

VOICES AND ASYLUM

ADOTIP

March 2017

March 2017

GOALS

- ⦿ Review TVPRA Initial Jurisdiction
- ⦿ Analyze UAC Determinations
- ⦿ Improve child-sensitive interview skills
- ⦿ Minor Adjudication Procedures
- ⦿ Practical exercise

MINOR APPLICANTS

Question:

Why do children immigrate to the US?

4/20/2017

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MINOR APPLICANTS

Answer:

- Economic/financial hardship
- Reunite with family
- Fear of harm in home country
- Common cases involve non-state actors
 - Intra-familial abuse/domestic violence/child abuse/trafficking
 - FGM and Forced marriage
 - Gang recruitment/gang violence
 - Sexual orientation
 - Religion

MINOR APPLICANTS

Question:

Why are children unaccompanied in the US?

4/20/2017

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MINOR APPLICANTS

Answer:

- Parents arranged for their travel to US for their safety/security/education and planned for them to live with another relative or family friend

- Children were sent to the US unaccompanied in order to reunite with a parent

- Children came to the US on their own

MINOR APPLICANTS

Question:

What situations do we typically see?

MINOR APPLICANTS

Children who...

- ⦿ Came to the US to reunite with their parents and are living in the US with one or more parents
- ⦿ Living in the US with a family friend or alternative adult family member (adult sibling/aunt/uncle)
- ⦿ Whose parents arranged for their journey to the US
- ⦿ Whose parents accompanied them to the US and then returned to home country
- ⦿ Whose parents have their own immigration court proceedings
- ⦿ Are in school and well-cared for

MINOR APPLICANTS

Children who...

- ⦿ Living with their boyfriends/girlfriends, adult spouses
- ⦿ Fled their country on their own/living in unstable housing
- ⦿ Living in homeless shelters
- ⦿ Are working full-time
- ⦿ Were impregnated by adults
- ⦿ Were impregnated through rape
- ⦿ Were working in the sex industry in their home country

MINOR STATISTICS

⊙ Thousands of unaccompanied children are apprehended each year after crossing the border into the United States.

- FY 2016: 59,692
- FY 2015: 44,927
- FY 2014: 73,471
- FY 2013: 41,908
- FY 2012: 27,053
- FY 2011: 17,786

⊙ Many of the UACs we see in ORR custody are from Guatemala, El Salvador, Honduras, and Mexico.

TERMINOLOGY

Minor?

UAC?

PRL?

MINOR APPLICANTS

- ⦿ Minor Principal
- ⦿ UACs
- ⦿ PRL
- ⦿ Dependents
- ⦿ Minors in APSO
- ⦿ Special considerations may apply to adult applicants who experienced harm as a child

A MINOR



PRL

CASE STATUS (CSTA)
PRINCIPAL

NUNC PRO TUNC: PRIN
DAINY NOLBERTO (M)

NEW SCHEDULED DOB: 1

SPEC GRP: PRL CLK DA

AO: 7/17/11 BASIS OF CLAIM:

APSS: IN: N USVISIT: V

TIME: 15 ATTY: SFR01

PREP:

DA

TERMINOLOGY

- ◎ “Unaccompanied alien child” (UAC) is a *narrow* term that specifically refers to the TVPRA provisions.
 - Only includes those with no lawful immigration status.

- ◎ “Unaccompanied minors” is a *broader* term used by the asylum division.
 - Includes both those with and without lawful immigration status.

TVPRA

- ⦿ Signed into law on December 23, 2008. 8 U.S.C.A. § 1232
- ⦿ Became effective on March 23, 2009

- ⦿ Allows children in Removal Proceedings to begin the asylum process in a non-adversarial setting
 - “Initial Jurisdiction”
 - Applies to UACs as of 12/23/08 who had a pending case and asylum claim was not previously adjudicated

- ⦿ Takes into account the specialized needs of unaccompanied alien children.

- ⦿ UACs are not subject to the one-year filing deadline

BACKGROUND

- ⦿ CBP and ICE determine whether a minor is a UAC upon apprehension
- ⦿ They issue UACs NTAs and place in removal proceedings
- ⦿ UACs who wish to apply for asylum are given a UAC Instruction Sheet & I-589 by ICE Trial Attorneys

THE UAC DETERMINATION

(effective June 10, 2013)

- ⦿ USCIS adopts the previous CBP or ICE determination that an applicant is a UAC and takes jurisdiction.
- ⦿ USCIS accepts the previous UAC determination even if the applicant turned 18 or reunited with a parent after being deemed a UAC.

WHERE TO FIND A PREVIOUS UAC DETERMINATION ?



1. Form I-213: Record of Deportable Alien
2. Form 93: CBP UAC Screening Form
3. ORR UAC Initial Placement Referral
4. ORR Verification of Release Form
5. EARM: Encounters Tab
6. This is not an exhaustive list...

