



U.S. Customs and
Border Protection

March 19, 2009

MEMORANDUM FOR: Executive Directors

Acting Director, Preclearance
Operations

Directors, Field Operations
Office of Field Operations

Director, Field Operations Academy
Office of Field Operations

FROM:

for Assistant Commissioner
Office of Field Operations

(b) (7)(C), (b) (6)

SUBJECT: Implementation of the William Wilberforce Trafficking Victims
Protection Reauthorization Act of 2008 (TVPRA)

On December 23, 2008, President Bush signed into law the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) to combat human trafficking and provide for the care and custody of unaccompanied alien children (UAC). U.S. Customs and Border Protection (CBP) is expected to implement the provisions of the TVPRA beginning March 23, 2009. The attached CBP Interim UAC Guidance outlines policy and procedures to be followed when processing UAC.

The TVPRA mandates, with limited exceptions, that all UAC CBP seeks to remove from the United States must be referred for removal proceedings under section 240 of the Immigration and Nationality Act (INA). A UAC who is a national or habitual resident of Canada or Mexico may be allowed to withdraw his or her application for admission only if CBP screening indicates that the UAC meets all of the criteria specified in the attached guidance. In addition, CBP officers are expected to follow the policy guidance specific to Field Operations outlined in this memorandum.

An alien child traveling alone is not necessarily a UAC. When an alien child traveling alone is encountered, Field Operations must first ascertain if the alien child has, or is eligible for, lawful immigration status. If the alien child has lawful immigration status, then the child does not meet the definition of a UAC. If Field Operations exercises discretion (e.g. waivers of inadmissibility) to confer lawful immigration status on an alien child, then the child is not a UAC. Port paroles

do not meet the threshold of lawful immigration status for the purpose of determining a child's status as a UAC.

Typically, Field Operations should accept permission slips and other equivalent proof as appropriate documentation indicating temporary guardianship. For instance, an alien child traveling with a public or private school group, religious group, social or cultural organization, or team associated with a youth sport organization under the supervision of an adult affiliated with the organization should generally be considered to be traveling with a guardian.

If a parent or legal guardian is available to provide care and custody for an alien child, then the child does not meet the definition of a UAC. However, Field Operations must assess the immigration status of the parent or legal guardian to determine an appropriate disposition for the entire family unit.

While Field Operations conducts UAC screening with CBP Form 93, validity of claims of asylum and/or trafficking are decided by other components within the Department of Homeland Security. Field Operations should be aware that fraudulent or frivolous claims of asylum and/or trafficking may increase after implementation. Directors, Field Operations (DFOs) should contact the appropriate counterpart at Immigration and Customs Enforcement (ICE) Office of Investigations to establish procedures specific to that field office for a more immediate assessment of trafficking risks.

Field Operations should strive to transfer the custody of all UAC within 24 hours, as outlined in CBP Directive 3340-030B, date August 8, 2008. For situations that require detention of UAC at a port of entry (POE) beyond 24 hours, the DFO must be notified. DFOs must continue to work with ICE, Detention and Removal Operations (DRO) to resolve issues related to detention, including UAC. Although the Office of Refugee Resettlement (ORR) is responsible for the care and custody of all UAC in Federal custody, DRO is the mechanism that Field Operations utilizes to obtain placement in an ORR-designated facility.

Although not specifically mentioned in the TVPRA, Field Operations must also take appropriate steps to ensure the safety and welfare of U.S. citizen children traveling without a parent or legal guardian. Referrals to local child service organizations or law enforcement agencies may be appropriate based on the totality of circumstances.

Please ensure the attached interim guidance is disseminated to all ports of entry in your area of responsibility. If you have any questions regarding this memorandum or guidance, please have a member of your staff contact (b) (6), (b) (7)(C) Acting Executive Director, Admissibility and Passenger Programs, at (b) (6), (b) (7)(C).

