

Children's Claims

RAIO CTP - 703 & 704

February 23 & 24, 2017

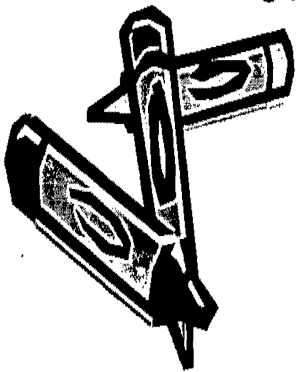
Jane Kochman

RAIO Asylum Division, HQ Officer



Topics

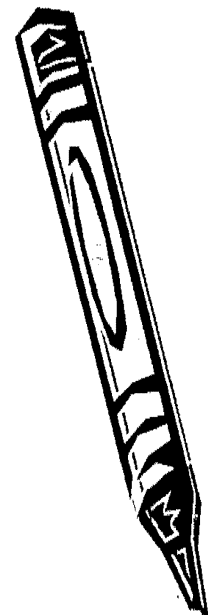
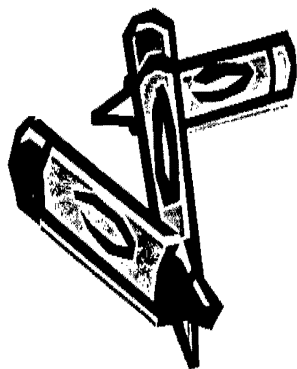
- International Guidance
- Cultural & Developmental Factors
- Interview Considerations
- Legal Analysis:
 - Describe how persecution should be analyzed; and
 - Identify issues of nexus in children's asylum claims.



International Guidance

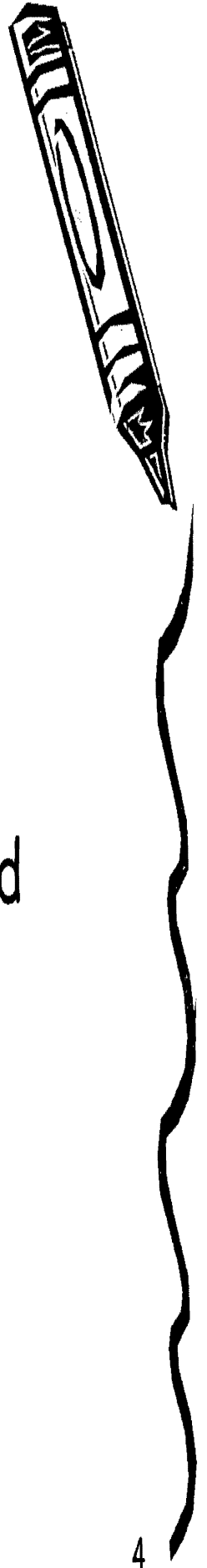
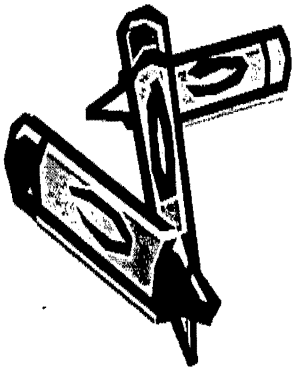
- Universal Declaration of Human Rights
- Convention on the Rights of the Child
- UNHCR ExCom Conclusions # 47, 59, and 107
- UNHCR Policies and Guidelines.

"Best interests of the child" principle in international guidance



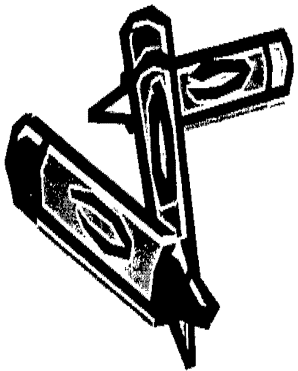
Influential Factors in Child Development

- Chronological age
- Physical and emotional health
- Psychological development
- Societal status and cultural background
- Cognitive processes
- Language ability



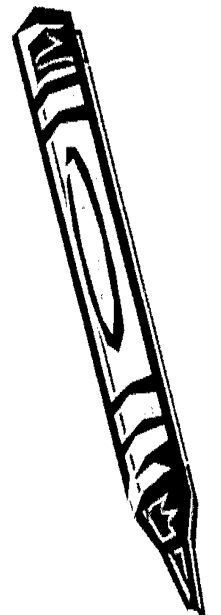
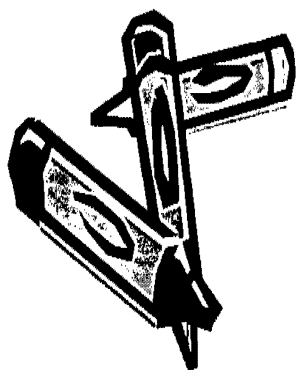
Factors that Accelerate or Stunt Development

