

*Office of the Principal Legal Advisor*

U.S. Department of Homeland Security  
500 12<sup>th</sup> Street, S.W., 11<sup>th</sup> Floor  
Washington, DC 20024



**U.S. Immigration and  
Customs Enforcement**

March 23, 2009

MEMORANDUM FOR: OPLA Attorneys

FROM:

Barry O'Melinn  
Acting Principal Legal Advisor

SUBJECT:

**Interim Guidance William Wilberforce Trafficking Victims  
Protection Reauthorization Act of 2008: Initial Jurisdiction**

On December 23, 2008, President Bush signed into law the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, 122 Stat. 5044 (2008). Certain portions of TVPRA became effective today, Monday, March 23, 2009.

TVPRA includes a number of modifications to the Trafficking Victims Protection Act of 2000 and existing immigration laws. For example, it makes significant changes to INA section 101(a)(27)(J) by providing the Secretary of Health and Human Services (HHS) the exclusive authority to specifically consent to a juvenile court exercising jurisdiction to determine the custody status or placement of a juvenile in HHS' actual custody. TVPRA also requires that U.S. Citizenship and Immigration Services (USCIS) adjudicate all initial asylum applications submitted by unaccompanied alien children, including applications which are/were filed before an immigration judge in removal proceedings.

Specifically, section 235 of TVPRA makes significant changes to how matters involving unaccompanied alien children are processed. For example, TVPRA amends the Homeland Security Act of 2002 (HSA) by placing unaccompanied alien children in the *care and custody*, including responsibility for "detention where appropriate," of the Secretary of HHS, rather than in the *care and placement* of HHS as previously defined in the HSA. In addition, TVPRA amends Immigration and Nationality Act (INA) section 208 by providing that "an asylum officer ... shall have *initial jurisdiction* over any asylum application filed by an unaccompanied alien child ..." (emphasis added).

This memorandum outlines how the ICE Offices of Chief Counsel (OCC) should handle initial jurisdiction issues and decisions points when unaccompanied alien children file asylum applications or express the intent to do so.

Under existing statutory and regulatory provisions, the Department of Homeland Security (DHS) notifies an alien of the institution of a removal proceeding by serving him/her with a Notice to Appear (NTA).

Under the TVPRA, with the exception of certain children from contiguous countries and victims of trafficking, removal proceedings must be initiated against the unaccompanied child within 72 hours.

TVPRA section 235(d)(7) of the Act gives initial jurisdiction on asylum applications filed by unaccompanied children to USCIS. Thus, under these interim procedures, the Executive Office for Immigration Review (EOIR) will have to maintain jurisdiction over the removal proceedings while USCIS will have jurisdiction over the asylum application.

If an unaccompanied alien child in immigration court indicates the intent to seek asylum, but has not filed an affirmative application before USCIS, the Assistant Chief Counsel (ACC) shall request a continuance of 60 days to allow the unaccompanied alien child an opportunity to file the application with USCIS. The ACC will provide the immigration judge (IJ) and unaccompanied alien child with a USCIS-drafted instruction sheet (attached), which will include the specific address to which such I-589s are to be filed. The instruction sheet advises the unaccompanied alien child to bring copies of the USCIS filing receipt to the next hearing. The ACC should ensure that the record reflects that the unaccompanied alien child receives the instruction sheet.

ACCs should oppose requests to administratively close or terminate these cases. At the next hearing, if the unaccompanied alien child brings the requested receipt, the ACC should request another continuance of up to 90 days to allow adjudication by USCIS and should continue to oppose administrative closure or termination. Once USCIS has adjudicated the I-589, the decision USCIS will communicate the decision to the OCC. If asylum is granted, the OCC will move to terminate the case before the immigration court. If asylum is not granted by USCIS, removal proceedings will continue and the unaccompanied alien child may renew his/her application for asylum before the IJ. USCIS will include all relevant information in the A file.

Unaccompanied alien children currently in removal proceedings, whose asylum applications were previously referred from USCIS to the immigration court, do not get another opportunity to go back to USCIS. Adjudication of their applications will continue before the IJ. This guidance applies only to those cases in which USCIS has not yet exercised initial jurisdiction over the asylum application.

A flow chart of how this process will work is attached. If you encounter unanticipated issues in implementing this guidance, please seek to continue the case and advise your chain of command as soon as possible. If the IJ terminates or administratively closes any cases covered by this guidance over your objection, please reserve appeal and advise your chain of command.

