



U.S. Customs and
Border Protection

JAN 22 2010

MEMORANDUM FOR: Directors, Field Operations
Office of Field Operations

FROM: Executive Director (b) (6), (b) (7)(C)
Admissibility and Passenger Programs

SUBJECT: Haitian Alien Minors Arriving in the United States

This document outlines the appropriate processing of arriving Haitian alien minors who arrive at the ports of entry. As a result of the devastation in Haiti, we expect in the next days, weeks and months that individuals will be arriving from Haiti at various U.S. ports of entry. Some of those arriving will be minors.

This document is intended to supplement the existing guidance on the processing of minors under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) (issued March 19, 2009). It is intended to address certain situations likely to arise as the situation in Haiti continues to unfold.

Pursuant to TVPRA, an unaccompanied alien child ("UAC") is a child who:

- Has no lawful immigration status in the United States;
- Has not attained 18 years of age; and
- With respect to whom—
 - i. There is no parent or legal guardian in the United States
 - ii. No parent or legal guardian in the United States is available to provide care and physical custody.

The TVPRA is applicable only to alien children who have no lawful immigration status in the United States. Where a child has any legal status in the United States, the TVPRA is not applicable. This includes U.S. citizens, lawful permanent residents (LPRs) and individuals in any other applicable legal status. Aliens arriving with nonimmigrant visas should be admitted as nonimmigrants, if otherwise admissible. Alien children who have been issued adoption-related visas (IH-3, IH-4, IR-3, IR-4 or IR-2) have legal status in the United States. They should not be processed under the TVPRA, but rather should be admitted in accordance with the immigrant visa. (b) (7)(E)

With regard to alien minors who do not have lawful status in the United States, when determining whether such minors meet the definition of a UAC based on the presence of a parent/legal guardian, (b) (7)(E)

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To the extent that there is any question whether an individual who wishes to take custody of a child is either a parent or legal guardian, please contact your local Associate/Assistant Chief Counsel.

UAC's encountered at the port of entry should be processed as normal in accordance with the TVPRA with the following exceptions:

- (b) (7)(E)

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To ensure smooth transfer of custody of UAC to ORR, (b) (7)(E)

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CBP should refer inquiries from prospective adoptive parents or other relatives (not parents or legal guardians) to USCIS at (800) 375-5283 or HaitianAdoptions@dhs.gov. Inquiries regarding the status of UAC following transfer of custody should be referred to ORR. Specific information regarding individual cases is protected by DHS Policy and the Privacy Act of 1974.

Please ensure the attached muster is provided to all CBP managers and officers within your area of responsibility. Questions or concerns regarding this memorandum may be directed to (b) (6), (b) (7)(C) Assistant Executive Director, Admissibility and Passenger Programs, at

Attachments

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Week of Muster: Immediately
Topic: Haitian Alien Minors Arriving in the United States
Reference: CBP Interim Guidance on Processing Unaccompanied Alien Children
Headquarters POC: (b) (7)(E)
Office: Admissibility and Passenger Programs

This muster is to inform CBP officer of procedures for processing Haitian alien minors arriving in the United States. All minors should be treated with dignity, respect, and special concern for their particular vulnerability.

- Arriving children who are U.S. citizens, LPRs, or are in possession of immigrant visas should be admitted. Normal process and procedures should be followed regarding any minor in possession of a visa (including taking any appropriate steps to the extent that they are not accompanied by an adult or where concerns for the child's welfare exist).
- Arriving children without immigrant visas or legal status should be processed first to determine whether there is a parent or legal guardian present in the United States and available to provide physical care and custody. To the extent there is no parent or legal guardian available, the child should be processed under the TVPRA and turned over to ICE DRO for transfer to HHS-ORR.
- Children issued transportation letters and/or parole documents by USCIS indicating "Category 1" status are the subject of a final adoption or custody order issued by the Government of Haiti, and (b) (7)(E)
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- (b) (7)(E)
- Under no circumstances should a UAC be released into the custody of any individual other than a parent or legal guardian.
- Prospective adoptive parents (i.e. where an adoption is not final) should not be considered parents or legal guardians. Questions of placement with prospective parents should be answered by HHS-ORR.
- Moreover, a child should never be released to any person whose claim to parenthood or legal guardianship or other status in relation to the child is in question. HHS-ORR is the appropriate entity to make determinations in those instances.

CBP Officers processing Haitian UAC should:

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The Immigration and Customs Enforcement (ICE), Detention and Removal Operations (DRO) Field Office Juvenile Coordinator must be contacted to coordinate custody transfer of the UAC to Health and Human Services (HHS), Office of Refugee Resettlement (ORR).

(b) (7)(E) can be contacted for specific guidance and is available at (b) (7)(E) or via email at (b) (7)(E)

Attachments

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