

Questions and Answers

June 10, 2013

Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children

Introduction

U.S. Citizenship and Immigration Services (USCIS) is responsible for initial adjudication of asylum applications filed by Unaccompanied Alien Children (UAC). On December 23, 2008, former President Bush signed into law the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Public Law 110-457. 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 have been issued a *Notice to Appear* in immigration court can have their application for asylum heard by USCIS if they were UACs on the date they first filed for asylum. The TVPRA also provides an opportunity for UACs, who did not previously file for asylum with USCIS and who had a pending claim in immigration court, on appeal to the Board of Immigration Appeals, or in federal court, to have their asylum claim heard and adjudicated by a USCIS Asylum Officer in a non-adversarial setting.

Prior to the issuance of this guidance, Asylum Offices made independent factual inquiries under the UAC definition to support their determinations of UAC status, which was assessed at the time of the UAC's filing of the asylum application. In most of these cases another Department of Homeland Security entity, either U.S. Customs and Border Protection (CBP) or U.S. Immigration and Customs Enforcement (ICE), had already made a determination of UAC status after apprehension, as required for the purpose of placing the individual in the appropriate custodial setting. Effective June 10, 2013, in those cases in which either CBP or ICE has already made a determination that the applicant is a UAC, and that status determination was still in place on the date the asylum application was filed, Asylum Offices will adopt that determination without another factual inquiry. Unless there was an affirmative act by HHS, ICE or CBP to terminate the UAC finding before the applicant filed the initial application for asylum, Asylum Offices will adopt the previous DHS determination that the applicant was a UAC. In cases in which a determination of UAC status has not already been made, Asylum Offices will continue to make determinations of UAC status per current guidance.

Questions and Answers

Q. Who is an Unaccompanied Alien Child (UAC)?

A. An Unaccompanied Alien Child (UAC) is a legal term referring to a child who: has no lawful immigration status in the United States; has not attained 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.

Q. Who is affected by the updated initial jurisdiction procedures?

A. The updated procedures affect UACs who are in removal proceedings and wish to apply for asylum. USCIS will now adopt a prior UAC status determination made by CBP or ICE for the purpose of determining USCIS jurisdiction over asylum applications filed by UACs in removal proceedings.

Q. I was in custody with the Office of Refugee Resettlement (ORR) and was released to a parent or relative. Am I still a UAC?

A. Under the updated procedures, effective June 10, 2013, USCIS will adopt a prior UAC status determination made by CBP or ICE that was in place on the date you first filed for asylum. If either CBP or ICE found that you were a UAC and transferred you to ORR custody, USCIS will generally take jurisdiction over your asylum application, even where there may be some evidence that you may have reunited with a parent or legal guardian after CBP or ICE determined that you were a UAC.

Q. I was in custody with the Office of Refugee Resettlement (ORR) and turned 18 years old after I was released. Am I still a UAC?

A. Under the updated procedures, effective June 10, 2013, USCIS will accept a prior UAC status determination made by CBP or ICE if that status determination was still in place on the date you first filed for asylum. If either CBP or ICE found that you were a UAC and transferred you to ORR custody, and there was no action taken by ICE, CBP or ORR to terminate that UAC finding, USCIS will take jurisdiction over your asylum application.

Q. I am a UAC and I wish to apply for asylum. However, I was not issued a *Notice to Appear* and have never been in immigration court. Where do I apply?

A. If you are a UAC who was not issued a *Notice to Appear* 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 not in proceedings in immigration court in the Form I-589, *Application for Asylum and for Withholding of Removal*, available at www.uscis.gov/forms.

Q. I am a UAC who was in ORR custody and was issued a *Notice to Appear* in immigration court. I have not previously filed for asylum. Can I file directly with USCIS or do I have to wait until my hearing date in immigration court?

