U.S. Department of Homeland Security
20 Massachusetts Avenue NW
Washington, DC 20529

U.S. Citizenship and Immigration Services

HQRAIO 120/9.7

Interoffice Memorandum

To: ASYLUM OFFICE DIRECTORS
ASYLUM OFFICE DEPUTY DIRECTORS
SUPERVISORY ASYLUM OFFICERS
QUALITY ASSURANCE/TRAINING ASYLUM OFFICERS
ASYLUM OFFICERS

From: Joseph E. Langlois /s/
Chief, Asylum Division
Refugee, Asylum, and International Operations Directorate

Date: August 14, 2007

Re: Updated Procedures for Minor Principal Applicant Claims, Including Changes to RAPS

The purpose of this memo is to explain changes in RAPS and provide further guidance concerning interviews involving minor principal asylum applicants. The Asylum Division has incorporated a new mechanism in RAPS to capture data on minor principal applicants, both accompanied and unaccompanied. This new mechanism allows the Asylum Division to track applicants who are unaccompanied minors and reminds the Asylum Officer that modified procedures are in order when handling a minor principal applicant's claim. The ability to gather information on the adjudication of unaccompanied minors' applications will assist the Asylum Division in developing or refining policy with regard to these cases.

I. New Minor Principal and Unaccompanied Minor Fields in RAPS

Two new features have been added to RAPS to capture data on minor principal applicants, both accompanied and unaccompanied. The CSTA screen will automatically display "MINOR PRINCIPAL" when a principal applicant is under the age of 18 at the time of filing. In addition, a new field - "UNACCOMPANIED MINOR (Y/N):" - has been added to the PDEC and FDEC screens, and will require that a RAPS user indicate whether a minor principal applicant is an unaccompanied minor when updating RAPS, either with a preliminary decision using the PDEC command or a final decision using the FDEC command.[1] The guidance in this section explains how this mechanism works in each of these scenarios.

[1] Given the difficulty in determining whether an applicant is an unaccompanied minor in the absence of an asylum interview, the user will not be asked to update this field when closing a case via the CLOS command.

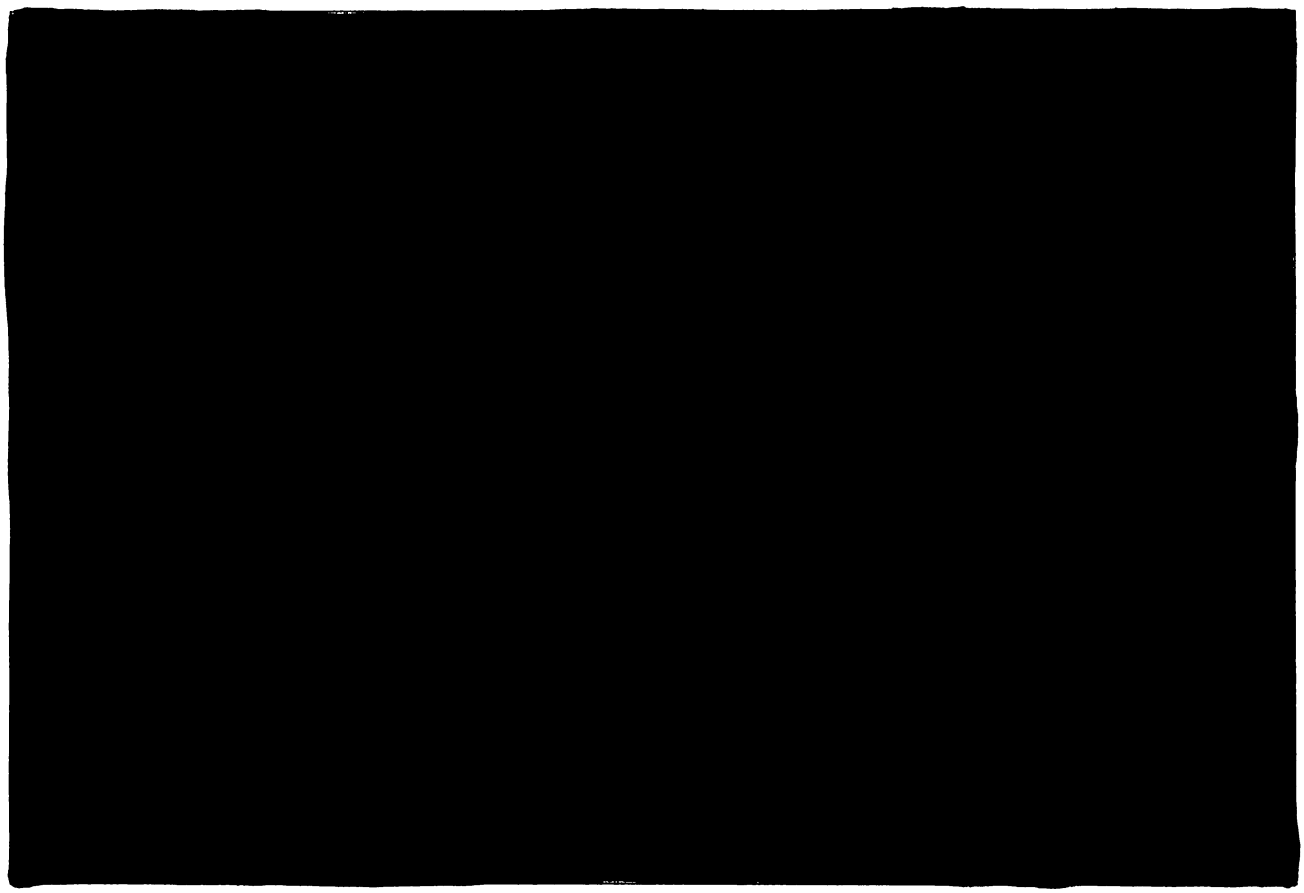
Section I.D. of this memo defines the terms "minor principals" and "unaccompanied minors" for the purposes of these new procedures.