*The ICE UAC Instruction Sheet is NOT by itself
evidence of a prior UAC determination*

1) FORM I-213: RECORD OF DEPORTABLE ALIEN

UNACCOMPANIED JUVENILE:

[REDACTED]

(b)(7)(c)

FUNDS IN POSSESSION:

Mexican Peso 20.00

[REDACTED]

(b)(7)(c)

RECORDS CHECKED:

CIS Negative

CLAIM Negative

IAPIS

[REDACTED]

(b)(7)(e)

NARRATIVE:

NOTE:

Subject is an unaccompanied juvenile.

ENCOUNTER/ALIENAGE:

Subject, [REDACTED] (A# [REDACTED]), DOB: [REDACTED], was encountered by McAllen Border Patrol Agents on December 4, 2010, near Hidalgo, Texas. Subject was

1) FORM I-213: RECORD OF DEPORTABLE ALIEN

TRAVEL INFORMATION:

[REDACTED] stated that she traveled from her home in El Salvador to Chiapas, Mexico then to Altar, Sonora, Mexico by bus. She then crossed the U.S./Mexico International Boundary illegally on foot.

DISPOSITION:

[REDACTED] is being served with a Warrant of Arrest/Notice to Appear, and placed in removal proceedings, per Section 212(a)(6)(A)(i) of the INA. She is an unaccompanied juvenile.

2) FORM 93: CBP UAC SCREENING

DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection

UNACCOMPANIED ALIEN CHILD SCREENING ADDENDUM

Trafficking Victim Protection Act (8 U.S.C. 1232)

Alien's Name:

A NUMBER (if any)

A

Credible Fear Determination

Why did you leave your home country or country of last residence?

Do you have any fear or concern about being returned to your home country or being removed from the United States?

Would you be harmed if you were returned to your home country or country of last residence?

Do you have any questions or is there anything else you would like to add?

Human Trafficking

Definition: Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion or in which the person induced to perform such an act is under 18; or the recruitment, harboring, transporting, provision, or obtaining of a person for labor or services, through the use of force, fraud or coercion, for the purpose of subjecting that person to involuntary servitude, peonage, debt bondage, or slavery.

Below are examples of trafficking indicators. If one or more of these indicators is present, the interviewer should pursue age appropriate questions that will help identify the key elements of a trafficking scenario. If required, ensure that follow up questions are asked based on the answers given. Answers from these questions will assist an interviewer in determining if the Unaccompanied Alien Child may be a victim of trafficking. In all cases, use your training and experiences to be alert for

3) ORR UAC INITIAL PLACEMENT REFERRAL FORM

UAC Initial Placement Referral Form

See Footer for Instructions - Updated, 3/25/08

Processing Officer's Name	Email Address	Desk Phone	Cell Phone

UAC Information

First Name	Middle Name	Last Name	DOB

Additional Names Used:				
Gender	Country of Birth	Immigration Status	A#	FINS #
	EL SALVADOR	NTA Issued		

Entry and Apprehension Information

	City and/or Location Code	ST	Date	Time	Type
Entry	SASABE	AZ	12/17/2010	10:00 AM	Entered Without Inspection
Apprehension	SASABE	AZ	12/18/2010	3:00 PM	N/A
Current Location	TUCSON	AZ	N/A	N/A	Processing Center

UAC apprehended with: (Choose more than one if applicable)	Please provide the following for all relatives apprehended with the AUC, if more space is needed, use the <i>Referral Notes</i> section at the bottom of the page.		
	Name	A#	Relationship to UAC
<input type="checkbox"/> Parent(s)			
<input type="checkbox"/> Other Related Adult(s)			
<input type="checkbox"/> Related Minor(s)			
<input type="checkbox"/> Smuggler(s)			
<input type="checkbox"/> Non-Related Individual(s)			
<input checked="" type="checkbox"/> Alone			

4) ORR VERIFICATION OF RELEASE FORM



US Department of Health and Human Services

Office of Refugee Resettlement
Verification of Release Form

OFFICE OF REFUGEE RESETTLEMENT Division of Unaccompanied Children's Services

Name of Minor:

Aliases (if any):

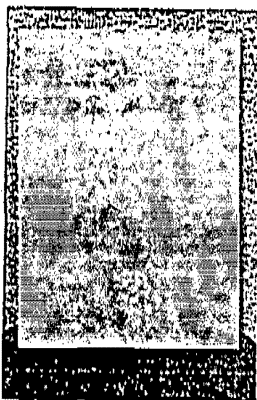
Minor's Date of Birth:

Minor's A

FINS#:

Pursuant to Section 462 of the Homeland Security Act, the Office of Refugee Resettlement (ORR) has released from its custody the above-named minor into the care and custody of:

Acknowledgement of Conditions of Release



- I hereby acknowledge that I have read, or had explained to me in the Spanish language, and I understand the conditions of my release as specified in the Sponsor's Agreement to Conditions of Release, which include among others the following conditions:
- I agree to appear at all future proceedings before the Department of Homeland Security (DHS)/Immigration and Customs Enforcement (ICE) and the Executive Office for Immigration Review (EOIR).
- I agree to report to the DHS/ICE office if so ordered.
- I agree to notify DHS/ICE if I decide to depart from the United States. I will do this at least 5 days before I actually depart the United States.
- I agree to notify DHS/ICE and EOIR within 5 days of a change of address.

