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Executive Office for Immigration Review

Office of the Chief Immigration Judge

Chief Immigration Judge

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~~May 22, 2007~~

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MEMORANDUM

TO: All Immigration Judges  
All Court Administrators  
All Attorney Advisors and  
Judicial Law Clerks  
All Immigration Court Staff

FROM: ~~David L. Neal~~ MaryBeth Keller  
Chief Immigration Judge

SUBJECT: Operating Policies and Procedures Memorandum ~~07-01:~~ 17-03:

*Guidelines for*

*Immigration Court Cases Involving Juveniles, Including Unaccompanied  
Alien Children*

This Operating Policies and Procedures Memorandum (OPPM) rescinds and replaces  
OPPM ~~04-07~~, dated ~~September 16, 2004~~ 07-01, Guidelines for Immigration Court Cases Involving  
Unaccompanied Alien Children, dated May 22, 2007.

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I. Introduction

Immigration cases involving children are complicated and implicate sensitive issues beyond those encountered in adult cases. For instance, an infant brought into the United States illegally by his family, an older child smuggled into the United States by relatives, an adolescent gang member, and a teenager convicted as an adult for serious criminal activity are all examples of immigration cases involving children, but they may not warrant identical treatment under the law.

~~This OPPM provides guidance and suggestions for adjudicating cases where the respondent is an unaccompanied alien child (defined later). The suggestions focus primarily on assisting the judge in ensuring that the respondent understands the nature of the proceedings, effectively presents evidence about the case, and has appropriate assistance.~~

~~When the respondent is a child, the immigration judge faces fundamental challenges involving any unmarried individual under the age of 18, including as both respondents and third-party witnesses. It is not intended to limit the discretion of an Immigration Judge, and nothing herein should be construed as mandating a particular outcome in adjudicating the case: does the respondent understand the nature of the proceedings; can the respondent effectively present evidence about the case; and is there anyone who can properly advocate for the respondent's interests? Issues of age, development, experience and self-determination impact how a court deals with a child respondent any specific case.~~

~~Organizations involved in handling children's asylum claims have developed special guidance for adjudicators. Canada's Immigration and Refugee Board was the first to draft such guidance, Child Refugee Claimants: Procedural and Evidentiary Issues (1996). The following year the United Nations High Commissioner for Refugees issued Policies and Procedures for Unaccompanied Children Seeking Asylum. Finally, in 1998 the former Immigration and Naturalization Service (INS) distributed Guidelines for Children's Asylum Claims to its asylum officers. Copies of these guidelines have been distributed to all Immigration Courts, and judges have been encouraged to consult them as appropriate.~~

~~None of these documents specifically addresses the issues that arise when children's asylum claims are presented in an adversarial setting. Therefore, in developing guidelines for the kinds of cases that we handle, the Office of the Chief Immigration Judge (OCIJ) sought additional guidance primarily from materials developed for juvenile and family courts. The guidelines that follow are based upon the asylum-specific documents mentioned above and the writings of judges and litigators in other areas of the law.~~

## II. Definition of unaccompanied alien child

~~The definition of the term "child" may differ depending on the context in which it is used. These guidelines use the terms "child" and "children" in a way that is slightly different from the definitions provided in the III Definitions~~

~~Immigration law utilizes multiple terms in different legal contexts to refer to unmarried individuals who have not attained a certain age. The Immigration and Nationality Act (INA or Act); The Act) defines a "child" as an unmarried person under 21 years of age. Sections INA §§ 101(b)(1) and 101(c)(1). The regulations ~~follow this statutory definition. The regulations also define a "juvenile" as an alien under the age of 18, 8 C.F.R. § 1236.3. The regulations also use (but do not define) the word "minor" when describing aliens under 14 years of age. 8 C.F.R. §§ 103.8(c)(2)(ii); 1236.2.~~~~