Attachments

U.S. Customs and Border Protection
Interim Guidance on Processing Unaccompanied Alien Children

The William Wilberforce Trafficking Victims Protection Reauthorization Act, 2008 (TVPRA) was signed into law on December 23, 2008. The TVPRA will significantly impact CBP operations regarding unaccompanied alien children (UAC) apprehended by CBP at and between the ports of entry. Below are specific guidelines that all CBP officers and agents should use to determine the appropriate immigration proceedings and applicable procedures for the treatment of UAC. CBP is obligated to initiate the changes from the TVPRA beginning March 23, 2009. The TVPRA mandates, with limited exceptions, that all UAC CBP seeks to remove from the United States must be placed in removal proceedings under section 240 of the Immigration and Nationality Act (INA).

The term "UAC" is defined by section 462(g) of the Homeland Security Act of 2002 (6 USC § 279(g)) as a child who:

- (A) has no lawful immigration status in the United States¹;
- (B) has not attained 18 years of age; and
- (C) with respect to whom—
 - (i) there is no parent or legal guardian in the United States; or
 - (ii) no parent or legal guardian in the United States is available to provide care and physical custody.

CBP has developed a "UAC Determination Sheet" for additional guidance (attached). If there is a reasonable claim or suspicion that an alien in CBP custody is under 18 years of age and the other criteria listed in the definition above are met, then the alien shall be treated as a UAC. The TVPRA requires Health and Human Services (HHS), in consultation with DHS, to identify procedures to make a prompt determination of age of an alien in CBP custody. CBP will continue to follow established procedures regarding age determination.

Typically, CBP should accept verifiable permission slips and other equivalent evidence as appropriate documentation indicating temporary guardianship. For instance, an alien child traveling with a public or private school group, religious group, social or cultural organization, or team associated with a youth sport organization under the supervision of an adult affiliated with the organization should be considered to be traveling with a guardian.

The TVPRA clarifies family reunification procedures for CBP. As of March 23, 2009 CBP may only reunify alien children with parents or legal guardians who are in possession of supporting documentation and are within the United States. HHS is responsible for the determination that any other proposed guardian, including a family member who lacks documentation of guardianship (e.g. grandparent, aunt/uncle, and brother/sister), is capable of providing care and physical custody.

CBP will process UAC expeditiously and complete the documentation necessary for case processing. If the UAC is under 14 years of age, or unable to understand his or her rights, the apprehending officer or agent must be sure to read and explain all documents in a language that the UAC can understand.

¹ Children under the age of five who are found within the United States, commonly referred to as "foundlings" are assumed to be United States citizens and, as such, have lawful immigration status in the United States.

Special Rules for Children from Contiguous Countries (UAC Screening):

The TVPRA states that any UAC determined to be a national or habitual resident of a country that is contiguous with the United States shall undergo a screening process before the UAC may be returned.

UAC Screening: CBP may allow a UAC who is a national or habitual resident of a country that is contiguous with the United States (i.e. Canada and Mexico) to withdraw the application for admission and/or be voluntarily returned if CBP determines that all three of the below-listed criteria exist:

1. The UAC is able to make an independent decision to withdraw the application for admission to the United States and/or be voluntarily returned to his/her country of nationality or last habitual residence.
 - a. CBP must determine whether the UAC is able to make an independent decision on a case by case basis. However, there are a few factors that CBP may take into consideration;
 - i. UAC 14 years of age and older should be considered presumptively able to make an independent decision unless circumstances indicate otherwise.
 - ii. UAC under the age of 14 should be considered presumptively unable to make an independent decision unless circumstances indicate otherwise.
 - b. The guidelines above do not alleviate the need for the officer or agent to determine the ability of the UAC to make an independent decision on a case-by-case basis. These presumptions may be overcome based on a number of factors including, but not limited to, the child's intelligence, education level, familiarity with the immigration process, and physical and mental state at the time of processing. If it is believed that UAC does not fully understand his/her rights, then removal proceedings will be initiated under section 240 of the INA and the UAC will be transferred to ORR custody. The basis for all determinations regarding independent decisions will be annotated in the narrative of the Form I-213.
2. The UAC does not have a fear of returning to his or her country of nationality or last habitual residence owing to a credible fear of persecution.
 - a. CBP will use the UAC Screening Addendum, CBP Form 93, to provide the UAC with an opportunity to express such a fear of returning. If the UAC indicates a fear or CBP identifies factors indicating a fear is likely to exist, then removal proceedings will be initiated under section 240 of the INA and the UAC will be transferred to ORR custody.
3. The UAC has not been a victim of a severe form of trafficking in persons and there is no credible evidence that the UAC is at risk of being trafficked upon return to his or her country of nationality or last habitual residence.
 - a. CBP developed a UAC Screening Addendum, CBP Form 93, to assess the likelihood that a UAC has been a victim of trafficking or is at risk of being trafficked. If the UAC claims to have been a victim, or appears to be at risk, removal proceedings will be initiated under section 240 of the INA and the