A. Case Status Screen (CSTA)

When a case is entered into RAPS, RAPS will determine whether the principal applicant is under the age of 18 at the time of filing by calculating the difference between the applicant's date of birth and the filing date, as entered in RAPS. If RAPS determines that the principal is under the age of 18 at the time of filing, the CSTA screen will display "MINOR PRINCIPAL" in boldface at the top of the screen, as shown below.

[redacted]

If the user determines that the minor principal applicant is an unaccompanied minor, then the user will enter "Y" in response to the "UNACCOMPANIED MINOR (Y/N):" field on the PDEC or FDEC screen, and the CSTA screen header will automatically change from "MINOR PRINCIPAL" to "UNACCOMPANIED MINOR PRINCIPAL," as shown below.



If the user enters "N" in response to the "UNACCOMPANIED MINOR (Y/N):" field on the PDEC or FDEC screens, the CSTA screen header will remain "MINOR PRINCIPAL."

B. Preliminary Decision Update (PDEC)

As shown in boldface type in the screenshot below, a new field - "UNACCOMPANIED MINOR (Y/N):" - has been added to the top of the PDEC screen. This field requires users to indicate whether or not the principal applicant, whom RAPS has determined to be under the age of 18 at the time of filing, is an unaccompanied minor. In the absence of this update, no further processing of the case (including update of the preliminary and final decisions and generation of related correspondence) will be allowed, and the PDEC will not be stored in RAPS. This new data entry requirement will only appear when RAPS has determined the principal applicant to be under the age of 18 at the time of the filing.

[redacted]

C. Final Decision Update (FDEC)

As with PDEC, a new field - "UNACCOMPANIED MINOR (Y/N):" - has been added to the top of the FDEC screen. This field requires users to indicate whether or not the principal applicant, whom RAPS has determined to be under the age of 18 at the time of filing, is an unaccompanied minor. In the absence of this update, no further processing of the case (including update of the final decision and generation of related correspondence) will be allowed, and the FDEC will not be stored in RAPS. This new data entry requirement will only appear when RAPS has determined the principal applicant to be under the age of 18 at the time of the filing.

The user will be required to indicate whether the applicant is an unaccompanied minor, regardless of whether this field was completed in any previous PDEC. The user may change the response from a "Y" to an "N" or vice versa when the unaccompanied minor question is posed on the FDEC screen after a response has been previously entered on the PDEC screen. RAPS will store the last response provided on the FDEC screen.

[redacted]

D. Definition of Minor Principal and Unaccompanied Minor

For purposes of the new minor principal field in RAPS, a minor principal is a principal applicant who is under 18 years of age (a juvenile) at the time of filing.

For purposes of the new unaccompanied minor field in RAPS, an unaccompanied minor is a principal applicant who is under 18 years of age (a juvenile) and who has no parent or legal guardian in the U.S. who is available to provide care and physical custody. *See* Homeland Security Act, 6 U.S.C. § 279. This definition encompasses separated minors, e.g., those who are separated from their parents or guardians, but who are in the informal care and physical custody of other adults, including family members. Note that a child who entered the U.S. with a parent or other adult guardian but who subsequently left the parent's or guardian's care would be considered an unaccompanied minor. For purposes of the unaccompanied minor definition, guardianship refers to a formal (legal/judicial) arrangement. If the parent is deceased and there is no legal guardianship arrangement, the child would be considered unaccompanied.