~~The Homeland Security Act of 2002 transferred responsibility for detained alien children from the former INS to the Department of Health and Human Services (HHS) and the Department of Homeland Security (DHS). It also introduced a new term — the concept of an "unaccompanied alien child — to define (UAC)," which it defined as a child who has no lawful immigration status in the United States, has not attained 18 years of age, and who has no parent or legal guardian in the United States, or no parent or legal guardian in the United States available to provide care and physical custody. The Office of Refugee Resettlement (ORR) within HHS is responsible for unaccompanied alien children, while DHS is responsible for accompanied children. States, or no parent~~

~~These guidelines use the term "unaccompanied alien child" as defined in the Homeland Security Act~~

OPPM 1703: Guidelines for Immigration Court Cases Involving Juveniles, Including Unaccompanied Alien Children Page 3 of 2002—that is, a person under 18, without a parent

~~8 or legal guardian in the United States or without a parent or legal guardian in the United States who is available to provide care and physical custody. Once a person attains the age of 18, or has a parent or legal guardian in the United States who is available~~6 U.S.C. § 279(g)(2); 8 U.S.C. § 1232(g).

~~This OPPM applies to provide care and physical custody, he or she would not fall within the definition. All immigration proceedings involving unmarried children under the age of 18. Therefore, to avoid confusion, any references to “child” or “children” in these guidelines should be construed in this OPPM to mean an “unaccompanied alien child” as defined in the Homeland Security Act of 2002~~the terms "child," "unaccompanied alien child," "juvenile," or "minor" (or their plural forms) are meant to refer to an unmarried individual under the age of 18. Further, although this OPPM applies primarily to respondents, its principles may also be applicable to child witnesses in immigration proceedings, regardless of whether the witness is an alien, a U.S. citizen, or a U.S. national.

III.

III. Basic principles~~Several principles are central to these guidelines:~~

A. Authority.—Immigration Judges should be mindful of several overarching principles when presiding over cases involving juveniles:

Individual circumstances. Every ~~immigration judge is expected to~~Immigration Judge should employ ~~child-sensitive~~

age-appropriate procedures whenever a ~~child~~juvenile respondent or witness is present in the courtroom. However, ~~it is equally true that not all such cases involving juveniles are not alike, and the procedures Immigration Judges should apply appropriate for a very young child may differ significantly from those appropriate for a teenager. These guidelines are suggestions that should be applied as procedures in juvenile cases as the specific circumstances of the case warrant. All immigration judges understand that special attention is required for~~

A. Cases involving child witnesses or unaccompanied alien child respondents. An immigration judge should decide, on a case by case basis, whether special attention is required and always in accordance with applicable law.

B. Best interest of the child. Issues of law—questions of admissibility, e.g. determinations of removability and eligibility for relief, etc.—or protection from removal—are governed by the Immigration and Nationality Act and the statutes, regulations. The concept of “, and case law. Although 8 U.S.C. § 1232(c)(2) contains provisions for the Department of Health and Human Services (HHS) to consider “the best interest of the child” does not negate the statute or the regulatory delegation of the Attorney General’s authority, and— in certain circumstances, no similar provision exists in the INA directing Immigration. Judges to consider the concept of “the best interest of the child” as a legal standard for determining removability or eligibility for relief or protection from removal. Therefore, this concept alone cannot provide a legal basis for providing relief or protection not otherwise sanctioned by law. Rather, this concept is a factor that relates to the immigration judge’s discretion in taking steps to ensure that a “child-appropriate” hearing environment is established, allowing a child to discuss freely the elements and details of his or her claim.

C. Legal and personal representation. Neither the INA nor the regulations permit immigration judges Immigration Judges to appoint a legal representative or a guardian ad litem. Immigration judges Nevertheless, all Immigration Judges are required to provide a list of pro bono legal service providers in accordance with 8 C.F.R. § 1240.10(a)(2) and should encourage the use of appropriate pro bono resources whenever a child respondent is not represented. Where a list of pro bono services is available, an immigration judge should provide it to a child if the child is not represented. Likewise, although there is no independent court role for a personal representative or guardian ad litem, if such services are made available to respondents they have the potential to increase a child’s understanding of the proceedings and to improve the child’s communication with his or her legal representative, consistent with applicable ethical principles.

