

## The Unbearable Lightness of BIA-ing

In an average year, the [Board of Immigration Appeals](#) decides over 35,000 cases, but publishes less than 40 decisions. The small number of published decisions provides insufficient guidance to the nation's Immigration Judges and results in inconsistent rulings between judges. The lack of guidance has also contributed to the dramatic increase in immigration cases heard by the federal courts of appeals. So instead of the law being settled by the BIA--which specializes in immigration--the various appeals courts have been interpreting the law, not always consistent with their sister circuits.

Here is how the [numbers](#) break down for the last few years: In 2009, the BIA decided 33,103 cases and published 34 decisions. In 2008, it decided 38,369 cases and published 33 decisions. In 2007, it decided 35,394 cases with 45 published decisions, and in 2006, it decided 41,476 cases and published 26 decisions. So far this year, the Board has published 31 decisions.

[caption id="" align="alignright" width="200" caption="Maybe Harry Truman could lend the BIA his famous sign."]



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When I was at the AILA conference last summer, we heard that published decisions require far more time and resources than unpublished decisions, but I just don't buy it. The BIA is authorized to have up to 15 Board Members. It has a staff of well over 100 attorneys. So even during their most prolific year (2007, when they published 45 decisions), each Board Member was required to write only three decisions, and each staff attorney wrote less than half of one decision.

According to the [BIA Practice Manual](#)

Decisions selected for publication meet one or more of several criteria, including but not limited to: the resolution of an issue of first impression; alteration, modification, or clarification of an existing rule of law; reaffirmation of an existing rule of law; resolution of a conflict of authority; and discussion of an issue of significant public interest.

It's hard to believe that of the 30 to 40 thousand cases the Board reviews each year, only about 0.1% (one in one thousand) contain an issue that meets the above criteria. I've had several cases before the BIA that involved issues of first impression, none of which were published (though two of them were published decisions by federal circuit courts). Why is the Board passing the buck on decisions to the federal courts of appeals?

Although it might be more work over the short term, if the Board published more frequently, IJ decisions would become more consistent--creating less work for the BIA over the long term. It would also make life easier for the federal courts of appeals, saving government resources. Finally--and most important from my point of view--it would create more certainty and

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predictability for immigrants and their families.

The [BIA](#) should embrace its role as "the highest administrative body for interpreting and applying immigration laws" and publish more decisions.