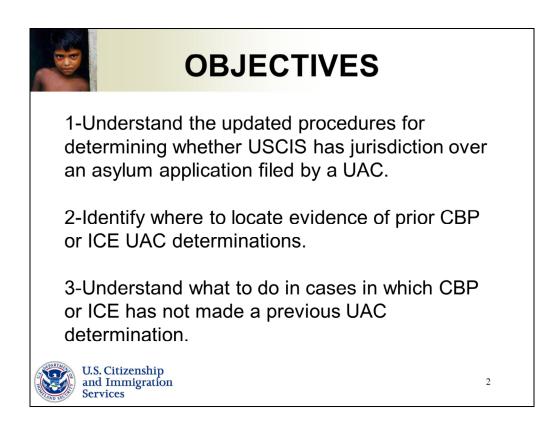


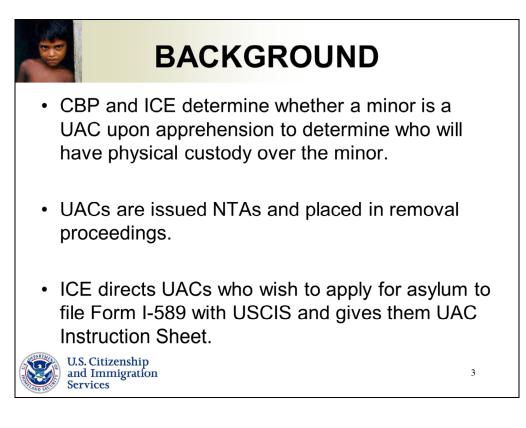
Updated Procedures for Determining Initial Jurisdiction Over UAC Asylum Applications



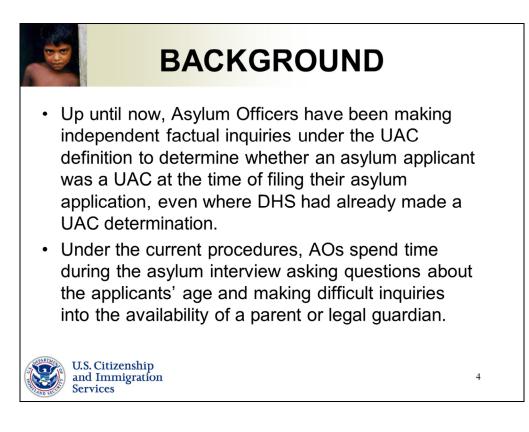
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graph by Hiram A. Ruiz, courtesy of the US Committee for Refu

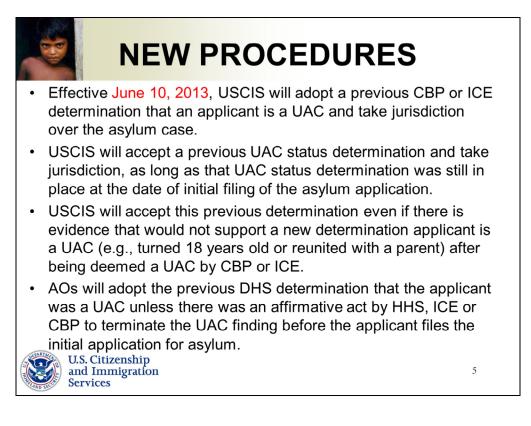




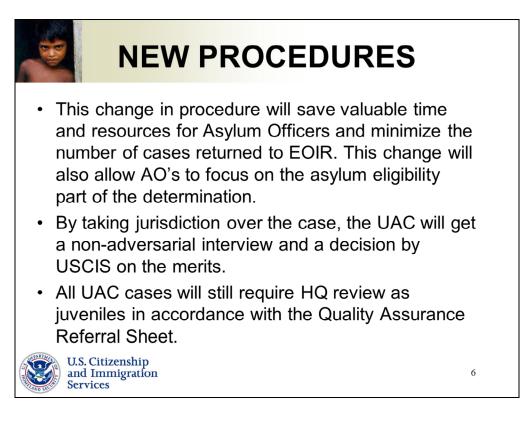
• HHS gets physical custody of UACs, so CBP and ICE transfer the UAC to ORR (within HHS).



