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Human Rights Day

MEMORANDUM FOR: Asylum Officers
Immigration Officers
Headquarters Coordinators (Asylum and Refugees)

FROM: **Jeff Weiss**
Acting Director
Office of International Affairs

SUBJECT: **Guidelines For Children's Asylum Claims**

This memorandum is written to provide the Asylum Officer Corps (AOC) with background and guidance on adjudicating children's asylum claims. This guidance applies primarily to children under the age of 18 who apply for asylum independently rather than as a derivative applicant by submitting a Form I-589 asylum application in their own name. Many of these issues will also be relevant to overseas Immigration Officers in processing the refugee applications of children.

It should be noted that the United Nations and generally accepted international definition of "child" is every person under the age of 18. These Guidelines take the same approach, except (as noted below) that they also apply to those individuals between 18 and 21 for purposes of scheduling and derivative determinations for asylum claims only.

During the last 10 years, the topic of child asylum seekers has received increasing attention from the international community. Human rights violations against children can take a number of forms, such as abusive child labor practices, trafficking in children, rape, and forced prostitution. In violation of current international standards that establish age 15 as the minimum age for participation in armed conflicts, children under age 15 in some countries are forcibly recruited by regular or irregular armies to participate directly in military conflicts. Children who have had such experiences are referred to as "child soldiers" throughout this text. The protection needs of these and other children have commanded much international and domestic attention.

Because of the unique vulnerability and circumstances of children, the Immigration and Naturalization Service (INS) considers it appropriate to issue guidance relating to our youngest asylum seekers. These "Guidelines For Children's Asylum Claims" provide Asylum Officers with child-sensitive interview procedures and analysis regarding the most common issues that may arise in these cases. This guidance is similar in approach to the "Considerations For Asylum Officers Adjudicating Asylum Claims From Women" (the *"Gender Guidelines")* memorandum issued on May 26, 1995. Like the *Gender Guidelines,* these Guidelines are designed to enhance the ability of INS Asylum Officers to address more responsively the substantive and procedural aspects of claims, irrespective of the child's country of origin. Increasing the understanding of and sensitivity to children's issues will improve U.S. asylum adjudications. In-Service training at all Offices will be critical to using this guidance effectively.

Background and International Guidance

Children and women represent approximately 80 percent of the world's refugee population. This section reviews the historical and human rights context in which guidance on children's refugee issues has evolved internationally.

Asylum and refugee status determinations are governed by United States law and regulations. Certain international instruments can provide helpful guidance and context on human rights norms.[1] For example, the internationally recognized "best interests of the child" principle is a useful measure for determining appropriate interview procedures for child asylum seekers, although it does not play a role in determining substantive eligibility under the U.S. refugee definition.

The following international instruments and documents contain provisions specifically relating to children. They recognize and promote the principle that children's rights are human rights, and that children's rights are universal:

- **UDHR:** The Universal Declaration of Human Rights (UDHR) was adopted by the United Nations General Assembly on December 10, 1948. The Declaration is an authoritative statement by the U.N. General Assembly, reflecting a collective understanding of the rights which are fundamental to the dignity and development of every human being. Article 14 of the UDHR provides for the right to apply for asylum, and Article 25(2) refers to the special care and assistance required for children. The rights contained in the UDHR have been expanded upon in international covenants and elsewhere. including the International Covenant on Civil and Political Rights, to which the United States is a Party.[2]

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[1] These instruments need not be ratified by the United States to provide guidance as a source of human rights norms. See, Asylum Officer Basic Training Course (AOBTC, August, 1998), Lesson: International Human Rights Law.

[2] Many of the components of international policy regarding refugee children also derive from the United Nations *Convention on the Rights of the Child* (CRC). Adopted by the United Nations in November 1989, the CRC codifies standards for the rights of all children, including those who are refugees. Article 3(1) of the CRC provides that the "best interests of the child" should be the primary consideration in decisions involving children. Because the United States has signed but not ratified the CRC, its provisions, as noted above, provide guidance only and are not binding on adjudicators. Having signed the CRC, however, the United States is obliged under international treaty law to refrain from acts which would defeat the object and purpose of the Convention.

- **UNHCR ExComm Conclusion No. 47:** Over the years, the Executive Committee of the Office of the United Nations High Commissioner for Refugees (UNHCR) has adopted a number of conclusions concerning refugee children. Safeguarding the well-being of refugee children has long been a high priority of the UNHCR Executive Committee and the United States. The Executive Committee issued its first conclusion in 1987 devoted exclusively to young people (Conclusion No. 47).[3] This Conclusion urged action aimed at addressing the human rights and needs of children who are refugees, and highlighted the particular vulnerability of unaccompanied and disabled refugee children, as well as the need for action by UNHCR to protect and assist them. Conclusion No. 47 condemned the exposure of refugee children to physical violence and other violations of their basic rights, including sexual abuse, trade in children, acts of piracy, military or armed attacks, forced recruitment, political exploitation, or arbitrary detention. The document also called for national and international action to prevent such violations and assist the victims. It emphasized that all action taken on behalf of refugee children must be guided by the principle of the "best interests of the child."

The internationally recognized guiding principle for refugee children is "best interests of the child." It is a useful measure for determining appropriate interview procedures for child asylum seekers, but does not play a role in determining substantive eligibility under the U.S. refugee definition.

- **UNHCR ExComm Conclusion No. 59:** In 1989, in Conclusion No. 59,[4] the Executive Committee reaffirmed and expanded upon the need for particular attention to the needs of refugee children; gave examples of how these needs could be assessed, monitored, and met; drew special attention to the UNHCR's particular need to endeavor to ensure the right of refugee children to education, as well as their protection from forced recruitment into armed forces and irregular adoption[5]

- **UNHCR Policies and Guidelines:** The UNHCR issued several sets of child-related guidelines in recent years.

  - The UNHCR "Policy on Refugee Children"[6] issued in 1993 points out that governmental actions relating to children must be "tailored to the different needs and potentials of refugee children," to avoid the tendency to think of refugees as a uniform group. The UNHCR stated that children and adolescents are entitled to special attention because their needs, and their legal and social status, can be

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[3] Conclusions on the International Protection of Refugees adopted by the Executive Committee of the UNHCR Programme, No. 47 (XXXVIII) on Refugee Children (1987).

[4] Conclusions on the International Protection of Refugees adopted by the Executive Committee of the UNHCR Programme, No. 59 (XL) on Refugee Children (1989). See also, ,Conclusions on the International Protection of Refugees adopted by the Executive Committee of the UNHCR Programme, No. 84 (XLVIII) on Refugee Children And Adolescents (1997) reaffirming the "best interests of the child" principle and Conclusions Nos. 47 and 59.

[5] Reflecting a more concerted effort to ensure the well-being of refugee children, the UNHCR established the position of a Senior Coordinator for Refugee Children in 1992. This was seen as a significant step toward improving UNHCR's protection of and assistance to minors.

[6] UNHCR Policy on Refugee Children, EC/SCP/82 (August 6, 1993).

significantly different from those of adults, and from each other as well, due to age-related developmental differences.

- In 1994, UNHCR issued "Refugee Children: Guidelines on Protection and Care,"[7] incorporating international norms relevant to the protection and care of refugee children. The Guidelines adopt a human rights perspective using the articles in the CRC to set UNHCR's standards. In the introduction to the revised Guidelines, the High Commissioner wrote: "The ultimate value of the UNHCR Policy and Guidelines on Refugee Children will lie in their translation from words to concrete action." At the request of the General Assembly, UNHCR submitted a report on unaccompanied minors in 1996.[8]

- The UNHCR published in 1997 the "Guidelines on Policies and Procedures in Dealing With Unaccompanied Children Seeking Asylum."[9] The purpose of the Guidelines is threefold: 1) to increase awareness of the special needs of unaccompanied children and the rights reflected in the CRC; 2) to highlight the importance of a comprehensive approach to child refugee issues; and 3) to stimulate internal discussion in each country on how to develop principles and practices that will ensure that the needs of unaccompanied children are being met.

- **Canadian Guidelines:** On September 30, 1996, the Canadian Immigration and Refugee Board (IRB) issued the ground-breaking "Child Refugee Claimants: Procedural and Evidentiary Issues," the first document of its kind issued by a country operating a refugee determination system. The Canadian Guidelines recognize that refugee claims of children pose a special challenge since they represent a particularly vulnerable group. The Guidelines acknowledge that children may not be able to articulate their claims to refugee status in the same way as adults, establish special procedures for adjudicating children's claims, and adopt the best interests of the child as the relevant standard for assessing a child's claim. The IRB developed the Guidelines after consultation with international, national, local, and legal organizations involved with refugee children.

Like the Canadian Guidelines, the INS Guidelines for Children's Asylum Claims are a collaborative effort developed after consultations with interested U.S. governmental and non-governmental organizations (NGOs) and individuals, as well as with the UNHCR The Women's Commission for Refugee Women and Children initially raised these concerns with the INS and was instrumental in the development of this guidance.

