution is no longer well founded. Reliable reports establish that the military of X continues to arrest and torture perceived opponents. [cite]. Because the persecutor is a government entity, it is presumed that the applicant cannot avoid persecution through relocation, and there is no evidence to support a finding to the contrary. Therefore, applicant's fear of future persecution is well founded.

No need to continue on with application of modified *Mogharrabi* test; well-founded fear of future persecution already established.

Example B: Past persecution on account of protected ground and no change in country conditions, but a preponderance of the evidence establishes that fear of future persecution is no longer well founded

Applicant suffered persecution on account of political opinion when she was imprisoned for six months fourteen years ago because she attended an opposition party meeting. Country conditions in X have not significantly changed. However, a preponderance of the evidence establishes that there is little likelihood the applicant would suffer persecution if she returned to country X, because the applicant remained safely in country X for ten years after her detention without any further threats or harm from the authorities, she is no longer interested in politics, and she has no inclination to participate in any political activities if she returns to country X.

The deprivation of liberty the applicant experienced did not constitute such severe persecution as to provide compelling reasons to grant asylum in the absence of a well-founded fear of future persecution. The applicant was not detained for a prolonged period of time and was not subject to severe harm during her detention.

Example C: All four prongs of the modified *Mogharrabi* test established

The threatening notes the military sent the applicant (warning that she would be killed if she continued participating in a student organization which opposed the military) are evidence that the military is aware that she possesses a belief the military seeks to overcome by force and is inclined to persecute her for possession of that belief. Country reports show that the military of X often arrests, tortures, and “disappears” perceived opponents. [cite] The applicant has met all four prongs of the modified *Mogharrabi* test by establishing that she opposes the military, the military is aware of her opposition activities and has both the inclination and the ability to persecute her on account of those activities. Her fear of future persecution on account of political opinion is well founded.

The information in the parentheses was included for purposes of this example. That information normally would be included in the summary of the facts and therefore would not need to be repeated in the analysis.

Example D: Pattern or practice of individuals similarly situated

While in the United States, the applicant converted from religion X to religion Y. The applicant would continue to practice religion Y openly if returned to his country. Laws prohibiting conversion from religion X to religion Y are generally enforced, and the punishment is severe (lengthy detention and/or execution). Although the applicant has not been personally threatened, there is a pattern or practice of persecution of individuals similarly situated to him. [cite country conditions]. The fact that the applicant openly practices his religion and would continue to do so upon return to his country establishes that there is a reasonable possibility the authorities would identify him with the persecuted group. Therefore, the applicant's fear of persecution on account of religion is well founded.

Example E: Failure to meet all four prongs of the modified *Mogharrabi* test

Although the guerrillas once threatened to harm the applicant if he continued to support the government, the applicant remained safely in his hometown for three years after that single isolated incident without receiving any further threats or suffering harm. The guerrilla's failure to take any action to carry out their threat for such a prolonged period of time indicates that they do not have the inclination to harm the applicant. Therefore, his fear of future persecution is not well founded.

Example F:**(1) Connection to protected ground**

The proximity in time between the applicant's participation in a protest rally and his arrest, along with the fact that he was not accused of any criminal activity, indicates that the government was motivated to arrest the applicant on account of his political opinion.

(2) No connection to the protected ground

There is no evidence that the criminal charges of auto theft were lodged against the applicant as a pretext to punish him for attending a political rally several months previously. The authorities made no mention of the applicant's attendance at the rally, which occurred a significant time prior to the arrest, and only questioned the applicant about his possible connection to the theft. Therefore, the applicant failed to establish a connection between the harm he suffered and his political opinion.

Example G: Internal Relocation Possible

The applicant testified that he could live safely in the capital city because the guerrillas who threatened him operate only in the western highlands. He presented no evidence that it would be unreasonable for him to relocate to the capital city. Therefore, the applicant failed to establish that he could not avoid persecution by relocating or that it was unreasonable to expect him to do so, thus his fear is not well-founded.

Example H:**(1) Firm resettlement found**

The evidence indicates that the applicant was firmly resettled in Germany, because after she fled her country for Germany, she received from the German government an offer of permanent resident status. The applicant was unable to establish by a preponderance of the evidence that she was not resettled in Germany.

(2) Firm resettlement not found

Although the applicant spent three years in Mexico before coming to the United States, he lived and worked there illegally and was not offered any type of permanent resident status. Therefore, he was not firmly resettled in Mexico.