5) EARM: ENCOUNTERS TAB

[Person](#)
[Encounters](#)
[Supporting Info](#)
[Case Summary](#)
[Actions/Decisions](#)
[ATD](#)
[Bonds](#)
[Comments](#)
[Scheduling](#)
[Print](#)

[Encounter Details](#)
[EOIR Look Up](#)

Subject Information

FINS:	Criminal Type: NA	Role:
A-Number:	Agg Felon: N - Not an Aggravated Felon	Role Comment: NA
Control Name:	Primary Citizenship: GUATEMALA	Processing Disposition: Warrant of Arrest/Notice to Appear
First Name:	Hair: BLK	INS Status: Inadmissable Alien
Middle Name: N/A	Eyes: BRO	POE: HIDALGO, TX
Maiden: NA	Complexion: MED	Entry Date: 12/04/2010
Nickname: NA	Race: W	Entry Class: PWA Mexico
Living?: NA	Origin: NA	Apprehension Date: 2010-12-04 05:40:00.0
Sex: M	Date of Birth:	Apprehension Location: HIDALGO, TX
Marital Status: Single	Age: 20	
SSN: NA	Age at Encounter: 17	
Juvenile Verified: Y	Height: 64	
Occupation: CHILD	Weight: 130	

I-213 Narrative NOTE: Subject is an unaccompanied juvenile. Subject made contact with [REDACTED] via phone [REDACTED] ENCOUNTER/ALIENAGE: Subject, [REDACTED] DOB: [REDACTED] was encountered by McAllen Border Patrol Agents on December 4, 2010, near Hidalgo, Texas. Subject was determined to be a citizen and national of Guatemala with no immigration documents. Subject entered the United States at a place not designated as a port of entry by the Attorney General of the United States and/or the Secretary of Homeland Security, the successor, thus subject was not admitted, inspected, or paroled.

CASE EXAMPLE

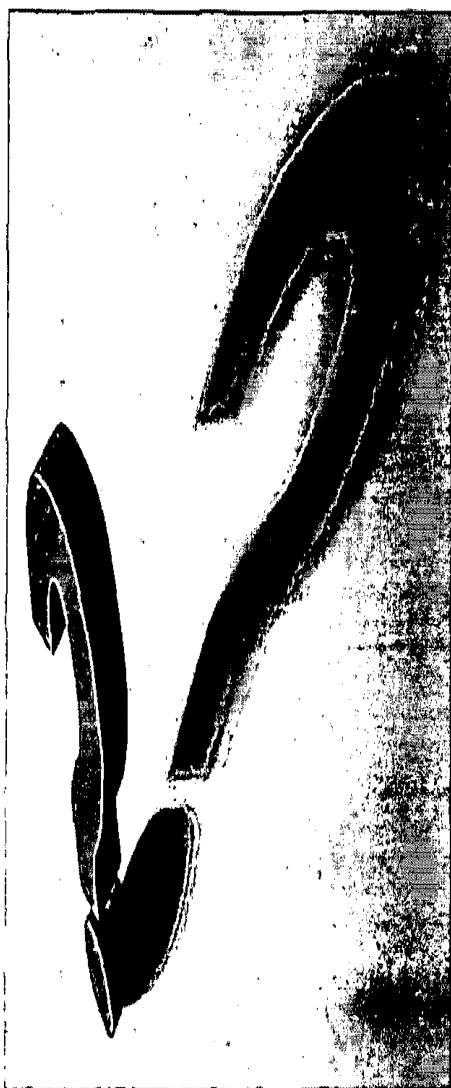
⦿ Claudia was apprehended by CBP and placed in removal proceedings. While preparing, the AO finds Form I-213, which states, “*subject is an unaccompanied juvenile*” and an ORR Initial Placement Referral Form in the file.

Q *Does USCIS have jurisdiction over Claudia’s asylum case?*

Q *Does USCIS have jurisdiction if Claudia is 20 years-old by the time she filed her I-589?*

MAKING A NEW UAC DETERMINATION

NO PREVIOUS UAC DETERMINATION?



