



HQRAIO 120/12a

May 7, 2021

Memorandum

TO: Connie Nolan
Acting Associate Director, Service Center Operations

FROM: Andrew Davidson
Chief, Asylum Division

SUBJECT: Updated Service Center Operations Guidance for Accepting Forms I-589 Filed by Applicants Who May Be Unaccompanied Alien Children

I. Purpose

This memorandum provides updated guidance to the USCIS Service Centers on the handling under the initial jurisdiction provision of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) of Forms I-589, *Application for Asylum and for Withholding of Removal*, filed by applicants who may be unaccompanied alien children (UACs). This guidance specifies how service centers should treat such potential UACs who are in removal proceedings or who have final removal orders, including those who were enrolled in the Migrant Protection Protocols. This memorandum supersedes the June 4, 2013, memorandum, *Updated Service Center Operations Procedures for Accepting Forms I-589 Filed by Unaccompanied Alien Children* (attached), and the April 9, 2009, memorandum, *Statutory Change Affecting Service Center Operations' Procedures for Accepting Forms I-589 Filed by Unaccompanied Alien Children* (attached). This guidance is effective immediately.

II. Background

USCIS typically does not have jurisdiction to accept a Form I-589 filed by an applicant in removal proceedings. Section 235(d)(7)(B) of the TVPRA, however, placed initial jurisdiction of asylum applications filed by UACs with USCIS, even for those UACs in removal proceedings. On December 21, 2020, the District Court for the District of Maryland certified a class and entered an Amended Preliminary Injunction in the case of *J.O.P. v. U.S. Dept. of Homeland Security et al.*, Civil Action No. 8:19-cv-01944. To comply with the Amended Preliminary Injunction, USCIS must adhere to the policies in the May 28, 2013, memorandum, *Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children* (2013 UAC memo) (attached). Therefore, for the purpose of determining whether USCIS has initial jurisdiction, asylum officers currently adopt a previous factual determination made by either U.S. Customs and Border Protection (CBP) or U.S. Immigration and Customs Enforcement (ICE) that an applicant was a UAC where that determination is in place on the date the applicant first files an

asylum application, without making another factual inquiry into the applicant's age or unaccompanied status. The previous determination that the applicant was a UAC remains in place unless there was an affirmative act by the U.S. Department of Health and Human Services (HHS), ICE, or CBP to terminate the UAC determination before the applicant filed an asylum application. In cases in which a UAC determination has not already been made or has been terminated, asylum officers make a factual determination about whether the applicant was a UAC¹ as of the date the applicant first filed an asylum application.

III. Field Guidance

This guidance focuses on the Nebraska Service Center's (NSC) processing of Forms I-589 filed by individuals in removal proceedings who are seeking initial jurisdiction before USCIS. In order to allow the asylum office to determine its jurisdiction over potential UAC applications under the 2013 UAC memo, the NSC should accept the asylum application of an individual in removal proceedings or with a final removal order whose asylum application has not already been adjudicated by USCIS if any of the following three conditions are met:

- (1) The date of birth listed on the Form I-589 indicates that the applicant is under 18 at the time of filing with USCIS; (or)
- (2) The applicant submits a copy of the UAC Instruction Sheet with the I-589;² (or)
- (3) The applicant submits with the Form I-589 a copy of documentation provided by the HHS Office of Refugee Resettlement (ORR) showing that the applicant was in ORR custody as a UAC, such as the UAC Initial Placement Referral Form or the ORR Verification of Release Form.

The NSC should reject Forms I-589 for lack of jurisdiction where the applicant is or has been in removal proceedings, is 18 or older at the time of filing, **and** has not submitted any of the documents listed in (2) and (3) above.

Forms I-589 filed by applicants who were enrolled in the Migrant Protection Protocols (MPP) should be processed in the same way as Forms I-589 filed by potential UACs who are in removal proceedings not being held pursuant to MPP. Applicants who were enrolled in MPP and who have final removal orders entered *in absentia* or on the merits should also be processed in the same way as potential UACs who were not enrolled in MPP.

In cases where a Form I-589 is filed by a potential UAC in removal proceedings or with a final removal order, the NSC should enter the special group "PRL – Unaccompanied Alien Child" into Global on the Entry tab. An A-file will already exist for potential UAC applicants who file asylum applications with USCIS and who are or were in removal proceedings. The NSC will create a T-file and transfer the file to the asylum office with geographical jurisdiction over the case.

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

Attachments (3):

1. Ted Kim, Acting Chief, Asylum Division. Memorandum *Updated Service Center Operations Procedures for Accepting Forms I-589 Filed by Unaccompanied Alien Children*. June 4, 2013.

¹ 6 U.S.C. § 279(g)(2).

² The NSC should accept both the 2009 and the 2013 versions of the instruction sheet.

2. Joseph E. Langlois, Chief, Asylum Division, Memorandum *Statutory Change Affecting Service Center Operations' Procedures for Accepting Forms I-589 Filed by Unaccompanied Alien Children*. April 9, 2009.
3. Ted Kim, Acting Chief, Asylum Division. Memorandum *Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children*. May 28, 2013.