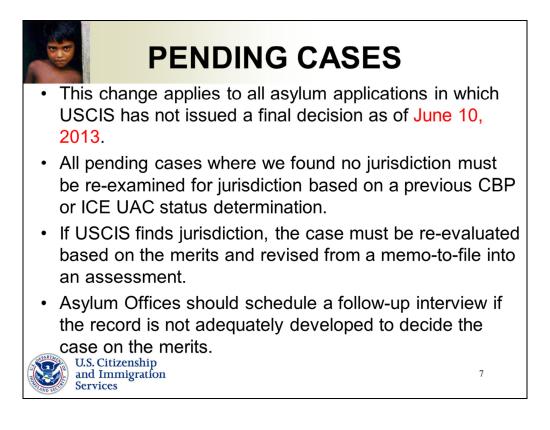
• An AO is not trained to be a child welfare expert and this change in our procedures redirects the focus of our interview to asylum eligibility.



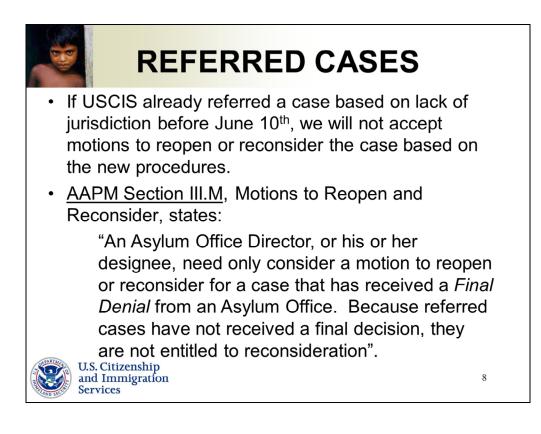
- The AO would still look to the filing date, and then look to whether the previous DHS UAC status determination was still in place at that time of filing.
- In general, the AO will adopt that determination without another factual inquiry.
- The AO will no longer need to question the applicant regarding 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 it placements.



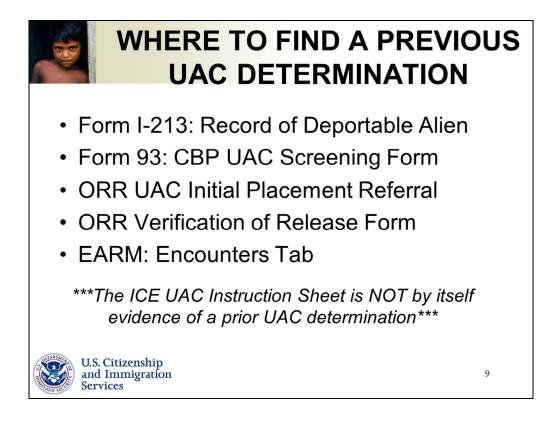
- This change aligns USCIS practice more closely to that of HHS, in that HHS does not investigate or revoke prior DHS UAC status determinations
- This change in procedure is also in line with the USCIS Ombudsman recommendations
 - CIS Ombudsman issued a report in Sept 2012 recommending that we accept 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.



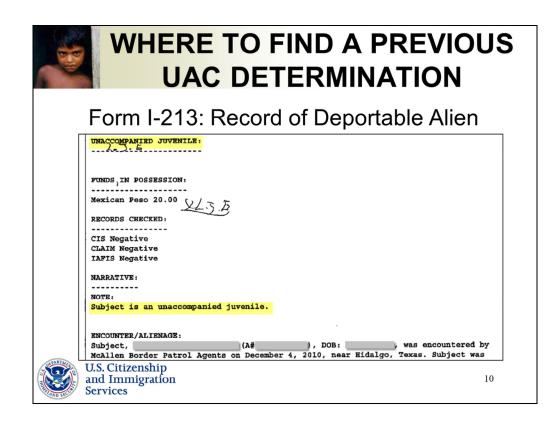
- The change affects all of the cases that have not been referred to EOIR before June 10th.
- HQ will return pending no jurisdiction cases to the field for the AO to review evidence in the file regarding previous CBP or ICE UAC determinations and re-evaluate jurisdiction.
 - This will happen after we 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.



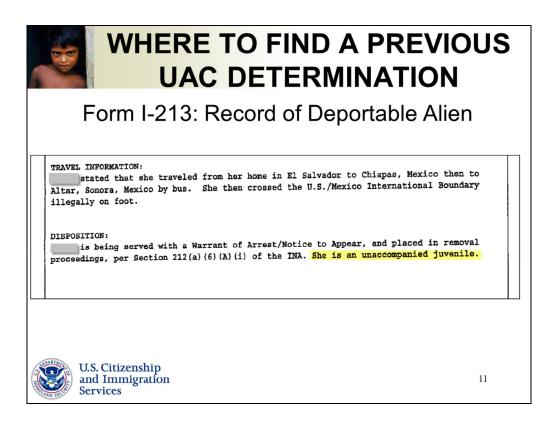
• Note: Where an IJ sends a case back to USCIS to reconsider its jurisdiction, USCIS will take the case.



