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Memorandum

TO: Donald Neufeld, Associate Director
Service Center Operations Directorate;
All Asylum Office Personnel

FROM: John Lafferty
Chief, Asylum Division

A handwritten signature in black ink, appearing to read "John Lafferty", written over a large, loopy flourish.

SUBJECT: Jurisdiction and EAD Clock Procedures for Unaccompanied Alien Children (UACs)

The purpose of this memorandum is to advise Asylum Office and Service Center personnel of procedures relating to the calculation of the 180-day Asylum EAD Clock for Unaccompanied Alien Children (UACs).

I. BACKGROUND

A. UAC Definition

Section 462 of the Homeland Security Act of 2002, 6 U.S.C. section 279(g)(2), defines an unaccompanied alien child (UAC) as a person under 18 years of age, who has no lawful immigration status in the United States, and either:

- has no parent or legal guardian in the United States, or
- has no parent or legal guardian in the United States who is available to provide care and physical custody.

UACs who apply for asylum with USCIS were generally apprehended at the border by CBP and placed into removal proceedings before an immigration judge after CBP determined that they were UACs. In some cases, ICE or an IJ may also have made subsequent determinations about UAC status.

B. UAC Jurisdiction and Process

With the enactment of the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008, Congress gave USCIS initial jurisdiction over any asylum application filed by a UAC. This initial jurisdiction provision took effect on March 23, 2009. This means that a UAC placed into removal proceedings can file with a USCIS Asylum Office, with an immigration judge ("IJ"), or with both. Where concurrent applications are filed, the USCIS adjudication of the Form I-589 ("I-589") will proceed and the adjudication of the "I-589" in proceedings will generally be continued, administratively closed, or terminated.

The TVPRA initial jurisdiction provision applies to all UACs who filed for asylum on or after the date of enactment, December 23, 2008, as well as to the asylum claims filed by UACs with pending proceedings in immigration court, cases on appeal to the BIA or on petition for review in federal court as of that date.

UACs seeking to file an I-589 with a USCIS Asylum Office who are also in removal proceedings (who previously would have had their case heard by an immigration judge in the first instance) may now file an I-589 with USCIS at the Nebraska Service Center (NSC).¹ In limited circumstances, a USCIS Asylum Office will also accept an I-589 from a UAC.

When a UAC appears at a master calendar hearing in removal proceedings, the immigration judge may continue, administratively close, or terminate the proceedings after the applicant declares an intent to file an I-589 with the USCIS Asylum Division. ICE will give the applicant the DHS UAC Instruction Sheet, which explains filing instructions to the applicant. In some cases, a UAC may have already lodged or filed an I-589 with EOIR during the course of the removal proceedings. This is not prohibited by the TVPRA.

When USCIS receives an I-589 from a UAC (either at the Nebraska Service Center's I-589 Unit or an Asylum Office), the code "PRL" is entered into the special group ("SPC GRP") field on the RAPS Case Entry screen (I589) and is displayed on the RAPS Case Status screen (CSTA), or alternatively within PCQS RAPS, if the UAC applicant is in removal proceedings AND the applicant has filed a Form I-589 with USCIS under the initial jurisdiction provision of the TVPRA.²

Following the USCIS Asylum Division's adjudication of the I-589, applications that are not granted will be returned to immigration court. Where immigration proceedings are concurrently pending in immigration court (as evidenced by the PRL code in RAPS), the asylum officer will issue a "Notice of Non-Eligibility" to the UAC stating that the application is being returned to the immigration judge to continue immigration proceedings.

Where the asylum officer determines that USCIS does not have jurisdiction over the I-589, the officer will issue a hard copy "Notice of Lack of Jurisdiction (non-UAC)" to the UAC stating that USCIS does not have jurisdiction over the I-589 and that the application is being returned to the immigration judge to continue immigration proceedings. A copy of the appropriate notice will be placed in the A-file, along with a copy of the asylum officer's memo to file explaining why USCIS lacks jurisdiction. ICE will then request that proceedings are re-opened or re-calendared for continuation of the adjudication of the I-589 before the immigration judge.

Adjudicators should take note that RAPS and PCQS DOJ-EOIR do not have special codes to reflect the transfer of the referred I-589 from the Asylum Division to the concurrently pending immigration proceedings. In RAPS, either a "referral" or "close" decision will be recorded.³ The PCQS DOJ-EOIR asylum clock information will not reflect days calculated in RAPS because USCIS asylum officers are not directly inputting this information into DOJ's system for UAC cases in concurrent proceedings, unlike in standard affirmative

¹ The I-589 Unit at the NSC accepts Affirmative, UAC, and Defensive I-589 applications. For Affirmative and UAC applications, the Unit enters the I-589 information into RAPS and records a filing date. For defensive applications, the Unit data enters information into a defensive section within RAPS to initiate biometrics.

