

Brand X Outline

- If the BIA issues a published opinion interpreting a provision of the INA in the absence of Ninth Circuit precedent, then follow the published BIA opinion.
- If the Ninth Circuit issues a published opinion interpreting a provision of the INA in the absence of BIA precedent, then follow the published Ninth Circuit opinion.
- If the Ninth Circuit issues a published opinion interpreting a provision of the INA that decides the question of statutory interpretation under *Chevron* step one (i.e., it expressly finds that the statute is unambiguous), then follow the Ninth Circuit, irrespective of any subsequent conflicting BIA decision.
- If the Ninth Circuit issues a published opinion interpreting a provision of the INA that defers to the BIA's statutory construction under *Chevron* step two (i.e., it finds that the statute is ambiguous and that the BIA's interpretation is permissible), then follow the Ninth Circuit/BIA interpretation, unless the BIA changes its interpretation.
- If the BIA issues a published interpreting a provision of the INA that conflicts with a prior Ninth Circuit published opinion decided in the absence of a prior agency interpretation (i.e., not using the *Chevron* two-step analysis), then follow the Ninth Circuit interpretation (recommended).
- If the BIA issues a published opinion interpreting a provision of the INA that conflicts with a prior Ninth Circuit published opinion that decides the question of statutory interpretation under *Chevron* step two (i.e., it finds that the statute is ambiguous), then follow the BIA decision so long as the Ninth Circuit has not found this interpretation to be impermissible.