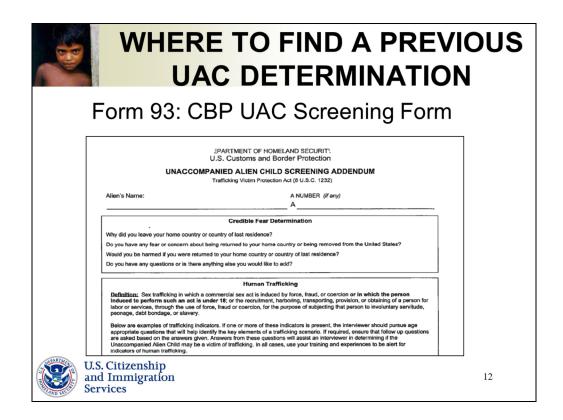
ANY ONE of these forms is evidence that CBP or ICE made a UAC determination. The AO does not need to find all of them in the A-File.



 Look for language in the I-213 indicating that the person is an <u>"UNACCOMPANIED JUVENILE</u>" or <u>"UNACCOMPANIED MINOR</u>"



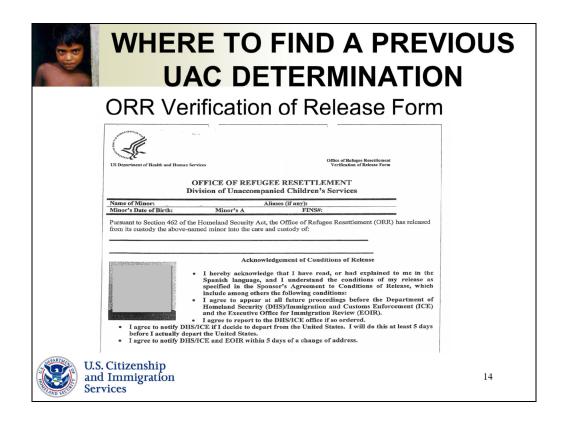
This language can show up ANYWHERE on the I-213—not just in the top portion/beginning.



- 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.

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							nent Referral ons – Updated, 3/2				
[Processing Officer's Name						Address		k Phone	Cell Phone	
UAC Information										1	
I	First Name			Middle Name					1	DOB	
	Additional Names Used: Gender Country of EL SALVADOR			of Birth	NTA	Immig	gration Status	nda na	A#	FINS #	
[Entry and Apprehension Information										
	Entry		City a SASAB	nd/or Locat	on Code	AZ	Date 12/17/2010	Time 10:00 AM	Entered	Type Without Inspection	
ł	Apprehension		SASABE			AZ	12/18/2010	3:00 PM	N/A		
	Current Location			DN		AZ	N/A	N/A		Processing Center	
	UAC apprehended with: (Choose more than one if		Please provide the following for all relatives apprehended with the AUC, if more space is needed, use the <i>Referral Notes</i> section at the bottom of the page.								
	applicable)		1243.8	and with a st	Name			200 - 1888-	Relations	ship to UAC	
	Parent(s) Other Related Adult(s) Related Minor(s) Smuggler(s) Non-Related Individual(s) Alone										
	U.S. Citi and Im Services	migra	hip ation								13

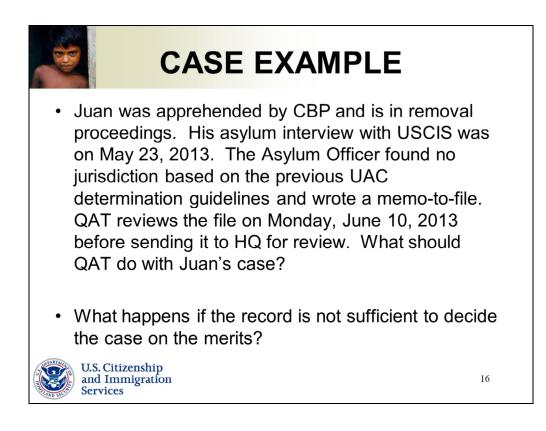
- CBP uses this form to refer UACs to ORR custody
- This form is evidence that CBP already determined that this person is a UAC.