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[7] UNHCR Refugee Children: Guidelines on Protection and Care (1994).

[8] Assistance to Unaccompanied Refugee Minors, A/51/329, September 5, 1996.

[9] UNHCR Guidelines on Policies and Procedures in Dealing With Unaccompanied Children Seeking Asylum (1997).

II. Procedural Considerations for Asylum Officers

The INS recognizes the particular needs of children in various contexts.[10] The purpose of this section is to emphasize the importance of creating a "child-friendly" asylum interview environment that allows a child to discuss freely the elements and details of his or her claim.

As noted above, this guidance applies primarily to children under the age of 18 who apply for asylum independently rather than as a derivative applicant by submitting a Form I-589 asylum application in their own name. If the child does not appear at the interview with a parent or guardian, the Asylum Officer should routinely inquire into the location of the child's parents, whether the parents are aware of the child's whereabouts, and that the child has applied for asylum.[11] The majority of children who apply for asylum do so riding along with a parent's ("principal") application.

While these Guidelines are particularly relevant for children who raise independent asylum claims, the procedural sections may be useful for children's cases generally. These Guidelines will also apply to those individuals between the ages of 18 and 21 for purposes of interview scheduling and derivative determinations only. Asylum Officers should bear in mind that an applicant who is above the age of 18 at the time of the asylum interview, but whose claim is based on experiences that occurred while under the age of 18, may exhibit a minor's recollection of the past experiences and events.

Child asylum applicants may be less forthcoming than adults, and may hesitate to talk about past experiences in order not to relive their trauma. This section recognizes that children may not present their cases in the same way as adults, and suggests child-sensitive procedures intended to help Asylum Officers to interact more meaningfully with the child during the asylum interview. Many of the techniques are also applicable to interviews with adults, and in all cases Asylum Officers should seek to ensure that the applicant feels comfortable and free to discuss the claim.

(a) Presence of Trusted Adult

It is generally in the child's best interests for Asylum Officers to allow a trusted adult to attend an asylum interview with the child asylum applicant.[12] A trusted adult is a support

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[10] For example, most unaccompanied minors (children under the age of 18 who seek admission to the United States and who are not accompanied by a parent or guardian) are exempted from the expedited removal process. See, Memorandum, "Unaccompanied Minors Subject to Expedited Removal" (INS Office of Programs), August 21, 1997.

[11] Because the circumstances under which an unaccompanied minor may reach the United States can vary greatly, it is necessary to determine, if possible, the location of the child's parents. Children may have been separated from parents during their flight to the United States. Both children and parents may wish to know the location of relatives and whether they are safe. It may be in the child's best interests for the Asylum Officer to notify parents that their child has applied for asylum, provided that the child requests such parental notification in writing. 8 CFR 208.6(a).

[12] "Some applicants may request that a relative or friend be present at the interview for 'moral support.' There is no prohibition against this and the Asylum Officer, in his or her discretion, may allow such individual to remain during the interview." AOBTC (August, 1998) Lesson: Part I: Overview of Nonadversarial Interview, at pg. 23. At the same time, there is no requirement that a child bring an adult to the interview either to serve as a support person, attorney, or accredited representative.

person who may help to bridge the gap between the child's culture and the U.S. asylum interview. Testifying can be difficult for a child, and the presence of a trusted adult may help the child psychologically. The function of the support person is not to interfere with the interview process or coach the child during the interview, but to serve as a familiar and trusted source of comfort. The Asylum Officer may allow the adult to help the child explain his or her claim, but the Asylum Officer should at the same time ensure that the child is able to speak for him\herself and is given an opportunity to present the claim in his or her own words. The INS is not suggesting that the trusted adult necessarily serve as a substitute for an attorney or representative at the asylum interview, and the child may be accompanied to the interview by a support person in addition to an attorney or representative.

In many cases, the child's parent or other relative is a logical and appropriate support person. When the child arrives at an interview without a relative, however, the Asylum Officer in his or her discretion may allow another trusted adult to serve as the support person.[13] If the Asylum Officer determines during the course of the interview that the child is not comfortable because of the support person or is afraid of the person (for example, the support person appears to be a smuggler or some other adult who may put the child in danger), the Asylum Officer should continue the interview without that person.

This is not a new practice. Asylum Officers have the discretion to admit to an interview an individual who can offer moral support to an asylum applicant. We will continue to work closely with the Asylum Offices, NGOs, and the UNHCR on the topic of support persons for children's cases. Additional guidance on the role of support persons will be issued as required.

(b) Asylum Officers

All INS Asylum Officers will be trained on child refugee issues, and may be called upon to conduct interviews of child asylum seekers. It is in the best interests of the child to be interviewed by an official who has specialized training in child refugee issues.

There may be some Asylum Officers who have unique backgrounds or experience dealing with children. Other Officers may share the culture or language of the child. To the extent that personnel resources permit, Asylum Offices should attempt to assign Asylum Officers with the relevant background or experience to interview children's cases.

(c) Interview Scheduling

Virtually all applicants who filed their asylum applications after January 4, 1995, have their cases decided within 60 days. This is one of the important results of the asylum reform regulations. Reform applicants normally do not have to file a request for an interview. They are automatically scheduled for interviews and sent interview notices after the filing of asylum applications.

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[13] The UNHCR document "Refugee Children - Guidelines on Protection and Care" (see, Section I, Background and International Guidance, supra) states that children should "have a trusted adult accompany the child during the interviewing process, either a family member of the child, a friend or an appointed independent person" (pg. 102).

For pre-reform cases in our backlog of unadjudicated asylum applications, the INS has long had a policy permitting any applicant to request in writing an asylum interview if one has not been scheduled. If a principal asylum applicant has a child who is close to reaching his or her 21st birthday, or if the child has filed a separate asylum application, a request for an asylum interview may be sent to the Asylum. Office. Such requests should be given high priority in scheduling. For the sake of continuity, siblings of minor age should be interviewed as closely in time as possible and, to the extent that personnel resources permit, interviewed by the same Asylum Officer.

(d) General Interview Considerations

The atmosphere created during the non-adversarial asylum interview should allow the child to testify at a comfortable speed and should promote a full discussion of the child's past experiences. 8 CFR 208.9(b).

Interpreters play a critical role in ensuring clear communication between the child and Asylum Officer. Asylum Officers should confirm that the child and interpreter fully understand each other. Children who have been victims of sexual violence may feel more comfortable recounting their experiences to an interpreter and interviewer of the same gender. For example, it is not difficult to imagine the reluctance of a girl to testify about a sexual assault through a male interpreter, particularly if the interpreter is a family member or friend.[14]

Girls and young women, in many cases, may be more comfortable discussing their experiences with women Asylum Officers, particularly in cases involving rape, sexual abuse, prostitution, and female genital mutilation (FGM). To the extent that personnel resources permit, Asylum Offices may have women Asylum Officers interview these cases. See, *Gender Guidelines*, at pg. 5.

The child may be reluctant to talk to a stranger due to embarrassment or emotional upset and past trauma. Asylum Officers may have to build a rapport with the child to elicit claims and to enable the child to recount his or her fears and/or past experiences.[15] Several steps described below may be helpful in building rapport with a child and encouraging communication. Keep in mind that, from the point of view of most applicants -- including children -- Asylum Officers are authority figures and foreign government officials. Officers must also be culturally sensitive to the fact that every asylum applicant is testifying in a foreign environment and may have had experiences which give him or her good reason to distrust persons in authority. A fear of encounters with government officials in countries of origin may carry over to countries of reception. This fear may cause some children to be initially timid or unable to fully tell their story.[16]

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[14] See, *Gender Guidelines*, at pg. 5; AOBTC (August, 1998) Lesson: Interviewing Part VI: Working with an Interpreter.

[15] See, AOBTC (August, 1998) Lesson: Part I: Overview of Nonadversarial Interview; AOBTC (August, 1998) Lesson: Interviewing Part III: Eliciting Testimony.

[16] "A person who, because of his experiences, was in fear of the authorities in his [or her] own country may still feel apprehensive vis-a-vis any authority. He [or she] may therefore be afraid to speak freely and give a full and accurate account of his [or her] case." United Nations High Commissioner for Refugees, Handbook on Procedures and

Asylum Officers may be able to overcome much of a child's timidity or nervousness with a brief rapport-building phase during which time neutral topics are discussed (such as general interests, future career goals, school, pets, hobbies). Once the child appears comfortable, the Asylum Officer should make a brief "Opening Statement" before beginning the formal interview.[17] Asylum Officers can explain in very simple terms in the Opening Statement what will happen during the asylum interview.

Child Asylum Applicant:
- ***Build Rapport With The Child***
- ***Use Opening Statement***

OPENING STATEMENT FOR CHILDREN (Example[18])

I am glad that you are here today, and that your friend Mr. (Ms.) [name of support person, if any] is here with you. Do you know what we are going to do today? We are going to talk about why you left [name of country of origin], and why you may not want to go back there. As we talk, we will both have jobs. My job is to understand what happened to you. But I need your help. Your job is to help me to understand by telling me as much as you can remember, even the little things.