D. Applicability to all immigration judges. All judges must be able to handle cases involving unaccompanied alien children. Circumstances in a particular court may require specialized dockets for children’s cases, and responsibility for such dockets may be assigned to certain judges. However, all immigration judges are trained to handle these cases. It is the responsibility of every immigration judge to be familiar with these guidelines and related training materials.

~~E. Additional considerations. While these guidelines are written for cases involving unaccompanied alien children, some provisions will apply in other cases where children are accompanied by a parent or guardian or where children testify as witnesses. Additionally, the guidelines mention, but do not address in detail, other topics that apply whenever a child is present as a respondent or witness. These topics include: the effect of age and development on a child's ability to participate in the proceedings; gender; mental health (including possible post-traumatic stress syndrome); general cultural sensitivity issues; and appropriate questioning and listening techniques for child witnesses. OCIJ has provided training to immigration judges on some of these issues and will continue to do so in the future. These guidelines should be viewed as one component of that training.~~

IV. Ensuring an appropriate courtroom setting

D. Claims in Immigration Court—Judicial impartiality. Although juvenile cases may present sympathetic allegations, Immigration Judges must be mindful that they are unbiased arbitrators of the law and not advocates for either party in the cases they hear. Accordingly, Immigration Judges must remain neutral and impartial when adjudicating juvenile cases and shall not display any appearance of impropriety when presiding over such cases. *Ethics*

and Professionalism Guide for Immigration Judges, §§ V, VI, and VIII; 5 C.F.R. §§ 2635.101(b)(8) and (14).

- E. Applicability to all Immigration Judges. All Immigration Judges shall be prepared to adjudicate cases involving juveniles. Accordingly, all Immigration Judges have the responsibility to be familiar with the applicable law and guidance related to juveniles and to maintain professional competence in adjudicating such cases. *Ethics and Professionalism Guide for Immigration Judges*, § IV. In particular, Immigration Judges must not only be familiar with the different statutory and regulatory definitions of "child," "juvenile," "minor," and "unaccompanied alien child" but also must apply them correctly in the appropriate context.
- F. Child Abuse and Human Trafficking Protocols. Issues regarding child abuse/neglect and human trafficking may arise when adjudicating cases involving juveniles. EOIR personnel, including Immigration Judges, are required to report instances of child abuse and/or neglect and suspected human trafficking in accordance with the guidance outlined in *Identification and Referral of Potential Trafficking Victims or Traffickers before the Executive Office for Immigration Review* (April 27, 2015) and *Identification and Referral of Potential Child Abuse and/or Neglect Victims Wore the Executive Office for Immigration Review* (May 23, 2017). Each protocol offers tools for identifying abuse/neglect and/or human trafficking and guidance for when and how to report it. For assistance with reporting a child abuse/neglect or human trafficking case, please contact the Office of the General Counsel.

#### IV. Courtroom setting and procedures

With these basic principles in mind, Immigration Judges should also be cognizant of special circumstances occasionally raised by juveniles participating in immigration proceedings. Although claims in immigration court are raised in an adversarial setting. ~~Recognizing that,~~ cases involving ~~unaccompanied alien children~~ juveniles may make special demands on all parties. ~~Therefore,~~ consideration should be given, in appropriate circumstances, to some modifications to the ordinary courtroom operations ~~and configuration. These modifications may include.~~ Nevertheless, Immigration Judges should be mindful that an alien's status as a juvenile does not, by itself, excuse compliance with statutory and regulatory requirements. The following guidance is offered to balance appropriate consideration of a juvenile's circumstances with legal requirements applicable to all immigration proceedings:

A. Courtroom orientation. The courtroom is usually an unfamiliar place for children. Many family and juvenile court experts recommend allowing children to visit an empty courtroom prior to their scheduled hearing. Under

A: children. To the extent that resources and time permit and under the supervision of court personnel, ~~the children should~~may be permitted to explore the courtroom, ~~sit in all the locations (including, especially, the judge's other than the Immigration Judge's bench and the witness stand),~~ records of proceedings, and courtroom technological equipment such as computers and

video conferencing units—and to practice answering simple questions in preparation for testimony. ~~To~~ Additionally, to the extent that resources permit, court administrators should be receptive to requests by legal representatives or custodians ~~for unaccompanied alien children to visit our courts prior to the initial hearing. Additionally, they should be open to other ways to familiarize unaccompanied alien children with court operations.~~ of children to visit

immigration courts prior to the initial hearing. Court administrators should also be open to other ways to familiarize children with court operations.

B. Scheduling ~~unaccompanied alien children's~~ juvenile cases. Wherever ~~possible~~feasible, courts should conduct cases involving juvenile respondents, particularly unaccompanied alien children, on a separate docket or at a fixed time in the week or month. If the number of cases ~~do~~does not warrant a separate docket, courts should ~~try~~attempt to schedule ~~children's~~children's cases at a specific time on the regular docket, but separate and apart ~~from~~from adult cases. ~~Such a docket or schedule will improve the ability of custodians to transport the children and of legal service providers to assist them. Similarly, courts should~~ Courts should similarly keep detained dockets for adults and children completely separate. ~~Courts should~~ and try to ensure ~~our~~that dockets do not have the effect of forcing unaccompanied alien children to be transported or held with detained adults. ~~When docketing these cases, immigration judges should be mindful to weigh both the child's need for time to prepare his or her case and the impact of prolonged custody on the child's mental health and well-being~~ To help ensure that juvenile and adult dockets are kept separate, court personnel will ensure that the date of birth for all juvenile respondents in immigration proceedings is entered in CASE.

C. Courtroom modifications. ~~Immigration judges do~~ Courtrooms. Courtrooms are not ~~have the luxury of equipping their courtroom~~equipped with special furniture designed ~~on a child's scale for~~ children. However, ~~judges~~Immigration Judges can and should permit reasonable modifications: allowing to the courtroom to accommodate children, such as: permitting counsel to bring pillows or booster seats for young respondents; permitting young respondents to sit in one of the pews with an adult companion or permitting the companion to sit at ~~counsel's~~counsel's table; allowing a young child to bring a quiet toy, book, or other personal item into the courtroom; permitting the child to testify while seated next to an adult or friend, rather than in the witness stand; etc. ~~Simple,~~These simple and common sense adjustments ~~need~~would not alter the serious nature of the proceedings. They ~~can~~would, however, help foster an atmosphere in which a child is better able ~~to present a claim and~~ to participate more fully in the proceedings.

~~D. Assessing the use~~ Waiver of video conferencing. ~~It is important to note that Congress made no distinction between hearings conducted in person and hearings conducted by~~

F. Control access to the courtroom. Young children may be reluctant to testify about painful or embarrassing incidents, and the reluctance may increase with

~~video conference. Video conference generally will be appropriate unless circumstances dictate otherwise. Therefore, when handling cases involving unaccompanied alien child respondents, if under ordinary circumstances the hearing would be conducted by video conference, immigration judges should determine if particular facts are present in the case to warrant an exception from the usual practice.~~

~~E.D. Allowing the use of telephone conference. Where practicable, alien children, whether unaccompanied or not, should be allowed to appear through telephone conference for master calendar hearings and status conferences when they do not reside within close proximity to the immigration court. Either party may request that an alien child appear telephonically. Judges may query the parties as to whether a telephonic juvenile's appearance by an alien child would be more appropriate than an in person. Unless a juvenile's appearance has been waived by the Immigration Judge, he or she is obligated to attend his or her immigration proceeding. Immigration judges should adhere to the requirements of 8 C.F.R. § 1003.25 in determining whether to waive a juvenile's appearance at a hearing. In all cases where an Immigration Judge waives the presence of a juvenile at a hearing, the Immigration Judge must state on the record that the waiver has been granted or must issue a written order to that effect.~~