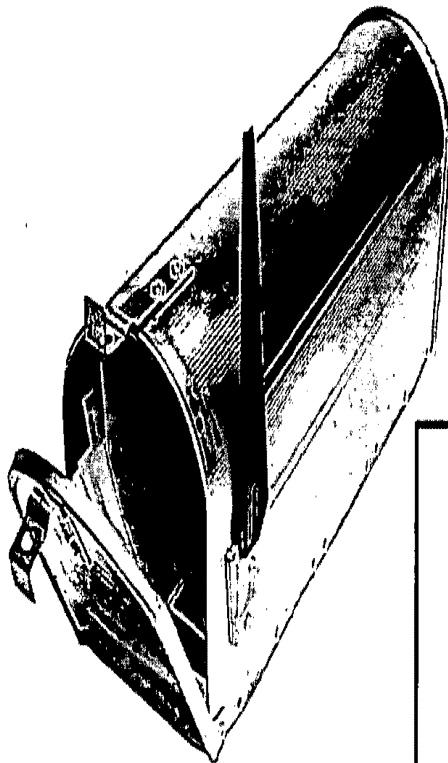
Removal Proceedings

or

No Removal Proceedings?

The only difference is the jurisdiction issue.

NO PREVIOUS UAC DETERMINATION?



In either case (removal proceedings or not), the key question is:

Were they a UAC at the time of filing?

NO PREVIOUS UAC DETERMINATION

And Applicant IS In Removal Proceedings:

- ◎The AO determines if the applicant was a UAC on the **date of the initial filing** of the asylum application
- ◎The AO makes a UAC determination by examining the applicant's age and unaccompanied status.
- ◎If the AO finds that USCIS does NOT have jurisdiction because applicant was not a UAC, write a memo-to-file on jurisdiction.

CASE EXAMPLE

- ◎ Leo and his father were apprehended by CBP in 2012 and placed in removal proceedings. His father was deported shortly after. Leo tells the IJ that he wants to apply for asylum and that he is unaccompanied.

- Q *Does USCIS have jurisdiction if he was 16 years old when he filed his I-589?*

- Q *What happens if the AO finds out during the interview that Leo has been living with his mother since 2012?*

- Q *What happens if AO determines that USCIS does not have jurisdiction?*

IF NO PREVIOUS UAC DETERMINATION

And Applicant Is NOT In Removal Proceedings:

- ⦿AO examines whether applicant was a UAC on the date of initial filing to determine if 1-year filing deadline applies.
- ⦿AO makes UAC determination using existing guidance on examining applicant's age and unaccompanied status.
- ⦿Jurisdiction is not at issue in this case.

CASE EXAMPLE

◎ Jenny entered the US in 2009 and has been living with her teenage friends since then. She was never apprehended and has never been in removal proceedings. She files Form I-589 with USCIS in 2013 at the age of 17.

Q *Does USCIS have jurisdiction over Jenny's asylum case?*

Q *Does the AO need to determine if Jenny is a UAC? Why or why not?*

DETERMINING UAC STATUS

- Where, at the time of filing, the applicant has no parent or legal guardian in the US who is available to provide care and physical custody, the applicant is unaccompanied.
- A child is unaccompanied even if they are in the informal care and custody of other adults, including family members.

NOTE – Legal guardianship refers to a formal (legal/judicial) arrangement.

CARE & PHYSICAL CUSTODY

Generally, when a child is living with a parent or legal guardian at the time of filing the child would be considered accompanied.



CARE & PHYSICAL CUSTODY

- If the child is **not residing** with a parent or legal guardian at the time of filing, the child would be considered **unaccompanied** unless there is sufficient evidence to the contrary.
- Was a parent was “available” to provide care and custody?
 - Parental responsibility?
 - Financial support?
 - Emotional support?



CREDIBLE & REASONABLE FEAR

- ⦿ UACs should be placed in Section 240 removal proceedings and are not subject to expedited or administrative removal.
- ⦿ If the evidence indicates that a UAC was mistakenly put through the APSO process, the AO must make a UAC determination and communicate the findings to ICE or CBP as appropriate.

SUMMARY

- ⦿ USCIS accepts the previous CBP or ICE determination of an asylum applicant's UAC status and takes jurisdiction over the asylum case.
- ⦿ If CBP or ICE have not made a previous UAC determination, USCIS determines whether the applicant was a UAC at the time of filing.

THE ASSESSMENT



- ◉ TVPRA Language
- ◉ UAC Determination
- ◉ One-year Rule
- ◉ Credibility Language
- ◉ Negative decisions

THE ASSESSMENT

TVPRA Language

Section 235(d)(7) of the William Wilberforce Trafficking Victims Protection Act of 2008 (TVPRA) took effect on March 23, 2009 and 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.” See TVPRA Public Law 110-457. The TVPRA grants initial asylum jurisdiction over these cases to 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 or commencement of proceedings. See 8 C.F.R. §§ 208.2(b), 1003.14(b), and 1208.2(b). 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 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. See 6 U.S.C. § 279(g)(2).