I will be asking you a few questions today. Some questions will be easy, but other questions you might not understand. It is OK if you do not understand a question. Just tell me that you do not understand and I will ask the question some other way. But please do not guess or make anything up. If you do not know the answer to the question, that is OK too. Just tell me that. No one can remember everything. There are no "right" or "wrong" answers to any of my questions.

As we talk today, I will write down what we say because what you tell me is important. Do not get nervous about my taking notes. Later, if I forget what we said, I can look it up.

I understand that you may be nervous or scared to tell me about what happened to you. I will not tell anyone in [name of country of origin] about what you tell me today. Also, none of your friends or, if you want, family here in the United States will know anything about what you tell me.

Before we start, do you have any questions that you would like to ask me? Or is there anything that you want to tell me? If you think of something while we are talking, let me know. If you have to go to the bathroom or want to stop for a while, also let me know.

The tone of the Opening Statement is intended to build trust and to assure the child that the Asylum Officer will be asking questions to help understand the claim. Note from a reading of the sample Opening Statement that a number of important points are made. The Statement clearly gives the child permission to tell the Asylum Officer when the child does not understand a question. Children need to know that it is permissible for them to tell adults when they either do not understand a question or do not know an answer. Children also need to be reassured that

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Criteria for Determining Refugee Status (1992) ("UNHCR Handbook ") at ¶ 198.

[17] If the principal on the case is an adult, an "Opening Statement" for adults should be used. See, Asylum Officer Corps Training, Interviewing Summary Of Techniques, HQ (July 14, 1994). See also, AOBTC (August, 1998) Lessons: Interviewing Part I: Overview of Non-Adversarial Interview; Part II: Notetaking; Interviewing Part III: Eliciting Testimony; Interviewing Part IV: Cross-Cultural Communication and Other Factors That May Impede Communication at an Asylum Interview; Interviewing Part VI: Working With an Interpreter; Interviewing Part V: Interviewing Survivors: Physical Abuse, Torture, and Trauma-Related Conditions.

[18] The sample Opening Statement is intended for young children, and may be modified for older children, depending on their developmental stage and level of sophistication. See, Working with Refugee and Immigrant Children, infra at note 21, pgs. 6-12, summarizing and reviewing the characteristics of children's developmental stages.

embarrassing or traumatic experiences from the past will not be shared with their friends or family members, if they wish, from their home country.

> ***The Opening Statement is a rapport-building activity intended to create a relaxing atmosphere, to make the child feel secure and confident, and to provide the child with general information about the asylum interview.***

During the interview Asylum Officers must take the initiative in actively considering whether the child understands the process and the particular questions. The Asylum Officer should watch for non-verbal cues, such as a puzzled look, knitted eyebrows, downcast eyes, long pauses, and irrelevant responses. These behaviors may signal something other than lack of comprehension, of course, but they may also serve as signals that a child is confused. In such circumstances, the Asylum Officer should pause, and if no appropriate response is forthcoming, rephrase the question.

Children in some cultures are taught to listen to adults but not to speak in their presence at all. Other children may have spent time in school or other environments where providing answers to questions is expected and saying "I don't know" is typically discouraged. If necessary, an Asylum Officer may explain to the child how to use the "don't know" response. An Asylum Officer might say, "If I ask you the question, 'How many windows are in this building?' and you don't know the answer to that question, you should say, 'I don't know.' Let's practice that. 'How many windows are in this building?' [Child responds, 'I don't know.']." This approach helps to ensure that the child understands when to provide a "don't know" response.

If at any time during the course of the interview the child begins to feel uncomfortable or embarrassed, the Asylum Officer should offer verbal reassurances. The Asylum Officer may empathize with the child by saying, "I know that it's difficult to talk about this, but it is important for me to hear your story." Or, "I know that this may make you feel uncomfortable or sad. That's OK. I understand." Additionally, a simple expression of interest (e.g., "I see" or "uh huh") may be enough for the child to continue. The Asylum Officer may also shift the focus of the questioning to a non-threatening subject until the child regains his or her confidence. Reassurance, empathic support, carefully framed questions, encouragement, and topic-shifting are important techniques for these cases.

> ***Reassurance, empathic support, carefully-framed questions, encouragement, and topic-shifting are important techniques for children's cases.***

Asylum Officers should also take the initiative when it comes to situations where a brief recess may be needed. Sometimes a child's way of coping with frustration or emotion is to shut down during the interview, to fall into silence or into a series of "I don't know" and "I don't remember" responses. Many children may not take the initiative to request a recess. A young child, for example, may stop answering questions or cry rather than interrupt the Asylum Officer with a request to go to the bathroom or rest. The responsibility may fall to the Asylum Officer to monitor the child's needs and best interests during the asylum interview, and to be proactive if a recess is needed.

As the interview draws to a close, the Asylum Officer should return to a discussion of the neutral topics with which the interview began. This approach will help to restore the child's sense of security at the conclusion of the interview. The Asylum Officer should ask the child if he or she has any final questions, and inform the child of the next steps in the application process.

(e) Child-Sensitive Questioning -- And Active Listening -- Techniques

This subsection reviews general child-sensitive questioning and active listening techniques. Children may not understand questions and statements about their past because their cognitive and conceptual skills are not sufficiently developed. An Asylum Officer's questions during the interview should be tailored to the child's age, stage of language development, background, and level of sophistication.[19] In order to communicate effectively with a child asylum applicant, an Asylum Officer must ensure that the Officer's questions -- and the child's answers -- are clearly understood.

Asylum Officers should take care to evaluate the child's words from a child's point of view. Children cannot give adult-like accounts of their experiences and memories, and Asylum Officers may have to bridge the gap through an understanding of age-related or culturally related reasons for a child's choice of words. For example, "staying up late" may mean early evening for a child. Similarly, instead of saying that a relative died or was killed, a child may state that the individual "went away" or "disappeared" implying reversibility; that the individual may return. Children may not know what happened or feel betrayed by the adult who has died, and may not understand the permanence of death. Even older children may not fully appreciate the finality of death until months or years after the event.

Asylum Officers should take care to evaluate the child's words from a child's point of view.

Proper questioning and listening techniques will result in case assessments that are more complete and accurate. The Asylum Officer controls the number and content of the questions during the interview process and, as such, needs to be familiar with the following techniques in order to elicit the most information:

- 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.

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[19] A child's "mental development and maturity" are important considerations when determining whether a child may qualify for refugee status. UNHCR Handbook at ¶214. See also, the summary of developmental stages in *Working with Refugee and Immigrant Children,* infra at note 21, pgs. 6-12.

- 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 visualizable terms (e.g., gun), instead of categorical terms (e.g., weapon). Reduce questions to their most basic and concrete terms.

- Avoid the use of legalistic 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 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 interview. Children are never to be coerced into answering questions during the interview. For example, telling a child that she cannot leave the interview until she answers the Asylum Officer's questions should never occur.

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

Children may not know the specific details or circumstances that led to their departure from their home countries. Children may also have limited knowledge of conditions in the home country, as well as their vulnerability in that country.

Asylum Officers should determine the child's ability to count before asking how many times something happened. Children may try to answer without the requisite skill, resulting in erroneous responses. 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, and is often a product of their culture.[20] The western mind typically measures time linearly, in terms of successive - and precise - named days, months, and years. Many cultures, 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 and not conform to western notions of precise time and named dates, but they may be the best and most honest replies the child can offer.

Even in those cultures where time is measured by a calendar, it may not comport to our Gregorian calendar. Many Guatemalan Indians, for example, still use the Mayan calendar of 20-day months. In certain Asian cultures, a baby is considered to be "1" on his or her date of birth thereby causing, to the western mind at least, a 1-year discrepancy between the child's age and date of birth. In many Latin cultures, 2 weeks is often "15 days" because the first and last days are counted. Certain Asian cultures also count the first day or year, adding 1 day or year to the time of the event.

In certain cultures, "I don't know" is used when an individual has no absolute knowledge but has an opinion about the truth of the matter in question. For example, a child may respond "I don't know" when asked who killed his or her parents, but upon further inquiry may state, for example, that everyone in his or her home village believes that it was government forces. Asylum Officers should generally probe further regarding these opinions. The child's awareness of community opinion may provide information about the issue in question even though the child may initially state "I don't know."

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[20] "Asylum Officers should recognize and take into account...barriers (linguistic, cultural, time, fear of authorities, ignorance . . ." during interviews). Basic Law Manual, Second Edition (BLM, 1995) at pg. 63. See also, AOBTC (August, 1998), Interviewing Part IV: Cross-Cultural Communication and Other Factors That May Impede Communication at an Asylum Interview.