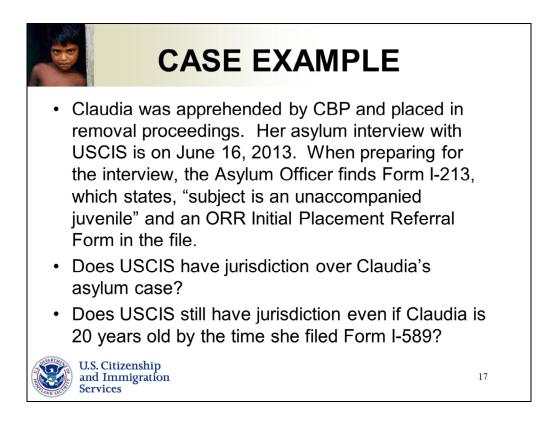
• We will accept a prior UAC determination even if this form indicates that the applicant was released to a parent or family member. HHS does not assess whether a parent is "available to provide care and physical custody" and has informed USCIS that placement with a sponsor (parent or not) does not constitute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

UA	E TO FIND C DETERN RM: Encounters	
Person Encounters Supporting Info	Case Summary Actions/Decisions AT	D Bonds Comments Scheduling Print
Subject Information FINS: A-Number: Control Name: First Name: Midden NA Nidename: NA Living?: NA Soc: M Martial Status: Single SSN: NA Livonito Varilloci: Y Occasión: CHILD	Criminal Type: NA Agg Felon N - Notan Aggravated Felon Primary Citizonship: GUATEMALA Hair: BLK Eyse: BRO Complexion: MED Paco: W Crigin: NA Date of Birth: Age: 20 Age at Encounter: 17 Height: 64	Pole: Pole Comment: N/A Processing Disposition: Warrant of Arres/Notice to Appear INS Stutus: Inadmiseable Allen POE: HIDALGO, TX Entry Date: 1204/2010 Entry Class: PWA Mexico Apprehension Date: 2010-12-04 05:40:00.0 Apprehension Location: HIDALGO, TX
via phone DOB: w Texas. Subject was determin entered the United States at a	Subject is an unaccompanied juvenile. Subject ENCOUNTER/ALIENAGE: Su as encountered by McAilen Border Patrol Ag et to be a citizen and national of Guatemala a place not designated as a port of entry by th Pland Security, the successor, thus subject w	ibject, ents on December 4, 2010, near Hidalgo, with no immigration documents. Subject he Attorney General of the United States

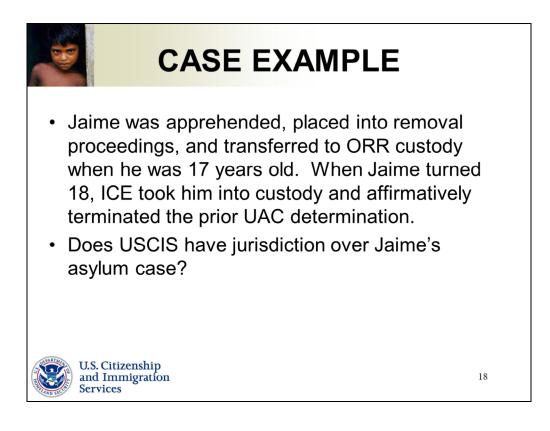
- AOs can use this if the I-213 is not in the A-File.
- Find the applicant by A number in EARM and then click on the "ENCOUNTERS" tab on the home page
- You will find the narrative from the I-213
- Look for language stating that the person is an "<u>UNACCOMPANIED</u> <u>JUVENILE</u>" or "<u>UNACCOMPANIED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



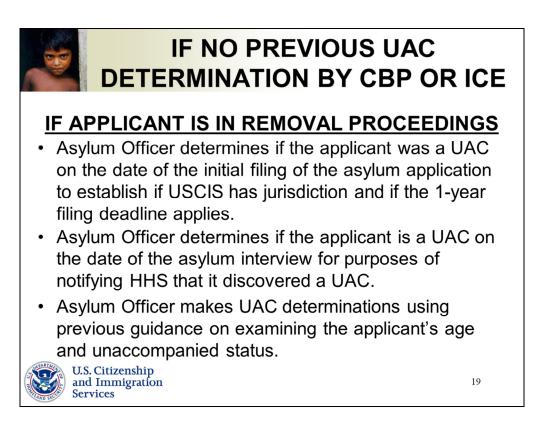
- QAT should send the file back to the AO to re-examine jurisdiction based on a previous UAC determination by CBP or ICE. If there is a previous UAC determination, and if there is no evidence that that determination was revoked, the AO should write an assessment on the merits.
- If the record is not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



- 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.



- 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.



