

Lesson Plan Overview

Course	Asylum Officer Basic Training
Lesson	<i>Decision Writing Part I: Overview and Components, Focusing on 1st Three Components</i>
Lesson Description	This lesson introduces the asylum officer to the standard format for written asylum decisions. Through lecture, discussion, and practical exercises, the trainees will become familiar with the components of the written decision, the required writing style, and techniques for writing concise summaries of applicant testimony.
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 which is clear, concise, complete, and legally correct.
Academy Training Performance Objective	Given written and roleplay scenarios involving asylum applications, the trainee will demonstrate ability to write asylum decisions in the proper format and construct concise summaries of applicant testimony.
Interim (Training) Performance Objectives	<ol style="list-style-type: none"> 1. List components of a complete assessment. 2. List components of a complete Notice of Intent to Deny (NOID). 3. Determine which information to include in the biographical/entry information summary. 4. Determine which information to include in the summary of the facts. 5. Identify information and statements that are not relevant or appropriate to include in an assessment or NOID. 6. Within specific time constraints, write an assessment or NOID in language that is easily understood. 7. List the circumstances under which a NOID must be prepared. 8. Explain when to consult with supervisor. 9. Explain when to refer case to supervisor for review and signature. 10. Identify who may have access to affirmative asylum assessments and/or NOIDs.
Instructional Methods	Lecture, Practice Exercise
Student Materials/References	Participant Workbook
Method of Evaluation	Written test, Practical exercise exam
Background Reading	8 C.F.R. §208.6

CRITICAL TASKS

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

Task/ Skill #	Task Description
026	Write decisions using established format.
031	Refer case to supervisor for review and approval.
036	Review all evidence and determine materiality to claim.
045	Communicate professionally with the public.
064	Testify in court when required.
SS03	Ability to work independently and effectively.
SS04	Ability to write clearly, concisely, and grammatically in the English language.
SS11	Ability to effectively organize and manage one's time and work environment.
SS14	Ability to work effectively with computers.
SS16	Ability to type, with reasonable accommodations for qualified individuals.

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Presentation

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I. INTRODUCTION

The purpose of this lesson is to instruct students how to write assessments and Notices of Intent to Deny (NOID), focusing on three of the necessary components of these documents only: the biographical/entry information, the basis of the claim, and the testimony. This lesson will also cover the differences between assessments and Notices of Intent to Deny, and appropriate language to use in both documents.

II. OVERVIEW

A. Background

Assessments and Notices of Intent to Deny explain the bases for asylum officers' decisions.

Prior to "Reform" asylum officers were required to write lengthy decisions, citing all relevant case law and country conditions information. The writing of assessments and Notices of Intent to Deny, however, has evolved into the streamlined version that asylum officers now use. One of the purposes of using a more streamlined written assessment is to reduce the length of writing time.

Computer "template" documents for assessments and NOIDs are installed on asylum officers' computers so that asylum officers can quickly and easily access and use these documents. Asylum officers should check with their supervisors for how to access these shells.

B. "Know It But Don't Show It"

An important aspect of streamlined writing is that the asylum officer is not required to "show" all the information that he or she is required to "know." This is often referred to as the "know it but don't show it" technique. Information that forms the basis of the claim and the decision, however, must be "shown."

OH #1: FPO;
OH #2A, 2B: IPOs

Refer to lesson *Decision Writing II: Legal Analysis* or *Procedures Manual* for copies of templates.

C. Assessments and NOIDs: Legal Documents to Which a Number of Persons Have Access

Individuals who have access to assessments and NOIDs include the following:

1. The applicant and his or her attorney or legal representative are sent copies of the NOID. In addition, they may submit a Freedom of Information Act (FOIA) request to obtain a copy of an assessment (and other information in the file).
2. Certain Asylum Office staff reviews assessments and NOIDs.

Supervisory asylum officers routinely review assessments and NOIDs. Certain other Asylum Office staff, such as the Quality Assurance/Trainer, Deputy Director, and Director, may also review assessments and NOIDs. In addition, other asylum officers review files of cases in which the interviewing officer could not complete the case or, in some cases, if there is a need to reinterview the applicant.

