

# Memorandum



BIA 09-03

Subject	Date
CASE HOLD - Asylum claims filed by unaccompanied alien children	March 20, 2009

To: Board Legal Staff

From: Juan Osuna, Chairman (b)(6)

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (TVPRA) was enacted on December 23, 2008. The TVPRA provides, in relevant part, that an asylum officer shall have initial jurisdiction over any asylum application filed by an unaccompanied alien child (UAC). TVPRA § 235(d)(7)(B). This provision is effective on March 23, 2009, and applies to all aliens in pending proceedings before the Executive Office for Immigration Review on the date of enactment of the TVPRA.

Accordingly, pursuant to 8 C.F.R. § 1003.1(e)(8)(iii), I am directing that the adjudication time limits be temporarily suspended in individual **case appeals** where the following criteria are met:

- The alien filed an asylum application before the Immigration Court in his/her name, **and at the time of filing before the Immigration Court** was, or could have been, a UAC. A UAC is defined as a person:
  - who has no lawful immigration status in the United States;
  - who has not attained 18 years of age; and
  - with respect to whom there is 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.
- The alien had *not* filed an affirmative asylum application before Citizenship and Immigration Services (or the former Immigration and Naturalization Service).

The record may not be clear about whether the child was unaccompanied at the time of filing, and whether an affirmative asylum application was filed. If the record is not clear, but the alien was under 18 at the time of filing, the case is subject to the hold. If you can tell that any one of these criteria do not apply, e.g., the alien was over 18 at the time the application was filed, the case is not subject to the hold. If you find a case falling within these guidelines, bring the case to the attention of your team leader or Senior Panel Attorney.