

Lesson Plan Overview

Course	Asylum Officer Basic Training
Lesson	<i>Reading Caselaw</i>
Rev. Date	January 9, 2006
Lesson Description	This lesson provides asylum officers with basic information on how to read and interpret precedent decisions, including finding decisions, the components of decisions, and the terms used to discuss decisions. Using the text of legal opinions in a directed discussion, trainees will become more comfortable analyzing and discussing legal decisions.
Field Performance Objectives	Given a request for asylum to adjudicate, the asylum officer will correctly read case law to determine eligibility for asylum in the United States.
Academy Training Performance Objective	Given written citations to judicial or administrative opinions and terms used in reading and discussing caselaw, the trainee will correctly identify the source of the opinion and identify the definition of the terms.
Interim (Training) Performance Objectives	<ol style="list-style-type: none"> 1. Identify the source of Administrative and Federal Court decisions and opinions through the citation. 2. Identify the holding of a decision. 3. Identify the facts of a decision. 4. Determine whether a decision is “on point.” 5. Determine whether a case can be distinguished. 6. Determine whether language in the decision is dicta.
Instructional Methods	Lecture, discussion, practical exercises
Student Materials / References	Participant Workbook; <i>Matter of S-A-; Fatim v. INS</i>
Method of Evaluation	Written Test
Background Reading	None

CRITICAL TASKS

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

Task/ Skill #	Task Description
001	Read and apply all relevant laws, regulations, procedures, and policy guidance.
011	Conduct legal research.
SS8	Ability to read and interpret statutes, precedent decisions and regulations.
E1	Relevant reference materials and databases.

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

The purpose of this lesson is to introduce the student to the use of case law in the asylum process. The lesson includes a definition of case law, an explanation of the component parts of a case, definition of terms, and the relevance of case law to an asylum adjudication. The asylum process will be covered in greater detail in subsequent lessons.

II. CASE LAW**A. Definition of “Case Law”**

Case law is defined as: “The aggregate of reported cases as forming a body of jurisprudence, or the law of a particular subject as evidenced or formed by the adjudged cases, in distinction to statutes and other sources of law.”

Black’s Law Dictionary, 9th Reprint, 1987, p. 196.

“Case law” refers to all cases on a particular subject that have been designated by the deciding body for publication. These cases are published in bound volumes sometimes called “reporters.” Case law interprets statutes and other sources of law.

See lesson, [Sources of Authority](#)

B. Component Parts of a Case

The asylum officer should first identify what body issued a particular decision. In the immigration context, case law consists of both administrative law and federal court decisions issued by, in order of ascending precedential authority:

See, Jacobstein, J. Myron, et al. *Legal Research Illustrated*, 7th Edition (New York: Foundation Press, 1998), pp. 25-27.

- the Board of Immigration Appeals (BIA),
- United States District Courts,
- United States Courts of Appeals (Circuit Courts), and
- the United States Supreme Court.

Regardless of the body that issues a decision, the component parts of the published case will be the same. The level of court will determine whether the decision is binding on a lower court or administrative body. For example, circuit court opinions are binding on the BIA, immigration judges and asylum officers located within that circuit court’s jurisdiction.

See, lesson, [Sources of Authority](#); Note that courts will also issue unpublished decisions that do not have precedential value.

1. Citation

A citation of authority is a reference to the case that you are

relying on to give weight to the opinion in asylum adjudication. The action of noting such a case is called “to cite” the case. The classification of how the case is reported is also called a citation. Every case has a uniform citation code.

In the following order, a citation includes the name of the case, the volume number and name of the reporter where the case is published, the case or page number, the name of the court, and the date of the decision.

See, [Annex I](#) of this lesson for a list of commonly used reporter abbreviations

A case can appear in a legal database before its publication in a bound reporter. When citing a case prior to its publication in a bound reporter, use the database citation listed at the top of the case. Once a case has been published, cite the published version.

Example: *Matter of C-A-L-*, 21 I&N Dec. 754 (BIA 1997)

See, lesson, [Sources of Authority](#) for more examples of citation codes.

