TVPRA 2008 & UACs

Sponsored by Houston UAC Task Force

University of Houston Law Center Immigration Clinic, Joseph A. Vail Workshop,

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TRAFFICKING VICTIMS PROTECTION REAUTHORIZATION ACT

*Enhancing Efforts To Combat The Trafficking of Children.*

- **Section 235 (2008) – March 23, 2009**
  - **SUBSTANTIVE** changes to immigration legal relief for UACs.
  - **PROCEDURAL** changes -- more child-sensitive procedures and protections for UACs in custody and detention.

- *Unaccompanied Alien Child Protection Act of 2005 (UACPA) passed unanimously in Senate.*
Definition: “Unaccompanied Alien Child”

- NO lawful immigration status in US
- UNDER 18 years of age
- NO parent or legal guardian in US or NO parent or legal guardian in the US available to provide care
What countries are eligible?

- **Non-Contiguous countries**
  Honduras
  El Salvador
  Guatemala
  *Section 235 (b)*

- **Contiguous countries**
  Mexico
  Canada
  *Section 235 (a)*
The (Main) Players

- **USCIS – US Citizenship and Immigration Services** -- adjudicates UAC asylum applications, I-360 Petitions for SIJ status, U visas, T visas

- **EOIR-DOJ - Executive Office of Immigration Review - Immigration courts. (IJ)**

  - CBP - Customs and Border Protection apprehends, processes, and detains UACs at border.

  - ICE - Immigration and Customs Enforcement transports to HHS-ORR custody. (Enforcement arm)

- HHS - Department of Health and Human Services
  - ORR (Office of Refugee Resettlement) - care/custody UACs screening, best interests
***Legal Remedies - TVPRA

- **UAC ASYLUM** – refugee/fear/persecution
  - (ARCG – 8/26/2014 BIA)

- **SIJS** – special immigrant juveniles – abused, neglected or abandoned, reunification not viable with one or both parents

- **T visa** – visa for victims of severe trafficking

- **U visa** – visa for victims of crime
**Substantive legal benefits**

- **DEADLINES:** Exempt from various filing deadlines and barriers (e.g. one-year filing deadline, safe third country limitation for asylum cases)

- **FORUM:** Allowed to proceed with USCIS, and not the judge, EVEN if already in removal (regular asylum v UAC asylum)

- **DEFINITIONS:** Expanded various definitions under Special Immigrant Juvenile Status to allow more relief

- **WAIVERS:** Pardoned from disqualifying factors at green card stage (waivers for ewi, fraud)
Procedural benefits

• Transfer to the care/custody of DHHS/ORR from DOJ/DHS

• Voluntary departure at govt. expense, 235(a)(5)(D) (indigenous clients)
And, ....

- “... the Secretary of Health and Human Services is obliged to provide these children access to counsel, including pro bono counsel, to provide free legal services to these children. TVPRA § 235(a)(5)(E)(iii)

BUT ......
JEFM v. Holder, USWD (Seattle) 2:14-cv-01026

Complaint filed 7/31/2014: J.E.F.M., a minor, ... et al v. Eric H. HOLDER, Attorney General, United States; ... Homeland Security; ...U.S. Immigration and Customs Enforcement; ... ICE, ... Health and Human Services; ... Office of Refugee Resettlement.

Order issued on 09/29/2014: Denying Plaintiffs' Motion for Preliminary Injunction and deferring Plaintiffs' Motion for Class Certification until resolution of Defendants' Motion To Dismiss, filed 09/19/2014
Government Position

- Not ripe because cases have not been adjudicated/no harm (deportations) yet
- Wrong forum: Go through circuit courts first
- No right to counsel in immigration proceedings
- Special benefits in TVPRA, Special child advocates
- Taxpayer money – $$$
- May encourage other children to make “dangerous and unlawful journey to the United States.”

- UACs already get Know Your Rights‘ (KYR) sessions, and “children at UAC shelters have access to phones to contact family or legal services.”
Why we need you!

- **40 percent of unaccompanied children potentially qualify for statuses that exempt them from deportation.** (Vera Institute of Justice)

- **7 percent who were placed in federal custody between 2007 and 2009 won their cases.**

- **9 times more likely to win with lawyers.**

- **In court, up against trained government lawyers, testify under oath, file supporting documents, understand immigration law, often with only the help of a translator.**
Ethics footnote: Nature of case

COMPELLING FACTUAL CASES WITH HUMAN INTEREST/clouds judgment

CULTURAL DIFFERENCES/LANGUAGE BARRIERS

CLIENT EXPECTATIONS AND MISINFORMATION
Client Benefits/Motives...

- Legal immigration status
- Employment authorization
- Legal Reprieve – from pending deportation.
- Benefits for derivatives
  - Parents, siblings
ABA Rule 3.3
Candor towards Tribunal*

• (a) A lawyer shall not knowingly:
  
  • (1) make a false statement of fact or law to a tribunal or fail to correct a false statement.
  • ...
  • (3) offer evidence that the lawyer knows to be false.

• *USCIS government agency
• Good intentions are not a defense
Safeguards

- Use good translators/assistants
  - Crucial nuances in different language

- Corroborate documents
  - Police reports, hospital records

- Get a Mentor -- Work in teams, if new
  - Need objectivity

- Review and review stories
  - LEARN THE LAW ... that’s next ....