



Immigration Advocates
NETWORK

Best Practices for Screening and Representing Unaccompanied Children

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Panelists

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Overview

- Unaccompanied children and detention
- Interviewing children: a social worker's perspective
- Legal options for children: SIJS, Asylum, and more
- Discussing legal strategies with children



Unaccompanied Children

- An unaccompanied minor is a child who:
 - (1) has no immigration status in the United States;
 - (2) is under 18 years of age; and
 - (3) has no parent or legal guardian in the United States See 6 U.S.C § 279(g)(2).
- Most youth coming to the United States are fleeing severe poverty, domestic violence, community violence, and have suffered extreme trauma in their home countries.



Detention of Unaccompanied Children

- Homeland Security Act gave custody of UCs to the Office of Refugee Resettlement
 - Unaccompanied Children's Services Program
- In ORR custody, children are detained in a foster care, shelter, staff secure, residential treatment or secure setting.
- Children are entitled to be detained in the *least restrictive setting*.
- While detained children receive a KYR presentation and legal screening.
- Children have the right to release to a family member in the United States.



Interviewing Children and Youth

Keep in mind that many of these children and youth have experienced trauma!

Assess

- Considerations for communication: language, educational level, chronological age versus developmental age, mental health issues



Interviewing Children and Youth

Introduction

- Obtain as much information as possible before interview and share with the child what you know
- Think about the environment
- Provide Choice
- Define role
- Explain reason for meeting
- Confidentiality (and limitations if any)
- Provide a guide for interview/meeting
- ASK BACK to assess for understanding



Interviewing Children and Youth

Interview

- Transparency
- Non-judgmental stance
- Continually check in
- Silence
- Use the child's language
- Allow child to see notes or computer screen



Interviewing Children and Youth

Wrap-Up

- Review next steps
- Ask the child if they have questions
- Check in about child's emotional state
- Make appropriate referrals



Interviewing Children and Youth

Managing Relationships with Adults

- With children come adults- sponsors, extended family, other professionals.
- Remember that the child is the client!
- Remind both child and adult caregiver that child is client.
- Make referrals for adults when appropriate.



Special Immigrant Juvenile Status

- Special Immigrant Juvenile Status (SIJS) is a form of relief for children who:
 - Are under 21
 - Are unmarried
 - Cannot reunify with one or both parents due to abuse, neglect, abandonment, or similar state law basis
 - Are under the jurisdiction of a state juvenile court
 - For whom return to home country is not in their best interests
- Children granted SIJS cannot file immigration petitions on behalf of their parents



SIJS – Juvenile Court

- To apply, child must first obtain factual findings from a “juvenile court”
 - Defined as “any court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.” 8 C.F.R. § 204.11(a)
 - Examples: dependency/foster care, probate/guardianship, delinquency, family court
- Juvenile Court order must include factual findings concerning all five eligibility criteria for SIJS



SIJS

- USCIS has exclusive jurisdiction over application
 - Specific consent required only in limited circumstances when child is in federal custody
 - USCIS must adjudicate SIJS applications within 180 days of filing
 - USCIS has consistently failed to do so, especially since implementing central processing of SIJS applications
- The child must remain under juvenile court jurisdiction for entire immigration process
 - Other than age-out, protected in *Perez Olano* settlement, the child must continue to meet all SIJS criteria and juvenile court order must remain in effect



SIJS Based Adjustment

- Once SIJS is granted, youth is eligible to adjust status once a visa number becomes available
 - For some applicants this happens immediately, but several countries are subject to years-long backlogs
 - Can be done concurrently before USCIS if child not in removal proceedings and visa is available
- EWI, public charge, and many other common inadmissibility grounds do not apply or can be waived
 - https://www.ilrc.org/sites/default/files/resources/humanitarian_part_ii.asylum.sijs_.pdf



SIJS - Recent Challenges

- USCIS has increasingly issued RFE/NOIDs inappropriately challenging juvenile courts' fact finding or imposing *ultra vires* requirements
- USCIS has been denying over-18 SIJS applications by challenging juvenile court jurisdiction
 - Advocates are currently challenging this policy change in CA and NY



Asylum

- Protects people who have suffered persecution or fear persecution in their home country on account of 1 of 5 protected grounds
- Difference between asylee and refugee
 - Refugees are granted protection abroad and then enter the U.S.
 - Asylees are granted protection after they enter the U.S.



