

May 31, 2019

## **Updates on Determining Jurisdiction of Asylum Claims from Unaccompanied Alien Children (UACs)**

On May 31, 2019, we issued a memorandum updating our procedures for determining when we have initial jurisdiction over asylum claims made by unaccompanied alien children (UACs). UAC is a legal term referring to a child who: has no lawful immigration status in the United States; has not reached 18 years of age; and has no parent or legal guardian in the United States, or for whom no parent or legal guardian in the United States is available to provide care and physical custody.

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), provides USCIS with initial jurisdiction over all asylum applications filed by UACs. The updated procedures affect UACs who are in removal proceedings and wish to apply for asylum. USCIS is returning to making independent factual inquiries to determine whether applicants met the UAC definition on the date they first filed their asylum applications such that USCIS has initial jurisdiction over the asylum application because it was “filed by an unaccompanied alien child.”

The updated procedures apply to all cases pending decision as of June 30, 2019 (30 calendar days from the issuance date of the memorandum outlining the procedures). USCIS will determine whether applicants met the UAC definition when they first filed their asylum application for all cases pending as of June 30, 2019.

The procedures for first filing for asylum are the same whether you are in Office of Refugee Resettlement (ORR) custody or not. If you are in custody, ORR will coordinate with the local asylum office if any interview-related issues arise. For more information on ORR’s general implementation of the TVPRA, please see ORR’s website available at [www.acf.hhs.gov/programs/orr](http://www.acf.hhs.gov/programs/orr).

### **Documents to Include with Your Application**

You should submit documents that contain information establishing your date of birth and living arrangements when you first filed your application to assist USCIS in making UAC determinations. You may submit these documents along with any other evidentiary documents supporting your asylum application.

### **Changing Your Address**

If you change your address after first filing a Form I-589, including because you were released from ORR custody, you must:

- Submit a Form AR-11 (Alien’s Change of Address Card) to USCIS electronically or by mail; and
- Submit a Form EOIR-33/IC (Alien’s Change of Address Form/Immigration Court) to EOIR.

If the forms are not included in the asylum instruction packet you received from ICE, they are available at [Change of Address Information](#) and [www.usdoj.gov/eoir](http://www.usdoj.gov/eoir), respectively.

### **Additional Information**

<b>If you are...</b>	<b>Then...</b>
<p>An applicant who was released from Office of Refugee Resettlement custody to a parent</p>	<p>USCIS will make an independent factual inquiry in most cases to determine whether you met the UAC definition when you first filed your asylum application. The USCIS asylum officer should elicit information at the asylum interview and examine all available records and information in order to make a UAC determination during the asylum interview.</p> <p>If, when you first filed, you had no parent or legal guardian in the United States who was available to provide care and physical custody, you were unaccompanied. If you have a parent or legal guardian residing in the United States and facts indicate that that parent or legal guardian was available to provide care and physical custody to you when you first filed, we will find you to be accompanied and not a UAC. The determination as to whether a parent or legal guardian was available to provide care and physical custody includes, among other factors, a determination as to whether the parent or legal guardian was willing and able to provide such care and physical custody. The burden of proof is on you to establish that you met the UAC definition when you first filed your asylum application.</p>
<p>An applicant who turned 18 after being released by ORR</p>	<p>USCIS will make an independent factual inquiry to determine whether you met the UAC definition when you first filed your asylum application. The USCIS asylum officer should elicit information at the asylum interview and examine all available records and information in order to make a UAC determination during the asylum interview. The burden of proof is on you to establish that you met the UAC definition when you first filed your asylum application. If you were under 18 when you first filed your asylum application and met the other components of the UAC definition at that time, USCIS will take jurisdiction over your asylum case. If you were 18 or older when you filed your asylum application, USCIS will not take jurisdiction over your asylum case.</p>

<p>A UAC who wishes to file for asylum who has not received a Notice to Appear and has never appeared in immigration court</p>	<p>If you are a UAC who is not in removal proceedings in immigration court and you wish to apply for asylum, you can file an asylum application with USCIS. You should follow the general instructions for asylum applicants who are not in removal proceedings in immigration court or before the Board of Immigration Appeals. As available, please provide evidence that establishes your age when you first file. The instructions are found on the <a href="#">Form I-589, Application for Asylum and for Withholding of Removal</a>.</p>
<p>A UAC who was issued a Notice to Appear in immigration court and has not previously filed for asylum, but wishes to apply now</p>	<p>You can file Form I-589 directly with USCIS before appearing in immigration court. However, you must attend all scheduled immigration court hearings. You should inform the immigration judge and the ICE trial attorney that you filed Form I-589 with USCIS and provide the status of your application with USCIS, including whether you have been interviewed or have an interview scheduled. ICE may seek to delay your case while USCIS reviews your application.</p>
<p>A UAC in removal proceedings who has not filed a Form I-589 with USCIS</p>	<p>If you indicated that you wished to apply for asylum and you fail to file a Form I-589, Application for Asylum and for Withholding of Removal, with USCIS, USCIS cannot adjudicate your asylum application and the immigration judge may proceed with your removal proceedings. You may file your application with the immigration court while in removal proceedings, and the immigration judge will determine whether EOIR or USCIS has jurisdiction over it.</p>
<p>A UAC with a pending asylum application in immigration court, on appeal before the Board of Immigration Appeals, or with a federal court when the TVPRA took effect who wishes to have USCIS adjudicate your asylum claim</p>	<p>USCIS also has initial jurisdiction over asylum applications filed by UACs with pending claims in immigration court, with a case on appeal before the Board of Immigration Appeals, or with a petition for review with a federal court as of Dec. 23, 2008, the date of the enactment of the TVPRA. If you were a UAC when you first filed for asylum and your case was pending in any of these places and you never filed for asylum with USCIS, you should raise your concerns in the context of those proceedings.</p>