There are instances when a case will have two citations, or “parallel” citations. This occurs when a case is published in an official and an unofficial reporter. Though the version of a case published in the official reporter is the definitive version and should always be cited, legal researchers can look to either version when reading a case.

Example: The official reporter for the Supreme Court is United States Reports, cited as “US.” An unofficial reporter is Supreme Court Reporter, cited as “S.Ct.” Asylum officers may see cases that include citations to both the official and unofficial reporters, such as *INS v. Stevic*, 467 U.S. 407, 104 S.Ct. 2489 (1984)

When citing a case, always use the official reporter citation, if available. Citing only the unofficial reporter is inappropriate when the official citation is available.

2. Title

The title will include the names of the parties in the case, or the petitioner’s name, initials, or alias in a BIA case.

Example: *Matter of C-A-L-, Respondent*

In a federal case, the party that initiated the action or filed the appeal is listed first.

Example: In *Aguirre-Aguirre v. INS*, Juan Anibal Aguirre-

[Aguirre-Aguirre v. INS](#), 121 F.3d 521 (9th Cir. 1997)

Aguirre appealed a decision of the BIA to the Court of Appeals of the Ninth Circuit. When the INS appealed the decision of the Ninth Circuit to the Supreme Court, the case was titled *INS v. Aguirre-Aguirre*.

[*INS v. Aguirre-Aguirre*](#),
526 U.S. 415 (1999)

3. Parties

The parties in a case will be identified by different terms.

a. applicant

In some BIA cases, the individual in question will be identified by the term “applicant.”

Example: In *Matter of X-P-T-*, the individual in question is identified as the “applicant.”

[*Matter of X-P-T-*](#), 21 I&N
Dec. 634 (BIA 1996)

In this situation X-P-T- is named the applicant because she applied for a benefit, asylum status, before the Executive Office for Immigration Review.

b. petitioner

The petitioner is a person filing an action or appealing from a lower court’s judgment

Example: In *Fatin v. INS*, Parastoo Fatin was named the petitioner because she filed a petition for review (i.e. appeal) of a decision of the BIA to the Court of Appeals.

[*Fatin v. INS*](#), 12 F.3d 1233
(3rd Cir. 1993)

c. plaintiff

A plaintiff is an individual or organization who initiates a lawsuit.

Example: In *American Baptist Churches v. Thornburgh*, the certified class of Guatemalans and Salvadorans who brought suit against the Attorney General because they believed that the government applied discriminatory standards in the application of immigration laws are named as plaintiffs.

[*American Baptist Churches v. Thornburgh*](#), 760 F.Supp.
796 (N.D.Cal., 1991)

d. *pro se*

The Latin term *pro se* means “on one’s own behalf.” In the legal context the term refers to individuals who represent themselves.

Example: In *Matter of K-L-*, the respondent represented himself. In the published decision after “on behalf of the respondent,” where the name of the legal representative is typically listed, the term *pro se* was written.

[*Matter of K-L-*](#), 20 I&N Dec. 654, (BIA 1993)

e. respondent

The respondent is the individual or organization against whom an appeal is brought.

Example: When Juan Anibal Aguirre-Aguirre appealed the decision of the BIA to the Court of Appeals (*Aguirre-Aguirre v. INS*), the Immigration and Naturalization Service was the respondent. When INS appealed the Court of Appeal decision to the Supreme Court, Juan Anibal Aguirre-Aguirre was the respondent.

In some cases before immigration judges and the Board of Immigration Appeals, the individual named in the title is called the respondent because the individual is “responding” to charges made by the government.

Example: In *Matter of C-A-L*, the alien in question is named as the “respondent.”

4. Syllabus or Headnotes

These terms both refer to a summarization of the case located at the beginning of the case. Reporters will use one of several formats to provide the reader with a brief statement of how the court decided different issues in the case.

a. syllabus

A syllabus is a synopsis written by an individual designated by the court. The syllabus will briefly cover the facts and issues considered in the case. The syllabus is not an authoritative source of law and should not be cited.

Kunz, Christina, et al. *The Process of Legal Research* (Boston: Little, Brown and Company, 1986) pp. 61-62.

b. headnotes

Some reporters, for example, those published by

West, feature a series of short paragraphs after the syllabus that break down the court's decision into discrete holdings. Each of the legal issues identified by West are assigned a "key number" which can be used to search for similar cases. Headnotes are not written by the court and do not carry the force of law.