Asylum: Analyze via Child-Specific Lens

- Consult key materials (USCIS AOBTC Guidelines for Children's Claims (2009), UNHCR Children's Guidelines (2009), INS Guidelines (1998)) to re-frame your view
- Remember children may suffer child-focused forms of persecution, including family violence (within or toward the family), child trafficking, forced underage recruitment into armed conflict, FGM, forced or underage marriage



Asylum: Analyze via Child-Specific Lens

- The level of harm needed to establish persecution may be lower for a child than an adult
- Harm to family, depending on your circuit, may constitute harm to the child
- Children may not be able to articulate clear nexus, but it may nonetheless be proven
- Do not discount political opinion, religious beliefs, sexual orientation/gender identity of children – actual or imputed



Asylum: Changes for Unaccompanied Minors

- TVPRA gives USCIS Asylum Office initial jurisdiction over asylum claims of unaccompanied minors (UCs)
 - UCs also exempt from one-year deadline, safe third country bar
- USCIS has reversed its previous policy and claims it has initial jurisdiction only over I-589s filed by a child who meets all of the criteria for UC status *at the time of filing*
 - For other children, the Immigration Court may exercise initial jurisdiction



Asylum: Recent Changes to Case Law

- *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018):
 - Seeks to limit particular social groups (PSGs) as a grounds for relief, particularly in domestic violence and nonstate persecutor cases
- *Matter of L-E-A-*, 27 I&N Dec. 581 (A.G. 2019):
 - Seeks to limit family as a cognizable PSG
- Despite their troubling language, neither case alters the framework for determining a PSG or standard for nonstate persecutor cases



Asylum: Proving Up the Case

- I-589 (be careful!)
- Child's statement
- Witness statements (here or abroad)
- Medical report
- Psychological assessment (harm & credibility)
- Strong country conditions
- Country conditions expert
- Legal brief



Other common forms of relief

- T visas
 - Law enforcement certification not required for children
 - For any child who is a victim of a commercial sex act or children who are victims of labor trafficking
 - <http://www.acf.hhs.gov/programs/orr/resource/child-trafficking>
- U visas
 - Children may be eligible as victim of crime themselves or as a derivative of a sibling or parent
- DACA
 - Not available for any recent arrivals – but sometimes an option for children detained in interior
 - DACA rescission is currently being challenged in court



Strategies for Discussing Legal Options with Children and Youth

- Children and youth more than likely have experienced trauma, and other factors may also limit their communication (i.e. language, education level, mental health issues, etc.)
- When asking questions to determine legal relief, always keep these factors in mind and make questions child-friendly:
 - Open-ended questions
 - Repetition
 - Empowerment



Open Ended Questions

- Why did you come to the United States?
- Why can't you return to your home country?
- What would happen if you return to your home country?
- How would you feel if you had to return to your home country?



Repeating and Rephrasing

- Abuse can mean many things including emotional and psychological abuse. i.e. Using certain words or saying certain things can hurt you and that could be a form of abuse.
- Has a parent ever insulted you? What type of insults? what would these insults make you feel? why would your parent use these words to describe you?



Empowering the Client

- Reminding youth that they are in control: i.e. “This is your case. If you don’t feel comfortable answering the questions I am making, you can ask me to stop. We can take a break and continue at a different time.”
- If a youth is frustrated or doesn’t want to answer a question -- sit in silence. Allow the youth to process emotions and give them space to think things through.
- Ask youth, “Why do you think I asked about this...” to allow the youth to understand why certain things need to be asked or shared.



