



Updated Procedures for Determining Initial Jurisdiction Over UAC Asylum Applications



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Photograph by Hiram A. Ruiz, courtesy of the US Committee for Refugees.



OBJECTIVES

- 1-Understand the updated procedures for determining whether USCIS has jurisdiction over an asylum application filed by a UAC.
- 2-Identify where to locate evidence of prior CBP or ICE UAC determinations.
- 3-Understand what to do in cases in which CBP or ICE has not made a previous UAC determination.



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BACKGROUND

- CBP and ICE determine whether a minor is a UAC upon apprehension to determine who will have physical custody over the minor.
- UACs are issued NTAs and placed in removal proceedings.
- ICE directs UACs who wish to apply for asylum to file Form I-589 with USCIS and gives them UAC Instruction Sheet.



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- HHS gets physical custody of UACs, so CBP and ICE transfer the UAC to ORR (within HHS).



BACKGROUND


- Up until now, Asylum Officers have been making independent factual inquiries under the UAC definition to determine whether an asylum applicant was a UAC at the time of filing their asylum application, even where DHS had already made a UAC determination.
- Under the current procedures, AOs spend time during the asylum interview asking questions about the applicants' age and making difficult inquiries into the availability of a parent or legal guardian.



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- An AO is not trained to be a child welfare expert and this change in our procedures redirects the focus of our interview to asylum eligibility.



NEW PROCEDURES


- Effective **June 10, 2013**, USCIS will adopt a previous CBP or ICE determination that an applicant is a UAC and take jurisdiction over the asylum case.
- USCIS will accept a previous UAC status determination and take jurisdiction, as long as that UAC status determination was still in place at the date of initial filing of the asylum application.
- USCIS will accept this previous determination even if there is evidence that would not support a new determination applicant is a UAC (e.g., turned 18 years old or reunited with a parent) after being deemed a UAC by CBP or ICE.
- AOs will adopt the previous DHS determination that the applicant was a UAC unless there was an affirmative act by HHS, ICE or CBP to terminate the UAC finding before the applicant files the initial application for asylum.



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- The AO would still look to the filing date, and then look to whether the previous DHS UAC status determination was still in place at that time of filing.
- In general, the AO will adopt that determination without another factual inquiry.
- The AO will no longer need to question the applicant regarding his or her age or whether he or she is accompanied by a parent or legal guardian to determine the UAC status.
- The UAC can file for asylum after turning 18 years old, as long as DHS did not revoke its determination that the applicant was a UAC before he filed.
- Generally, an Asylum Officer should not expend resources to pursue inquiries into the correctness of a prior DHS determination that applicant was a UAC.
- Generally, the AO should recognize Only the component who made the prior determination can revoke or terminate the UAC finding.
- Because HHS only does a suitability check when releasing a child to a sponsor, a child being released to a sponsor (whether a parent or not) does not constitute an affirmative act to terminate a UAC finding. HHS does not examine the “availability” of a parent to provide care and physical custody and does not view its placement of a child with a sponsor (parent or not) as terminating UAC status. USCIS accepts HHS’s view of the effect of its placements.



NEW PROCEDURES

- This change in procedure will save valuable time and resources for Asylum Officers and minimize the number of cases returned to EOIR. This change will also allow AO's to focus on the asylum eligibility part of the determination.
- By taking jurisdiction over the case, the UAC will get a non-adversarial interview and a decision by USCIS on the merits.
- All UAC cases will still require HQ review as juveniles in accordance with the Quality Assurance Referral Sheet.



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- This change aligns USCIS practice more closely to that of HHS, in that HHS does not investigate or revoke prior DHS UAC status determinations
- This change in procedure is also in line with the USCIS Ombudsman recommendations
 - CIS Ombudsman issued a report in Sept 2012 recommending that we accept jurisdiction of cases referred by EOIR
- The AO will still have to determine if the applicant is eligible for asylum based on the merits of their claim.
- ALL UAC cases require HQ review, even if the applicant was over 18 at the time of filing.



PENDING CASES

- This change applies to all asylum applications in which USCIS has not issued a final decision as of **June 10, 2013**.
- All pending cases where we found no jurisdiction must be re-examined for jurisdiction based on a previous CBP or ICE UAC status determination.
- If USCIS finds jurisdiction, the case must be re-evaluated based on the merits and revised from a memo-to-file into an assessment.
- Asylum Offices should schedule a follow-up interview if the record is not adequately developed to decide the case on the merits.