- Chaotic social conditions
- Experience with forms of violence
- Lack of protection and caring by significant adults
- Nutritional deficits
- Physical and mental disabilities



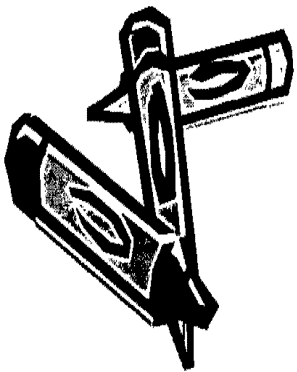
Children's Preconceptions

- All governments are corrupt
- Others still at home will be harmed
- He or she should feel guilty for fleeing
- Others will be privy to the testimony



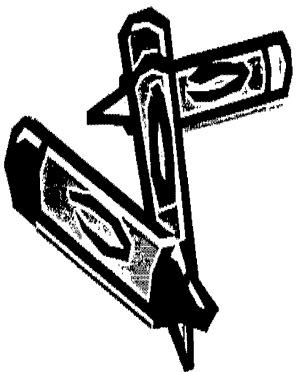
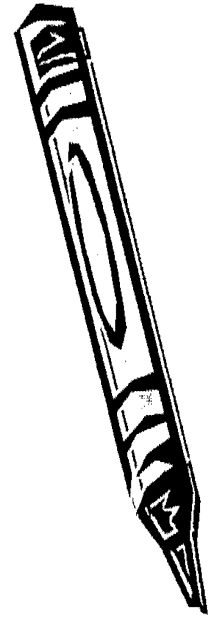
Procedural Considerations

- Determining capacity to apply
 - Capacity to understand what applying for?
 - Objective basis for ignoring parents' wishes?
 - Who has legal authority to speak for the child?



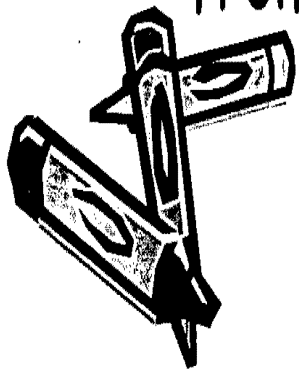
Presence of a Trusted Adult or Child Advocate

- Familiar and trusted source of comfort
- Not a substitute for an attorney or representative
- Not a coach, but may be allowed to help the child explain things



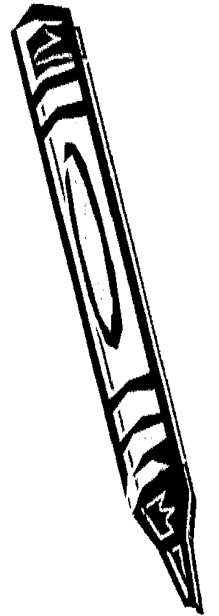
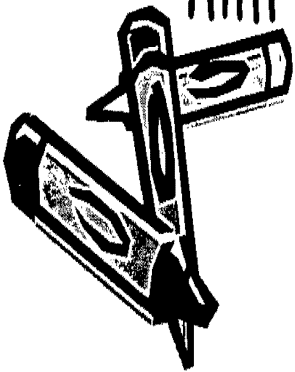
Building Rapport

- Non-adversarial is crucial
- Officer's position of authority - a likely obstacle
- Start with an interest in the child as an individual
- Discuss neutral topics
- Consider asking about child's interests from attending adult beforehand



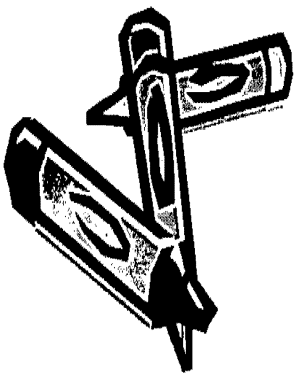
Opening Statement

- Given once child appears comfortable
- Should explain roles of persons present
- Should reassure child that embarrassing or traumatic experiences will not be shared with others
- Should reassure child that it's okay to say "I don't understand" or "I don't know"
- Should reassure child that it's okay for him or her to ask questions

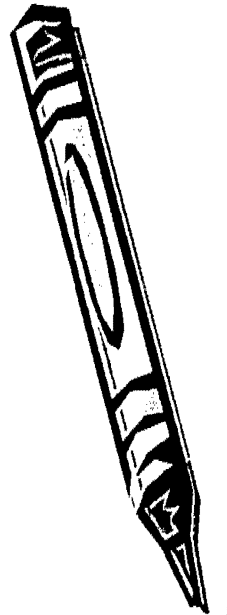


General Interview Considerations

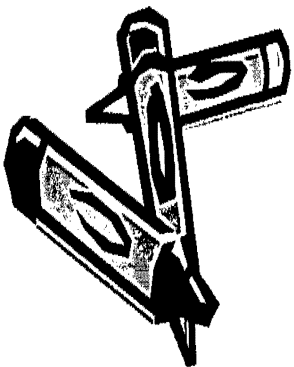
- Watch for non-verbal cues
- Offer verbal reassurances
- Shift the focus when necessary
- Take the initiative to suggest breaks