UAC will be transferred to ORR custody. CBP will refer these cases to U.S. Immigration and Customs Enforcement (ICE), Office of Investigations (OI), for further investigation.

If CBP determines that the UAC meets **all** of the above criteria, then the UAC may be processed as a withdrawal or voluntary return. Current policies regarding repatriation, as outlined by local Repatriation Agreements, remain in effect. UAC must be returned to appropriate trained officials of contiguous countries during reasonable business hours.

If a UAC does **not** meet all of the above criteria or if CBP **cannot** make a determination within 48 hours of apprehension of the UAC, then the UAC shall be placed in removal proceedings under section 240 of the INA and immediately transferred to ORR.

Visa Waiver Program (VWP)

UAC who apply for admission under section 217 of the INA who are determined to be ineligible for admission under that section or to be inadmissible to the United States under section 212 of the INA (other than for lack of a visa), or who are in possession of and present a fraudulent or counterfeit travel documents should be refused admission into the United States. CBP may continue to process these UAC as VWP Refusals with the UAC Screening Addendum used as a guide for assessing the risk of trafficking and/or credible fear. Generally, a UAC applying for admission under the VWP who expresses a fear of returning to his or her country of nationality or last habitual residence owing to a credible fear of persecution or who has been a victim of trafficking or who is at risk of being trafficked should be referred for a limited review hearing by an Immigration Judge using Form I-863. UAC who are or who may be victims of trafficking will also be referred to ICE-OI and custody will be transferred to ORR. UAC apprehended by CBP and amenable to removal under section 217 of the INA will be placed in removal proceedings under section 240 of the INA and custody will be transferred to ORR.

All Other Children:

UAC who do not meet the exceptions above and whom CBP seeks to remove from the United States must be placed in removal proceedings under section 240 of the INA. Immediate notifications to the Juvenile Coordinator within ICE Detention and Removal Operations (DRO) and ORR, Division of Unaccompanied Children's Services (DUCS) must occur. Notification must occur within 48 hours from the apprehension or discovery of a UAC or any claim or suspicion that an alien in custody is unaccompanied and under the age of 18. This will expedite the transfer of custody and placement of UAC into ORR facilities.

CBP will process UAC expeditiously and complete the documentation necessary for inclusion in the alien file (A-file). A Form I-770 must be completed and a copy provided to all UAC. If the UAC is under 14 years of age, or unable to understand Form I-770, the apprehending officer or agent must be sure to read and explain all documents in a language that the UAC can understand. The attached A-file Preparation Guide has been designed to assist officers and agents in ensuring that all appropriate documents have been completed.

When CBP issues an NTA to a UAC under 14 years of age, it may be necessary to delay service of the NTA until custody can be transferred to ORR. ORR should sign the NTA and other legal documentation and receive all copies of legal documentation on behalf of the UAC.

Custody of the UAC will be transferred to ORR (generally through DRO) as soon as possible. Consistent with the language of the TVPRA, custody must be transferred to ORR no later than 72 hours after determining that a child is a UAC. This does not preclude an earlier transfer as existing CBP policy seeks to accomplish custody transfer of all UAC within 24 hours.