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- The change affects all of the cases that have not been referred to EOIR before June 10th.
- HQ will return pending no jurisdiction cases to the field for the AO to review evidence in the file regarding previous CBP or ICE UAC determinations and re-evaluate jurisdiction.
 - This will happen after we train all the QATs—sometime after Wednesday, May 29th.
- Refer to updated procedures hand out for specifics on how to deal with pending cases that were already interviewed.
- Look at the sample language to help with the assessments.



REFERRED CASES

- If USCIS already referred a case based on lack of jurisdiction before June 10th, we will not accept motions to reopen or reconsider the case based on the new procedures.
- AAPM Section III.M, Motions to Reopen and Reconsider, states:


“An Asylum Office Director, or his or her designee, need only consider a motion to reopen or reconsider for a case that has received a *Final Denial* from an Asylum Office. Because referred cases have not received a final decision, they are not entitled to reconsideration”.



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- Note: Where an IJ sends a case back to USCIS to reconsider its jurisdiction, USCIS will take the case.



WHERE TO FIND A PREVIOUS UAC DETERMINATION

- Form I-213: Record of Deportable Alien
- Form 93: CBP UAC Screening Form
- ORR UAC Initial Placement Referral
- ORR Verification of Release Form
- EARM: Encounters Tab


****The ICE UAC Instruction Sheet is NOT by itself evidence of a prior UAC determination****



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ANY ONE of these forms is evidence that CBP or ICE made a UAC determination. The AO does not need to find all of them in the A-File.



WHERE TO FIND A PREVIOUS UAC DETERMINATION

Form I-213: Record of Deportable Alien



UNACCOMPANIED JUVENILE: ----- J.S.B.
FUNDS, IN POSSESSION: ----- Mexican Peso 20.00 J.L.S.B.
RECORDS CHECKED: ----- CIS Negative CLAIM Negative IAFIS Negative
NARRATIVE: ----- NOTE: Subject is an unaccompanied juvenile.
ENCOUNTER/ALIENAGE: Subject, _____ (A# _____), DOB: _____, was encountered by McAllen Border Patrol Agents on December 4, 2010, near Hidalgo, Texas. Subject was




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- Look for language in the I-213 indicating that the person is an
“UNACCOMPANIED JUVENILE” or **“UNACCOMPANIED MINOR”**

	<h2>WHERE TO FIND A PREVIOUS UAC DETERMINATION</h2> <h3>Form I-213: Record of Deportable Alien</h3>
<p>TRAVEL INFORMATION: [redacted] stated that she traveled from her home in El Salvador to Chiapas, Mexico then to Altar, Sonora, Mexico by bus. She then crossed the U.S./Mexico International Boundary illegally on foot.</p> <p>DISPOSITION: [redacted] is being served with a Warrant of Arrest/Notice to Appear, and placed in removal proceedings, per Section 212(a)(6)(A)(i) of the INA. She is an unaccompanied juvenile.</p>	
<div><p>U.S. Citizenship and Immigration Services</p></div> <div>11</div>	

This language can show up ANYWHERE on the I-213—not just in the top portion/beginning.



WHERE TO FIND A PREVIOUS UAC DETERMINATION

Form 93: CBP UAC Screening Form

DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection

UNACCOMPANIED ALIEN CHILD SCREENING ADDENDUM
Trafficking Victim Protection Act (8 U.S.C. 1232)

Alien's Name: _____ A NUMBER (if any) _____
A _____

Credible Fear Determination

Why did you leave your home country or country of last residence?

Do you have any fear or concern about being returned to your home country or being removed from the United States?


Would you be harmed if you were returned to your home country or country of last residence?

Do you have any questions or is there anything else you would like to add?

Human Trafficking

Definition: Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion or in which the person induced to perform such an act is under 18; or the recruitment, harboring, transporting, provision, or obtaining of a person for labor or services, through the use of force, fraud or coercion, for the purpose of subjecting that person to involuntary servitude, peonage, debt bondage, or slavery.