Child-Sensitive Questioning and Listening Techniques

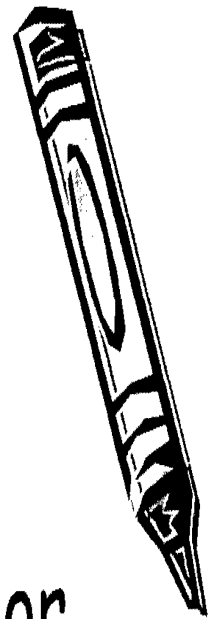
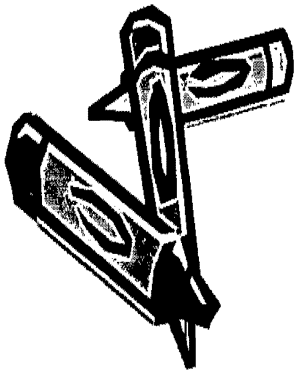


- Use short, age-appropriate questions
- Avoid leading questions
- Explain any repetition of questions
- Never coerce a child into answering a question



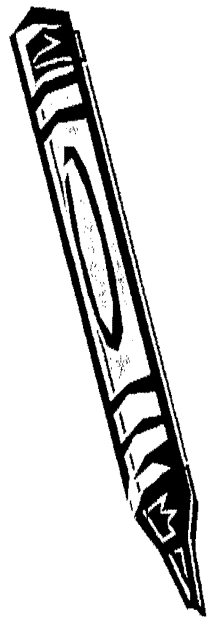
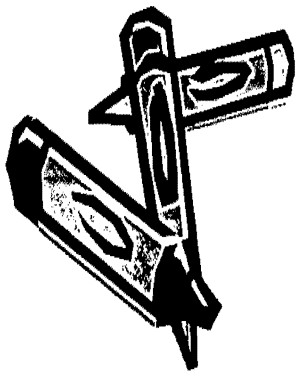
Questioning and Listening Techniques (cont'd.)

- Ask child to define terms that he or she uses, then use those terms
- Use easy words; active voice
- Allow a narrative without interruption
- Tolerate pauses



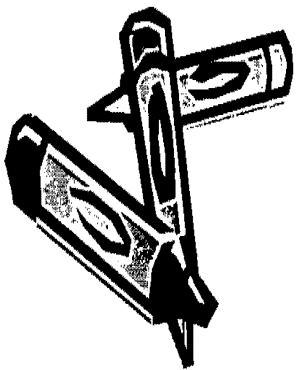
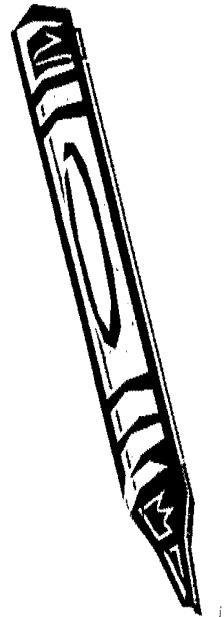
Children's Credibility Considerations

- AO must consider child's age, relative maturity, ability to recall events, and psychological factors
- Demeanor: culture plays a prominent role
- Trauma: manifests itself differently among children; don't misinterpret



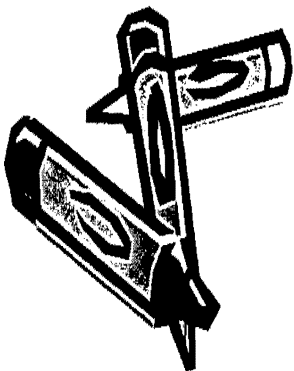
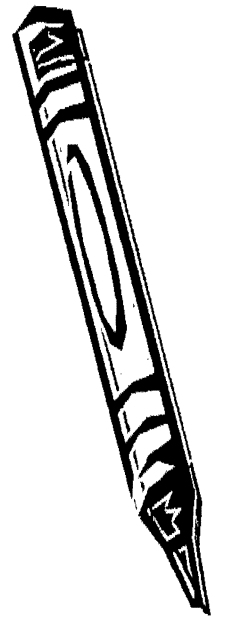
Other Credibility Considerations

- Age and development: at time of events and retelling
- Impact of time lapse
- Limited knowledge of circumstances
- Role of others in preparing the child for interview



