

Trafficking Victims Protection and Reauthorization Act of 2008, H.R. 7311

On December 11, 2008, the U.S. House of Representatives and Senate passed the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), H.R. 7311. The TVPRA includes provisions to promote the identification and protection of trafficking survivors and those who are eligible for asylum and other forms of immigration relief. Among other provisions, the bill includes important revisions to the T visa statute and requirements regarding A-3 and G-5 visas that are designed to expand protections for trafficking victims. The bill sets new standards for how immigrant children will be treated in custody, the kind of mental health and other services they will receive, and the conditions under which they can be repatriated.

Please find below an analysis of Section 235 governing Unaccompanied Alien Children (UACs)

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Repatriation of Unaccompanied Alien Children

The bill requires the Department of Homeland Security (DHS) in conjunction with Department of State (DOS), Department of Justice (DOJ), and Department of Health and Human Services (HHS) to develop policies to ensure that UACs are safely repatriated. See Section 235(a)(1).

Repatriation Safeguards for Mexican and Canadian Children

The bill prohibits the repatriation of unaccompanied alien children from contiguous countries (Mexico and Canada) who are 1) victims of a severe form of trafficking, 2) at risk of being trafficked upon return, or 3) have a credible fear of persecution. Requires screening within 48 hours of apprehension of all UACs to determine if they are in the above categories. Authorizes DHS immigration officers to permit UACs who are not in the above categories to withdraw their application for admission and to repatriate the child. Requires DOS to negotiate agreements with Mexico and Canada to ensure safe repatriation of UACs. See Sections 235(a)(2)-(a)(4). All UACs shall be in placed in INA Section 240 removal proceedings unless they are from a contiguous country. See Section 235(a)(5)(D).

Repatriation Pilot Program

Requires DOS to create a pilot program in conjunction with HHS, DHS, non- governmental organizations and other experts to develop and implement best practices to ensure the safe repatriation and reintegration of UACs in their country of nationality or residence. Requires DHS to consult with DOS human rights country reports before repatriating UACs. See Sections 235(a)(5)(A) and (5)(B).

Report to Congress on Repatriation

DOS, HHS and DHS shall submit a report to Congress with data on children removed from the United States., including data on nationality, ages and gender of children and a description of any immigration relief sought by these children. See Sections 235(a)(5)(A)-(a)(5)(C).

HHS Responsibility for UACs

HHS is responsible for the care and custody of all UACs. Requires all federal departments and agencies to notify HHS within 48 hours if they have a UAC in their custody and to transfer the child to HHS within 72 hours. See Section 235(b)(1)-(b)(2).

Age Determinations

HHS, in consultation with DHS, shall develop procedures to make a prompt determination of the age of an alien which shall be used by both agencies for children in their respective custody. At a minimum, these procedures shall take into account multiple forms of evidence, including the non-exclusive use of radiographs. See Section 235(b)(4).

Placement of UACs in Restrictive Settings

UACs in HHS custody shall be placed in the least restrictive setting that is in the “best interest of the child.” Children may not be placed in a secure facility absent “a determination that the child poses a danger to self or others or has been charged with having committed a criminal offense.” The placement of a child in a secure facility shall be reviewed at least on a monthly basis. See Section 235(c)(2).

Home Studies Required Before Release of Children from Custody

To ensure the safety of all UACs, the bill requires HHS to verify the suitability of potential adults who apply to serve as the sponsor of UACs. Home studies shall be conducted for disabled children, victims of trafficking or of physical or sexual abuse, or whose proposed sponsor presents a risk of abuse or maltreatment. For children who received a home study, HHS is required to provide follow-up services during child’s immigration proceedings. HHS is also authorized to conduct follow-up services for children with mental health or other needs. Requires DHS to provide information to HHS for such assessments within 2 weeks. See Section 235(c)(3).

Legal Orientation Presentations

HHS shall work with the Department of Justice’s Executive Office for Immigration Review to ensure that sponsors of UACs receive legal orientation presentations to ensure the child’s appearance at court and to protect the child from trafficking. See Section 235(c)(4).

Access to Counsel

HHS shall ensure “to the greatest extent practicable” that children have legal representation and make every effort utilize the services of *pro bono* counsel. See Section 235(c)(5).

Child Advocates

The bill authorizes HHS to appoint independent child advocates for child trafficking victims and other vulnerable UACs. See Section 235(c)(6).

Special Immigrant Juvenile Status

The bill includes several technical amendments regarding Special Immigrant Juvenile Status (SIJS) applications: 1) requires SIJS applications to be adjudicated within 6 months of filing, 2) transfers authority to HHS to grant consent for state court jurisdiction over children in federal custody thereby facilitating their application for SIJS, 3) grants additional exemptions to SIJS applicants to certain inadmissibility bars, including children who entered without inspection, used false documents, or who accrued unlawful presence 4) authorizes federal reimbursement to state foster care systems caring for children who obtain SIJS status, 5) ensures children are not denied SIJS based on age so long as they qualified at the time of application. See Section 235(d)(1)-(d)(6).

Asylum Protections

The bill transfers initial jurisdiction over asylum cases of UACs to DHS asylum officers. UACs are exempt from the 1-year filing deadline for asylum. See Section 235(d)(7).

Training for Government Personnel

The bill requires training for all federal personnel and, upon request, state and local personnel who “have substantive contact” with UACs.