

(b)(6)

2019 Procedures for Determining USCIS Jurisdiction for Unaccompanied Alien Children (UACs)



**U.S. Citizenship
and Immigration
Services**

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Objectives

1. Review the Trafficking Victim Protection Reauthorization Act's (TVPRA's) initial jurisdiction provision, codified at INA § 208(b)(3)(C).
2. Identify the current procedures related to jurisdiction determinations for UACs.
3. Understand whether an individual meets the UAC definition for jurisdictional purposes.
4. Understand other purposes of the UAC determination.



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Background – the law

- INA § 208(b)(3)(C):
“An asylum officer. . . shall have initial jurisdiction over any asylum application filed by an unaccompanied alien child. . . .”
- Therefore, to determine whether USCIS has jurisdiction, AOs must determine whether the applicant is a UAC.



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Background – the law: UAC

- An “Unaccompanied Alien Child” (UAC) is a legal term referring to a child who:
 - has no lawful immigration status in the US;
 - has not attained 18 years of age; and
 - has no parent or legal guardian in the US, or for whom no parent or legal guardian in the US is available to provide care and physical custody.



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Background – PRL

- PRL refers to those UACs who are currently in removal proceedings (under INA Section 240) in Immigration Court.
- PRL is the special group code entered by the Nebraska Service Center in Global at the time of I-589 receipt.



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Background – Process

- March 2009-June 2013
 - AOs always made independent factual inquiries to support UAC determinations.
- June 2013-June 30, 2019
 - AOs adopted prior determinations by CBP or ICE that the applicant was a UAC if that determination remained in place at time of filing for asylum.



2019 Process

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- *See Memorandum, May 31, 2019, Updated Procedures for Asylum Applications Filed by Unaccompanied Alien Children.*



Background – UAC Apprehension

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- UACs in federal custody must be transferred to Office of Refugee Resettlement (ORR) custody within 72 hours of apprehension.
- ORR places UACs in a range of different settings until they are released into the care and physical custody of an adult sponsor.
- UAC is issued Notice to Appear (NTA).



Background – Notice to Appear

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- UAC appears at Immigration Court master calendar hearing and requests asylum.
- ICE OCC may assert that the applicant is or is not a UAC.
- If a UAC, IJ continues proceedings to allow UAC to file the asylum application (Form I-589) with USCIS.
- If not a UAC, IJ instructs applicant to file with the Immigration Court.



Background – Filing

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- A UAC may file the I-589 with EOIR at the window, in court, or by mail.
- A UAC must file the I-589 with USCIS Nebraska Service Center (NSC) for USCIS to examine jurisdiction.
 - NSC will review filing to determine if the applicant was under 18 at the time of filing with USCIS or EOIR.
 - NSC will reject the I-589 if the applicant was 18 or older at the time of filing with USCIS or EOIR.



Asylum Officer

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Examines Jurisdiction

- The burden of proof is on the applicant to establish that he or she meets the UAC definition.
- The AO examines whether the applicant was a UAC **at the time the I-589 was first filed (either with USCIS or EOIR)** due to:
 - Lack of lawful immigration status;
 - Age under 18; and
 - Unaccompanied.



Asylum Officer

Examines Jurisdiction

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In order to determine whether the applicant was a UAC at the time of first filing the I-589, the AO should:

- Check the date of first filing the I-589.
 - Check date stamped on all I-589s in A-file.
 - Check Global for USCIS filing date.
 - Check DOJ-EOIR in PCQS for EOIR filing date.

- Check for evidence of UAC status at the time of filing.



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Asylum Officer Examines Jurisdiction

- If the AO finds that the applicant has a parent or legal guardian in the US at the time of filing, the applicant must then establish that the parent or legal guardian was unavailable to provide care and physical custody at that time.
- The AO should elicit information regarding whether the applicant's parent or legal guardian was either unwilling or unable to provide such care and physical custody to determine whether the applicant was unaccompanied at the time of filing.
- Legal guardianship refers to a formal (legal/judicial) arrangement.



UAC Determination

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Asylum Officer:

- Writes the assessment.
 - Include initial filing date, brief summary that applicant was a UAC at the time of filing, and state that as a UAC, applicant is not subject to the one-year filing deadline.
- Enters the final decision in Global.





(b)(6) **Non-UAC Determination**

- If AO determines during the interview that USCIS does not have jurisdiction because the applicant is not a UAC:
 - Do not interview on the merits of the claim but confirm determination with a UAC POC, an SAO, or a Training Officer before the applicant leaves;
 - Draft a memo to file explaining lack of jurisdiction;
 - Use Notice of Lack of Jurisdiction (non-UAC) to transfer case to ICE; attach copy of this Notice to the A file.



Other Procedural Issues

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- One-Year Filing Deadline (OYFD)
 - If you determine that the applicant **is a UAC**, the OYFD does not apply (INA § 208(a)(2)(E)).
 - If you determine that the applicant **is not a UAC but that USCIS has jurisdiction** (the applicant is not in removal proceedings), you must elicit testimony regarding the OYFD and any exception to the filing deadline.





Other Procedural Issues

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- UAC Discovery Notification
 - If USCIS is the first federal entity to determine that the applicant is a UAC, the Asylum Office is required to notify HHS that it has “discovered” a UAC (Section 235(b)(2) of the TVPRA).
 - A form and process for this notification has been established (Section III.B.1.a.ix of the AAPM).



Other Procedural Issues

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- Credible Fear & Reasonable Fear
 - AOs will not ordinarily encounter UACs in the screening processes, as they should be placed in section 240 immigration court proceedings.
 - If, however, during CF or RF screenings, a UAC is discovered, the AO should make a UAC determination and communicate such determination to ICE for purposes of issuing a charging document.



Types of UAC Decisions

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- Grant
 - Issue standard grant letter, but copy local ICE OCC.
- Transfer
 - Replace referral notice with UAC Decision Notice for Non-Eligibility, with cover sheet.
- Lack of jurisdiction
 - Use Notice of Lack of Jurisdiction (non-UAC). Instead of assessment, draft memo to file explaining lack of jurisdiction.



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Effective Date

- These updated procedures are effective on June 30, 2019, and apply to any USCIS decision issued on or after that date, including cases pending decision with USCIS on that date.



Summary

1. An unaccompanied alien child (UAC) is, at the time of filing, without lawful immigration status in the United States, under 18, and unaccompanied.
2. USCIS has initial jurisdiction over all asylum applications filed by UACs.
3. A range of procedural issues arise related to UAC cases, including UAC decision notices and notice of “discovery” to HHS.