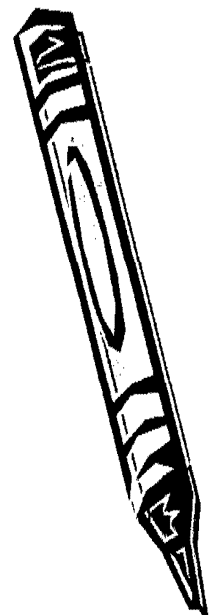
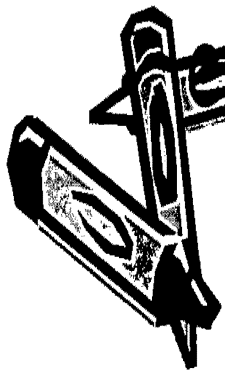
Evidence

- Testimony alone may be sufficient.
- Corroborating evidence may come from:
 - testimony from family and community members
 - evidence from medical personnel, teachers, psychologists
 - country conditions evidence of those similarly situated



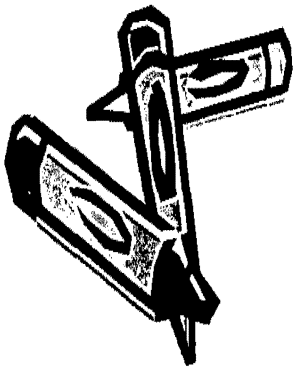
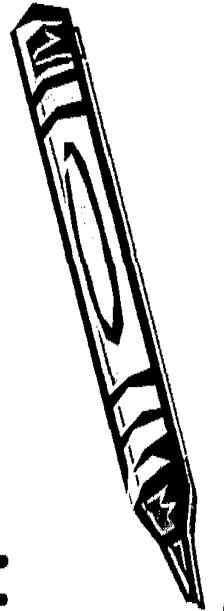
Legal Analysis: Definition of a Refugee

- Definition applies to all individuals regardless of age
- Nonetheless, particular regard should be given to a child's stage of development, possible limited knowledge of conditions, and special vulnerability
- "Best interests of child" does not replace definition in determining eligibility



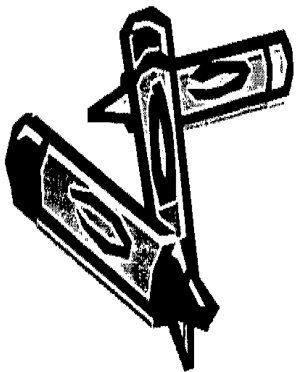
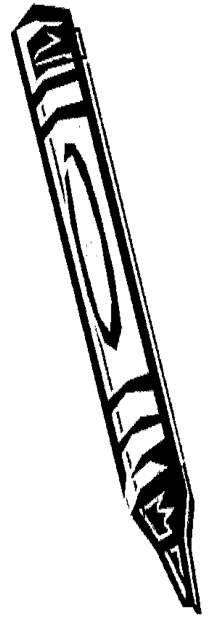
Persecution: level of harm

- Harm that rises to the level of persecution for a child may not be serious enough to rise to the level of persecution for an adult.



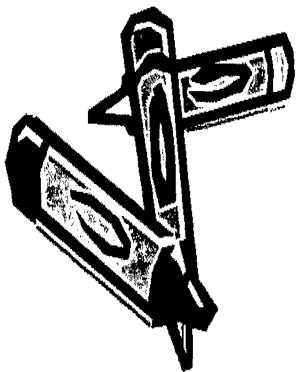
Persecution: whether harm rises to persecution

- Consider non-physical harm
- Even with calibrating the analysis based on age, harm may not constitute persecution



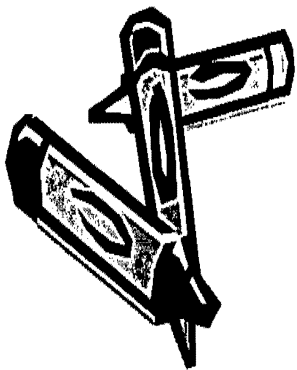
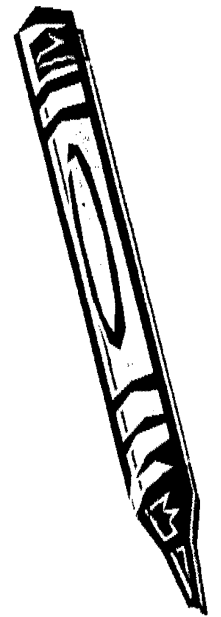
Types of harm to children

- Types of harm that may befall children are varied
- Cultural practices that target young people may constitute persecution
- May often involve non-state actors



Well-founded fear

- May need to give more weight to objective circumstances
- Family members may be seen as “similarly situated”
- Family’s intentions in sending child abroad may be relevant
- Circumstances of child’s arrival may provide clues



Nexus Issues

- Adults may inflict harm on children without viewing it as such
- Political opinion - cannot be discredited because of age
- Imputed political opinion - family may play a key role
- Particular social group - issues of family membership, age and gender likely to arise