3. The Office of International Affairs, Asylum Division (Headquarters) Quality Assurance Branch staff sometimes reviews assessments and NOIDs. (Certain cases must be forwarded to Headquarters for review.)
4. INS trial attorneys read certain assessments and NOIDs. (In some cases, the trial attorney may enter an assessment or NOID into the record, which means that the immigration judge and others would also review these documents.)
5. Board of Immigration Appeals (BIA) and federal courts review certain assessments and NOIDs.
6. Bureau of Democracy, Human Rights, and Labor (DRL) of the Department of State gives advisory opinions on certain claims.
7. Certain government officials (e.g., FBI or other law enforcement agencies) or contractors as indicated in 8 C.F.R. §208.6 may have access to particular files.

Information that must be “shown” is explained in lesson, *Decision Writing Part II, Legal Analysis*.

Instructor Note 1

OH #3: Persons Who Have Access to Assessments and NOIDs

See, Procedures Manual

Note that asylum officers may be required to testify in immigration court as to the content of interviews and/or their reasoning for reaching particular decisions.

8. Members of Congress who receive inquiries from applicants may have access to the assessments and NOIDs in the applicants' files. The Congressional liaisons who are responsible for responding to Congressional requests also may read certain assessments and NOIDs.

8 C.F.R. §208.6

D. Supervisor's Role

Every asylum officer is assigned to a supervisory asylum officer. The supervisory asylum officer is available throughout the decision-making process for consultation, guidance, and discussion about the merits of the applicant's claim. The supervisor can often refer the asylum officer to legal and country conditions resources that may be helpful in making the decision.

When the asylum officer completes a case, he or she submits it to the supervisor for review and signature. At the time of submission, the file should be in record order and all required documents should be complete and accurate. If no errors are found, the supervisor signs the necessary documents and forwards the file to the clerical staff for the next step in the processing. If any errors are found during the supervisor's review, the case is returned to the asylum officer for revision. If the supervisor disagrees with the asylum officer's analysis, the supervisor discusses the issues with the asylum officer.

III. THE DIFFERENCE BETWEEN AN ASSESSMENT AND A NOID

The basic components of the assessment and NOID are generally the same. There are a few differences, however, between the two documents.

A. Assessment

1. A written document stating the reasons for granting a case or referring a case to the Office of the Immigration Judge
2. Written for cases in which the applicant is not in lawful immigrant status and is not a class member of the *ABC* Settlement Agreement (or is not a member of the *Mendez* Settlement Agreement, if in the Los Angeles District)

OH #4A & B: Assessment

Instructor Note 2

See lesson, American Baptist Church (ABC) Settlement Agreement

3. An internal Service document; remains in the file (See section II.C above for exceptions.)
4. Contains limited biographic information, summary of the material facts of the claim, credibility determination, legal analysis, and decision (granting asylum or referring the case to the Office of the Immigration Judge). Citations to country conditions are included only when determinative to the decision; citations to statutes and case law are used only in certain circumstances. An assessment does not contain information about the asylum process.
5. If the assessment is to refer the case to the Office of the Immigration Judge, the applicant cannot rebut the reasons set forth in the assessment.
6. Written in the third person, referencing "the applicant"

B. NOID

1. A preliminary denial
2. Written for cases in which the applicant is in lawful immigrant status or is a class member of the *ABC* Settlement Agreement (in the Los Angeles District, class members of the *Mendez* Settlement Agreement also receive a NOID if not granted asylum)
3. A document (letter) that is sent to the applicant and the applicant's representative, if any
4. Contains limited biographic information, summary of the material facts of the claim, credibility determination, legal analysis, and a decision stating that it is the intent of the Service to deny asylum (and in some cases, withholding of removal). It also contains limited information about the asylum process, including information about possible comments from the DRL, the applicant's next step in the process, and time deadlines.
5. Includes citations to statute and, in some cases, citations to case law and country conditions resources
6. Written in the second person, referencing "you"
7. The applicant has the right to rebut the grounds for denial before a final decision is rendered by the asylum officer.