THE ASSESSMENT

UAC Determination

The applicant was apprehended by US Border Patrol agents on [DATE], determined to be an Unaccompanied Alien Child (“UAC”) and transferred to the custody of the Office of Refugee Resettlement (“ORR”). On [DATE], the applicant was served with a Notice to Appear before the Immigration Court. The applicant was released from ORR custody to his [RELATIONSHIP], [NAME]. The applicant filed an application for asylum with USCIS on [FILING DATE].

THE ASSESSMENT

Credibility Language

In determining the applicant's credibility, his/her minor age at the time of the harms was considered as per Guidelines for Children's Asylum Claims. In light of the applicant's minor age at the time of the harms and the nature of the trauma he/she alleges, the applicant presented testimony which was consistent, sufficiently detailed and plausible. Therefore, the applicant was found to be credible.

THE ASSESSMENT

One-Year Rule

Because the applicant was determined to be a UAC at the time of his/her entry into the United States, the one year filing deadline does not apply.

or

The applicant is not a UAC but filed for asylum while still a minor. An extraordinary circumstance exists and the applicant is found to have filed within a reasonable period of time. Thus, the applicant is entitled to an exception to the one-year rule.

THE DECISION

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

INTERVIEWING TIPS

PRE-INTERVIEW

Pre-interview Prep:

- Have a minors interview template where you include reminders of subjects to cover
- Review the application and identify important issues to discuss in interview
- Check for concurrent filings e.g. I-360 Special Immigration Juvenile Status (SIJ), T-visa, U-visa, VAWA
- **Question:** What are some important issues that need to be discussed on children's cases?

INTERVIEWING TIPS

PRE-INTERVIEW

- o All cases: Is there evidence of a prior UAC determination in the file? Is this a PRL case?
- o Where are the applicant's parents? Are they aware of/support the asylum application?
- o Who is the applicant's caregiver in the US and who was their caregiver in the home country?
- o Is there any indication in file that the applicant is not safe/being exploited? Are they in school/working?
- o Nexus: Note down all possible bases of claim

INTERACTIONS WITH THIRD PARTIES/SAFETY

- ⦿ Interactions with Third Parties
- ⦿ Who is present?
- ⦿ Attorney/waiver of representative?
- ⦿ Determine the relationships to the applicant of those present. Does the relationship seem bona fide?
- ⦿ Address any suspicions that arise at the interview. Consult an SAO, Minors POC, or Training Officer, if appropriate, for assistance.

INTERACTIONS WITH THIRD PARTIES/SAFETY

Guardianship/ Custody Issues

- ⦿ Who is present?
- ⦿ Relationships of those present
- ⦿ Living situation
- ⦿ Is there a formal guardianship arrangement?
- ⦿ Do they know what happened to the applicant?
- ⦿ Do they have additional information that the applicant is unaware of?
- ⦿ Does the applicant feel comfortable sharing all information in front of this individual?

INTERVIEWING TIPS IN INTERVIEW

- ⦿ Warmly welcome children to office
- ⦿ Ask child if they have any questions
- ⦿ Use a Child-Friendly Introduction
- ⦿ Make sure that the applicant can understand his/her interpreter (indigenous/Spanish)
- ⦿ Explain the Purpose/ Interview Process
- ⦿ If application references a particularly severe form of physical harm/sexual harm/long term discrimination/humiliation/share, acknowledge up front.

INTERVIEWING TIPS IN INTERVIEW

- ⦿ Build Rapport
- ⦿ Assessing Capacity
- ⦿ Developmentally-Appropriate questions
- ⦿ Confidence
- ⦿ Appearance
- ⦿ Cognitive/other delays?
- ⦿ Keep all PSGs in mind throughout questioning

INTERVIEWING TIPS

TRAUMA SENSITIVE TECHNIQUES

- ◎ Consider presence of third parties
- ◎ A child who has been raped or had other difficult experience is nervous and likely will dread talking about it. Put them at ease from the moment you start talking to them and you will see them visibly relax.
- ◎ Build rapport first and ask about circumstances of their lives, their affiliations (nexus), without touching on harm, if possible.

INTERVIEWING TIPS

TRAUMA SENSITIVE TECHNIQUES

- ⦿ When you are going to ask about harm, try to state something that provides an indicator about the fact that you will be discussing the harm. For instance, “I’m now going to talk about the hard part.”
- ⦿ When you finish speaking about the harm, let the minor know. Make your best effort to limit the time spent focused on the harm in the interview and keep this line of questioning contained.