For both developmental and cultural reasons, children cannot be expected to present testimony with the same degree of precision as adults.[21] This may require more probing and creative questioning. For example, the child may not know whether any family members belonged to a political party. The Asylum Officer should probe further and ask the child whether his or her parents attended any meetings and when the meetings were held. Asylum Officers should also make an inquiry into the location of the meetings, other people who attended the meetings, and whether the people had any problems. The child's knowledge of these matters may support a conclusion regarding the family's political association, despite the fact that the child may not know the details of the association.

(f) Other Evidence

Apart from the child's verbal testimony, the Asylum Officer may consider other evidence where available, including:

- evidence from family members;
- evidence from members of the child's community;
- evidence from medical personnel, teachers, social workers, community workers, child psychologists,[22] and others who have dealt with the child; and,
- documentary evidence of persons similarly situated to the child, or his or her group, physical evidence, and general country conditions information (see, INS Resource Information Center, subsection (i), infra).

(g) Credibility Issues

Inasmuch as Asylum Officers may deal with child and adult applicants from a diverse array of countries, cultures and backgrounds, cross-cultural sensitivity is required of all Asylum Officers irrespective of whether the applicant is a child or an adult. Nowhere is this sensitivity more

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[21] See generally, Karen J. Saywitz, Children in Court: Principles of Child Development for Judicial Application, in *A Judicial Primer on Child Abuse* (ABA Center on Children and the Law 1994); *Symposium: Child Abuse, Psychological Research On Children As Witnesses: Practical Implications Forensic Interviews And Courtroom Testimony,* 28 PAC. L.J. 3 (1996); Perry & Teply, *"Interviewing, Counseling, and In-Court Examination of children: Practical Approaches for Attorneys,"* 18 Creighton L. Rev. 1369 (1985); Note, *"The Problem of the Child Witness,"* 10 Wyo. L.J. 214, 220 (1986); Jean Koh Peters, *"Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions"* (1997); Jacqueline Bhabha and Wendy A. Young, *Through a Child's Eyes: Protecting the Most Vulnerable Asylum Seekers,* 75 Interpreter Releases 757 (June 1, 1998); *Working with Refugee and Immigrant Children, Issues of Culture Law & Development* (Lutheran Immigration and Refugee Service, 1998); Anne Graffam Walker, *Handbook on Questioning Children: A Linguistic Perspective.* Washington, D.C.: ABA Center on Children and the Law, 1994, pp. 95-98.

[22] For example, a report from a child psychologist who has interviewed the child may indicate post-traumatic stress, a conclusion that could support an Asylum Officer's determination regarding past or future persecution.

needed than in assessing credibility and "demeanor." "Demeanor" refers to how a person handles himself or herself physically; for example, maintaining eye contact, shifts in posture, and hesitations in speech. Some children can appear uncooperative for reasons having nothing to do with the reliability of their testimony. For example, there may be cultural reasons why a child will not maintain eye contact with an Asylum Officer during an interview. In Anglo-American cultures, people who avert their gaze when answering a question, or seem nervous, are perceived as untruthful. In other cultures, however, body language does not convey the same message. In certain Asian cultures, for example, people will avert their eyes when speaking to an authority figure as a sign of respect. This is a product of culture, not necessarily of credibility.[23]

From the child's point of view, INS Asylum Officers are authority figures and foreign government officials -- Children may have had experiences which give them good reason to distrust persons in authority.

Poor interview techniques or weak cross-cultural skills may affect the Asylum Officer's credibility finding. Officers should avoid misinterpreting certain emotional reactions or psychiatric symptoms as indicators of reliability. Children who have been subject to extreme abuse may be psychologically traumatized. Talking about such events generally does not come easily to anyone. Lengthy confinement in refugee camps or stays in first asylum countries can also greatly endanger the psychological well-being of children. Children who are separated from their families due to war or other refugee-producing circumstances are placed at greater psychological risk.

Questionable demeanor can be the product of culture or trauma rather than a lack of credibility.

Trauma can be suffered by any applicant, regardless of age, and may have a significant impact on the ability to present testimony. Symptoms of trauma can include depression, indecisiveness, indifference, poor concentration, long pauses before answering, as well as avoidance or disassociation. Some children may appear numb or show emotional passivity when recounting past events of mistreatment. Other children may give matter-of-fact recitations of serious instances of mistreatment. Trauma may also cause memory loss or distortion, and may cause applicants to block certain experiences from their minds in order not to relive their horror by the retelling. Inappropriate laughter can also be a sign of trauma or embarrassment. These symptoms can be mistaken as indicators of fabrication or insincerity.[24]

In reviewing the child's testimony, the Asylum Officers should consider the child's age and development at the tune of the event and the time of the retelling, the impact of the lapse of time between the event and the retelling; a child's ability to recall/communicate; the needs of children

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[23] See, AOBTC (August, 1998) Lesson: Interviewing Part IV: Cross-Cultural Communication and Other Factors That May Impede Communication at an Asylum Interview.

[24] See, AOBTC (August, 1998) Lesson: Interviewing Part V: Interviewing Survivors: Physical Abuse, Torture, and Trauma-Related Conditions.

with special mental, emotional, or developmental needs; and the possibility that a child has been protected by his or her parents/family and may not know all the relevant details.

When evaluating a child's testimony, the Asylum Officer may encounter gaps or inconsistencies. For example, a child may not know the political views of his or her family. The child may, due to age, gender, cultural background, or other circumstances, be unable to present testimony concerning every fact in support of the claim. Because vagueness and inconsistencies are likely to occur during the interview of a child, Asylum Officers must remember the possible developmental or cultural reasons for a child's vagueness or inconsistency, and not assume that it is an indicator of unreliability.[25]

Some children may have been coached by adults to tell a particular story at the interview, which the child repeats in order not to anger the adult. The fact that a child begins to tell a fabricated story at the interview should not foreclose further inquiry, and the Asylum Officer should undertake a careful and searching examination of the underlying merits of the child's case.[26]

(h) Derivative Status or Independent Claim

The UNHCR Senior Coordinator for Refugee Children has noted that there is a tendency in some countries to think of children simply or only as dependents of adults.[27] The UNHCR believes that "invisibility" is a common problem for refugee children. In recognition of this problem, Asylum Officers should not assume that a child cannot have an asylum claim independent of the parents. When a parent or parents do not appear to have an approvable claim, an Asylum Officer should routinely make an inquiry into the child's case even though the child may be listed merely as a derivative on a parent's application and may not have filed a separate Form I-589 asylum application. As importantly, the fears and experiences of the child may help to enhance the strength of the parents' claim.

The UNHCR points out that invisibility is a common problem for refugee children

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[25] See, AOBTC (August, 1998) Lesson: Credibility. See also, Jacqueline Bhabha and Wendy A. Young, *Through a Child's Eyes: Protecting the Most Vulnerable Asylum Seekers*, 75 Interpreter Releases 757 (June 1, 1998).

[26] Compare, "The fact that an applicant attempts to give a boilerplate story at an affirmative asylum interview should not foreclose further inquiry by the Asylum Officer. Many applicants have been the victims of unscrupulous preparers, of bad advice, and, commonly, of fear. It is this type of applicant who above all may require the careful and searching examination of the underlying merits of his/her case." Asylum Officer Corp Training, Interviewing Summary of Techniques (July 14, 1994).

[27] Progress Report on Refugee Children and Adolescents, including UNHCR's Strategy for Follow-Up to the Report on the Impact of Armed Conflict on Children (EC/47/SC/CRP.19), April 9, 1997.

(i) INS Resource Information Center

The INS Resource Information Center (RIC) regularly distributes to the Asylum Offices a wide variety of country conditions information in the following formats: profile series, perspective series, query series, information packet series, master exhibit series, and a bi-weekly news summary. [28] Asylum Officers also have access to the electronic CD-ROM database "Refworld" produced by the Center for Documentation and Research at the UNHCR in Geneva. Additionally, the UNHCR's website at www.unhcr.ch often contains updated information not yet available on the Refworld CD-ROM.

Asylum Officers must be able to rely on objective and current information on the legal and cultural situation of children in their countries of origin, on the incidence of exploitation, victimization, and other human rights violations against children, and on the adequacy of state protection afforded to them.[29] To this end, the RIC will continue to issue periodic papers and other documentation, including U. N. documents and State Department and non-governmental reports addressing human rights, including children's rights and country practices. Asylum Officers should consult all available hard copy and database information as needed.

The RIC will continue to ensure that comprehensive information concerning child-specific persecution and violations of the rights of children is distributed regularly and systematically to all Asylum Offices[30]

III. Legal Analysis Of Claims

(a) Introduction

This section will focus on the particular legal issues an Asylum Officer may encounter when adjudicating the claim of a child who has filed a separate asylum application.[31] Unlike the child

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[28] See; AOBTC (August, 1998), Lesson: Country Conditions Research and the Resource Information Center (RIC).