<p>A UAC who filed your asylum claim after you turned 18</p>	<p>For applications decided on or after June 30, 2019, if USCIS determines that you were 18 years of age or older when you first filed and you have already been placed into removal proceedings before an immigration court, USCIS will no longer retain jurisdiction over your case. We will instead refer your asylum application to the immigration court for consideration during your removal hearing.</p> <p>Beginning June 30, 2019, the Nebraska Service Center will not accept new asylum first filings if the applicant is over 18 unless the applicant first filed for asylum with the immigration court while under the age of 18.</p>
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## Historical Background

On Dec. 23, 2008, former President George W. Bush signed the TVPRA into law. The provisions of the TVPRA that apply to UACs took effect on March 23, 2009. The TVPRA provides USCIS with initial jurisdiction over all asylum applications filed by UACs. Thus, even UACs who are in removal proceedings in immigration court can have their application for asylum heard by USCIS if they were UACs when they first filed for asylum. The TVPRA also provides an opportunity for UACs who did not previously file for asylum with USCIS to have their asylum claim heard and adjudicated by a USCIS asylum officer in a non-adversarial setting if they were in pending proceedings before the Department of Homeland Security, the Executive Office for Immigration Review (EOIR), or related administrative or federal court appeals when the TVPRA was enacted.

When USCIS first implemented the TVPRA in March 2009, asylum officers made independent factual inquiries under the UAC definition to support determinations about whether an application was filed by a UAC such that USCIS had jurisdiction over it. These determinations were assessed as of the time the UAC filed the asylum application. USCIS changed the procedures for determining jurisdiction in these cases following issuance of a May 28, 2013, memorandum, Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children, which allowed asylum officers to adopt prior UAC determinations made by U.S. Customs and Border Protection (CBP) or U.S. Immigration and Customs Enforcement (ICE) without further factual inquiry, so long as those determinations were still in place the asylum application was first filed. In cases in which a UAC determination had not already been made by CBP or ICE, asylum officers continued to make UAC determinations by making independent factual inquiries under the UAC definition, following the procedures established in the 2009 TVPRA implementation guidance.

On Oct. 16, 2018, the Board of Immigration Appeals (BIA) issued a precedent decision related to initial jurisdiction over asylum applications filed by individuals in removal proceedings who were determined to be UACs at one time but turned 18 years of age prior to filing their asylum applications. See *Matter of M-A-C-O-*, 27 I&N Dec. 477 (BIA 2018). Dealing with the issue of “whether the USCIS or the Immigration Judge [(IJ)] has initial jurisdiction over an asylum application filed by a respondent who was previously determined to be a UAC but who turned 18 before filing the application,” *id.* at 478, the BIA held that the immigration judge has jurisdiction to determine that an individual who was 18 years of age when they filed an asylum application

no longer qualified as a UAC at that time. Therefore, INA § 208(b)(3)(C) granting USCIS initial jurisdiction over the asylum application did not apply, and the IJ properly exercised initial jurisdiction over the asylum application that was before the immigration court.

The BIA's decision, however, does not divest USCIS of its authority to determine whether an application before it was filed by a UAC, such that USCIS has jurisdiction over it. Rather, both the immigration judge and USCIS have authority to make this jurisdictional determination.

To ensure that USCIS is making these jurisdictional determinations in a manner consistent with immigration judge determinations on the same issue under Matter of M-A-C-O-, USCIS is returning to making independent factual inquiries in all cases in order to determine whether the individual met the UAC definition when they filed their asylum application. This will help prevent incongruous results where USCIS would otherwise have deferred to a prior UAC determination that fails to take into consideration the age and other circumstances of the applicant when they filed the application. Similar to the instructions contained in the 2009 TVPRA implementation guidance, this new memorandum sets forth instructions for asylum officers on making the UAC determination.

These updated procedures are effective June 30, 2019, (30 calendar days from the issuance date of the memorandum outlining the procedures), and they apply to any USCIS decision issued on or after that date, including cases already pending decision with USCIS on that date.