~~F.E. Removing the robe. Like the courtroom, the robe is a symbol of the judge's Immigration Judge's independence and authority. ~~For this reason, OPJM 94-10, "Wearing of the Robe During Immigration Judge Hearings," provides that a robe shall be worn in every proceeding when any of the parties is present with the immigration judge.~~ While most ~~unaccompanied alien~~ children will be far more interested in the ~~judge's~~ judge's behavior than the ~~judge's~~ judge's attire, the robe may be disconcerting for younger respondents. If ~~a judge an~~ Immigration Judge determines in a particular case that dispensing with the robe would add to the ~~child's~~ child's ability to participate, OPJM 94-10, Wearing of the Robe During Immigration Judge Hearings, is modified to permit the judge to remove the robe ~~for in~~ that ~~ease~~ instance.~~

#### ~~V. — Ensuring appropriate courtroom procedures~~

~~There is a consistency in the published recommendations for improvements in handling children's cases. Many of these recommendations come not from child psychologists but from lawyers and judges. Although most suggestions pertain to juvenile and family court cases, they have applicability in immigration cases as well, despite the added complexities of language and cultural differences. By carefully controlling how the proceedings are conducted, immigration judges can effectively discharge their obligation under the INA and the regulations in a way that takes full account of the best interest of the unaccompanied alien child. The following suggestions have relevance to most, if not all, cases where children are respondents:~~

#### ~~A. —~~

the number of spectators or other respondents present. Although hearings are generally open to the public, judges should be sensitive to the concerns of juveniles if there is a motion to close the hearing pursuant to 8 C.F.R. § 1003.27.

Explain the proceedings at the outset. In cases involving juveniles, Immigration Judges should consider making a brief opening

G. \_\_\_\_\_ statement at the beginning of each proceeding; or at the commencement of a specialized docket for ~~children's juvenile~~ cases; to explain the purpose and nature of the proceeding, to introduce the parties and discuss each ~~person's person's~~ role, and to explain operational matters such as ~~tape~~-recording, interpreting, and note taking, ~~telephonic or video conference appearances, etc. Where approved instructive materials are available, such as a video prepared for unaccompanied alien children in proceedings, the courts should make a reasonable effort to make those materials available to unaccompanied alien children.~~

B.H. Pay ~~particular~~ attention to the interpreter. Immigration Judges should ~~allow~~permit time for the interpreter and ~~the unaccompanied aliena~~ younger child to establish some rapport by talking about unrelated matters before testimony is taken. Immigration Judges should also watch for any indication that the child and the interpreter are having difficulty communicating. Any statement to be translated should be made ~~in English~~ at an age-appropriate level and translated at that level for the child respondent.

C.I. Be aware of time. As in any case, the ~~judge~~Immigration Judge should give the parties a full opportunity to present or challenge evidence. However, stress and fatigue can adversely impact the ability of ~~an unaccompanied aliena~~ younger child to participate in his or her removal proceedings. ~~Where~~ Therefore, where appropriate, ~~immigration judges~~Immigration Judges should seek not only to limit the number of times that children must be brought to court, but also to resolve issues of removability and relief without undue delay. ~~As appropriate, judges should require the parties to narrow issues through pre-trial conference and stipulations.~~ Additionally, if a child is called to testify, ~~judges~~Immigration Judges should ~~seek to limit~~consider limiting the amount of time the child is on the stand ~~without compromising due process for the opposing party.~~ Similarly, ~~judges~~Immigration Judges should recognize that, for emotional and physical reasons, children may require more frequent breaks than adults.