INTERVIEWING TIPS

TRAUMA SENSITIVE TECHNIQUES

- ⦿ Extensive details about the harm is most times not necessary as nexus, credibility, and other material aspects of the claim can be established through other areas of questioning.
- ⦿ Remember that talking about their persecutor may = talking about the harm. If persecutor is Dad who sexually abused daughter, then asking her about who she lived with in home country is going to elicit an emotion because it ties directly into harm.

INTERVIEWING TIPS

CHECKING IN...

Check-in throughout interview...

- How old were you when that happened?
- Did you see that yourself or did someone tell you about that? Who?
- Did you understand that question? Do you need me to ask it again? Or explain?
- Note attention span
- Try not to introduce new concepts to them, stay within the realm of what they know
- Security issues - probe gang affiliations

CHALLENGES IN DETERMINING CREDIBILITY

- ⦿ Compare the objective reality with the actual facts of the case
- ⦿ Remain sensitive to the cultural and personal experiences of applicants
- ⦿ Reasonable expectation of detail (esp. related to time periods) when harm experienced as a child
- ⦿ Age and situation at the time of events

INTERVIEWING TIPS

CONCLUDING THE INTERVIEW

- ⦿ Make sure to ask explicitly if the applicant has any fears related to each of the five grounds
- ⦿ Always finish the interview on a more positive subject
- ⦿ After discussing the harm and persecutor, ask at least a few other questions so that the applicant can leave the office feeling calm and not upset because he or she recently disclosed the harm experienced.
- ⦿ Ask if they have anything to add/questions

MOCK EXERCISE

4/20/2017

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QUESTIONS?

Quality Assurance Branch POCs- Asylum HQ

Jane Kochman

Mollie Isaacson

Operations Branch POC - Asylum HQ

Kimberly Sicard

With special thanks to *Vincent Ferri* at ZSF for the creative UAC Determination slides!

One-Year Interviewing – Practical Exercise (ADOTP)

Student Instructions: For this exercise, we will divide into small groups of students. After gathering with your group and facilitator, please individually read the fact pattern below, which presents a one-year scenario that contains multiple possible changed and extraordinary circumstances. As you read, (1) identify every possible changed circumstance and extraordinary circumstance and (2) draw a timeline of events. There is a student worksheet on page 2 to help you organize.

With your facilitator, the group will identify possible changed circumstance and extraordinary circumstance. You will then be then divided into pairs and assigned to interview the role-player focusing on one of these possible circumstances. Develop sufficient questions to determine whether your assigned issue qualifies as a changed circumstance or extraordinary circumstance and whether the delay in filing is reasonable. As pairs you will then ask the role-player these questions and any necessary follow-up for the identified changed circumstance or extraordinary circumstance and record the responses for discussion in the class.

STUDENT FACT PATTERN:

The applicant is a female native and citizen of Burkina Faso. She last entered the United States on January 1, 2010 at San Francisco International Airport on a valid F-1 student visa, which is established by DHS records and the applicant's credible testimony.

- The applicant's family contacted the applicant concerning having FGM performed on the applicant's U.S. citizen child.
- The applicant was in a car accident.
- The applicant consulted with someone on immigration matters.
- The applicant graduated in January 2015.

The applicant filed for asylum on March 3, 2015, which is date-stamped on the applicant's I-589.

Student Worksheet

For each pair (round of questions), identify the type of circumstance involved and how long the applicant delayed before filing.

1a. Possible circumstance: _____

1b. Length of delay: _____

Notes/Issues to Address: _____

2a. Possible circumstance: _____

2b. Length of delay: _____

Notes/Issues to Address: _____

3a. Possible circumstance: _____

3b. Length of delay: _____

Notes/Issues to Address: _____

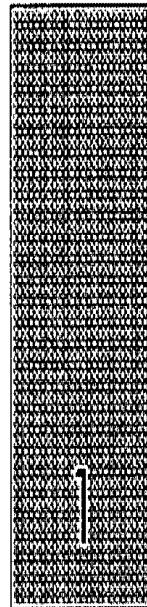
4a. Possible circumstance: _____

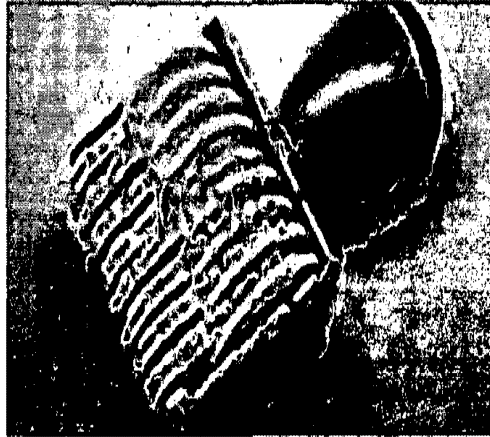
4b. Length of delay: _____

Notes/Issues to Address: _____

REAL ID ACT

HQ ASYLUM, MARCH 2017





DATE OF ENACTMENT - MAY 11, 2005

ONLY APPLIES TO ASYLUM APPLICATIONS FILED ON OR
AFTER THIS DATE



REAL ID ACT

Most relevant aspects of the law (for Asylum):