Syllabi and headnotes are designed solely to assist the reader and do not form a part of the court's opinion. Readers should never rely solely on statements located in these publishers' aids. **Never cite a syllabus or a headnote**; cite relevant language as it appears in the body of the decision itself.

5. Statement of Facts

A statement of facts is the description of circumstances, events, or occurrences as they actually take or took place. The "facts" of the case would be the events as admitted into evidence in the adjudication. Appellate bodies, such as the BIA and US Courts of Appeals, write statements of fact based on the information already on record.

Black's Law Dictionary, 9th Reprint, 1987, p. 532

6. Opinions

An opinion is a judge's (or judges') discussion of the application of the law to the material facts of the case. Opinions indicate which statutes and/or regulations bear on the decision and analyze the circumstances of the case in light of precedent case law.

See section III.E., [*Precedent*](#), below

a. majority opinion

The majority opinion is "one that is joined by the majority of the court" and is the reasoning that leads to the court's disposition of the case.

Steven H. Gifis. *Law Dictionary* (New York: Barron's, 1984) p. 327.

b. concurring opinion

A concurring opinion is an opinion by one or more members of the court that agrees with the final outcome of the majority opinion, but uses different reasoning to reach that outcome or desires to emphasize a particular point. Concurring opinions are found after the disposition of a case, but are not written in all cases.

see, section III.B.7, [*Disposition of the Court*](#), below

c. dissenting opinion

Dissenting opinions are written by a judge (or judges) who disagrees with the decision reached by the majority of the court. The dissenting opinion explains the reasoning of the dissenting judge(s). Dissenting opinions are found after the disposition and concurring opinions; however, dissenting opinions are not written for all cases.

d. holding

A holding is a ruling on any question before the court. Holdings are contained within the text of the majority opinion; one must read an opinion in its entirety, and not rely on syllabi or headnotes, to determine what the court has actually “held.”

7. Disposition by the Court

The disposition is the court’s order on the case. A court of appeal will generally either uphold the lower court’s decision or reverse that opinion. Frequently used terms include:

a. affirm

An appellate court will affirm a lower court’s decision when it is the majority opinion that the lower court’s decision is correct, and should stand.

b. dismiss

When a court dismisses an appeal, it finds that the appeal is either without merit or not properly before the appellate body. The parties are then in the same position that they were in prior to the appeal. To dismiss or deny an appeal on its merits is akin to “affirming” the lower court’s decision.

c. remand

A court remands a case on appeal when it finds that the lower court had erred in procedure or ruling. The reviewing court sends the case back to the lower court to reconsider the issues set forth in the appellate body’s opinion. The higher court outlines where the lower

An appeal is the process of review by a higher court of a ruling of a lower court. (*One-L Dictionary*. Harvard Law School Library (Cambridge, MA: Aug. 2000) [Internet] http://www.law.harvard.edu/library/services/research/guides/united_states/basics/one_l_dictionary.php [Accessed on 28 August 2001].)

court erred and may set out specific instructions that it expects the lower court to follow when reconsidering the case.

d. reverse

In general, when a case is reversed it means that the appellate court has disagreed with the lower court's opinion. Other terms used to mean that a case is reversed include "set aside" and "vacate".

e. sustain

When a court sustains an appeal it concludes that it supports or approves the appeal as brought by the petitioner. To sustain an appeal is akin to reversing a decision or the lower court.

It is possible that a court will make different decisions on multiple issues in a case. For example, a court may remand in part, reverse in part, and affirm in part. It is important in these instances to verify exactly which issue corresponds to the decision.

In some cases, a "further order" will follow the initial disposition. Where the "order" of the court provides the courts ruling on the issue raised by the petitioner, the "further order" calls for additional actions by the lower court or parties required as a result of the ruling.

[*Matter of Chen*](#), 20 I&N Dec. 16 (BIA 1989)

Example: In *Matter of Chen*, the BIA ordered that the motion to reconsider presented by the INS was granted. The Board further ordered that the appeal from the Immigration Judge's decision presented by Chen was sustained. The Board further ordered that Chen's application for asylum be granted.