D.J. ~~Prepare the child to testify.~~Preparation for a juvenile's testimony. As with any witness, a ~~judge~~an Immigration Judge should be confident that the child is competent to testify in the proceedings, including whether the child is of sufficient mental capacity to understand the oath and to give sworn testimony. The explanation of the oath should vary with the age of the witness: promise "to tell the truth?" or promise "to tell what really happened?" etc. Children should be told that it is all right for them to say, "I don't know?" if that is the correct answer, and to request that a question be asked another way if the child does not understand it. ExplainImmigration. Judges should also ~~that~~explain to the child witness that he or she should not feel at fault if an objection is raised to a question.

E.K. Employ child-sensitive questioning. Language and tone are especially important when ~~children~~juveniles are witnesses. Proper questioning and listening techniques will produce a more complete and accurate record. ~~Although the Immigration Court process is adversarial, judges should ask and encourage the parties to phrase questions in age-appropriate language and tone. Attachment A contains a detailed set of instructions from the DHS guidelines. Immigration judges should consult these suggestions and adapt them to the courtroom setting to the extent possible.~~The immigration court process is

Make proper credibility assessments.

adversarial. Due process and fundamental fairness require that testimony by a juvenile witness, like that of any other witness, be subject to cross-examination, particularly if the testimony is speculative, vague, or contains indicia of inappropriate coaching. Nevertheless, Immigration Judges should ask and encourage the parties to phrase questions to a juvenile witness in age-appropriate language and tone. Abusive questioning should not be tolerated under any circumstances.

F.L. Credibility and burden of proof assessments. Testimony from a child, as with testimony from any witness, is neither inherently reliable nor inherently unreliable. As noted above, an Immigration Judge must always first ensure that a child is competent to testify before considering what weight, if any, to afford that testimony. Immigration Judges should also recognize that children, especially young children, will usually ~~will~~ not be able to present testimony with the same degree of precision as adults. ~~Do not assume that inconsistencies~~ Vague, speculative, or generalized answers by a child, especially a particularly young child, are ~~proof~~ not necessarily indicators of dishonesty, ~~and~~. Immigration Judges should recognize that a ~~child's~~ child's testimony may be limited not only by his or her ability to understand what happened, but also by his or her skill in describing the event in a way that is intelligible to adults. Immigration Judges should be mindful that children are highly suggestible and their testimony could be influenced by their desire to please judges or other adults. Immigration Judges should bear in mind, however, that legal requirements, including credibility standards and burdens of proof, are not relaxed or obviated for juvenile respondents. Thus, although vague, speculative, or generalized testimony by a child witness is not necessarily an indicator of dishonesty, it may nevertheless also be insufficient by itself to be found credible or to meet an applicable burden of proof. See *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998) (finding that general testimony may be insufficient to meet the burden of proof); *Matter of E-P-*, 21 I&N Dec. 860, 862 (BIA 1997) (finding that credible testimony alone is not necessarily dispositive to meet the burden of proof).

~~G. Control access to the courtroom. As a general matter, it is best to have as few people in court as possible. Children may be reluctant to testify about painful or embarrassing incidents, and the reluctance may increase with the number of spectators or other respondents.~~

## ~~VI. Motions~~

~~Certain motions, as appropriate, should be adjudicated in a manner that enables unaccompanied alien children to effectively present their evidence and obtain appropriate assistance. Accordingly, immigration judges should adjudicate motions to change venue and requests for continuances as follows.~~

~~A. Motions to change venue. In cases involving alien children, whether unaccompanied or not, unopposed motions for change of venue may be granted without requiring a pleading or the filing of an application for relief. Accordingly, the pleading and issue resolution mandates set forth in OPPM 01-02, section V. B., may be waived in cases involving unaccompanied alien children.~~