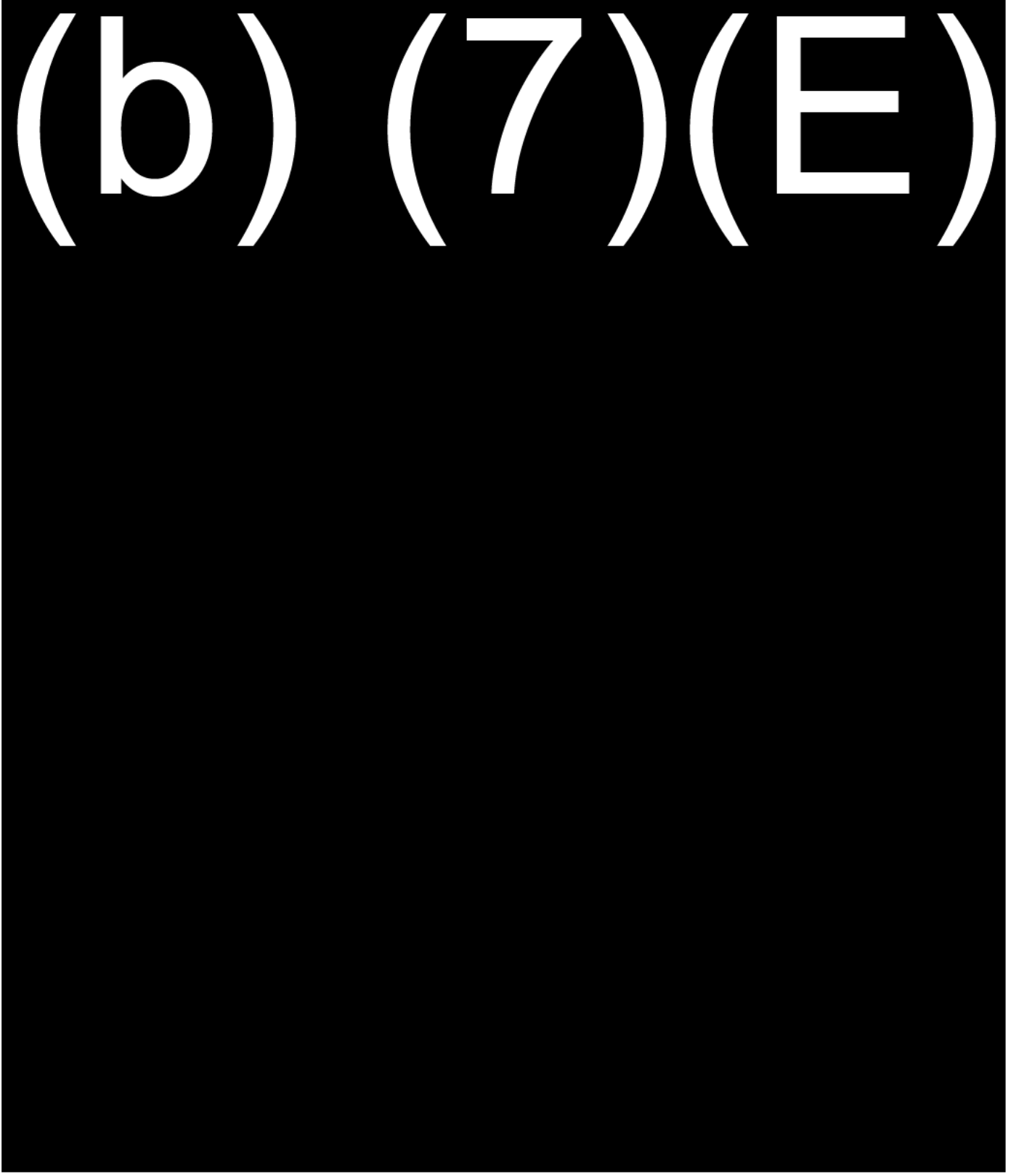
While awaiting transfer to an ORR-designated facility, UAC must be held in a suitable area in compliance with the Flores Settlement Agreement. CBP will separate UAC from unrelated adults whenever possible. Where such separation is not immediately possible, a UAC should not be detained with an unrelated adult for more than 24 hours. All post-arrest facilities, including temporary holding areas, will provide access to:

- toilets and sinks;
- drinking water and food, as appropriate;
- emergency medical assistance;
- adequate temperature control and ventilation; and,
- adequate supervision to protect UAC from others.

When a UAC is apprehended and is amenable to criminal prosecution, notification to ORR within 48 hours and transfer to ORR within 72 hours is necessary.

UAC A-File Preparation Guide

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