Below are examples of trafficking indicators. If one or more of these indicators is present, the interviewer should pursue age appropriate questions that will help identify the key elements of a trafficking scenario. If required, ensure that follow up questions are asked based on the answers given. Answers from these questions will assist an interviewer in determining if the Unaccompanied Alien Child may be a victim of trafficking. In all cases, use your training and experiences to be alert for indicators of human trafficking.



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- CBP uses this form to question UACs regarding their credible fear and possible human trafficking issues.
- This form is evidence that CBP already determined that this person is a UAC.



WHERE TO FIND A PREVIOUS UAC DETERMINATION

ORR UAC Initial Placement Referral Form


UAC Initial Placement Referral Form
See Footer for Instructions – Updated, 3/25/08

Processing Officer's Name		Email Address		Desk Phone	Cell Phone

UAC Information					
First Name		Middle Name		Last Name	DOB
Additional Names Used:					
Gender	Country of Birth	Immigration Status		A#	FINS #
	EL SALVADOR	NTA Issued			

Entry and Apprehension Information					
	City and/or Location Code	ST	Date	Time	Type
Entry	SASABE	AZ	12/17/2010	10:00 AM	Entered Without Inspection
Apprehension	SASABE	AZ	12/18/2010	3:00 PM	N/A
Current Location	TUCSON	AZ	N/A	N/A	Processing Center


UAC apprehended with: (Choose more than one if applicable) <input type="checkbox"/> Parent(s) <input type="checkbox"/> Other Related Adult(s) <input type="checkbox"/> Related Minor(s) <input type="checkbox"/> Smuggler(s) <input type="checkbox"/> Non-Related Individual(s) <input checked="" type="checkbox"/> Alone	Please provide the following for all relatives apprehended with the UAC, if more space is needed, use the <i>Referral Notes</i> section at the bottom of the page.		
	Name	A#	Relationship to UAC



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- CBP uses this form to refer UACs to ORR custody
- This form is evidence that CBP already determined that this person is a UAC.



WHERE TO FIND A PREVIOUS UAC DETERMINATION

ORR Verification of Release Form


 US Department of Health and Human Services


Office of Refugee Resettlement
 Verification of Release Form

OFFICE OF REFUGEE RESETTLEMENT
Division of Unaccompanied Children's Services


Name of Minor: _____ Aliases (if any): _____
 Minor's Date of Birth: _____ Minor's A: _____ FINS#: _____

Pursuant to Section 462 of the Homeland Security Act, the Office of Refugee Resettlement (ORR) has released from its custody the above-named minor into the care and custody of: _____

Acknowledgement of Conditions of Release




- I hereby acknowledge that I have read, or had explained to me in the Spanish language, and I understand the conditions of my release as specified in the Sponsor's Agreement to Conditions of Release, which include among others the following conditions:
- I agree to appear at all future proceedings before the Department of Homeland Security (DHS)/Immigration and Customs Enforcement (ICE) and the Executive Office for Immigration Review (EOIR).
- I agree to report to the DHS/ICE office if so ordered.
- I agree to notify DHS/ICE if I decide to depart from the United States. I will do this at least 5 days before I actually depart the United States.
- I agree to notify DHS/ICE and EOIR within 5 days of a change of address.


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- We will accept a prior UAC determination even if this form indicates that the applicant was released to a parent or family member. HHS does not assess whether a parent is “available to provide care and physical custody” and has informed USCIS that placement with a sponsor (parent or not) does not constitute a termination of UAC status.



WHERE TO FIND A PREVIOUS UAC DETERMINATION

EARM: Encounters Tab


Person	Encounters	Supporting Info	Case Summary	Actions/Decisions	ATD	Bonds	Comments	Scheduling	Print
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Encounter Details [EOIR Look Up](#)

