Today’s Agenda

- Overview of Agency Decisions
- Administrative and Judicial Review of Agency Decisions in general and in BIA in particular
- Quick review of immigration agencies
- Researching immigration agency decisions in print and online
Overview of Agency Decisions

Types of Agency Decisions:

1. Advisory Opinions
2. Informal Adjudications
3. Formal Adjudications
Advisory Opinions

- Not Binding
- Often interpret statutes and regulations on a hypothetical set of facts
- Indicate agency’s policies and expectations
Informal Adjudications

- Governed by specific statute or agency’s own regs
- Due process applies
- Discretionary
- Generally not reviewable by a court
- Conducted by officials rather than ALJs
Formal Adjudications

- Quasi-Judicial in nature
- Usually involves written opinion
- Usually published or made available to public
- ALJ, commissioner or board decides
- *Sometimes* are precedent (e.g. BIA & AG precedent decisions)
Publication of Agency Decisions

- Official publications of agency decisions vary greatly from agency to agency.

- Commercial legal loose-leaf services, such as Matthew Bender, CCH and BNA are often the easiest and most reliable print source of specific agency decisions.
Publication of Agency Decisions

- Official agency publications are often poorly indexed and are often not current – each agency has own method of indexing.

- By comparison, unofficial commercial publications are organized for use by practitioners and are usually more current.
Administrative Review of Agency Decisions

- Once an ALJ has issued a formal decision, the decision can usually be appealed to a higher entity within the agency.

- Parties to an administrative proceedings must exhaust administrative remedies before filing for relief in federal court.
Administrative Review of Agency Decisions

- Look to Administrative Procedures Act, 5 USC 554 through 559, for administrative review procedures in general

- Look to agency’s own regulations for specific administrative review procedures and remedies
Judicial Review of Agency Decisions

- The final agency decision can usually be appealed:

  - to a federal circuit court if Congress has provided an appeals process
  
  - to a federal district court if no provision for appeal has been specified
Judicial Review of Agency Decisions

- Judicial cases reviewing agency decisions are reported as usual in the Federal Reporter or Federal Supplement
Common issues are:
- constitutionality
- agency acted outside of delegated authority
- interpretation of statute or regs
- arbitrary or capricious decision or abuse of discretion
Judicial Review -- Chevron Deference Doctrine

When a statute grants power to an administrative agency and the statute is ambiguous, court must defer to the agency’s interpretation, so long as it is reasonable.

Chevron Deference Doctrine

- If Congress expresses its intent in unambiguous language, no deference is due. *Chevron, supra*.

- Chevron deference is only due where Congress delegated authority to make rules having the force of law and the interpretation was reach pursuant to this delegated authority. *U.S. v. Mead Corp.*, 533 U.S. 218, 226-227 (2001).
Chevron Deference Doctrine

- Agency interpretations of a statute contained in policy statements and other documents lacking the force of law are not entitled to deference.

Chevron Deference Doctrine

Where Chevron deference is not due, a court will defer to an agency’s interpretation only to the degree that it is “persuasive”, is thorough, contains valid reasoning, and is consistent with other pronouncements. *Skidmore v. Swift and Co.*, 323 U.S. 134 (1944).
Chevron Deference Doctrine

A court’s prior interpretation of a statute is binding on an agency only when the statute is unambiguous. *National Cable & Telecommunications Association v. Brand X Internet Services*, 545 U.S. 967 (2005).
Under some circumstances, agencies may ignore circuit court interpretations of a statute.