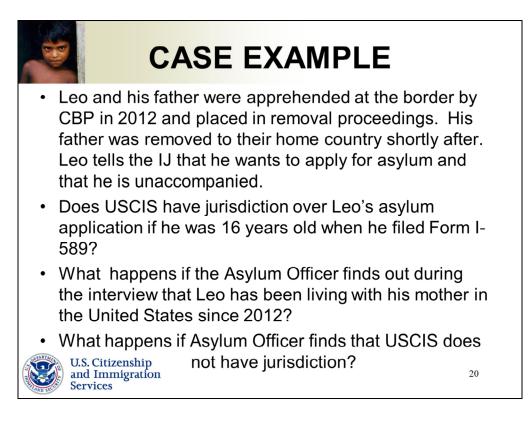
- 1 year filing deadline DOES NOT APPLY to UACs.
- Remember that according to 6 U.S.C. §279(g)(2), an unaccompanied alien child means:

a child who—

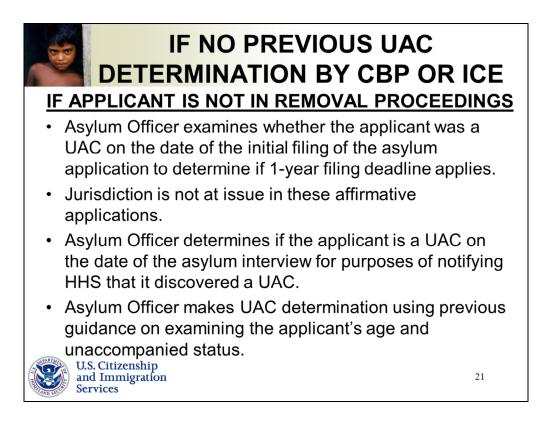
- (A) has no lawful immigration status in the United States;
- (B) has not attained 18 years of age; and
- (C) with respect to whom—

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

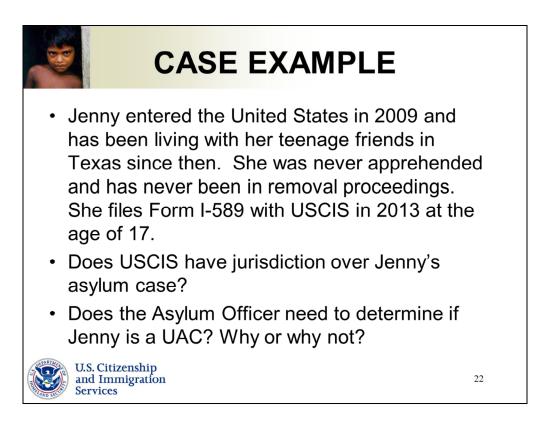
(ii) no parent or legal guardian in the United States is available to provide care and physical custody.



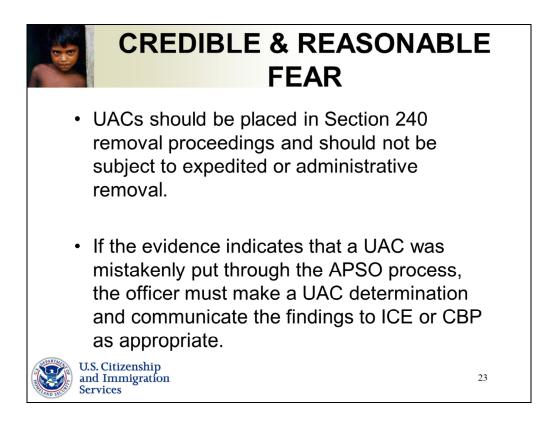
- AO must determine whether Leo was a UAC at the time that he filed Form I-589. Although CBP apprehended Leo, CBP would not have made a UAC determination because Leo was with his father. If nothing in the file indicates that CBP or ICE have made a previous UAC determination, the AO should use guidance 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.



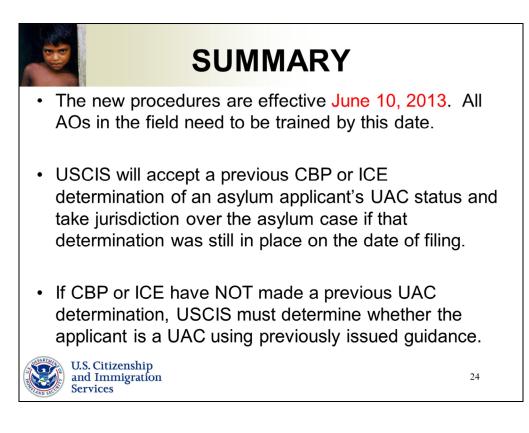
UACs are NOT subject to the 1-year filing deadline.



- 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.



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



- 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.