III. USING CASELAW

A. Finding Cases

Asylum officers have many legal research tools at their fingertips to locate case law that is pertinent to adjudicating the case at hand.

See, lesson, [Country Conditions Research and the Resource Information Center \(RIC\)](#)

1. Westlaw

Westlaw is a specialized database of legal materials that

Westlaw can be accessed on the internet at

can be accessed by subscribers over the internet. Most asylum officers will conduct the majority of their legal research on Westlaw. In addition to allowing researchers to find cases by citation, terms and connectors, and natural language searches, Westlaw provides other services, such as a citator service, a table of authorities, and key number searching ability.

<http://web2.westlaw.com/signon/default.wl?newdoor=true>

For more on citator services see section III.E., [*Precedent*](#), below

All officers can receive a Westlaw password through their home office. Training on the database by Westlaw professionals can also be arranged through individual asylum offices.

2. U.S. Government Sources

Agencies of the U.S. Government have made legal resources available on the web. Two useful sites are those maintained by the Executive Office for Immigration Review (EOIR) and the Office of Immigration Litigation (OIL). The EOIR site includes a direct link to BIA decisions awaiting publication. The OIL site contains all US immigration case law as well as a complete subject guide with links to asylum statutes, regulations, treaties, monographs, administrative decisions, and judicial decisions. Finally, each Circuit Court maintains its own website containing general information, opinions, court calendars, and other information.

The EOIR site can be accessed at <http://www.usdoj.gov/eoir/> and the OIL site can be accessed at oil.aspensys.com.

U.S. Court of Appeals sites can be accessed through the Federal Judiciary Homepage at <http://www.uscourts.gov>.

B. “On Point”

A case is “on point” when the final holding in the case is relevant to an asylum case adjudication. Usually this means that there is a similar set of facts, and that the holding or opinion is based on that similar set of facts.

When attempting to rely on a particular decision as persuasive and precedential, one must argue that the facts and circumstances of the case at hand are similar to those of the published case to such an extent that the case is “controlled” by the holding in the published decision.

Example: An asylum applicant testified credibly that he is a national of Iran and that he had recently visited the Iranian Interest Section in the United States, which is located at the Algerian Embassy. Upon his visit, he fell into a political argument with the Iranian representative who brandished a pistol and exclaimed “we will rid the earth of you people.” The applicant fled the interest section, noting as he left that there

were security cameras on the ceiling that probably recorded the events. The applicant also took part in demonstrations against the current government of Iran. The applicant had no problems in Iran prior to coming to the United States.

The asylum officer reviews two cases: *Fatin v. INS* and *Matter of Mogharrabi*. Both of these cases involve nationals from Iran, but only one of these cases relies on facts very similar to those of the case before the asylum officer to reach the final lead opinion. *Matter of Mogharrabi* is on point because the case also addresses a claim of well-founded fear of persecution in Iran resulting from an altercation at the Iranian Embassy in which the applicant and his friend were threatened by an employee of the Embassy.

[Matter of Mogharrabi](#) 19
I&N Dec. 439 (BIA 1987)

C. “Distinguish”

The definition of Distinguish is: “To point out an essential difference; to prove a case cited as applicable, inapplicable.”

Black’s Law Dictionary, 9th
Reprint, 1987, p. 425

In practical terms, distinguishing a case is opposite of finding that a case is on point; the case at hand is not relevant, or less relevant than other cases, to your assessment of the issue.

When one wishes to “distinguish” a particular case from the case before him or her, the individual will argue that the facts and circumstances of the case differ from those of the published case to such an extent that the case is not “controlled” by the holding in the published decision.

Example: A second asylum officer discusses the case above and cites *Fatin v. INS* to argue that the applicant in your case should not be granted asylum because he is Iranian, like Fatin, whose request for asylum was denied. The first asylum officer can distinguish *Fatin* from the case before him because in his case the applicant had been threatened by an Iranian official who identified him as holding a political view in opposition to the government, whereas *Fatin* had not received direct threats and had not been directly identified by an Iranian official as being opposed to government policies.