But only when the statute is ambiguous.
American Immigration Council’s Legal Action Center maintains a list of immigration cases, both in federal courts and in immigration agencies, that apply the Brand X doctrine.

www.legalactioncenter.org/clearinghouse/litigation-issue-pages/brand-x-immigration-cases
Deference in Regulatory Interpretation

- Chevron Deference applies to agency interpretations of an ambiguous statute.
- Must a court defer to an agency’s interpretation of its own regulation which doesn’t involve a statutory interpretation?
Federal District Court has original jurisdiction:

- Agency is a plaintiff (28 U.S.C. 1345)
- Mandamus action
- Specific statute provides for original jurisdiction
Agency Actions

- Decision by Presiding Officer, Commissioner, or ALJ
- Appeal to higher entity within the Agency: Exhaustion of Agency Remedies

Court Actions

- Original Jurisdiction by District Court:
  - By statute
  - Agency is plaintiff
  - Mandamus action
- Judicial Review:
  - To Court of Appeals if statute provides for appeal
  - To District Court if there is no provision for appeal
BIA Review of IJ Decisions

- Jurisdiction in 8 CFR 1003.1(b)

- BIA reviews IJ factual findings under a clearly erroneous standard, 8 CFR 1003.1(d)(3)(i)

- BIA reviews legal issues de novo, 8 CFR 1003.1(d)(3)(ii)
BIA Review of IJ Decisions

Procedures are found in 8 CFR 1003

- Streamlining (reduce backlog)
- Deadlines and procedures
- Rules for re-opening
Judicial Review of BIA Decisions

- Petition for review starts the process

- Statute sets forth jurisdiction, scope of review, venue, deadlines and procedures. Eg. INA 242
Overview of Federal Immigration Agencies

5 departments share responsibility for immigration regulation:

1. Department of Homeland Security
2. Department of Justice
3. Department of Labor
4. Department of Health & Human Services
5. Department of State
Overview of Immigration Agencies

- **Homeland Security:** Primary authority since end of INS
  - Citizenship & Immigration Services (including Asylum Adjudication)
  - Customs & Border Protection
  - Immigration & Customs Enforcement

- **Dept of State:** Shares visa issuance with USCIS

- **Dept of Justice:**
  - Runs immigration court system
  - Handles employment discrimination

- **Dept of Labor:** effect of immigration on workforce

- **Health & Human Services:**
  - Refugee resettlement and unaccompanied minors
  - Pre-entry health examinations
Outline of Immigration Regulations in CFR

- Code of Federal Regulations
  - Aliens & Nationality Regs, Title 8
    - Homeland Security, Chapter 1
    - DOJ Review, Chapter V
  - DOJ Regs, Title 28, parts 44, 68 and 0
  - Labor Regs, Title 20, parts 655-656; Title 29, parts 500-501
  - DOS Regs, Title 20, pts 40-42; Title 22, pts 7, 50-51, 62-65
  - Health & Human Services Regs, Title 42, pt 34
Immigration Administrative Adjudication

- **Board of Immigration Appeals**: review of individual cases
- **Office of Chief Immigration Judge**: oversees immigration courts
- **Office of Chief Adm. Hearing Officer**: employment disc, sanctions and document fraud
- **Board of Alien Labor Certification Appeals**: alien labor certification and unfair employment practices
- **Office of Immigration Litigation**: coordinates litigation of civil matters in federal court system
- **Administrative Appeals Unit**: Reviews denials of petitions by asylum officers and other USCIS officials
Where to Find the BIA Decisions

Administrative Decisions under Immigration & Nationality Laws (print -official)
Bender’s Immigration Case Reporter (print -unofficial)

Hein Online>Federal Agency Documents, Decisions & Appeals
Library>Adm. Dec. under Immigration & Nationality Laws

Westlaw: Federal Immigration – Board of Immigration Appeals (FIM-BIA)

Lexis: Immigration Precedent Decisions
Where to Find BIA Decisions

- EOIR Virtual Law Library

http://www.usdoj.gov/eoir/vll/intdec/lib_indecitnet.html
Where to Find AAU Decisions

- AAU precedent decisions are published in print in Administrative Decisions Under Immigration and Nationality Laws and in Bender’s Immigration Case Case Reporter

- Recent AAU decisions available online: USCIS website>Laws>Administrative Decisions