Attachments



**Homeland  
Security**

**INSTRUCTION SHEET FOR AN UNACCOMPANIED ALIEN CHILD IN  
IMMIGRATION COURT TO SUBMIT AN I-589 ASYLUM APPLICATION  
TO U.S. CITIZENSHIP AND IMMIGRATION SERVICES (USCIS)**

Alien #: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ ICE Attorney: \_\_\_\_\_

You are receiving these instructions from a representative of Immigration and Customs Enforcement (ICE) because you appear to be an unaccompanied alien child, you are in Immigration Court, and you have indicated your intent to file a Form I-589, Application for Asylum and for Withholding of Removal. You may submit an I-589 application to USCIS only if you have received these instructions from ICE.

**Attachments to this UAC Instruction Sheet:**

In addition to these instructions, this packet contains a blank Form I-589 application, Instructions for the I-589, and a USCIS Form AR-11 (Alien's Change of Address Card). You may request from the Immigration Court the List of Free Legal Service Providers.

**Definition of an unaccompanied alien child:**

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.

**Filing Instructions:**

**If you are an unaccompanied alien child and you are filing an asylum application, you must file your asylum application with USCIS.**

**Send these 4 items to the address below:**

- (1) The completed, signed original and two copies of your Form I-589 application. For more details on how to complete the Form I-589 application and the documents to include in your application, see the Instructions for the I-589, included in this packet and available at [http://www.uscis.gov/files/form/I-589\\_Inst.pdf](http://www.uscis.gov/files/form/I-589_Inst.pdf);
- (2) A Form G-28 (Notice of Entry of Appearance as Attorney or Representative) if you are represented;
- (3) Any documentation you have to indicate that you are an unaccompanied alien child; and

(4) A copy of this UAC Instruction Sheet.

**USCIS Nebraska Service Center  
UAC I-589  
P.O. Box 87589  
Lincoln, NE 68501**

In extenuating circumstances where expeditious processing is required, the Director of the local USCIS Asylum Office may consent to your filing the Form I-589 application directly with the Asylum Office. The contact information is below and is available at [https://egov.uscis.gov/crisgwi/go?action=offices.type&OfficeLocator.office\\_type=ZSY](https://egov.uscis.gov/crisgwi/go?action=offices.type&OfficeLocator.office_type=ZSY).

<p><b>Arlington Asylum Office:</b> Arlington, VA; phone # 703-235-4100. <b>Chicago Asylum Office:</b> Chicago, IL; phone # 312-353-9607. <b>Houston Asylum Office:</b> Houston, TX; phone # 281-774-4830. <b>Los Angeles Asylum Office:</b> Anaheim, CA; phone # 714-808-8000. <b>Miami Asylum Office:</b> Miami, FL; phone # 305-960-8600. <b>Newark Asylum Office:</b> Lyndhurst, NJ; phone # 201-531-0555. <b>New York Asylum Office:</b> Rosedale, NY; phone # 718-723-5954. <b>San Francisco Asylum Office:</b> San Francisco, CA; phone # 415-293-1234.</p>
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After the above items are received by USCIS, **you will receive:**

- A **USCIS receipt notice** in the mail indicating that USCIS has received your asylum application, and
- An **Application Support Center (ASC) notice**, indicating your unique receipt number and providing instructions for you to appear for an appointment at a nearby ASC for collection of biometrics (such as your photograph, fingerprints, and signature). If you do not receive this notice in 3 weeks, call (800)375-5283. You must take both the ASC notice and the USCIS receipt notice to your ASC appointment.

### **Next steps:**

**You must then:**

- Provide a copy of your USCIS receipt notice to the ICE Office of Chief Counsel and to the Immigration Judge at your next hearing.
- If you have a hearing scheduled before the Immigration Court, you must appear. At the hearing, ICE may seek to continue your case in order to allow USCIS to adjudicate your asylum application.
- If you change your address after filing a Form I-589 application, you must submit a Form AR-11 (Alien's Change of Address Card) to USCIS and you must submit a Form EOIR-33 (Alien's Change of Address Form/Immigration Court) to Immigration Court. The Form AR-11 is included in this packet, and is available on the internet at <http://www.uscis.gov/files/form/ar-11.pdf>. The Form EOIR-33 is available on the internet at <http://www.usdoj.gov/eoir/eoirforms/eoir33/ICadr33.htm>.

***Important: If you fail to file a Form I-589 application, USCIS cannot adjudicate your asylum application and an Immigration Judge may proceed with your removal proceedings.***

UAC Placed in Removal Proceedings Pursuant to the William Wilberforce Trafficking Victims Protection Reauthorization Act Effective, Monday March 23, 2009

