Sanctuary for Families

REPRESENTING CHILDREN IN ASYLUM CASES

Children may have an independent asylum claim, separate from their parents'.[1] Children's asylum claims present unique challenges. Here we provide guidance on meeting with children for the first time, some procedural considerations to be aware of, and additional resources that may be of use in meeting with children and assessing their asylum claims.

Meeting the Child

When you represent a child in their own asylum claim, you should be meeting with the child alone, outside of the presence of their parent or adult caregiver. If not, the adult's presence will break attorney-client confidentiality and may inhibit the child from fully engaging with you. It may be helpful, however, to meet initially with both the client and the parent or adult caregiver to clarify your role as the attorney for the child and that you will be meeting with the child alone. It is helpful to reiterate this again when you begin meeting alone with the child.

Try to ensure a comfortable, child-friendly environment when meeting with the child client. Age-appropriate children's books, toys, crayons – things that communicate to the child that they are in a child-friendly environment can go a long way in developing trust. Before questioning the child about their potential asylum claim, it will be important to establish a relationship with the child. Introduce yourself and ask the child some basic questions and appropriate follow-up. *How is school going? Do you have siblings? What do you enjoy doing in your free time?* These and other similar questions demonstrate an interest in the child, which may ease the child's anxiety, start to give you an impression of the child, and allow the child to begin to assess your own demeanor and personality.

It is also important to try to reiterate the purpose of your meeting at the outset and explain the rules of confidentiality. Use age-appropriate language to convey what confidentiality means; however, avoid describing confidentiality as a "secret," as this may have negative connotations for a child who has been told to keep abuse or some traumatic incident a secret from others. Your interview with your client might be the first context in which the child has had autonomy over sharing personal information. Explain to your client that, without their permission, you will not share their information.

Inform the child that they can stop the conversation at any time, can ask to go to the bathroom, get a glass of water, or see their parent or adult caregiver at any point in your meeting. These are ways you can give the child a degree of control. A child may not feel comfortable asking an adult, or an adult figure in a position of authority, for permission to do these basic activities.

As you begin your questioning of the child, describe what area of their life you will be discussing. For example, you may let the child know you first will be asking basic questions about them and their family, then talk about life in their home country, and then their journey to the United States. These topic markers give the client a sense of what to expect from the interview as well as the scope

[1] This chapter will not cover children who would be considered derivative beneficiaries of their parent's principal asylum application.

of it. Throughout the interview, provide a verbal cue to the child as you transition from one of these topic areas to the next.

Before your meeting with the child is concluded, establish rules of communication going forward and reiterate the terms of confidentiality. If the child has given permission to share information with the parent or adult caregiver, do so with the child in the room so that communication is transparent. Otherwise, make sure that the child has your contact information and a secure way of hearing from you.

Procedural Considerations

Procedurally, children are able to apply for asylum independently of a parent of legal guardian, as they themselves may have suffered past persecution or have a well-founded fear of future persecution. Children under 18 year of age who are not in Immigration Court removal proceedings may apply for asylum directly with USCIS.[2] A child in this situation would follow the same filing procedures as an adult submitting their asylum application affirmatively. However, asylum applications filed by children are prioritized by USCIS for interviews and are not subject to the same scheduling delays that adult affirmative applicants face.[3]

A child or young person who has been classified as an unaccompanied alien child (UAC) may apply for asylum directly with USCIS, even if they are in Immigration Court removal proceedings, are reunited with a parent or legal guardian, or turn 18 years old and are no longer a minor, provided their UAC classification has not been formally revoked by an agency such as Customs and Border Protection, Immigration Customs Enforcement, or Health and Human Services.[4] The most common example of this would be a child who was apprehended by the U.S. Department of Homeland Security after entering the United States, transferred into the custody of the U.S. Department of Health and Human Services' Office of Refugee Resettlement, and released to a parent or legal guardian pending their Immigration Court removal proceedings.

In February of 2017, the Department of Homeland Security (DHS) issued a memo in order to implement the January 25, 2017 Executive Order on Border Security.[5] That memo directs U.S. Citizenship & Immigration Services (USCIS), CBP, and ICE to develop "uniform written guidance and training" on who should be classified as a UAC, and when and how that classification should be

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[2] The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 established USCIS' initial jurisdiction over an asylum application filed by an unaccompanied alien child ("UAC"). See William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Public Law 110-457.

[3] See USCIS Affirmative Asylum Scheduling Bulletin, https://www.uscis.gov/humanitarian/refugees-asylum/asylum/affirmative-asylum-scheduling-bulletin.

[4] See USCIS Memoranda "Implementation of Statutory Change Providing USCIS with Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children" (dated March 25, 2009), "Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children" (dated May 28, 2013), and "Updated Service Center Operations Procedures for Accepting Forms I-589 Filed by Unaccompanied Alien Children" (dated June 4, 2013).