Subject Information

FINS: A-Number: Control Name: First Name: Middle Name: N/A Maiden: N/A Nickname: N/A Living?: N/A Sex: M Marital Status: Single SSN: N/A Juvenile Verified: Y Occupation: CHILD	Criminal Type: N/A Agg Felon: N - Not an Aggravated Felon Primary Citizenship: GUATEMALA Hair: BLK Eyes: BRO Complexion: MED Race: W Origin: N/A Date of Birth: Age: 20 Age at Encounter: 17 Height: 64 Weight: 130	Role: Role Comment: N/A Processing Disposition: Warrant of Arrest/Notice to Appear INS Status: Inadmissible Alien POE: HIDALGO, TX Entry Date: 12/04/2010 Entry Class: PWA Mexico Apprehension Date: 2010-12-04 05:40:00.0 Apprehension Location: HIDALGO, TX
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I-213 Narrative **NOTE: Subject is an unaccompanied juvenile.** Subject made contact with [REDACTED] via phone [REDACTED]. ENCOUNTER/ALIENAGE: Subject, [REDACTED] DOB: [REDACTED] was encountered by McAllen Border Patrol Agents on December 4, 2010, near Hidalgo, Texas. Subject was determined to be a citizen and national of Guatemala with no immigration documents. Subject entered the United States at a place not designated as a port of entry by the Attorney General of the United States and or the Secretary of Homeland Security. the successor, thus subject was not admitted, inspected, or named.



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- AOs can use this if the I-213 is not in the A-File.
- Find the applicant by A number in EARM and then click on the “ENCOUNTERS” tab on the home page
- You will find the narrative from the I-213
- Look for language stating that the person is an “**UNACCOMPANIED JUVENILE**” or “**UNACCOMPANIED MINOR**”
- This language can be anywhere in the narrative



CASE EXAMPLE

- Juan was apprehended by CBP and is in removal proceedings. His asylum interview with USCIS was on May 23, 2013. The Asylum Officer found no jurisdiction based on the previous UAC determination guidelines and wrote a memo-to-file. QAT reviews the file on Monday, June 10, 2013 before sending it to HQ for review. What should QAT do with Juan's case?
- What happens if the record is not sufficient to decide the case on the merits?



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- QAT should send the file back to the AO to re-examine jurisdiction based on a previous UAC determination by CBP or ICE. If there is a previous UAC determination, and if there is no evidence that that determination was revoked, the AO should write an assessment on the merits.
- If the record is not sufficient to decide the case on the merits, Juan must be re-interviewed.



CASE EXAMPLE

- Claudia was apprehended by CBP and placed in removal proceedings. Her asylum interview with USCIS is on June 16, 2013. When preparing for the interview, the Asylum Officer finds Form I-213, which states, “subject is an unaccompanied juvenile” and an ORR Initial Placement Referral Form in the file.
- Does USCIS have jurisdiction over Claudia’s asylum case?
- Does USCIS still have jurisdiction even if Claudia is 20 years old by the time she filed Form I-589?



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- USCIS has jurisdiction over her asylum case. Based on the new procedures, USCIS will accept a previous CBP or ICE determination that an applicant is a UAC. Claudia’s file has 2 indicators that CBP determined that she was a UAC: the I-213 notes that she is an “unaccompanied juvenile” AND there is an ORR Initial Placement Referral Form. However, any one of these forms would have been sufficient evidence of a previous UAC determination.
- USCIS still has jurisdiction if the DHS UAC determination is still in place, even if Claudia was 20 years old by the time she filed Form I-589. USCIS will take jurisdiction if CBP or ICE has made a previous UAC determination, even if the applicant is over 18 years old or has reunited with a parent since the UAC determination.



CASE EXAMPLE


- Jaime was apprehended, placed into removal proceedings, and transferred to ORR custody when he was 17 years old. When Jaime turned 18, ICE took him into custody and affirmatively terminated the prior UAC determination.
- Does USCIS have jurisdiction over Jaime's asylum case?



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- Assuming that Jaime files for asylum, the AO would look to the filing date of his I-589.
- If Jaime filed for asylum while the prior DHS UAC determination was still in place, USCIS would have jurisdiction over his asylum claim, regardless of the fact that the determination was later terminated. USCIS will accept a previous UAC status determination and take jurisdiction, as long as at the date of initial filing of the asylum application that UAC status determination was still in place.
- If Jaime filed for asylum after the prior DHS UAC determination was terminated, the AO would look for any previous documented intent to file. If no documented intent to file was found, USCIS would not have jurisdiction over the case. The AO would write a memo to file explaining no jurisdiction and send to HQ for review.



IF NO PREVIOUS UAC DETERMINATION BY CBP OR ICE

IF APPLICANT IS IN REMOVAL PROCEEDINGS

- Asylum Officer determines if the applicant was a UAC on the date of the initial filing of the asylum application to establish if USCIS has jurisdiction and if the 1-year filing deadline applies.
- Asylum Officer determines if the applicant is a UAC on the date of the asylum interview for purposes of notifying HHS that it discovered a UAC.
- Asylum Officer makes UAC determinations using previous guidance on examining the applicant's age and unaccompanied status.