~~B. Requests for continuances. When considering requests for continuances, immigration judges should be mindful that cases involving alien children are exempt from case completion goals and aged case completion deadlines. Such cases, however, must be noted with case identifier “J” or “UJ” in ANSIR or CASE to be exempted from completion goals and aged case completion deadlines.~~

## ~~VII. Coding unaccompanied alien child cases~~

~~It is important that the Immigration Courts code these cases so that they can readily be identified. Courts for many years have used the J-code in ANSIR to designate cases involving children. However, the J-code alone does not permit us to distinguish children who are with a parent or legal guardian from unaccompanied alien children.~~

~~Beginning immediately, court administrators should assign the J-code in ANSIR or CASE only to cases where a child in proceedings has a parent or legal guardian in the United States who is providing care and physical custody. Those children, obviously, will not be in the custody of the Office of Refugee Resettlement. If, on the other hand, a child in proceedings meets the definition of an unaccompanied alien child—has no parent or guardian in the United States or no parent or legal guardian in the United States available to provide care and physical custody—the court administrator should use a new ANSIR or CASE code, UJ. In most if not all instances, those unaccompanied alien children will be in the custody of DHS or the custody of ORR. The UJ code should remain on the record unless the child is released from DHS custody or ORR custody to a sponsor, parent or legal guardian. If the court staff or the judge become aware that the child has been released from DHS custody or ORR custody to a sponsor, parent or legal guardian, the case should be re-coded J-1. The J-1 code should also be used if an unaccompanied alien child attains the age of 18 while still in~~

~~proceedings. These new codes should be used for all new case filings. Additionally, for pending cases court staff should change the case identifier from J to UJ if the respondent meets the definition of an unaccompanied alien child.~~

~~The use of these three codes is temporary until the new CASE system is operational in all courts. Although it is an interim procedure, it will permit us to report on the number and disposition of unaccompanied alien children cases in our courts.~~

#### VIII. Training

~~Immigration judges can play an active part in training programs for pro bono attorneys. Mock trials, “Model Hearings,” and other efforts are effective ways of increasing the available pool of representatives. When judges are invited to participate, these requests should be promptly forwarded to OCIJ for approval. Recognizing that docket demands must come first, this office is committed to assisting in such efforts.~~

## Attachment A

The following suggestions are drawn from the Guidelines for Children's Asylum Claims issued by the Immigration and Naturalization Service (now the Department of Homeland Security) in 1998. Specifically, they are found in the section entitled "Child Sensitive Questioning—And Active Listening—Techniques."

As a general rule, use short, clear, age-appropriate questions and sentences, avoiding long or compound questions. Use one or two syllable words in questions and avoid three or four syllable words. For example, it is better to ask "Who was the person?" rather than "Identify the person." Use simple, straight forward questions: "What happened?" Avoid multi-word verbs: "Might it have been the case ...?" Ask the child to define the use of a term or phrase in the question posed in order to check the child's understanding.

Choose easy words over hard ones: use expressions like "show," "tell me about," or "said" instead of complex words like "depict," "describe," or "indicate."

Tolerate pauses, even if they are long.

Ask the child to describe the concrete and observable, not the hypothetical or abstract. Use visual terms (e.g., gun), instead of categorical terms (e.g., weapon). Reduce questions to their most basic and concrete terms.

Avoid the use of technical legal terms in questions, such as "persecuted" or "persecution." Instead of "Were you persecuted?", ask "Were you hurt?"

Use the active voice when asking a question (e.g., "Did the man hit your father?"). Avoid the passive voice (e.g., "Was your father hit by the man?").

Avoid "front-loading" questions. Front loading involves using a number of qualifying phrases before asking the crucial part of the question (i.e., questions that list several previously established facts before asking the question at hand). For example, "When you were in the house, on Sunday the third, and the man with the gun entered, did the man say ...?" should be avoided.

Keep each question simple and separate. For example, a question like "Was your mother killed when you were 12?" should be avoided. The question asks about the child's mother and the child's age at the same time.