[5] Sec. John Kelly, "Implementing the President's Border Security and Immigration Enforcement Improvements Policies" (Feb. 20, 2017), Sec. L; *see also* Donald J. Trump, "Executive Order on Border Security and Immigration Enforcement Improvements" (Jan. 25, 2017), Sec. 11(e).

reassessed. This guidance has not yet been released, but we do expect changes to be implemented in the near future. In addition, the Office of General Counsel recently published a legal opinion for the Executive Office of Immigration review opining that Immigration Judges are not bound by DHS's determination regarding whether a child is a UAC and that they may resolve classification disputes in the course of removal proceedings. In light of these recent events, advocates are concerned that the forthcoming agency policies may negatively impact children seeking asylum in the United States. Accordingly, if you are representing a child who has been classified as a "UAC," please be sure to discuss this aspect of your case promptly with your Sanctuary supervisor to receive technical advice and to become aware of the most up-to-date policies and practices in effect.

Legal Considerations

For children's asylum cases generally, one should always keep in mind the child's unique status as a child and their stage of development. Both the U.S. government and international legal authorities have consistently noted that "[t]he harm a child fears or has suffered . . . may be relatively less than that of an adult and still qualify as persecution."[6] Further, when considering persecution for a child's asylum claim, it is important to assess the harm suffered from the perspective of the child.[7]

A child's fear of returning to their home country may or may not be related to their being a member of their family. For example, a child may have suffered persecution when their family was targeted with violence. Or, a child may have been a victim of trafficking in their home country and their government may be unwilling or unable to protect them from future harm. It is always important to consider that a child may not receive the same legal protections as adults in their home country, and there may be documented lack of protection of children and child exploitation and abuse.

Additional Resources

- USCIS, "Minor Children Applying for Asylum By Themselves," https://www.uscis.gov/humanitarian/refugees-asylum/asylum/minor-children-applying-asylum-themselves

- USCIS, "Asylum Officer Basic Training Course: Guidelines for Children's Asylum Claims" (Mar. 21, 2009), https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/AOBTC%20Lesson29_Guide_Children%27s_Asylum_Claims.pdf

- Center for Gender & Refugee Studies, "Children's Asylum Guidelines," https://cgrs.uchastings.edu/search-materials/childrens-asylum-guidelines

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[6] Guidelines for Children's Asylum Claims, U.S. Department of Justice, Immigration and Naturalization Service, Office of International Affairs, File 120/11.26, December 1, 1998, at 19; UNHCR 2009 Guidelines, at ¶ 10; see also Hernandez-Ortiz v. Gonzales, 496 F.3d 1042 (9th Cir. 2007); Jorge-Tzoc v. Gonzales, 435 F.3d 146, 150 (2d Cir. 2006); Liu v. Ashcroft, 380 F.3d 307, 314 (7th Cir. 2004); Abay v. Ashcroft, 369 F.3d 634, 640 (6th Cir. 2004).

[7] See, e.g., Jorge-Tzoc, 435 F.3d at 150.

- Center for Gender & Refugee Studies, "Children's Asylum Claims: CGRS Practice Advisory" (Mar. 2015), https://cgrs.uchastings.edu/sites/default/files/CGRS_Child_Asylum_Advisory_3-31-2015_FINAL.pdf

- Center for Gender & Refugee Studies, "CGRS Litigation Support Materials," https://cgrs.uchastings.edu/search-materials/cgrs-litigation-support-materials

- Safe Passage Project, "Resources," https://www.safepassageproject.org/resources/

- Kids in Need of Defense, "Resources for Children's Asylum Claims" (June 17, 2015), https://supportkind.org/resources/childrens-asylum-claims/

- Immigrant Legal Resource Center, "Unacompanied Minors (UACs) and new Executive Orders" (March 2017), https://www.ilrc.org/sites/default/files/resources/uacs_under_trump_administration_final_3.21.17.pdf

- Catholic Legal Immigration Network, Inc., "Practice Advisory on Strategies to Combat Government Efforts to Terminate Unaccompanied Child Determiantions" (May 2014), https://cliniclegal.org/sites/default/files/resources/defending-vulnerable-popluations/Practice-Advisory-on-Strategies-to-Combat-Government-Efforts-to-Terminate-Unaccompanied-Child-Designations-(May-2017).pdf

- Catholic Legal Immigration Network, Inc., "Working with Child Clients and Their Families in Light of the Trump Administration's Focus on 'Smugglers'" (July 2017) https://cliniclegal.org/sites/default/files/resources/defending-vulnerable-popluations/Working-with-Child-Clients-and-Their-Family-Members-in-Light-of-the-Trump-Administrations-Focus-on-Smugglers.pdf

- Kids in Need of Defense, "Asylum and Related Relief," https://supportkind.org/wp-content/uploads/2015/04/Chapter-5-Asylum-and-Related-Relief.pdf

- American Bar Association Commission on Immigration, "A Humanitarian Call to Action: Unaccompanied Children in Removal Proceedings" (Apr. 15, 2015), https://www.americanbar.org/content/dam/aba/administrative/immigration/RepresentUACs_NewOrleans2015.authcheckdam.pdf

- ICE, "Instruction Sheet for an Unaccompanied Alien Child in Immigration Court to Submit a Form I-589 Asylum Application to USCIS" (July 2014), https://www.nationalservice.gov/sites/default/files/resource/UAC_Instruction_Sheet_Handout.pdf