OH #5A & B: NOID

IV. COMPONENTS OF AN ASSESSMENT AND A NOID

Instructor Note 3

The contents of assessments and NOIDs can be divided into the following basic components:

OH #6: Components of Assessment/NOID

- **Biographic/Entry Information**
- **Basis of Claim**
- **Testimony**
- **Credibility Determination**
- **Legal Analysis**
- **Decision**

Instructor Note 4

The above-listed components are expanded upon below.

A. **Biographic/Entry Information**

1. Includes:
 - a. age of applicant
 - b. sex of applicant
 - c. country or countries of which applicant is a native and citizen (or whether applicant is stateless)
 - d. date and place of entry into the United States
 - e. manner of entry
2. Does not include extraneous information such as:
 - a. The applicant's journey to the U.S.: the route, the length of time, the cost, whether smugglers were involved
 - b. how many family members remain in applicant's country
 - c. information listed in other components of assessment
3. Example

Applicant is a 19-year old single male, native and citizen of the People's Republic of China who entered the U.S. without inspection somewhere along the border between Mexico and California on March 24, 1995.

B. Basis of Claim

1. Brief statement of:
 - a. What the applicant fears
 - b. Whom the applicant fears
 - c. The protected ground(s), if any, the fear is connected to (on account of)
2. Example

Applicant fears he will be harmed by the government of China on account of his religious beliefs.

C. Testimony

The testimony is a summary of the material facts of the applicant's claim.

Material facts are those facts that have a direct and substantive bearing on the claim, and which, when analyzed by applying the law, determine the outcome of the claim.

Generally speaking, material facts are related to the event(s) that caused the applicant to leave his or her country and/or the event(s) that form the basis of the applicant's fear of return.

All material facts necessary to construct the legal analysis should be described in the testimony component of the assessment and NOID. Material facts should not be introduced in the content of the legal analysis.

Example:

Applicant testified that he became interested in Christianity through Christian friends in 1992. In early 1993, he began attending weekly Protestant services that were held secretly in a neighbor's house. In December, 1993, he took two classmates to his church. The school authorities found out about his religious activities, accused him of proselytizing, and expelled him, reporting him to the local authorities.

Throughout January, 1994, the applicant had to write weekly self-criticisms for the local authorities who told him that, because of his religious proselytizing, he would not be able to finish school and would be prohibited from finding work. He stopped attending church services and continued living with his parents. He tried to find a job but his record showed that he had a "bad background" due to his religious activities, so no one would hire him. One year later, the applicant borrowed money from smugglers and left China.

Instructor Note 5**D. Credibility Determination**

The asylum officer must make an assessment of the applicant's credibility in every case. If a negative credibility determination is made, the asylum officer must explain in the assessment or NOID the reasons for finding the applicant not credible. A negative credibility determination must be based on material points of the applicant's claim. The asylum officer must note in the credibility determination any discrepancies, inconsistencies, or lack of details in the applicant's claim and explain why they are material to the claim.

The credibility component of the assessment and NOID is discussed in detail in lesson, *Credibility*.

Instructor Note 6**E. Legal Analysis**

The asylum officer's legal rationale for the decision must be included in every assessment and NOID.

Legal analysis is discussed in depth in lesson, *Decision Writing Part II, Legal Analysis*.

Instructor Note 7**F. Decision**

This is the outcome of the asylum officer's legal analysis of the applicant's request for asylum. In an assessment, the Decision states whether the case is granted or referred. In the case of a NOID, the Decision indicates that the Service finds that the applicant does not qualify for asylum (and in some cases, withholding of removal) and intends to deny the request.

Instructor Note 8**V. WRITING STYLE**

Assessments and NOIDs should be informational in tone and written in language that the reader can easily understand.

A. Informational Tone

OH #7A & B: Writing Style

1. The assessment is written in the third person, referencing "the applicant"; the NOID is written in the second person, referencing "you."
2. There should not be any reference to the first person pronoun "I" in either of these documents. The asylum officer is representing the Service when writing these documents and so the term "the Service" is used rather than "the asylum officer" or "I." For example, "The Service finds that..." is used instead of "The asylum officer finds that..." or "I find that..."
3. The asylum officer should not include his or her personal opinions, either positive or negative, when writing these documents. Both assessments and NOIDs should be strictly informational in tone.