Generally, avoid leading questions whenever possible. Research reveals that children may be more highly suggestible than adults. Leading questions may influence them to respond inaccurately.

Use open-ended questions to encourage narrative responses. Children's spontaneous answers, although typically less detailed than those elicited by specific questioning, can be helpful in understanding the child's background. Try not to interrupt the child in the middle of a narrative response.

If you are asking questions more than once, explain to the child why you are doing so. Make clear to the child that he or she should not change or embellish earlier answers and explain that you are asking repeated questions to make sure you understand the story correctly. Repeated questioning is often interpreted (by adults as well as children) to mean that the first answer was regarded as a lie or wasn't the answer that was desired.

Coercion has no place in any hearing. Children are never to be coerced into answering questions during the hearing. For example, telling a child that she cannot leave the hearing until she answers the questions posed by counsel or the judge should never occur.

Do not expect children to be immediately forthcoming about events which have caused great pain.

Before asking how many times something happened, the immigration judge should determine the child's ability to count. Children may try to answer without the requisite skill, resulting in irrelevant, inconsistent, misleading, or erroneous responses.

Children may not know the specific circumstances that led to their flight from their home countries and, even if they know the circumstances, they may not know the details of the circumstances. The child may also have limited knowledge of conditions in the home country, as well as his or her vulnerability in that country. Even older children may not have mastered many of the concepts relating to conventional systems of measurement for telling time (minutes, hours, calendar dates).

Imprecise time and date recollection may be a common problem for children. Many aliens, however, note events not by specific date but by reference to cyclical (rainy season, planting season, etc.) or relational (earthquakes, typhoons, religious celebrations, etc.) events. In response to the question "When were you hurt?", it may not be uncommon for a child to state "During harvest season two seasons ago" or "shortly after the hurricane." To be sure, these answers may appear vague, but they may be the best and most honest testimony the child has to offer.

M. It should be noted that children can not be expected to present testimony with the same degree of precision as adults with respect to context, timing, and details.Unaccompanied Alien Child (UAC). Immigration Judges should exercise special care in cases where the respondent is alleged to be a UAC. First, a UAC is eligible for voluntary departure at no cost to the child. 8 U.S.C. § 1232(a)(5)(D)(ii). To the extent practicable, an Immigration Judge should expedite consideration of a request for voluntary departure by a UAC, especially one that is in the custody of HHS.

UAC is, in fact, a UAC at the time his or her case is adjudicated. Moreover, because a UAC generally receives more favorable treatment under the law than other categories of illegal aliens, there is an incentive to misrepresent

accompaniment status or age in order to attempt to qualify for the benefits associated with UAC status.

Consequently, Immigration Judges, while remaining sensitive to the concerns of juveniles, should be vigilant in adjudicating cases of a purported U.A.C. In June 2017, all Immigration Court employees were reminded of their responsibilities regarding suspected fraud and abuse, particularly regarding applications for benefits, relief, or protection in removal proceedings, and were directed to take action where warranted. All EOIR employees have an ethical duty to the United States government and its citizens to disclose "waste, fraud, abuse, and corruption to appropriate authorities." 5 C.F.R. § 2635.101(b)(11). This duty applies to immigration judges and is further codified in Section VII of the *Ethics and Professionalism Guide for Immigration Judges*. Because reporting fraud and abuse in the immigration system is an ethical duty of all EOIR employees, including Immigration Judges, any suspicion of fraud or misrepresentation by someone in a UAC case should be reported to the EOIR Office of the General Counsel Fraud and Abuse Prevention Program.

#### V. Conclusion

Immigration cases involving juveniles are challenging; there is no blanket approach applicable to all such cases. Although juvenile cases warrant special consideration in appropriate circumstances, Immigration Judges should also be mindful that legal requirements applicable to all immigration cases are not necessarily diminished solely because the respondent is a juvenile.

If you have any questions regarding this OPPM, please contact your Assistant Chief Immigration Judge.