Discussing Asylum with Children and Youth

- Post Matter of A-B and Matter of L-E-A follow up questions:
 - Particular social groups similar to and/or related to Matter of A-R-C-G, “Guatemalan women unable to leave their partner” were allegedly overturned in Matter of A-B.
 - Family as the quintessential particular social group was allegedly overturned in Matter of L-E-A.
 - Child abuse or domestic violence claims and family based claims can still be argued as particular social groups despite these recent BIA cases but it may require additional follow up questions to strengthen the “particularity, immutability, and social visibility” of particular social groups.

Asking more detailed questions and explaining to youth why more details need to be shared is important to developing your legal case.



Sample Questions

- i.e. If a family particular social group:
 - How big is your community?
 - Would people in your town/village know you are part of your family? How would people in your community know you were X's brother?
 - did your family own a business? what was the business' name? how would people know your family ran the business? did you or your family work in the business?



Discussing Legal Strategy with Children and Youth

- UC status de-designation: recent changes in policy allows USCIS and/or the Immigration Judge to de-designate youth as UCs if reunited with a parent and/or if are over 18 at the time of filing of their I-589 applications. See Matter of M-A-C-O. See *a/so*, USCIS Policy Memo dated May 31, 2019.
- If de-designated as a UC, a child or youth would lose their opportunity to present their case in a non-adversarial venue first, will need to present their legal case in an adversarial setting before an immigration judge, subject to cross-examination and additional questioning by an immigration judge, and will be exposed to a lot more scrutiny.

When discussing options with a child or youth, explain the protections they may lose, why it would be better to present their case to an asylum officer first, and the importance of preserving their rights as UCs.



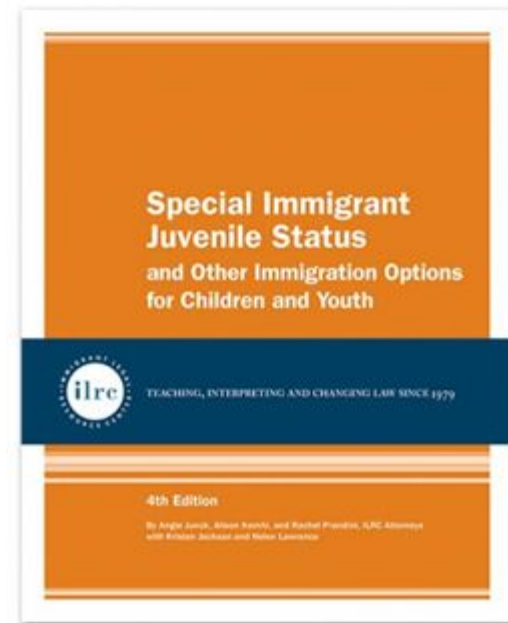
Explaining UC de-designation:

- Explain the difference between the Asylum Office and the Immigration Court. **Draw a picture of each **
- An asylum office is supposed to be friendlier. An asylum officer will be asking you questions about why you are afraid to return to your country and is supposed to be helping you. If an asylum officer doesn't give you asylum you can still have an opportunity to fight your case again in Court.
- Court is different. There's an attorney that represents the government. This attorney is going to ask you a lot of questions and try to confuse you. The immigration judge will also have a lot of questions for you. Court requires more questions/more testimony.



Special Immigrant Juvenile Status and Other Immigrant Options for Children & Youth

- Provides in depth information on SIJS and background on various forms of relief including: U Visa, VAWA, Asylum, Family, Citizenship
- Discussion of special topics including inadmissibility & deportability, state court systems, immigration consequences of crime and delinquency, and detention



To order: www.ilrc.org/publications

Additional Resources

❖ Asylum Guidelines:

- UNHCR: <https://www.unhcr.org/50ae46309.pdf>
- INS:
<https://www.aila.org/infonet/ins-guidelines-for-childrens-asylum-claims>
- AOBTC:
https://cliniclegal.org/sites/default/files/AOBTC_Lesson_29_Guidelines_for_Childrens_Asylum_Claims_0.pdf

❖ To follow ongoing SIJS litigation:

- CA: <http://www.publiccounsel.org/pages/?id=0011>
- NY: <https://www.legalaidnyc.org/sijs-update>



Questions

Questions?

(Use the chat box on the right of your screen to ask questions.)



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