The determination as to whether the applicant is an unaccompanied minor will be made based on the applicant's status at the time of the PDEC or FDEC.

E. Updating the Case in RAPS and Submission to Headquarters for Quality Assurance Review.

As a reminder of the policy elucidated in the February 9, 2007 memo entitled *Issuance of Revised Quality Assurance Referral Sheet and Instructions on Submission of Certain Claims for Quality Assurance Review*, all asylum claims filed by principal applicants under the age of 18 at the time of filing (juvenile cases) must be submitted to the Training, Research and Quality Branch (TRAQ) for quality assurance review before they can be processed. This applies regardless of whether or not the applicant is considered an unaccompanied minor. Prior to placing the case of a minor principal applicant on hold for submission to TRAQ, the asylum office should enter a PDEC or FDEC on the case so that the office can complete the "UNACCOMPANIED MINOR (Y/N):" field, thus allowing the Asylum Division to most accurately track cases on hold involving minor principal applicants.

F. Correcting or Making Changes to the Unaccompanied Minor Field.

Please note that once a determination has been made at the time of the FDEC as to whether or not the minor is unaccompanied, the determination cannot be changed by the asylum office. If, following completion of the "UNACCOMPANIED MINOR (Y/N):" field at the time of the FDEC, the asylum office needs to correct or make a change to the field, please send a request for the change to the RAPS Program Manager with a copy to TRAQ's "ASYLUM QA – AFFIRMATIVE" Outlook mailbox.

II. Interviewing Procedures for Minor Principal Applicants

The adjudication of asylum claims filed by minor principal applicants (potentially unaccompanied minors) requires that child-sensitive interviewing techniques be employed and that issues of guardianship and parental knowledge of the asylum application be considered.

A. General Guidance

Claims where the juvenile is the principal applicant involve special considerations. The Asylum Officer should be aware of these special considerations, and should tailor his or her interviews and assessments accordingly. The Asylum Officer should tailor the interview to the child's age, stage of language development, background, and level of sophistication. Such child-sensitive interview techniques are required by the *Guidelines for Children's Asylum Claims*. Additionally, the Asylum Officer should keep in mind that while a minor applicant, like an adult applicant, must establish eligibility under the INA §101(a)(42) refugee definition, sensitivity to the age of the child may affect the analysis of his or her asylum status (e.g., in considering whether the harm the child suffered amounts to persecution, in evaluating the child's possibly limited knowledge of events, etc.). Where a child is unable to identify all relevant motives for the persecution, the *Guidelines for Children's Asylum Claims* state that "a nexus can still be found if the objective circumstances support the child's claim that the persecutor targeted the child based on one of the protected grounds." For a more detailed discussion of child-sensitive questioning and legal eligibility, see *Guidelines for Children's Asylum Claims* (Dec. 10, 1998), at http://z02rsccow12:8080/docushare/dsweb/Get/Document-58328/10a_ChldrnGdlns.pdf; *see also* Draft AOBTC Lesson: *Guidelines for Children's Asylum Claims* (Mar. 3, 2005), at http://z02rsccow12:8080/docushare/dsweb/Get/Document-57763/.

The Asylum Officer should also elicit information about issues of guardianship and parental knowledge and consent of the application for asylum. The questions of guardianship may be particularly important for unaccompanied minors because whether or not there is a legal guardian informs the Asylum Officer's decision of whether to categorize the applicant as an unaccompanied minor. Additionally, the information elicited by the Asylum Officer is useful to HQASM in informing future policy making and in helping HQASM provide guidance on individual cases, as necessary. In some cases, it may be appropriate to delay adjudication of the case after interview so that the minor applicant can provide further information or documentation about the guardianship arrangement and/or parental knowledge and consent of the application, where such information could be reasonably available and there are unresolved questions that the documentation could help resolve.

Below are questions and issues that the Asylum Officer should take into account when conducting an interview with a minor principal applicant. Interview notes should reflect the below-requested information on guardianship and parental knowledge and consent. A minor applicant's inability to demonstrate a guardianship arrangement or parental knowledge and consent does not foreclose the adjudication of the application or a grant of asylum; rather, these questions are important to HQASM in reviewing cases, gathering information, and informing our policy on juvenile cases. If there is a concern in regards to parental notification and confidentiality, or a concern for the child's welfare and/or safety, please contact TRAQ for further guidance. We recognize that there are several issues, such as parental knowledge and consent that require further guidance, which will be forthcoming. In the meantime, collection of information concerning parental knowledge and consent helps to inform TRAQ's guidance on individual cases and to inform HQASM's broader policies.

