



U.S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

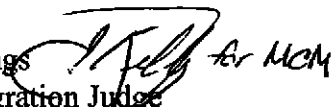
Chief Immigration Judge

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March 20, 2009

MEMORANDUM

TO: All Immigration Judges
All Court Administrators
All Attorney Advisors and Judicial Law Clerks
All Immigration Court Staff

FROM: Michael C. McGoings 
Acting Chief Immigration Judge

SUBJECT: Implementation of the Trafficking Victims Protection Reauthorization Act of 2008 Asylum Jurisdictional Provision (Interim Guidance)

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I. Introduction

Section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) takes effect on March 23, 2009.¹ This section contains a jurisdictional provision affecting certain unaccompanied alien children (UACs) who apply for asylum. *See* section 235(d)(7). This interim guidance is issued pursuant to 8 C.F.R. § 1003.9(b)(1) and contains guidance for the immigration courts on how to implement this new jurisdictional provision.

II. Authority

Section 235(d)(7) of the TVPRA amends section 208(b)(3) of the Immigration and Nationality Act (INA) to state that:

An asylum officer . . . shall have initial jurisdiction over any asylum application filed by an unaccompanied alien child . . . regardless of whether filed in accordance with this section or section 235(b) [of the INA].

The TVPRA grants initial asylum jurisdiction over these cases to United States Citizenship and Immigration Services (USCIS) notwithstanding regulations which state that “sole” and “exclusive” jurisdiction over asylum applications lies with the immigration court after service of the Notice to Appear (NTA) or commencement of proceedings. *See* 8 C.F.R. §§ 1003.14(b); 1208.2(b).

III. General Principles

Once the TVPRA goes into effect, and in view of the special consideration due to UACs in immigration court proceedings,² judges should be mindful of the following:

- Judges should proceed in such a way as to exercise the discretion of the Attorney General to ensure smooth coordination among government agencies responsible for the implementation of the asylum jurisdictional provision of the TVPRA, while ensuring that the UAC experiences the smoothest possible prompt access to all available relief.
- Judges should accommodate both parties, to the extent possible, in order to ensure the smooth implementation of the new asylum jurisdictional provision of the TVPRA.

¹ Section 235 of the TVPRA “shall also apply to all aliens in the United States in pending proceedings before the Department of Homeland Security or the Executive Office for Immigration Review, or related administrative or Federal appeals, on [December 23, 2008].” Section 235(h)(2).

² *See* OPPM 07-01, *Guidelines for Immigration Court Cases Involving Unaccompanied Alien Children*.

IV. Procedures

A. Initial Asylum Application

In cases in which a UAC in immigration court proceedings wishes to apply for asylum:

- In order to meet EOIR's obligations under the TVPRA, and meet the goal of smooth implementation of the TVPRA, it will be necessary in most or all cases to grant continuances to allow the UAC to pursue asylum before USCIS.
- The parties may request multiple continuances, first to allow the UAC to file the asylum application with USCIS and to present a receipt for proof of filing and, second, for enough time to allow USCIS to adjudicate the application.
- The number and length of continuances should be determined on a case-by-case basis depending on the facts and circumstances of each individual case.
- Where a UAC in immigration court proceedings expresses an intent to apply for asylum, it is anticipated that counsel for Immigration and Customs Enforcement (ICE) will provide written instructions to the UAC regarding the filing of the asylum application with USCIS.
- In these cases, judges should allow counsel for ICE to provide these written instructions to the UAC in court. Thereafter, the judge may wish to inform the UAC, on the record, that the failure to comply with the Department of Homeland Security's (DHS's) instructions may result in a decision to go forward with the removal proceeding.

B. Case Identifier and Adjournment Codes

- A new case identifier code has been created and added to CASE. This identifier must be assigned to all cases identified by the judge as falling under the asylum jurisdictional provision of the TVPRA.
- Adjournment code 7B+ (DHS Application Process – DHS Initiated) should be used for continuances to allow a UAC to pursue asylum before USCIS.

C. Asylum Not Granted by USCIS

If USCIS does not grant the asylum application:

- The UAC may wish to renew the asylum application before the court. It is anticipated that the asylum application and supporting documents filed with USCIS will be submitted to the judge at a hearing.

- The initial asylum received date in CASE will be the date the judge accepts the application at the hearing.

D. Asylum Granted by USCIS

If USCIS grants the asylum application, the parties may request that the immigration court proceedings be terminated.

E. Pre-Existing Asylum Applications

For cases involving UACs who have previously filed an asylum application and whose proceedings were pending before the immigration court as of December 23, 2008:

- The judge will need to decide on a case-by-case basis whether it is appropriate to allow the UAC to pursue asylum before USCIS.
- If the judge decides that the UAC should be allowed to pursue asylum before USCIS, the procedures described in section IV should be followed. The judge should retain the original asylum application in the Record of Proceedings. The court may, however, provide a copy of the application and supporting documents to the UAC if requested.

V. Future Guidance

OCIJ anticipates issuing further guidance on administering the TVPRA in the future, to include circumstances in which DHS identifies asylum applicants upon the filing of the NTA. Under these circumstances, consideration will be given to setting the first master calendar hearing 120 days from the date the NTA is filed so that USCIS has sufficient time to adjudicate the UAC's asylum application.

VI. Conclusion

This interim guidance is provided to ensure the smooth implementation of the asylum jurisdictional provision of the TVPRA in the immigration courts. If you have any questions, please contact your Assistant Chief Immigration Judge.