



U.S. Citizenship
and Immigration
Services

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Memorandum

TO: All USCIS Service Centers

FROM: Joseph E. Langlois
Chief, Asylum Division

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Barbara Velarde
Chief, Office of Service Center Operations

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SUBJECT: Statutory Change Affecting Service Center Operations' Procedures for Accepting Forms I-589 Filed by Unaccompanied Alien Children

I. Purpose

This memorandum provides notification and guidance to the USCIS Service Centers on the handling of I-589 applications for asylum filed under the "initial jurisdiction" provision of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA). The TVPRA, Public Law 110-457, was signed into law on December 23, 2008. The initial jurisdiction provision becomes effective 90 days thereafter on March 23, 2009.

II. Background

The TVPRA makes a number of changes that affect unaccompanied alien children (UACs)¹ who file for asylum. Among the statutory changes, section 235(d)(7)(B) of the TVPRA provides asylum officers with "initial jurisdiction over any asylum application filed by" a UAC. This means that UACs will have an opportunity to file for asylum with USCIS, even if the UAC has been issued a Notice to Appear. This initial jurisdiction provision is effective on March 23,

¹ As defined at 6 U.S.C. § 279(g)(2), an unaccompanied alien child means:
a child who—

(A) has no lawful immigration status in the United States;

(B) has not attained 18 years of age; and

(C) with respect to whom—

(i) there is no parent or legal guardian in the United States; or

(ii) no parent or legal guardian in the United States is available to provide care and physical custody.

2009. It applies to all UACs who file for asylum on or after March 23, 2009, as well as to the asylum claims filed by UACs with pending proceedings in Immigration Court or cases on appeal to the Board of Immigration Appeals or in federal court as of December 23, 2008 (see attached USCIS Update and USCIS Questions and Answers for more information).

UACs apprehended by Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), or another federal entity must be placed into the custody of the Office of Refugee Resettlement (ORR) within the U.S. Department of Health and Human Services within 48 or 72 hours. *See* TVPRA §§ 235(a)(4); 235(b)(3). Those UACs are generally issued a Notice to Appear before an Immigration Judge of the U.S. Department of Justice for removal proceedings under section 240 of the Immigration and Nationality Act. During removal proceedings, a UAC may request asylum. Until the TVPRA's initial jurisdiction provision went into effect, such UACs filed their I-589 applications for asylum with the Immigration Court in removal proceedings. With the initial jurisdiction provision of the TVPRA taking effect, UACs in removal proceedings should now file their I-589 with USCIS. Those UACs in Immigration Court intending to file for asylum will be provided by ICE with "Instruction sheet for an unaccompanied alien child in immigration court to submit an I-589 asylum application to USCIS" ("UAC Instruction Sheet") (attached).

III. Field Guidance

This guidance focuses on the Nebraska Service Center's (NSC) handling of I-589s filed by UACs in removal proceedings. UACs who, prior to implementation of the TVPRA provision on initial jurisdiction, had the ability to affirmatively file with USCIS are not the focus of this guidance. UACs who are not in removal proceedings should continue to affirmatively file for asylum with USCIS by sending an I-589 to the Service Center listed for their location on the I-589 Instructions. The Service Center should follow standard procedures for reviewing and accepting such filings.

NSC will receive all I-589s filed by UACs in removal proceedings. The UAC Instruction Sheet directs UACs to file the I-589 with NSC. The outer envelope of the filing should be addressed with the heading "UAC I-589." Additionally, the UAC Instruction Sheet directs the UAC to submit a copy of the UAC Instruction Sheet with the I-589.

USCIS typically does not have jurisdiction to accept the filing of an I-589 filed by an applicant in removal proceedings before an immigration judge. Because section 235(d)(7)(B) of the TVPRA places initial jurisdiction of asylum applications with USCIS, even for those UACs in removal proceedings, NSC should accept the asylum applications of UACs in removal proceedings. Accordingly, NSC should accept the asylum application of an individual in removal proceedings if:

- (1) the date of birth listed on the Form I-589 indicates that applicant is under 18 at the time of filing with USCIS; or
- (2) the applicant has submitted a copy of the UAC Instruction Sheet with the I-589, regardless of any other evidence of the applicant's age at the time of filing.

NSC should otherwise follow normal procedures to verify that the filing is complete and to process the case filing.² This means that NSC should continue to reject I-589 applications for lack of jurisdiction where the applicant is in removal proceedings, is 18 or over at the time of filing, and has not submitted the UAC Instruction Sheet.

At the time of receipt of a UAC's application, NSC should verify that the UAC is in removal proceedings by checking the EOIR screen. NSC personnel should not consider the date on which the removal proceedings commenced, even though initial jurisdiction of new asylum applications applies only to those applications filed on or after March 23, 2009. This is because USCIS may also have initial jurisdiction over the asylum application of an individual who was in pending proceedings as of December 23, 2008, including individuals in pending proceedings who later indicate an intent to apply for asylum. If the EOIR screen does not indicate that the individual is in removal proceedings, the case should be handled like an affirmative application.

In cases where an I-589 is filed by a UAC in removal proceedings, the NSC should enter the special group code "PRL" (formerly "parole," presently defensive unaccompanied child) into RAPS on the Case Entry screen (I-589).³ Since this special group code is no longer in use for new filings, it is now being converted to refer to UACs in removal proceedings. This special group code serves the purpose of removing the case from the automatic scheduler, so that the Asylum Office can determine whether special arrangements for the interview location need to be arranged.

The NSC should reject an I-589 filing due to lack of jurisdiction if the applicant is in removal proceedings, does not include the UAC Instruction Sheet, and is 18 years of age or more. The NSC should document this reasoning in the rejection notice sent to the applicant.

An A-file will already exist for UAC applicants who file for asylum with USCIS and who are concurrently in removal proceedings. The NSC will create a T-file and transfer the file to the Asylum Office. Additionally, RAPS will automatically initiate the A-file transfer request from the ICE Office of Chief Counsel to the Asylum Office. ICE may contact the Asylum Office to confirm that the file is being transferred due to the applicant being a UAC.

The NSC should designate a point of contact and backup point of contact for issues related to this memorandum. The name of the point of contact and backup should be provided to HQ-SCOPS and HQASM (Chief of Operations) within one week after issuance of this memo.

If you have any questions concerning the guidance contained in this memorandum, please contact your supervisor, who can forward your inquiry to Headquarters Service Center Operations.

² The question as to whether the applicant is in fact a UAC will be examined again at the time of the Asylum Office interview.

³ Note that the memo "Implementation of Statutory Change Providing USCIS with Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children" issued by Asylum Division Chief Joseph E. Langlois on March 25, 2009 indicated that the special group code "KRD" would be used for these cases in RAPS. A directive has been issued to all Asylum Offices to correct the reference to "PRL."

Attachments (5)

1. DHS UAC Instruction Sheet (internal use only).
2. USCIS Update: USCIS Initiates Procedures for Unaccompanied Children Seeking Asylum. March 25, 2009.
3. USCIS Questions and Answers: USCIS Initiates Procedures for Unaccompanied Children Seeking Asylum. March 25, 2009.
4. Joseph E. Langlois, Chief, Asylum Division. Memorandum *Implementation of Statutory Change Providing USCIS with Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children*. March 25, 2009.
5. Joseph E. Langlois, Chief, Asylum Division. Memorandum *Special Group Code for Unaccompanied Alien Children Defensive Asylum Filings Changed To "PRL."* April 2, 2009.