As appropriate and with the consent of the child, we encourage the Asylum Officer to interview the parent or trusted adult, if any, in order to confirm any guardianship arrangement and gather information about parental knowledge of and consent to the application. The parent or trusted adult may also be able to provide information on the child's claim where the child's age at the time of harm or of the interview prevent him or her from fully detailing events. Where inconsistencies arise between the applicant's and the adult's testimony, an opportunity must be given to the child to reconcile inconsistencies apparent at the interview. Note that it is not a requirement that a witness or trusted adult be present at the interview.

B. Issues for Exploration in the Interview: Guardianship and Parental Knowledge and Consent

The questions listed below provide a general framework for exploration of issues of guardianship and parental knowledge and consent in interviews of minor principal applicants.

- With whom is the child living in the U.S.?
  - Gather relevant information about the individual(s) with whom the child is living in the U.S. (e.g., relationship, age, circumstances under which the child came to know this person, the length of time the child has lived with the person, etc.).

- Did anyone accompany the child to the interview?
  - If someone accompanied the child to the interview, note the identity and address of the person and the nature of the relationship. If the trusted adult is not the guardian, note relevant information (e.g., relationship, age, circumstances under which the child came to know this person, the length of time the child has known this person, etc.).

- Is there a guardianship arrangement?
  - Note if there is a guardianship arrangement and how the parents conferred guardianship (e.g., in writing, through a legal proceeding, etc.). Describe the process by which the guardianship was established.
  - If the child views someone as a guardian even though the adult is not a legal guardian, inquire into how or why the adult is viewed as the guardian, whether the parents entrusted the child with the adult, or whether such an arrangement is customary in the child's society.
  - Note whether documentation of the guardianship arrangement is included in the file.
    - If no supporting documentation is provided, ask whether it can reasonably be obtained and, if so, ask that it be provided. If it cannot reasonably be obtained, document the reasons why.[2]
    - If guardianship documentation is provided, note whether the parents are surrendering their parental rights to the child and whether that has been put in writing.

- If there is an adult caretaker but not a legal guardian, what arrangements has the adult made to provide care for the child?[3]
  - Note, for example, whether the adult has made arrangements for the child's education or health care, whether the adult has initiated legal proceedings to adopt the child, etc.

- Is there one or more living parent?
  - Note if there is a living parent. If there is a living parent, note where the parent resides – including the address and/or telephone number, if known. If a parent has died, note the circumstances and place of the parent's death.

- Do the parents know that the child is applying for asylum in the U.S.?
  - If one or both parents know of the child's application, ask whether the parent(s) consents, and note the answer. Note where any documentation concerning parental knowledge and/or consent is included in the application and, if there is no documentation, note the reason why. If one or

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[2] This documentation is not required to process the asylum claim and, if the applicant or purported guardian refuses to provide it, the refusal should be noted but should not stop processing of the application.

[3] As noted above, the adjudication will generally proceed notwithstanding the existence or absence of a guardian or adult caretaker or the care arrangements provided for the applicant. Nonetheless, inquiring into the care arrangements for the child can assist in identifying unaccompanied minors who may be victims of trafficking or other abuse. In addition, acquiring information on the child's care and custody is useful to HQASM in gathering information and informing policy.

both of the parent(s) either do not know of or oppose the child's application, ask the reason why and document the answer.[4]

This guidance augments the 2005 AOBTC lesson: *Guidelines for Children's Asylum Claims*, at http://z02rsccow12:8080/docushare/dsweb/Get/Document-57763/childrendraft%20lesson%, and the 1998 *Guidelines for Children's Asylum Claims*, at http://z02rsccow12:8080/docushare/dsweb/Get/Document-58328/10a_ChldrnGdlns.pdf.

Should you have any questions regarding RAPS, please contact the RAPS Program Manager. Should you have any questions regarding unaccompanied minors generally or the child-sensitive interviewing procedures, please send your inquiry to TRAQ's "ASYLUM QA – AFFIRMATIVE" Outlook mailbox.

[4] As with information related to guardianship, information elicited about parental knowledge and consent is helpful to HQASM in responding to individual cases where there is an issue as well as in informing policy.