- **Codified certain asylum case law provisions re: Nexus, Corroboration, and Credibility**
- Broadened TRIG
- Removed cap on adjustments of status for asylees (had been 10,000/year)
- Removed cap on grants of asylum based on CPC (had been 1,000/year)

CHANGES UNDER REAL ID

3 Main Points

1. **Nexus**

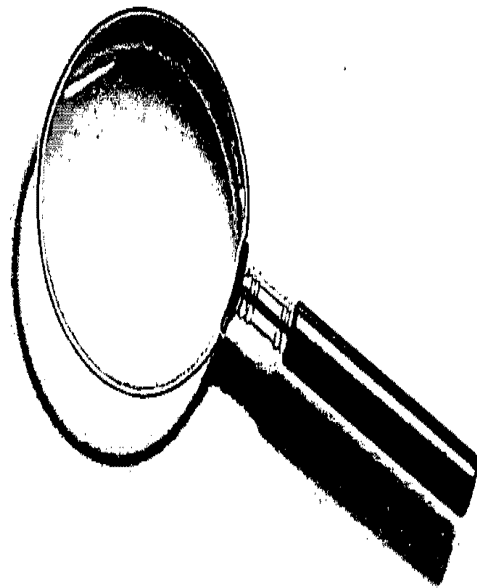
INA § 208(b)(1)(B)(i)

2. **Corroborating Evidence**

INA § 208 (b)(1)(B)(ii)

3. **Credibility**

INA § 208(b)(1)(B)(iii)



1. NEXUS

The grounds remain the same...

- Race
- Religion
- Nationality
- Membership in a Particular Social Group ("PSG")
- Political Opinion

REAL ID did not change any of the grounds but it clarified what an applicant's must demonstrate to establish a nexus.

1. NEXUS

- “[O]ur **standard** in mixed-motive cases has **not been radically altered** by the [REAL ID Act]”
- The protected ground “**cannot play a minor role** in the [applicant's] past mistreatment or fears of future mistreatment.”
- The protected ground **cannot be “incidental, tangential, [or] superficial . . . to another reason for harm.”**
- “[M]otivation of the persecutors involves questions of fact, and the burden **can be met by testimonial evidence.**”

Matter of J-B-N- & S-M-, 24 I&N Dec. 208, 214 (BIA 2007)

1. NEXUS: "ONE CENTRAL REASON"

"There is **no requirement** that the motivation relating to the protected ground **be dominant or primary.**"

Parussimova v. Mukasey, 555 F.3d 734, 741 (9th Cir. 2009).

But it must be "**at least one central reason.**"

INA § 208(b)(1)(B)(i)

1. NEXUS

For Assessment Writing

Identify the nexus and analyze facts to show that at least **one central reason** that the persecutor harmed applicant was on account of a protected ground.

- From the ADOTC Grant Assessment Template (DRAFT)

2. CORROBORATION

“**[T]estimony** of the applicant **may be sufficient** to sustain the applicant's burden without corroboration, **but only if** the applicant satisfies the trier of fact that the applicant's testimony is **credible, is persuasive, and refers to specific facts sufficient to demonstrate** that the applicant is a refugee.”

INA § 208 (b)(1)(B)(ii).

2. CORROBORATION

“[T]he trier of fact (**YOU**) may weigh the **credible testimony** along **with other evidence of record.**”

§

“Where the trier of fact determines that the applicant should provide evidence that corroborates **otherwise credible testimony**, such evidence **must be provided** unless the applicant **does not have** the evidence and **cannot reasonably obtain** the evidence.”

AKA the “Corroboration Rule” - INA § 208 (b)(1)(B)(ii).

3. CREDIBILITY DETERMINATIONS

**“THERE IS NO
PRESUMPTION OF
CREDIBILITY”**

INA § 208 (b)(1)(B)(iii)

3. CREDIBILITY DETERMINATIONS

What is credible testimony?

Testimony is credible if it is “detailed, consistent, and plausible.”

3. CREDIBILITY DETERMINATIONS

Considering the **totality of the circumstances**, and **all relevant factors**, a trier of fact **may** base a credibility determination* on:

- **Demeanor**, candor, responsiveness
- Inherent **plausibility** of the applicant's account
- **Consistency** between the applicant's written and oral statements**
 - internal consistency between all such statements;
 - consistency between such statements and other evidence of record (including DOS Country Conditions reports)
- Any inaccuracies or falsehoods in such statements
 - without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim
- **Any other relevant factor**

INA§208(b)(1)(B)(iii)

*Of any applicant or witness

**Whenever made and whether or not under oath, and considering the circumstances under which the statements were made

REMINDER: THE BASIS WAS IN CASE LAW...