[29] The INS will continue to work with attorneys, advocacy groups, academic institutions, NGOs, and other interested organizations and members of the public in developing appropriate human rights documentation resources. Individuals or organizations who wish to contribute information or documentation on children's or other refugee issues may mail it to: INS Resource Information Center, 425 I St., N.W., Washington, D.C. 20536 (Attn: ULLICO Bldg., 3rd Floor). Information available in electronic format may also be sent by e-mail to John.D.Evans@justice.usdoj.gov.

[30] RIC has distributed to all 8 Asylum Offices a number of documents relating to abuses against children, including Amnesty International USA. *Iraq: Children - Innocent Victims of Political Repression* (New York, NY: Amnesty International USA, April 1989), 71 pgs.; Amnesty International. *Argentina: Missing Children Update* (London, UK: AI index: AMR 13/05/90 DISTR: SC/CO/GR/PG, 13 May 1990). 9 pgs.; Amnesty International. *Brazil: Extrajudicial Execution of Street Children in Sergipe* (London, UK: AMR 19/19/92, July 1992). 4 pgs.; Human Rights Watch. *Guatemala's Forgotten Children: Police Violence and Abuses in Detention* (New York: Human Rights Watch/Americas. July 1997). 132 pgs.

[31] Although the discussion focuses on children who have filed separate asylum applications, the same issues are applicable in the case of a derivative applicant when the principal applicant is not granted asylum. UNHCR Handbook, ¶ 184.

who is a derivative applicant under the parent's application,[32] the child who has filed a separate asylum application must recount his or her own story, frequently without the support of familiar adults. The child may not even fully understand why or how the events leading to his or her arrival in the United States came about.

Consequently, the age, relative maturity, ability to recall events, and psychological make-up of the child will affect the quality of the answers an Asylum Officer is able to elicit from that child. While the burden of proof remains on the child to establish his or her claim for asylum, an Asylum Officer must take these and other factors into account when assessing the credibility of a claim and must also attempt to gather as much objective evidence as possible to evaluate the child's claim. Given the non-adversarial nature of the affirmative asylum adjudication, the special considerations associated with adjudicating a child's claim may require a closer working relationship with the child's representative and support person, if any, to ensure that the child's claim is fully explored.

This section does not create new law or alter existing law. Nor does it attempt to address all the legal issues that may arise in adjudicating a child's asylum claim.[33] Instead, it identifies particular issues relevant to children that an Asylum Officer may encounter and places those issues within the context of United States law and UNHCR guidance.[34]

(b) Children as Refugees

The standards governing claims of persons seeking asylum are set forth in statute and regulation, and are not expanded by the force of customary international law. Matter of Medina, 19 I&N Dec. 734 (BIA 1988); Matter of A-E-M-, Int. Dec. 3338 (BIA 1998). In order to be granted asylum in the United States, the child applicant must establish that he or she meets the definition of refugee contained at Section 101(a)(42)(A) of the Immigration and Nationality Act

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[32] Under INS regulations, the child of a refugee or asylee is usually afforded the same status as his or her parent. See, 8 CFR 207.1(c) (refugee status), 208.21(a) (asylee status). With respect to firm resettlement, for example, the courts have reasoned that "children are, legally speaking, incapable of forming the necessary intent to remain indefinitely in a particular place." Lepe-Guitron v. INS, 16 F.3d 1021, 1025 (9th Cir. 1994). See also, Vang v. INS, 1998 WL 334183 (9th Cir. 1998) (looking "to whether the minor's parents have firmly resettled in a foreign country before coming to me United States, and then derivatively attribut[ing] the parents' status to the minor").

[33] For further discussion of the basic framework of asylum adjudication, Asylum Officers should refer to the AOBTC training materials and *Gender Guidelines*. The *Gender Guidelines* provide a useful overview, and many of its points relating to gender may be useful in analogizing to claims based on youth.

[34] Where appropriate, the following discussion will incorporate relevant sections of the UNHCR Handbook. While the UNHCR Handbook does not have the force of law and does not bind the INS with respect to interpretations of Section 208 of the INA, the Supreme Court has noted that the Handbook provides significant guidance in construing the 1967 Protocol, to which Congress sought to conform in adopting the Refugee Act of 1980. INS v. Cardoza-Fonseca, 480 U.S. 421, 439 n.22 (1987).

(INA), as interpreted by Board and Federal court precedent.[35] Regardless of how sympathetic the child's claim may be, he or she cannot be granted asylum unless this standard is met. Consequently, the "best interests of the child" principle, while useful to the interview process, does not replace or change the refugee definition in determining substantive eligibility.

In discussing the treatment of unaccompanied minors, the UNHCR Handbook notes that, "[t]he same definition of a refugee applies to all individuals, regardless of their age."[36] Sensitivity to the age of the child, however, may affect the analysis of his or her refugee status:

> Although the same definition of a refugee applies to all individuals regardless of their age, in the examination of the factual elements of the claim of an unaccompanied child, particular regard should be given to circumstances such as the child's stage of development, his/her possibly limited knowledge of conditions in the country of origin, and their significance to the legal concept of refugee status, as well as his/her special vulnerability.[37]

Thus, while a child's claim must contain all the necessary components of a claim to refugee status, the evidence a child is able to present regarding each component should be carefully evaluated on a case-by-case basis.

(c) Persecution

In assessing a child's claim of persecution, asylum adjudicators should follow the procedural considerations outlined above. As in all asylum cases, the Asylum Officer must assess whether the harm that the child fears or has suffered is serious enough to constitute "persecution" as that term is understood under the relevant international and domestic law.[38] The Board of

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[35] Under the INA, a refugee is: any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, ... The term "refugee" does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. For purposes of determinations under this Act, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of Political opinion, and a person who has a well founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of political opinion. 8 U.S.C. 1101(a)(42).

[36] UNHCR Handbook, supra note 16, at 213

[37] United Nations High Commissioner for Refugees Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, p. 10 (1997).

[38] See, BLM; Asylum p. 23-27; See also, AOBTC (August, 1998). Lesson: Asylum Eligibility Part I: Definition of Refugee: Definition of Persecution; Eligibility Based on Past Persecution.

Immigration Appeals (BIA) has interpreted persecution to include threats to life, confinement, torture, and economic restrictions so severe that they constitute a threat to life or freedom. Matter of Acosta, 19 I&N Dec. 211, 222 (BIA 1985), overruled on other grounds by Matter of Mogharrabi, 19 I&N Dec. 439 (BIA 1987).[39] Physical or mental harm, including rape, has been considered persecution. Matter of D-V-, Int. Dec. #3252 (BIA 1993). In addition, though discriminatory practices and experiences are not generally regarded by themselves as persecution, they "can accumulate over time or increase in intensity so that they may rise to the level of persecution. "[40] However, "'persecution' within the Act does not encompass all treatment that society regards as unfair, unjust, or even unlawful or unconstitutional." Matter of V-T-S-, Int. Dec. 3308 (BIA 1997) citing Fatin v. INS, 12 F.3d 1233 (3d Cir. 1993). The Board has further found that, "[g]enerally harsh conditions shared by many other persons" do not amount to persecution. Acosta, 19 I&N Dec. at 222.

The harm a child fears or has suffered, however, may be relatively less than that of an adult and still qualify as persecution. Given the "variations in the psychological make-up of individuals and in the circumstances of each case, interpretations of what amounts to persecution are bound to vary." UNHCR Handbook, supra note 18, at ¶ 52. The types of harm that may befall children are varied. In addition to the many forms of persecution an adult may suffer, children may be particularly vulnerable to sexual assault, forced labor, forced prostitution, infanticide, and other forms of human rights violations such as the deprivation of food and medical treatment. Cultural practices, such as FGM, may under certain circumstances constitute persecution. Matter of Kasinga, Int. Dec. 3278 (BIA 1996).

These issues are also relevant to a determination that a child has a well-founded fear of persecution. A well-founded fear of persecution involves both subjective and objective elements such that an applicant is found to have a genuine fear of persecution and that fear is objectively reasonable. Acosta, 19 I&N Dec. at 224; Mogharrabi, 19 I&N Dec. at 446.[41] For child asylum seekers, however, the balance between subjective fear and objective circumstances may be more difficult for an adjudicator to assess. Although there are no bright line tests, the UNHCR Handbook suggests that children under the age of 16 may lack the maturity to form a well-founded fear of persecution, thus requiring the adjudicator to give more weight to objective factors. UNHCR Handbook, supra note 1, at ¶ 215, 217. "Minors under 16 years of age. . . may have fear and a will of their own, but these may not have the same significance as in the case of an adult." Id. at 215. There is, of course, no hard and fast rule; "a minor's mental maturity must normally be determined in the light of his [or her] personal, family and cultural background." Id. at ¶ 216.

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[39] See, Kovac v. INS, 407 F.2d 102, 107 (9th Cir. 1969) (persecution involves "the infliction of suffering or harm upon those who differ . . . in a way regarded as offensive"); Hernandez-Ortiz .v INS, 777 F.2d 509, 516 (9th Cir. 1985) (persecution can occur where "there is a difference between the persecutor's views or status and that of the victim; it is oppression which is inflicted on groups or individuals because of a difference that the persecutor will not tolerate").