A: You can file Form I-589 directly with USCIS before appearing in immigration court. You should submit proof that you were determined to be a UAC with your Form I-589. Evidence that you were in ORR custody as a UAC, such as either the UAC Initial Placement Referral Form or the ORR Verification of Release Form, can show that you were determined to be a UAC. However, **you must attend all scheduled immigration court hearings**. You should inform the immigration judge and the Immigration and Customs Enforcement (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. If you have already appeared in immigration court and been provided with a UAC Instruction Sheet, please submit it to USCIS with your asylum application.

Q. I am in removal proceedings and filed a Form I-589, *Application for Asylum and for Withholding of Removal*, with USCIS. Will ICE and the immigration judge know I applied for asylum?

A: After you have filed for asylum with USCIS, **you must appear at any hearings scheduled in immigration court**. You should be certain to tell the immigration judge and ICE trial attorney that you have filed an application with USCIS and at your next hearing in immigration court, you may be required to provide a copy of your USCIS receipt notice to the ICE trial attorney.

Q. If I was issued a *Notice to Appear* and then applied for asylum with USCIS, do I still have to appear in immigration court?

A: Yes. **Even while pursuing the asylum claim, you must appear in immigration court if you have a hearing scheduled.** At the hearing, ICE may again seek to continue your case to allow USCIS to adjudicate your asylum application.

Q. What happens if I am in removal proceedings and I do not file a Form I-589, *Application for Asylum and for Withholding of Removal*, with USCIS?

A: 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*, USCIS cannot adjudicate your asylum application and the immigration judge may proceed with your removal proceedings.

Q. I am a UAC and my asylum application was pending in immigration court, on appeal before the Board of Immigration Appeals, or with a federal court when the TVPRA took effect. May I request that USCIS adjudicate my asylum application?

A: Yes. 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 the date of enactment of the TVPRA (December 23, 2008). If 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.

Q. How do I know if CBP or ICE has made a previous UAC status determination in my case?

A: If you were apprehended by CBP or ICE and transferred to ORR custody, it is most likely because CBP or ICE determined that you were a UAC. An Asylum Officer will know if a previous UAC status determination has been made in your case by examining the documents in your alien file.

Q. I am an unaccompanied minor in removal proceedings but have never been in ORR custody. May I request that USCIS adjudicate my asylum application?

A: Yes. You can file Form I-589 directly with USCIS. However, **you must attend all scheduled immigration court hearings.** You should inform the immigration judge and the Immigration and Customs Enforcement (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. If you have already appeared in immigration court and been provided with a UAC Instruction Sheet, please submit it to USCIS with your asylum application. If CBP or ICE has not made a previous UAC status determination in your case, USCIS will have jurisdiction over your asylum case if you were a UAC at the time that you filed your asylum application. The UAC Instruction Sheet, by itself, is not evidence that CBP or ICE has made a UAC status determination in your case. The Asylum Officer will make this determination by asking you questions regarding your age and unaccompanied status.

Q. What do I do if I was released from an ORR facility or my address otherwise changed?

A: If you change your address after filing a Form I-589 application, you must:

1. Submit a Form AR-11 (Alien's Change of Address Card) to USCIS; and
2. 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 on the Web at www.uscis.gov/forms or www.usdoj.gov/eoir.

Q. I am currently in ORR custody. Are the procedures any different for me?

A: The procedures for filing for asylum are the same. You should submit proof that you were determined to be a UAC, such as the UAC Initial Placement Referral Form, with your Form I-589. 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 at www.acf.hhs.gov/programs/orr.

Q. I am a minor in removal proceedings and already applied for asylum with USCIS. USCIS sent me a Notice of Lack of Jurisdiction and referred my case to the immigration court. Can I ask USCIS to take back my asylum case based on the updated initial jurisdiction procedures?

A: No. The updated initial jurisdiction procedures only apply to cases in which USCIS has not issued a final decision as of June 10, 2013. If USCIS referred your case to an immigration court for lack of jurisdiction under the previous procedures, you may request asylum again before the immigration judge.

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