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- 1 year filing deadline DOES NOT APPLY to UACs.
- Remember that according to 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.



CASE EXAMPLE


- Leo and his father were apprehended at the border by CBP in 2012 and placed in removal proceedings. His father was removed to their home country shortly after. Leo tells the IJ that he wants to apply for asylum and that he is unaccompanied.
- Does USCIS have jurisdiction over Leo's asylum application if he was 16 years old when he filed Form I-589?
- What happens if the Asylum Officer finds out during the interview that Leo has been living with his mother in the United States since 2012?
- What happens if Asylum Officer finds that USCIS does not have jurisdiction?



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- AO must determine whether Leo was a UAC at the time that he filed Form I-589. Although CBP apprehended Leo, CBP would not have made a UAC determination because Leo was with his father. If nothing in the file indicates that CBP or ICE have made a previous UAC determination, the AO should use guidance from the March 25, 2009 memo on how to determine Leo's age and unaccompanied status.
- It appears that Leo may be a UAC because he filed Form I-589 at the age of 16.
- However, the AO must question Leo regarding whether there was a parent or legal guardian in the U.S. who is available to provide care and physical custody at the time he filed Form I-589.
- If the AO finds that USCIS does NOT have jurisdiction over Leo's asylum application because the facts indicate that his mother was available to provide care and physical custody at the time of filing, then the AO should write a memo-to-file on jurisdiction and send the case to HQ for review (like we have been doing up to this point).
 - Also—if Leo was with his mother at the time of filing but became unaccompanied by the time of the interview, then we would still take jurisdiction and decide his asylum application.
- **IMPORTANT POINT**→AO must still conduct a FULL asylum interview and thoroughly examine Leo's substantive claim even if the AO thinks that Leo is not a UAC.



IF NO PREVIOUS UAC DETERMINATION BY CBP OR ICE

IF APPLICANT IS NOT IN REMOVAL PROCEEDINGS

- Asylum Officer examines whether the applicant was a UAC on the date of the initial filing of the asylum application to determine if 1-year filing deadline applies.
- Jurisdiction is not at issue in these affirmative applications.
- Asylum Officer determines if the applicant is a UAC on the date of the asylum interview for purposes of notifying HHS that it discovered a UAC.
- Asylum Officer makes UAC determination using previous guidance on examining the applicant's age and unaccompanied status.



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UACs are NOT subject to the 1-year filing deadline.



CASE EXAMPLE


- Jenny entered the United States in 2009 and has been living with her teenage friends in Texas since then. She was never apprehended and has never been in removal proceedings. She files Form I-589 with USCIS in 2013 at the age of 17.
- Does USCIS have jurisdiction over Jenny's asylum case?
- Does the Asylum Officer need to determine if Jenny is a UAC? Why or why not?



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- USCIS has jurisdiction because Jenny has never been in removal proceedings. This is a regular affirmative asylum application.
- The AO does have to determine if Jenny is a UAC for purposes of determining whether the 1-year filing deadline applies and whether to notify HHS that USCIS has “discovered” a UAC. The deadline does not apply to UACs.
- The AO should use guidance from the March 25, 2009 memo on how to determine Jenny's age and unaccompanied status.



CREDIBLE & REASONABLE FEAR


- UACs should be placed in Section 240 removal proceedings and should not be subject to expedited or administrative removal.
- If the evidence indicates that a UAC was mistakenly put through the APSO process, the officer must make a UAC determination and communicate the findings to ICE or CBP as appropriate.



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The AO makes a UAC determination using previous guidance on examining the applicant's age and unaccompanied status.



SUMMARY

- The new procedures are effective **June 10, 2013**. All AOs in the field need to be trained by this date.
- USCIS will accept a previous CBP or ICE determination of an asylum applicant's UAC status and take jurisdiction over the asylum case if that determination was still in place on the date of filing.
- If CBP or ICE have NOT made a previous UAC determination, USCIS must determine whether the applicant is a UAC using previously issued guidance.



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- Remember to use the new resources:
 - Use the updated procedures hand out for a quick reference guide.
 - Look at the sample language to help with the assessments.