[40] BLM, at p. 22. See also, AOBTC (August, 1998). Lesson: Asylum Eligibility Part I.

[41] See, AOBTC (August, 1998) Lesson: Asylum Eligibility Part II: Well-Founded Fear.

The adjudicator may also have to look to the circumstances of the parents and other family members, including their situation in the child's country of origin. See id. at ¶ 218. The treatment of a child's family, for example, can support a well-founded fear. See Ananeh-Firempong v. INS, 766 F.2d 621 (1st Cir. 1985)(concluding that evidence of mistreatment of one's family is probative of a threat to the applicant); UNHCR Handbook, supra note 18, at ¶ 43 (stating that an applicant need not show a threat of persecution based on personal experience, as evidence concerning relatives may support the conclusion that fear is well-founded). In certain cases, the reasonableness of an applicant's fear of persecution can be reduced when his or her family remains in the home country unharmed for a long period of time after the applicant's departure. Matter of A-E-M-, Int. Dec. 3338 (BIA 1998); Cuadras v. INS, 910 F.2d 567 (9th Cir. 1990).

If the child was sent abroad by his or her parents or family members, the circumstances of that departure are also relevant to the child's asylum application. "If there is reason to believe that the parents wish their child to be outside the country of origin on grounds of well-founded fear of persecution. . ." that may suggest that the child has such a fear as well, according to the UNHCR Handbook, supra note 18 at para. 218. Thus, if it can be determined that the parent had an objectively reasonable fear of persecution, this might be important to the analysis of the well-foundedness of the child's claim. When this information is unavailable, or it appears that the will of the parents and that of the child are in conflict, the adjudicator "will have to come to a decision as to the well-foundedness of the minor's fear on the basis of all the known circumstances, which may call for a liberal application of the benefit of the doubt." Id. at ¶ 219.

An adjudicator should attempt, in the course of the interview, to evaluate the child's level of maturity in order to determine the weight to give to the child's expressed fear. It is also incumbent on the adjudicator to evaluate the circumstances under which the child has raised a claim for asylum. For example, the circumstances of a child's arrival in the United States may provide clues to whether the child has a well-founded fear of persecution. If the child arrives in the company of other asylum seekers who have been found to have a well-founded fear of persecution, this may, depending on the circumstances, help to establish that the child's fear is well-founded. See id. at ¶ 217. 8 CFR 208.13(b)(2).

Assessing the coherence and credibility of any applicant's account of events is a difficult and challenging responsibility for the adjudicator. Assessing a child's account of harm and possible persecution presents even greater challenges. Asylum Officers are encouraged to consult the Headquarters Asylum Office where necessary to resolve these issues.

(d) Nexus: the "On Account of" Requirement

(1) General Factors to Be Considered

One of the more complex analytical decisions an asylum adjudicator may face is the determination of whether a child's asylum claim involves persecution "on account of" one of the five protected grounds of race, religion, nationality, political opinion, or membership in a particular social group. See 8 U.S.C. 1101(a)(42)(A). The "on account of" component is a critical part of the analysis under United States law, requiring the applicant to provide some

evidence, either direct or circumstantial, that the harm he or she suffered is connected to the persecutor's intention to harm the applicant, based on the applicant's race, religion, nationality, political opinion, or membership in a particular social group. INS v. Elias-Zacarias, 502 U.S. 478, 482 (1991).

In considering the asylum claim of a child who has filed a separate asylum application, the nexus requirement may be particularly difficult to determine because a child may express fear or have experienced harm without understanding the persecutor's intent. A child's incomplete understanding of the situation does not necessarily mean that a nexus between the harm and a protected ground does not exist. The Board has acknowledged that a persecutor may have mixed motives for inflicting harm. Matter of Fuentes, 19 I&N Dec. 658, 662 (BIA 1988); Matter of S-P-, Int. Dec. 3287 (BIA 1996) ("Proving the actual, exact reason for persecution or feared persecution may be impossible in many cases. "); Matter of V-T-S-, Int. Dec. 3308 (BIA 1997) ("An asylum applicant is not obliged to show conclusively why persecution has occurred or may occur. "). Consequently, because more than one factor may motivate a persecutor to inflict harm, an applicant is not required to establish that the persecutor is motivated solely by a desire to overcome the protected characteristic. Fuentes, 19 I&N Dec. at 662. When a child applicant is involved, the child may be unable to identify all relevant motives, but a nexus can still be found if the objective circumstances support the child's claim that the persecutor targeted the child based on one of the protected grounds.

Similarly, the inherent vulnerability of children often places them at the mercy of adults who may inflict harm without viewing it as such, sometimes to such a degree of severity that it may constitute persecution. In that context, it is important to remember that the Board of Immigration Appeals has held that a punitive or malignant intent is not required for a harm to constitute persecution on the basis of a protected ground. A persecutor may believe that he or she is helping the applicant by attempting to overcome the protected characteristic. Kasinga, Int. Dec. 3278 (involving persecution based on FGM); Pitcherskaia v. INS, 118 F.3d 641 (9th Cir. 1997) (involving the use of psychiatric treatments to overcome homosexuality). Consequently, it is possible that a child's claimed harm may arise from a culturally accepted practice within his or her community. In such cases, an adjudicator must look carefully at both the degree of harm and whether any of the reasons for inflicting the harm involve a protected ground.

(2) Issues of Particular Relevance to Children

Regardless of the nature or degree of harm the child fears or has suffered, that harm must nonetheless be tied to a protected ground. For purposes of these Guidelines, this discussion focuses briefly on the protected grounds in general and then turns to an analysis of "membership in a particular social group, " because claims based on this ground are frequently difficult, novel, and analytically complicated.

Children, like adults, may raise one or more protected grounds as the basis for an asylum claim. The Asylum Officer must explore all possible grounds for asylum and should take into account the age and relative maturity of the child in assessing the child's ability to articulate his

or her claims. Nonetheless, when a child asserts a claim based on race, nationality, or religion, the burden remains on the child to establish that he or she falls within the described category or is perceived as belonging to that category. Because children who have filed separate asylum applications may lack the necessary documents to establish their race, nationality, or religion, and may have more limited access to these documents than a similarly situated adult, the Asylum Officer may have to rely solely on testimony of the child to establish these elements. Although the Board has recently issued several opinions that emphasize an applicant's burden to produce all accessible documents, testimony alone can still be sufficient to establish a claim where the applicant credibly testifies that he or she is unable to procure documents. 8 CFR 208.13(a). See, Evidentiary Issues, subsection (f), infra.[42] This distinction may be particularly important in analyzing a child's claim, particularly if the child is unrepresented.

When the child claims asylum on the basis of political opinion, the age and maturity of the child must also be taken into account. Just as a younger child may have difficulty forming a well-founded fear of persecution, the ability to form a political opinion for which one may be persecuted may be more difficult for a young child to establish. Because the level of children's political activity varies widely among countries, however, Asylum Officers should not assume that age alone prevents a child from holding political opinions for which he or she may be persecuted. See Civil v. INS, 140 F.3d 52 (1st Cir. 1998). In Civil, the First Circuit affirmed the Board's holding that the young applicant failed to establish a well-founded fear of persecution based on either political opinion or membership in a social group consisting of "Haitian youth who possess pro-Aristide political views. " Id. at 56. Although the Court found sufficient grounds to affirm the underlying decision, it criticized the Immigration Judge's conclusion that "it is almost inconceivable to believe that the Ton Ton Macoutes could be fearful of the conversations of 15-year-old children, " noting that the evidence submitted by petitioner cast serious doubts on "the contention that '15-year-old children' are unlikely targets of political violence in Haiti. " Id. at 56. This serves to remind adjudicators that a child's assertion of persecution based on political opinion cannot be rejected on the basis of age alone.

It may also be possible for a child's claim to be based on imputed political opinion. See, e.g., Matter of S-P-, Int. Dec. 3287. The adjudicator should carefully review the family history of the child and should explore as much as possible the child's understanding of his or her family's activities to determine whether the child may face persecution based on the imputed political beliefs of family members or some other group with which the child is identified.

(e) Membership in a Particular Social Group

(1) General Considerations

In order to establish eligibility for relief based on membership in a particular social group, an applicant must establish that the group is cognizable as a particular social group under the Act and

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[42] See also, AOBTC (August, 1998). Lesson: Asylum Eligibility Part IV, Burden of Proof and Evidence.

the individual possesses the traits that make the group cognizable. Matter of V-T-S-, Int. Dec. 3308 (BIA 1997)(citing Sanchez-Trujillo, 801 F.2d at 1573-75). The type of harm a child may suffer cannot serve to define the particular social group on account of which that particular harm was suffered. Persecution on account of membership in a particular social group encompasses persecution that is directed toward an individual who is a member of a group of persons all of whom share a common immutable characteristic. Acosta, 19 I&N Dec. at 233. The Board of Immigration Appeals noted:

> The shared characteristic might be an innate one such as sex, color, or kinship ties, or in some circumstances it might be a shared past experience such as former military leadership or land ownership. The particular kind of group characteristic that will qualify under this construction remains to be determined on a case-by-case basis. However, whatever the common characteristic that defines the group, it must be one that the members of. the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences.
>
> Id.