- Westlaw: FIM-AAU
Where to Find IJ Decisions

- Selected IJ decisions can be found in Interpreter Releases and Bender’s Immigration Case Reporter
- Immigration Court websites sometimes have decisions/dockets online
Where to Find OCAHO Decisions


- EOIR’s Virtual Law Library>OCAHO Decisions

- Bender’s Immigration Case Reporter

- Westlaw: FIM-OCAHO
Where to Find BALCA & OALJ Labor Decisions

- DOL Office of Administrative Law Judge’s Immigration Collection
  - http://www.oalj.dol.gov/libina.htm
- Lexis: BALCA
- Westlaw: FIM-BALCA
Tips for Finding Agency Decisions

- Use secondary sources, annotated codes, digests, KeyCite/Sheperd’s and current awareness materials to find names, docket numbers and citations, then retrieve on government websites, HOL, Lexis or Westlaw.

- **Essential Immigration Treatises:** Kurzban’s *Immigration Law Sourcebook*, Gordon, Mailman’s *Immigration Practice & Procedure*, and Martin’s *Asylum Law Sourcebook*
Tips on Finding Agency Decisions

- Immigration statutes, regulations, agency decisions, agency memoranda and government manuals are available on AILALink.org (get password from librarian)

- AG, BIA, BALCA, CBP, CDC, DOS, ICE, ORR, USCIS materials and interagency materials on AILALink.org
Tips for Finding Agency Decisions

- When full-text searching on Lexis & Westlaw, be sure to select appropriate databases to search (e.g., FIM-BIA, FIM-AAU, FIM-OCAHO, FIM-BALCA)
Tips for Finding Agency Decisions

- Browse/search government websites for alerts, newsletters and press releases on decisions
- Browse government websites for indexes of decisions
Tips for Finding Agency Decisions

- Don’t hesitate to try keyword searches of entire government websites – works remarkably well with EOIR’s VLL; not so well with USCIS.gov
- Use party names, phrases, terms of art as keywords
Agency Websites

Agency Websites continued

- **Department of Justice**, [http://www.doj.gov](http://www.doj.gov)
  - Executive Office for Immigration Review, [http://www.doj.gov/eoir](http://www.doj.gov/eoir)
    - Board of Immigration Appeals, [http://www.usdoj.gov/eoir/vll/intdec/lib_indecitnet.html](http://www.usdoj.gov/eoir/vll/intdec/lib_indecitnet.html)
    - Office of Chief Immigration Judge, [http://www.usdoj.gov/eoir/ocijinfo.htm](http://www.usdoj.gov/eoir/ocijinfo.htm)
    - Office of Chief Administrative Hearings Officer, [http://www.usdoj.gov/eoir/OcahoMain/ocahosibpage.htm](http://www.usdoj.gov/eoir/OcahoMain/ocahosibpage.htm)
  - Office of Immigration Litigation, [http://www.usdoj.gov/civil/oil](http://www.usdoj.gov/civil/oil)
Agency Websites continued

- Department of Labor, [http://dol.gov](http://dol.gov)
  - Employment & Training Administration (ETA)
  - Employment Standards Administration, Wage & Hour Division (WHD)
  - Board of Alien Labor Certification Appeals (BALCA)
    [http://www.oalj.dol.gov/libina.htm](http://www.oalj.dol.gov/libina.htm)
Agency Websites continued

- Department of Health and Human Services, [http://dhhs.gov](http://dhhs.gov)
  - Division of Global Migration and Quarantine, [http://www.cdc.gov/ncidod/dq/](http://www.cdc.gov/ncidod/dq/)
Agency Websites continued

- Department of State, http://state.gov
  - Bureau of Population, Refugees and Migration, http://www.state.gov/g/ prm/
  - Bureau of Educational and Cultural Affairs, http://exchanges.state.gov/
  - Bureau of Consular Affairs, http://travel.state.gov/