B. Language That is Easy to Understand

Assessments and NOIDs should be written in language that the reader can easily understand, avoiding excessive legal jargon and superfluous language.

C. Language Structure, Grammar, and Spelling

Because officers are under time constraints and need to write a number of assessments every week, it is sometimes difficult to create well-written documents in terms of the grammar and structure of the language used. However, asylum officer should quickly review his or her assessments and NOIDs for grammar and spelling before giving them to a supervisor for review.

Computer word processing software is equipped with a "spell check" function that should always be used on final versions of these documents. "Grammar check," which may be available in some offices, can also be helpful.

Instructor Note 9

VI. SUMMARY

- A. Assessments and Notices of Intent to Deny (NOID) are legal documents that explain the bases for asylum officers' decisions in asylum cases.

OH #8: Summary A

B. A number of persons may have access to assessments and NOIDs including:

OH #9: Summary B

1. The applicant and his or her attorney or legal representative
2. Asylum Office staff
3. Headquarters staff
4. INS trial attorneys
5. The BIA; federal courts
6. Staff from the Bureau of Democracy, Human Rights, and Labor (DRL) of the Department of State
7. Certain government officials as indicated in 8 C.F.R. § 208.6

C. There are several differences between assessments and NOIDs

OH #10A & B: Summary C

1. An assessment is an internal Service document written for cases in which the asylum applicant is not in status and is not an *ABC* class member. Written in the third person, referencing "the applicant," it explains the reasons for granting a case or referring a case to an immigration judge. It includes limited legal and country conditions information and does not include information about the asylum process. If the case is referred, the applicant is not given an opportunity to rebut the reasons the applicant was not found eligible.
2. A Notice of Intent to Deny (NOID) is a preliminary denial letter written for cases in which the applicant is in status or is an *ABC* class member. It is written in the second person, referencing "you," and is sent to the applicant and representative, if any. It contains limited information about the asylum process, and gives the applicant an opportunity to rebut the grounds for denial before a final decision is rendered.

D. Although there are several differences between assessments and NOIDs, they contain the same basic components, which are:

OH #11: Summary D

1. Biographic/entry information

2. Basis of claim
3. Testimony
4. Credibility determination
5. Legal analysis
6. Decision

- E.** Assessments and Notices of Intent to Deny should be informational in tone and should be written in language that is easily understood, without any reference to the first person pronoun "I" or "the asylum officer." They should not include any personal opinions of the asylum officer.

OH #12: Summary E

Decision Writing Part I: Overview and Components, Focusing on 1st Three Components
Instructor Guide

Instructional Methods	Lecture, Practice Exercise
Training Aids	Overhead Transparencies or Powerpoint presentation <ol style="list-style-type: none"> 1. Field Performance Objective 2A & B. Interim Performance Objectives 3. Persons Who Have Access to Assessments and NOIDs 4A & B. Assessment 5A & B. NOID 6. Components of an Assessment / NOID 7A & B. Writing Style 8. Summary A 9. Summary B 10A & B. Summary C 11. Summary D 12. Summary E
Instructional Equipment	Overhead or LCD Projector
Instructor Notes	<ol style="list-style-type: none"> 1. Ask students who has access to assessments and NOIDs. 2. Use overheads alternately, point by point, noting the differences, or use one overhead at a time. 3. <u>Practical Exercise #1</u> – The following practical exercise is used as a springboard for discussion about the components of an assessment and the type of information that should be included in each component. <p style="margin-left: 40px;"><u>(1-a)</u> The students are given a well-written assessment, found after the lesson. The instructor explains that an assessment can be divided into several components and requests the students to try to identify those components by reviewing the assessment they were given. The instructor then elicits the components from the students, pointing out paragraphs to focus on, if necessary. Using the language on the list of components below, the instructor writes the components on the chalkboard.</p> <p style="margin-left: 40px;"><u>(1-b, 1-c)</u> The instructor then asks students to read several more well written assessments and NOIDs, on which the components are noted. The instructor and students discuss what is included in each</p>

component; the instructor adds information from the list below that students do not include.

