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U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

DEC 07 2017

ACTION

MEMORANDUM FOR THE SECRETARY

FROM: James D. Neaton
Assistant Secretary
for International Affairs
Office of Policy, Strategy, and Plans

SUBJECT: **Re-designation of Unaccompanied Alien Children Who No Longer Meet the Statutory Definition and Verification of Sponsor's Immigration Status**

Purpose: To enable the re-designation of Unaccompanied Alien Children (UACs) when a child no longer meets the statutory definition and requires verification of a sponsor's immigration status, when appropriate, to prevent abuse and to ensure only qualified individuals access UAC safeguards and benefits.

Background: A UAC is defined in statute as a child who: (A) has no lawful immigration status in the United States; (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.¹ Designation as a UAC does not provide lawful immigration status, but UACs are afforded certain procedural safeguards and certain substantive advantages with respect to asylum eligibility that are not available to other aliens, including accompanied juveniles. Permitting individuals to maintain UAC designation when they are not, or no longer, statutorily qualified enables them and/or their parents and sponsors to exploit U.S. immigration laws and processes.

Current Practice

- Typically, UACs are first encountered when presenting themselves to U.S. Customs and Border Protection (CBP) at the border or a port-of-entry. However, U.S. Immigration and Customs Enforcement (ICE) may also apprehend UACs in the interior of the United States during immigration enforcement actions. Upon encounter, the apprehending agency must **determine whether a child meets the statutory definition of a UAC.**

¹ 6 U.S.C. § 279(g)(2).

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- In accordance with the law, all UACs must be transferred to the U.S. Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) within 72 hours of the UAC determination, barring exceptional circumstances.
- U.S. Citizenship and Immigration Services (USCIS) has initial jurisdiction over any asylum application filed by a UAC, regardless of whether the UAC is in removal proceedings or reunites with a parent or legal guardian after filing the application. For non-UACs in removal proceedings, it is ordinarily an Immigration Judge, not a USCIS Asylum Officer, who adjudicates an asylum application.
- **A 2013 USCIS memo requires USCIS to abide by initial UAC determinations made by CBP or ICE** for purposes of taking initial jurisdiction over an asylum application.² Pursuant to this 2013 memo, USCIS continues its initial jurisdiction over such an application unless CBP, ICE, or HHS terminate the UAC determination by the date the asylum application was filed.
- When HHS releases a UAC to a sponsor, it produces a document containing basic sponsor information, including relationship to the UAC and physical address. However, there is **currently no requirement for sponsors to have legal immigration status**, nor does ORR inquire about the sponsor's immigration status.³

Proposed Changes

- USCIS proposes to **rescind the 2013 memorandum** and replace it with one that effectively reverts to the pre-2013 policy of Asylum Officers making independent factual determinations about whether the asylum applicant meets the statutory UAC definition on the date he or she initially filed the application.
 - Under this approach, Asylum Officers will be reminded that the burden of proof is on the applicant to establish that he or she was a UAC at the time of filing and instructed to elicit information at the interview and examine all available records and information (to include whether a parent or legal guardian is in the United States at the time of the applicant's filing) in order to **reach an independent UAC determination**.

² See USCIS Memorandum, *Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications* (May 28, 2013), available at <https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/Memor%20Children%20Applying%20for%20Asylum%20By%20Themselves/determ-juris-asylum-app-file-unaccompanied-alien-children.pdf>.

³ This memorandum is not intended to address the various possible legal and policy ramifications of taking the custodial parent or guardian into ICE custody, with or without the child, and of taking only the child into ICE custody (especially vis-à-vis *Flores* Settlement Agreement).

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- ICE proposes to re-designate, as alien juvenile aliens, UACs who are released to HHS to a parent or legal guardian, unless based on its own independent fact inquiry, the parent or legal guardian is no longer present or otherwise no longer available to provide care and physical custody.
 - USCIS supports ICE's plan to make UAC re-designations.

Law Enforcement Sensitive

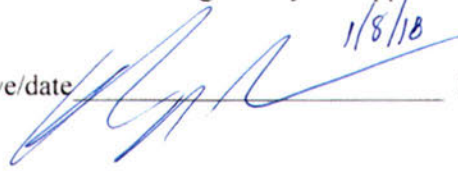
Taking into account potential resource constraints, pro-active engagement by ICE, and independent determinations by USCIS will ensure that UAC safeguards and benefits are afforded only to those individuals who truly are, or remain, UACs, as the law intends.

Timeliness: UAC determinations continue to be applied to individuals with changed circumstances, no longer rendering them as UACs. While HHS and the Department of Justice will need to be consulted after a decision is made, it is in DHS's interest to quickly align UAC policies with U.S. law. Accordingly, ICE, USCIS, and the Office of Strategy, Policy, and Plans make the following recommendations:

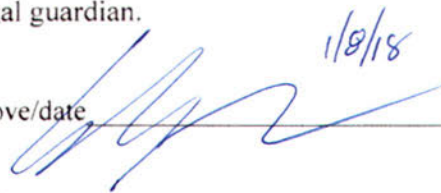
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Recommendation 1: Instruct USCIS to rescind the 2013 memo entitled *Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children* and replace it with one that reverts to the pre-2013 policy allowing USCIS Asylum Officers to make independent UAC re-designations based on the facts at the time of filing the asylum application.

Approve/date  1/8/18 Disapprove/date _____
Modify/date _____ Needs discussion/date _____

Recommendation 2: Authorize ICE, as a matter of policy, to re-designate UACs as accompanied juvenile aliens, when appropriate, upon release of the child by HHS to a parent or legal guardian.

Approve/date  1/8/18 Disapprove/date _____
Modify/date _____ Needs Discussion/date _____