² Only the "PRL" code indicates that the applicant is in removal proceedings and has filed an I-589 with the USCIS Asylum Division under the initial jurisdiction provision of the TVPRA. Officers may see designations of "minor principal" or "unaccompanied minor principal" at the top of the Case Status screen (CSTA command in RAPS) or PCQS RAPS. These designations should not be used to determine whether an applicant has applied for asylum with USCIS under the initial jurisdiction provisions of the TVPRA as a UAC.

³ Although RAPS does not have a separate code to reflect transfers back to the immigration court, the system is able to distinguish served "referrals" (Notices of Non-Eligibility) of PRL (UAC) cases for reporting purposes.

referral cases. Likewise, the RAPS clock will only reflect activity before USCIS. The section “180-Day Asylum EAD Clock Calculation for UACs” explains how to calculate the 180-Day Asylum EAD Clock for I-765 adjudications.

II. 180-DAY ASYLUM EAD CLOCK CALCULATION FOR UACS

A UAC applicant’s 180-day Asylum EAD Clock (“the Clock”) will be calculated according to one of the following scenarios:

Scenario 1: No PRL Code in RAPS

If an applicant files a Form I-589 with USCIS prior to being placed in removal proceedings:

- The Clock is calculated no differently than a standard affirmative asylum application.
- The Clock starts at the time of filing of the I-589 with USCIS.
- The Clock days accumulate (taking into consideration any stops and restarts) until the date of final decision by the Asylum Office, as reflected in RAPS. PCQS DOJ-EOIR should be consulted for activity following routine referral of the case.

Scenario 2: PRL Code in RAPS, with Lodging or Filing with EOIR prior to USCIS filing

If a UAC applicant is in removal proceedings and has lodged or filed an I-589 with EOIR prior to filing as a UAC with USCIS:

- The Clock starts on the date of lodging or filing of the I-589 at EOIR.
- The Clock days accumulate (taking into consideration any stops and restarts) until the date of an IJ final decision on the merits of the I-589, if any. If an IJ decision stops the Clock prior to the filing of an I-589 with USCIS, the Clock will remain stopped until the UAC applicant files an I-589 with USCIS. (This scenario is very rare).
- If there is no final decision by the IJ on the I-589, the Clock days will be calculated (taking into consideration any stops and restarts) through the date of the filing of the I-589 with USCIS. The adjudicator should refer to PCQS DOJ-EOIR to calculate the days from lodging or filing with EOIR and stop on the date that the applicant filed the I-589 with USCIS.
- The Clock days accumulated at EOIR (taking into consideration any stops and restarts) must be added to those days accumulated at the Asylum Office, as reflected in RAPS, beginning on the date the UAC applicant files an I-589 with USCIS through the date of a final decision by the asylum officer.
- Disregard any starts or stops reflected in PCQS DOJ-EOIR during the time period that USCIS is adjudicating a UAC’s I-589.
- For calculation of days accumulated following a final decision by the Asylum Office, see Section entitled “Post-Decision Calculation for Scenarios 2 through 4” below.

Scenario 3: PRL Code in RAPS, with no Lodging or Filing with EOIR

If a UAC applicant is in removal proceedings and has not lodged or filed an I-589 with EOIR (either before or after filing as a UAC with USCIS):

- The Clock starts at the time of filing the I-589 with USCIS (either at the Nebraska Service Center or an Asylum Office).
- The Clock days accumulate (taking into consideration any stops and restarts) until the date of a final decision by the asylum officer, as reflected in RAPS.
- For calculation of days accumulated following a final decision by the Asylum Office, see Section entitled “Post-Decision Calculation for Scenarios 2 through 4” below.

Scenario 4: PRL Code in RAPS, with Lodging or Filing with EOIR after USCIS filing

If a UAC applicant is in removal proceedings and has lodged or filed an I-589 with EOIR after filing as a UAC with USCIS:

- Disregard this lodging or filing.
- Calculate the clock days according to **Scenario 3**.
- For calculation of days accumulated following a final decision by the Asylum Office, see Section entitled “Post-Decision Calculation for Scenarios 2 through 4” below.

Post-Decision Calculation for Scenarios 2 through 4:

Where an asylum officer finds a UAC ineligible for asylum, RAPS will display “referred to immigr. judge” under current status on the CSTA and “150-day clock query” (KLOK) screens. When an asylum officer finds that USCIS lacks jurisdiction over the application, RAPS will display “adm close – No/IJ Jurisdiction” on the CSTA and KLOK screens.