Alternative to the Exercise – The instructor can explain to the students that assessments and NOIDs are divided into several basic components and use the overhead transparency to list those components. The instructor then hands out several well-written assessments and NOIDs with the components noted. The instructor and students discuss the type of information that is included in each component. The instructor adds information that students do not include, using the information listed below.

4. As this lesson focuses on the first three components, the instructor should expand the discussion on these three components, explaining that the other components will be discussed at length in another lesson.
5. **Practical Exercise #2** – Students read several written samples of the biographic/entry, basis of claim, and testimony components of assessments and NOIDs. Some of the samples are well-written, including all necessary material facts; others include extraneous information or are missing material facts. Discuss in large group. Samples are found at end of the lesson.
6. Ensure that students correctly label the assessments and NOIDs as well written or poorly written so that there is no confusion if students later refer to these sample documents.
7. Avoid a lengthy discussion of legal analysis at this time.
8. **Practical Exercise #3** – Students read sample assessments and NOIDs, some of which are well written and some which are missing components or necessary information from components. Students must identify each component, and note if anything is missing. Discuss in large group. (Sample #3-c can be used as a lead-in to the next section of this lesson in which editing and the use of computer spell-check are discussed.) Samples (a-c) are found at end of the lesson.

These are points that the students should pick up on. They may have other comments on the assessments as well.

PE #3-a: There is no credibility assessment, no discussion of well-founded fear; legal analysis stops after discussion of past persecution and standard paragraphs.

PE #3-b: Biographic/Entry Information component - applicant's age

not noted; manner of entry not noted; One-year filing analysis not included: Basis of Claim component - not included

PE #3-c: Basis of Claim component - whom applicant fears/statutory ground not included; Biographic/Entry Information component - includes "your brother;" nothing noted in testimony about why brother entered with applicant; Numerous spelling/typing errors throughout the assessment, at least one error in most components. Please note specifically the following:

- Biographic/Entry Information and Basis of Claim components indicate applicant is from El Salvador, Testimony component indicates applicant is from Guatemala;
- Legal Analysis - prosecution instead of persecution;
- Conclusion - several errors: indicates that applicant (she) is eligible for asylum rather than not eligible; 8 C.F.R. § 108.13

This assessment can be used as a lead-in to the next section of this lesson, "Writing Style," in which editing and the use of computer spell-check are discussed.

9. **Practical Exercise #4** – To apply the principles discussed in the section on Writing Style, students are given several assessments and NOIDs that contain inappropriate language, include personal opinions, or are not informational in tone, etc. Students correct the assessments and discuss in large group. (Assessments are found at the end of the lesson.)

Practical Exercise #5 – In summary of the entire lesson, students are given a sample completed I-589 and the corresponding interview notes (5-a). Students prepare a written summary of the background/entry information, the basis of the applicant's claim, and the testimony. Large group discussion about what should go into the components. The interview notes and I-589 follow the lesson.

Practical Exercise #5 (Alternate) – This variation serves to reinforce the importance of looking closely at all of the documents in the file, eliciting all necessary information when interviewing (see lesson, *Interviewing Part III, Eliciting Testimony*), and taking adequate interview notes (see lesson, *Interviewing Part II, Note-Taking*). If students have not yet attended *Interviewing Part III, Eliciting Testimony*, this variation can serve as a means by which students can begin thinking about what constitutes adequate interview notes. If students have had Note-Taking, this variation can be used as reinforcement for the necessity of taking adequate

interview notes.

There are two sets of interview notes: “5-a” which is very brief, and “5- b” which is complete. Both sets of interview notes are included after the lesson, instructor should inform students which set they should be using to conduct the exercise.

Students can use interview notes 5-a to write the components of the assessment. When students are part-way through the exercise, instructor can elicit what further details are needed to write the assessment, and can supply the details from 5-b or distribute 5-b to students, discussing briefly what constitutes adequate interview notes.

Practical Exercise #6 – Students are given the interview notes from the videotaped interview they observed in *Interviewing Part I, Overview of Nonadversarial Asylum Interview*. They prepare a written summary of the background/entry information, the basis of the applicant's claim, and the testimony. They hand in their work to the instructor who gives written feedback. Instructor will need to coordinate with instructor of lesson, *Interviewing Part I, Overview of Nonadversarial Asylum Interview*.