Office of Communications

U.S. Citizenship and Immigration Services

USCIS Update

March 25, 2009

USCIS Initiates Procedures for Unaccompanied Children Seeking Asylum

New Law Allows Children in Removal Proceedings to Begin Asylum Process in a Non-Adversarial Setting

WASHINGTON—U.S. Citizenship and Immigration Services (USCIS) today announced it is now responsible for initial adjudication of applications for asylum from **Unaccompanied Alien Children*. Some of these children previously would have been required to file for asylum in immigration court with the Executive Office for Immigration Review in the Department of Justice.

The new procedures were created to carry out the *William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008* (TVPRA). Under one of the provisions of the TVPRA, these unaccompanied children, who have been issued a *Notice to Appear* in immigration court, will now file their initial application for asylum with USCIS. The TVPRA also provides an opportunity for unaccompanied children, who did not previously file for asylum with USCIS and, who either have 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.

Further details on the asylum-related provisions of the TVPRA to protect unaccompanied children are in the accompanying USCIS *Questions and Answers* document. For more information about USCIS' Asylum Division, please visit www.uscis.gov/asylum.

** 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.*

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Questions and Answers

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Introduction

U.S. Citizenship and Immigration Services (USCIS) is now responsible for initial adjudication of applications for asylum from Unaccompanied Alien Children, (UAC). The new procedures were created to carry out the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA). The TVPRA provides USCIS with initial jurisdiction over any asylum applications filed by unaccompanied children.

Background

On Dec. 23, 2008, former President Bush signed into law TVPRA, Public Law 110-457. The provisions of the TVPRA that apply to unaccompanied alien children took effect on March 23, 2009. Under one of these provisions, unaccompanied alien children who have been issued a *Notice to Appear* in immigration court will now file their initial application for asylum with USCIS. The TVPRA also provides an opportunity for unaccompanied alien children, who did not previously file for asylum with USCIS and who have 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.

In addition, the TVPRA makes the following changes that affect UACs applying for asylum:

1. The Immigration and Nationality Act (INA) is amended so that the one-year filing deadline and any safe third country agreements do not apply to UACs.
2. The Department of Health and Human Services (HHS) shall ensure pro bono counsel, to the greatest extent practicable and consistent with section 292 of the INA, for all UACs who either are or have been in its custody or in DHS custody.
3. HHS is authorized to appoint independent child advocates for child trafficking victims and other vulnerable unaccompanied alien children.

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 new procedures for UACs?
A. The new procedures for filing the asylum application apply to a UAC, who has been issued a Notice to Appear in immigration court. These new procedures do not apply to accompanied children or to UACs who were not issued a Notice to Appear in immigration court.

Q. I was in custody with the Office of Refugee Resettlement (ORR), and was released to a relative. Am I still unaccompanied?
A. This depends on whether your relative is a legal guardian such that you are accompanied. DHS will make the determination as to whether USCIS has jurisdiction of your case because you are a UAC.

Q. I am a UAC and I wish to apply for asylum; however, I was not issued a Notice to Appear 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 *Application for Asylum and Withholding of Removal,* Form I-589, available at www.uscis.gov/forms.

Q. I am a UAC who 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: At your hearing in immigration court, inform the immigration judge and the Immigration and Customs Enforcement (ICE) trial attorney that you intend to file for asylum. Once you receive the asylum instruction package from the ICE trial attorney, file your asylum application directly with USCIS. The instruction package includes a cover sheet that you are requested to submit to USCIS with your asylum application, so it is best to file for asylum after you have received the instruction package at your hearing in immigration court. The ICE trial attorney may recommend to the immigration judge to continue your case to allow you time to submit your application.

Q. I was a UAC when I was placed in removal proceedings, but am no longer a UAC. I want to file for asylum. Where do I file?
A: You must file your asylum application in immigration court. Since you are not a UAC at the time of filing your asylum application and you are in removal proceedings, USCIS does not have initial jurisdiction over your claim.

Q. I am in removal proceedings and filed an *Application for Asylum and Withholding of Removal*, Form I-589, with USCIS, according to the instructions provided by ICE. Will ICE and the immigration judge know I applied for asylum?
A: After you have received the instruction packet and filed for asylum with USCIS, you must appear at any hearings scheduled in immigration court. 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 an *Application for Asylum and Withholding of Removal,* Form I-589, with USCIS?
A: If you indicated that you wished to apply for asylum and you fail to file an *Application for Asylum and Withholding of Removal*, Form I-589, 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 is currently pending in immigration court, is on appeal before the Board of Immigration Appeals, or is on review with a federal court. May I request that USCIS adjudicate my asylum application?
A: 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. If your case is pending in any of these places and you did not file for asylum with USCIS, your concerns should be raised in the context of those pending proceedings.

Q. I already filed for asylum with USCIS and my case was referred to immigration court. Can I now file again with USCIS?
A: No. You cannot re-file with USCIS if your case, which is pending or on appeal, began as an asylum adjudication with USCIS. You already had your initial opportunity to have your asylum claim heard by USCIS.

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. Additionally, you may wish to ask your ORR Division of Unaccompanied Children's Services Field Coordinator or Project Officer for a copy of your ORR Interim Placement Authorization Form, to submit it with your *Application for Asylum and Withholding of Removal*, Form I-589 as proof of UAC status. ORR will coordinate with the local asylum office, should 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.

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