For the time period following the asylum officer’s decision in a UAC case, the Clock is calculated under the same rules as a standard affirmative asylum application referral. However, unlike in routine affirmative referral cases (such as Scenario 1 above), in cases where a UAC is in removal proceedings prior to filing with USCIS, asylum officers are not able to directly enter Clock information into DOJ’s case management system (displayed to USCIS through PCQS DOJ-EOIR). Adjudicators must manually calculate the days following an asylum officer’s determination as follows:

- **Clock Running – UAC ineligible:** If the Clock is running when a UAC’s I-589 is returned back to immigration court as ineligible (“referred to immigr. judge” in RAPS), the Clock will continue to run but will appear as stopped in RAPS. RAPS will only display the total Clock days elapsed during the time period that USCIS adjudicated the applicant’s I-589. RAPS will display “INS Clock counted until jurisdiction passed to Immigration Judge on [date of service]” on the KLOK screen. However, adjudicators must refer to PCQS DOJ-EOIR to manually calculate Clock days following the date of the asylum officer’s final decision to the present. Following the date of the asylum officer’s decision, any stops and restarts during immigration proceedings should be taken into consideration in calculations. The Clock will be calculated as follows:

[Days calculated in Scenario 2, 3, or 4 above, as applicable]	+	[Days between AO Decision date TO next chronological event in PCQS DOJ-EOIR that is a “Stop”]	+	[Days accumulated as running in PCQS DOJ-EOIR thereafter]
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- **Clock Running – Lack of Jurisdiction:** If a UAC’s I-589 is returned to the immigration court as USCIS lacking jurisdiction (“adm close – No/IJ Jurisdiction” in RAPS), the days from this time period will be counted toward the Clock, and the Clock days continue to accumulate until the next activity with EOIR. At this time, RAPS does not display this information. The KLOK screen in RAPS may show that the Clock has stopped as of the date of the decision with an “admin close – IJ Jurisdiction,” but the Clock should be calculated as running from the date of the asylum officer’s final decision.⁴ Accordingly, adjudicators must refer to PCQS DOJ-EOIR to manually calculate Clock days from the date of the asylum officer’s final decision, as noted in RAPS. Following the date of the asylum officer’s decision on the I-589, any stops and restarts during immigration proceedings should be taken into consideration in calculations.

[Days calculated in Scenario 2, 3, or 4]	+	[Days between AO Decision date TO next chronological event in]	+	[Days accumulated as running in PCQS DOJ-EOIR thereafter]
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⁴ In UAC cases, the TVPRA allows for removal proceedings to be ongoing, and thus the delay from a determination that USCIS lacks jurisdiction is caused by USCIS’s consideration of whether the applicant meets the definition of a UAC. In these instances, the clock will be calculated as running.

above, as applicable]	PCQS DOJ-EOIR that is a “Stop”]	EOIR thereafter]
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- **Clock Stopped:** If the applicant’s I-589 is referred with the Clock stopped, due to the applicant’s failure to pick up the decision and NTA, the Clock will not restart until the immigration judge determines that the Clock should be restarted. The Clock is stopped in RAPS on the date the applicant failed to appear for decision pickup and will display “pickup no-show” under reason for stoppage on the KLOK screen. Accordingly, the Clock does not restart on the date the case is referred to EOIR. Rather, the immigration judge may determine that the Clock will be restarted at the next master calendar hearing. *See* Brian O’Leary, Chief Immigration Judge, *Operating Policies and Procedures Memorandum (OPPM) 13-02: The Asylum Clock*, p. 5. Adjudicators must refer to PCQS DOJ-EOIR to manually calculate Clock days following the date of the failure to pick up the decision and NTA with the Asylum Office (including any stops and restarts).
- **Failure to Appear:** In cases where the applicant failed to appear for an interview with an Asylum Office and the case has been transferred by the Asylum Office to the immigration judge to continue removal proceedings, the Clock is stopped on the date of the failure to appear, as reflected in RAPS. EOIR will not independently restart it. *See* Brian O’Leary, Chief Immigration Judge, *Operating Policies and Procedures Memorandum (OPPM) 13-02: The Asylum Clock*, p. 5. The current status field on the CSTA and KLOK screens in RAPS will display “Admin Close – Interview No Show.” PCQS DOJ-EOIR does not reflect this failure to appear.

Please direct questions to Elizabeth Mura, Operations Branch Chief at 202-272-1013 or Elizabeth.E.Mura@uscis.dhs.gov.