The First, Third, and Seventh Circuits have adopted the Acosta analysis, endorsing "Acosta's 'immutable characteristics' definition as central to the determination of what constitutes a particular social group." Lwin v. INS, 144 F.3d 505, at 511 (7th Cir. 1998); See also, Fatin, 12 F.3d at 1239-41; Meguenine v. INS, 139 F.3d 25, 28 n. 2 (1st Cir. 1998).[43] Unlike the other Circuits, the Ninth Circuit emphasizes the "voluntary associational relationship" of persons who share a common bond. Sanchez-Trujillo v. INS, 801 F.2d 1571 (9th Cir. 1986). The Second Circuit has defined a particular social group as a group "comprised of individuals who possess some fundamental characteristic in common which serves to distinguish them in the eyes of the persecutor or in the eyes of the outside world in general. " Gomez v. INS, 947 F.2d 660, 664 (2d Cir. 1991).

Even in those jurisdictions where the relevant standard is a variation on Acosta, the determination that a particular social group exists requires that the group must have some fundamental characteristic or bond that makes it sufficiently distinct from the general population. Identifying the group is only the first step, however, as the applicant must also establish that he or she is a member of the particular social group, and that persecution or a well-founded fear of persecution is based on membership in that group. Lwin, 144 F.3d at 642 n. 3; Fatin, 12 F.3d at 1240.

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[43] See also, AOBTC (August, 1998), Lesson: Asylum Eligibility Part III, Nexus and the Five Protected Grounds.

(2) Social Group Defined by Family Membership

Asylum seekers often claim to have suffered harm or to face the risk of harm because of a family relationship. See, Legal Opinion, Office of the INS General Counsel, "Whether Somali Clan Membership May Meet the Definition of Membership in a Particular Social Group under the INA" (December 9, 1993). In Gebremichael v. INS, 10 F.3d 28, 36 (1st Cir. 1993), the court concluded: "[t]here can, in fact, be no plainer example of a social group based on common, identifiable and immutable characteristics than that of a nuclear family." This appears to follow the pronouncement of the BIA in Acosta that "kinship ties" could be the shared characteristic defining a particular social group. Gebremichael concerned an Ethiopian applicant who had been imprisoned and tortured by Dergue Government officials seeking information about the applicant's brother. The court found that:

> the link between family membership and persecution is manifest: as the record makes clear and the INS itself concedes, the Ethiopian security forces applied to petitioner the "time-honored theory of cherchez la famille ('look for the family')," the terrorization of one family member to extract information about the location of another family member or to force the family member to come forward. As a result, we are compelled to conclude that no reasonable fact finder could fail to find that petitioner was singled out for mistreatment because of his relationship to his brother. Thus, this is a clear case of "[past] persecution on account of . . . membership in a particular social group."

10 F.3d at 36. See also Ravindran v. INS, 976 F.2d 754, 761 n.5 (1st Cir. 1992), quoting Sanchez-Trujillo, 801 F.2d at 1576 ("a prototypical example of a 'particular social group' would consist of the immediate members of a certain family, the family being the focus of fundamental affiliational concerns and common interests for most people"). Without mentioning Sanchez-Trujillo, however, or exploring the question in depth, the Ninth Circuit later held that the concept of persecution on account of membership in a particular social group does not extend to the persecution of a family. Estrada-Posadas v. INS, 924 F.2d 916, 919 (9th Cir. 1991). It should be noted that the facts of Estrada may impose some limits on its application, as the asserted group membership was broader than that of the applicant's immediate family.

While the state of the law is therefore uncertain in the Ninth Circuit, there is nevertheless Board and Federal court support for the principle that family membership could define a "particular social group" under the asylum laws. Obviously all other elements of the definition must be satisfied for this to be the basis of eligibility as a refugee. There must be past persecution or a well-founded fear of future persecution, and the harm must be threatened or inflicted on account of the applicant's membership in the group.

(3) Social Groups Defined in Whole or in Part by Age

Domestic law with respect to age-based claims is scarce. The Second Circuit has noted that "[p]ossession of broadly-based characteristics such as youth and gender will not by itself endow

individuals with membership in a particular group." Gomez v. INS, 947 F.2d 660, 664 (2d Cir. 1991). With respect to gender, Federal courts have taken different legal approaches regarding the possible breadth of a gender-based claim, but have yet to find as a factual matter that an applicant has established that a persecutor sought to harm the individual on the basis of gender alone. See, *Gender Guidelines* and cases cited therein. More often, while acknowledging the possibility of a broadly defined social group based on gender, courts have looked to narrowly defined subgroups in which gender is one of several factors used to determine the parameters of the particular social group. Id. See also Kasinga, Int. Dec. 3278; Fatin, supra.

By analogy, an age-based claim grounded solely in the applicant's status as a child or a child from a particular country is unlikely to be sufficiently discrete to establish persecution on account of that status. The Board and Federal courts have rejected claims based primarily or exclusively on age. For example, in Matter of Sanchez and Escobar, 19 I&N Dec. 276 (BIA 1985), the Board rejected as overly broad claims that young Salvadoran men, ages 18 to 30, who were urban, working class males of military age constituted a particular social group. The Board noted:

> Historically, it has been the young who have primarily been involved in both the internal and external armed conflicts of a country. Although it may be an element of the proof, a purely statistical showing is not by itself sufficient proof of the existence of a persecuted group. It is not enough to simply identify the common characteristics of a statistical grouping of a portion of the population at risk. In the context of the asylum and withholding provisions related to "membership in a particular social group" under the Act, there must be a showing that the claimed persecution is on account of the group's identifying characteristics.
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> Id. at 285-86.

On appeal, the Ninth Circuit affirmed, reiterating that the term "particular social group" does not "encompass every broadly defined segment of a population, even if a certain demographic division does have some statistical relevance. " Sanchez-Trujillo, 801 F.2d at 1576. See also Civil 140 F.3d at 56 (rejecting "Haitian youth who possess pro-Aristide political views" as overly broad);[44] Ravindran v. INS, 976 F.2d 754, 761 n.5 (1st Cir. 1991) (rejecting argument that Tamil males between the ages of 15 and 45 were targeted for persecution on the basis of age and gender); Matter of Vigil, 19 I&N Dec. 572 (BIA 1988).

(4) Private versus Public Actors

As the preceding discussion suggests, the claims of child asylum seekers may often involve forms of harm that have not traditionally been associated with government actors. Non-state actors generally inflict harms such as child abuse, forced labor, or criminal exploitation of children which

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[44] The First Circuit, in Civil, found that "[p]etitioner presented ample documentary evidence that young people in Haiti were not exempted from the general violence and unrest that occurred in the aftermath of Haiti's military coup, but she presented no evidence that such persons constitute anything other than a general demographic segment of the troubled Haitian population. We thus reject petitioner's suggestion that the Board erred by not finding her eligible for asylum based on her status as a Haitian youth who supported Aristide."

may or may not be linked to one of the five protected grounds. Where such a nexus can be established, however, the applicant must still demonstrate both that the private persecutor has the requisite intent and that the government is unable or unwilling to protect the child from the alleged persecutor. See Matter of Villalta 20 I&N Dec. 142 (BIA 1990) (finding that "[t]he Salvadoran Government appears, at a minimum, to have been unable to control the paramilitary 'Death Squad'"); Matter of V-T-S-, Int. Dec. 3308 (BIA 1997).[45] The fact that a child did not specifically seek protection does not necessarily undermine his or her case, but instead the adjudicator must explore what, if any, means the child had of seeking protection. Depending on the age and maturity of the child, he or she may be able to contribute some personal knowledge of the government's ability to offer protection, but it is far more likely that the adjudicator will have to rely on objective evidence of government laws and enforcement. Special attention should be paid to government efforts to address criminal activities relating to children.

When a non-state actor is involved, the question of internal relocation may also take on greater significance in assessing a well-founded fear of persecution. A determination that a government is unable or unwilling to protect a child should include an assessment of whether or not the lack of protection is limited to a specific geographic area or extends nationwide. Matter of A-E-M-, Int. Dec. 3338 (BIA 1998) (noting that "the respondents have not provided any evidence to suggest that their fear of persecution from the Shining Path would exist throughout that country"). An adjudicator should also take into account whether or not it is reasonable for the child to relocate by himself or herself,[46] as well as the possibility of return to protection of the state, as opposed to the protection of the parents.