The **BIA** has held that the factors listed in the REAL ID Act relevant to credibility determinations were chosen because they were "**identified in case law**" and therefore help provide a "uniform standard for credibility."

Lack of Detail*

Internal Inconsistency

External Inconsistency

Plausibility

Inaccuracies or falsehoods

Candor or Responsiveness

Demeanor

Any other relevant factor

*Not listed in the statute but see: *Matter of Mogharrabi*

REMINDER: TOTALITY OF THE CIRCUMSTANCES

Each specific instance of any credibility concern must be addressed and then afforded the appropriate probative weight given the **"TOTALITY OF THE CIRCUMSTANCES"**

What does it mean?

According to the BIA, it is basically **the context of the entire record.**

3. CREDIBILITY DETERMINATION

TOTALITY OF THE CIRCUMSTANCES

Chinese Christian claim. IJ made adverse credibility determination based on several factors, including:

- applicant said he had to stand outside in the heat during his 2nd day in detention; written statement said 3rd day.
- applicant could not recall date or year of arrest – said it was within “four, five, or six months” of departure from China
- applicant's recitation of Lord's prayer was incorrect – knowledge of Christianity less than basic.

Ren v. Holder, 648 F.3d 1079 (9th Cir. 2011)

3. CREDIBILITY DETERMINATION

TOTALITY OF THE CIRCUMSTANCES

Factors

- Age: 19
- Father's recent death
- Separation from mother
- Put in care of "unsympathetic aunt"
- Long journey to US
- 8 months in detention upon arrival in US
- Applicant's explanations

Outcome

- BIA overturned an immigration judge negative credibility finding – based on the "totality" including these factors
- BIA held the applicant presented a plausible, detailed and internally consistent asylum claim

3. CREDIBILITY DETERMINATIONS

For extended discussions on:

- Demeanor
- Plausibility
- Inconsistencies

Refer to:

- RAIO CT Class "Credibility Determinations"
- RAIO Credibility Lesson Plan
- Asylum Supplement to the LP

3. "ANY OTHER RELEVANT FACTOR"

"Relevant" facts

- Do not have to go to the heart of the claim;
- But still must be logically connected;
- Tend to either prove or disprove a matter at issue (i.e. moves the needle one direction or the other)

REMINDER: ADDRESSING SPECIFIC CREDIBILITY CONCERNS

- Identify the type of credibility concern;
- Inform the applicant of your concern;
- Ask the applicant to explain;
- Assess the reasonableness of the explanation in the totality of the circumstances, given all relevant factors.

This is not a linear process. All these elements are ongoing and can happen before, during, and/or after the interview.

REMINDER: "ELICIT"

"To elicit": VERB

*to call forth or draw out
(as information or a
response)*

More than just asking a list of questions

- Listening
- Thinking
- Responding
- Documenting
- Clarifying
- Repeating
- Pausing
- *What else?*

TIPS FOR ELICITING ON CREDIBILITY

- Ask about biographic information
- Listen carefully
- Ask for the details you need
- Ask questions out of chronological order (when appropriate)
- Ask the applicant to explain again
- Take careful notes
- Review documents carefully
- Remain composed, even when you suspect misrepresentation

REMINDER: FACTORS THAT CAN PRESENT AS CREDIBILITY CONCERNS

Remember factors from the RAIO CT and all the LPs regarding factors such as:

- Incomplete / faulty memory
- Varied impacts/manifestations of trauma
- Cultural / societal barriers
- Dialect / Language Issues
- Limited Access to Counsel or understanding of the System
- Sensitive Topics (sexual violence, FGM, sexual orientation, etc.)

*These may be **RELEVANT** factors that you should address in the interview and in your analysis of the **TOTALITY OF THE CIRCUMSTANCES!***

REMINDER: FACTORS THAT ARE NOT
RELEVANT TO CREDIBILITY
DETERMINATIONS

- Your moral or value judgments
- The fact that applicants may make statements that are "self-serving"
- Your speculation as to what is plausible
- AO fatigue with hearing similar claims or dealing with similar populations
- **The legal conclusion that the Applicant's fear is not well-founded**

3. CREDIBILITY DETERMINATION

For Assessment Writing

If positive credibility finding, write:

- **“The applicant's testimony was detailed, consistent, and plausible. Therefore, it is found credible”**

If negative credibility finding:

- Fully analyze the relevant credibility factors

REAL ID ACT RECAP

Take Away Points

1. Nexus → “**one central reason**”
2. Corroboration Rule
3. Credibility → Any **relevant** factors in the **totality of the circumstances**