See lesson, [Asylum Eligibility Part II: Well-Founded Fear](#)

D. Dicta

Dicta are assertions in the court’s opinion that address issues beyond the facts at hand and express the personal opinion of the author. Dicta are not relevant to the holding and are not binding on future cases.

See, *Black’s Law Dictionary*, 9th Reprint, 1987, p. 408; The singular of “dicta” is “dictum.”

Example: In *Fatin v. INS*, the court discusses whether Fatin could succeed in a claim that she will be persecuted in Iran on account of being a women. The judges state that the particular social group of “Iranian women” is too broad to meet the requirements for particular social groups as set out in *Matter of Acosta*. This discussion is dicta because, as conceded later in the opinion, *Fatin* did not argue that she would be persecuted on account of her inclusion in the particular social group of “Iranian women,” but on account of her inclusion in the particular social group of “Iranian women who refuse to conform to the government’s gender-specific laws and social norms.” Though the discussion in this case on “Iranian women” as a social group might be used in the future as persuasive guidance, it does not have bearing on the issues that determined how the case was decided.

[*Fatin v. INS*](#), 12 F.3d 1233 (3rd Cir. 1993)

[*Matter of Acosta*](#), 19 I&N Dec. 211 (BIA 1985)

E. Precedent

A case is established as precedent when its decision is recognized as authority for the disposition of similar cases decided subsequently.

In determining when a case is precedent, the reader must ascertain whether the case has been overruled, or whether the decision has been limited by other cases. Sometimes when a statute has been repealed, invalidated, or otherwise amended, a case will lose value as precedent.

To ascertain whether a case has not been altered by subsequent decisions or legislation one must conduct legal research. Case citators list cases that have referenced a particular case and are the most useful tool in researching whether cases remain “good law.” The most commonly used citator is *Shepard’s Citations*; therefore this process of research is often called “Shepardizing.” Westlaw provides a similar citator service called “KeyCite.”

Sometimes the asylum officer may find a case on point, but find that the case is unpublished. An unpublished case is not binding, but can be used as guidance when there are no published cases on point. Databases such as Westlaw will indicate that a case is not published.

While the reasoning in an unpublished decision may be persuasive in adjudicating a case at hand, as a matter of USCIS policy asylum officers should not cite to unpublished decisions. An asylum officer may adopt the reasoning contained in an unpublished decision, without citing the decision.

IV. SUMMARY

A. Case Law

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

B. Parts of a Case

The parts of a case are:

1. Citation
2. Title
3. Syllabus or headnotes
4. Statement of facts
5. Opinion
6. Disposition of the case

C. “On Point”

A case is on point when the asylum officer’s application of the final holding of that case is specifically relevant to an asylum adjudication.

D. “Distinguish”

To **distinguish** a case is to point out an essential difference; to prove that a case cited is inapplicable.

E. Dicta

Dicta are statements in a decision that do not embody the resolution or determination of the court. Expressions in a court’s opinion which go beyond the facts before the court are unnecessary and therefore are and not binding in subsequent cases.

F. Precedent

A case is established as **precedent** when the decision in that case is recognized as authority for the disposition of cases that are decided later.

ANNEX I**ABBREVIATIONS COMMONLY FOUND IN CITATIONS**

U.S. - United States Reports, the official reporter for US Supreme Court cases

S.Ct. - Supreme Court Reporter, an unofficial reporter of US Supreme Court cases

L.Ed.2d - Lawyers' Edition, an unofficial reporter of US Supreme Court cases

USC - United States Code, the official version of the federal statutory code

USCA & USCS – two unofficial, annotated versions of the federal statutory code

CFR - Code of Federal Regulations, the codified subject arrangement of current regulations issued by agencies of the executive branch of the federal government

F, F2d, and F3d - Federal Reporter, first second and third series. This is the reporter for opinions of the federal courts of appeals. Not all opinions are published.

F. Supp. and F. Supp2d - The Federal Supplement is the reporter for published opinions of federal district courts, which is generally a trial-level court. Most opinions of the district courts are not published.

I & N Dec. – Administrative Decisions under Immigration and Nationality Laws of the United States. This is the official reporter for decisions by the Board of Immigration Appeals