(f) Evidentiary Issues

In evaluating the evidence submitted to support the application of a child seeking asylum, adjudicators should take into account the child's ability to express his or her recollections and fears, and should recognize that it is generally unrealistic to expect a child to testify with the precision expected of an adult. The UNHCR Handbook advises that children's testimony should be given a liberal "benefit of the doubt" with respect to evaluating a child's alleged fear of persecution. UNHCR Handbook, supra note 18, at ¶ 219. See, Matter of S-M-J-, supra, for a discussion of the benefit of the doubt doctrine.

A child, like an adult, is not required to provide corroborating evidence in all cases, and may rely solely on testimony when that testimony is credible, consistent, and sufficiently detailed to provide a plausible and coherent account of the basis of the child's alleged fear. See Matter of M-D-, Int. Dec. 3339 (BIA 1998); Matter of S-M-J-, Int. Dec. 3303 (BIA 1997); Matter of Dass, 20 I&N Dec. 120, 124 (BIA 1989); 8 CFR 208.13(a). The level of detail and consistency required of a child, however, should be appropriate to the child's age and maturity level. An adjudicator should also consider the child's emotional state in assessing testimony. For example, the Board

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[45] See also, AOBTC (August, 1998). Lesson: Asylum Eligibility Part I.

[46] See, supra note 32.

has recognized that it may be appropriate to discount certain inconsistencies based on the trauma associated with persecution. Matter of A-S-, Int. Dec. 3336 (BIA 1998) (noting that an individual fleeing persecution may have difficulty "remembering exact dates when testifying before an Immigration Judge").

Certain elements of a child's claim, however, such as those relating to identity or verifiable incidents of persecution, may require corroborating evidence. A child, through his advocate or support person, should be expected to produce the relevant documents "where it is reasonable to expect corroborating evidence" or should be expected to offer an explanation as to why those documents cannot be produced. See, e.g., Matter of M-D-, Int. Dec. 3339; Matter of S-M-J-, Int. Dec. 3303. What is reasonable will, of course, depend on the child's individual circumstances, including whether or not the child is represented. A child who has been in contact with his or her family may have greater access to documentation than a child who has had. no contact with family members. The adjudicator should carefully explore these issues with the applicant in assessing the strength of the evidence presented.

Given the additional difficulties associated with evaluating a child's claim, the adjudicator should carefully review relevant country conditions information. While the child, through his or her advocate or support person, has an obligation to produce relevant supporting material, the adjudicator should also supplement the record as necessary to ensure a full analysis of the claim. Matter of S-M-J-, Int. Dec. 3303 ("The more background information the Service has about the applicant's country, the more thorough and intelligent the examination will be.").

As with the substantive legal standard, evidentiary questions relating to child asylum seekers will pose special challenges for the adjudicator. Adjudicators are encouraged to seek assistance from the Headquarters Asylum Office to resolve difficult problems.

IV. Aged-Out Children

This section reviews the issue of children who reach the age of 21 ("age out") before the asylum interview, or who turn 21 after the interview but before adjustment of status.

(a) Children Who Age-Out Before Asylum Interview

Children who are included in their parents' asylum application age out of derivative status upon reaching their 21st birthdays, even though they may have been under 21 at the time of the filing of their parents' asylum application. INA 208(b)(3) and 8 CFR 208.19(a). If a child who is listed on an asylum application as a derivative reaches his or her 21st birthday before the asylum interview, he or she 'must be considered a principal applicant, and must file a separate Form I-589 asylum application.

When a child has aged out of derivative status by the time of the asylum interview, a photocopy should be made of the parent's case assessment for inclusion in the non-record side of the former derivative's A-file. The former derivative may not have as much information as the parent regarding why the family left their home country. By placing a copy of the parent's case assessment in the aged-out child's A-file, we ensure that the interviewing Asylum Officer has the parent's case assessment -- before the interview -- to make a fuller evaluation of the aged-out child's case.[47] The parent's case assessment will help the later interviewing Asylum Officer by providing more details of the family's background and experiences.

Aged-Out Children:

- **Copy of parent's case assessment in non-record side of former derivative's A-File.**
- **Inform the family that an asylum application should be separately filed now by the aged-out child, and if asylum is granted to the parent a Form I-130 can be filed for the aged-out child by the parent after adjustment.**

The Asylum Officer should inform the family that:

1. A separate Form I-589 asylum application should be filed now -- by the aged-out child;[48] and,

2. If the parent of an aged-out child is granted asylum, a Form I-130 relative petition can be filed for the aged-out child later -- by the parent after adjustment.

In situations such as this, the family may not understand how a child becomes disqualified from derivative asylum eligibility by operation of law (by reaching his or her 21st birthday); and also may not understand the Form I-130 option (in which reaching one's 21st birthday is not disqualifying). This approach will help to prevent the separation of a family.

(b) Children Who Age-Out Before Adjustment

If a child is granted asylum as a derivative, but the child turns 21 years of age before an application for adjustment to permanent residence is filed, a *nunc pro tune* (retroactive approval) procedure is permitted.

To adjust to permanent residence as a derivative child of an asylee, the child must be under 21

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[47] Since the applicant had been previously included in the parent's application, there is no confidentiality issue in using the parent's application to explore the child's claim.

[48] Aging-out of derivative status can materially affect eligibility for asylum and may qualify as a changed circumstances exception to the 1-year deadline for filing asylum applications. See, 8 CFR 208.4(a)(4)(i)(B); AOBTC, Lesson: Once Year Filing Deadline, pgs. 9-10 (November, 1998).

years of age. The relevant date for determining status as a minor is the date the application for adjustment is adjudicated. The INS has developed specific procedures for asylees applying for adjustment who no longer qualify as derivative children. Such aged-out derivatives must file a Form I-589 asylum application on their own. Provided that the aged-out child remains unmarried, the asylum application can then be approved by the Asylum Office, *nunc pro tunc,* to the date of receipt of the original derivative status.[49] The aged-out child does not have to independently meet the refugee definition of 101(a)(42), but he or she must still be interviewed by an Asylum Officer to confirm identity and to ensure that there are no disqualifications (e.g., a mandatory bar). A fingerprint check must be completed if the original fingerprint check is more than 15 months old.

V. Conclusions: Training and Monitoring/Follow-up

(a) Training

The INS Guidelines For Children's Asylum Claims are required reading for all interviewing and supervising Asylum Officers and overseas Immigration Officers adjudicating child refugee applications. Photocopies should be made for the fullest possible distribution among these Officers. Upon receipt of this guidance each Asylum Office must initiate a minimum of 4 hours of in-Service training designed to help Officers to use this guidance, and reinforce their awareness of and sensitivity to children's and cross-cultural issues. Training on these Guidelines will also be incorporated into future refugee training sessions for overseas Immigration Officers adjudicating child refugee applications. Training materials will be provided by Headquarters and, in certain instances, trainers may be drawn from the ranks of experienced NGOs and the UNHCR.

This guidance will be included in all future training sessions as a separate module. These training activities, and the information being gathered by the RIC, will enhance the ability of all Officers to make informed, consistent, and fair decisions.

Headquarters will continue to keep Officers abreast of the latest information on child refugee issues. Further training on these and related topics will take place as required. Training is critical to using this guidance effectively.

(b) Public Liaison

An important follow-up activity is public liaison. During their regular meetings with the NGO community, Asylum Office Directors should inform the public of this new initiative for children with asylum claims. The INS can benefit greatly from the help of the public and the NGO community. For example, pro bono representatives and qualified interpreters are always needed for asylum cases. Many volunteers may not have experience working with children. Representatives and interpreters with training or experience with children can be of great assistance during asylum interviews.

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[49] See, *INS Discusses Adjustment of Status Issues For children of Asylees,* 69 Interpreter Releases 847 (1992).

There are excellent community organizations and university law clinics that offer specialized training to lawyers who are willing to provide pro bono representation for child asylum applicants. Children also benefit greatly from the work of church, synagogue, and community-based groups. Volunteers without legal training are always welcome in these organizations, and can make a tremendous difference to children whose lives are affected by violence. Information-sharing, cooperation, and networking among these organizations, individuals, and INS may help to ensure that children have qualified representatives and interpreters at their asylum interviews.

(c) Monitoring

The ultimate value of the INS Guidelines For Children's Asylum Claims will lie in their translation from words to concrete action.[50] Asylum Officer interviewing and decision making should be monitored systematically by Asylum Office Directors and Supervisory Asylum Officers. The latter will be held accountable for ensuring that Asylum Officers fully implement this guidance.

As caselaw on child refugee issues evolves, this guidance will be revised from time-to-time. Headquarters will keep track of all developments in international and domestic policies relating to child refugees. At the same time, procedures will be established to ensure collection of statistics on various aspects of children's asylum claims adjudicated by the AOC.

The INS Guidelines for Children's Asylum Claims is a public document and may be distributed outside INS.

[50] Compare, U.N. High Commissioner For Refugees Ogata's remarks upon release of the UNHCR Policy and Guidelines on Refugee Children, supra at pg. 4.