



**U.S. Citizenship
and Immigration
Services**

RAIO DIRECTORATE – OFFICER TRAINING

RAIO Combined Training Course

CHILDREN'S CLAIMS

TRAINING MODULE

RAIO Directorate – Officer Training / RAIO Combined Training Course

CHILDREN'S CLAIMS

Training Module

MODULE DESCRIPTION:

This module provides guidelines for adjudicating children's claims. Issues addressed include guidelines for child-sensitive interview techniques and considerations for the legal analysis of claims involving child applicants. While the legal analysis sections specifically address refugee and asylum claims, other sections, including those that address child development and procedural issues, are relevant to claims made by children for other immigration benefits.

TERMINAL PERFORMANCE OBJECTIVE(S)

When interviewing in the field, you (the Officer) will apply adjudicative and procedural guidance in issues that arise in claims made by children, in particular unaccompanied children.

ENABLING PERFORMANCE OBJECTIVES

Examine the development of international law that protects the rights of children and children seeking refugee or asylum status.

Describe procedural considerations when working with child applicants.

Apply child-sensitive questioning and listening techniques that facilitate eliciting information from children.

Describe how persecution must be analyzed when looking at a claim of a child refugee or asylum-seeker.

Describe how nexus must be analyzed when looking at a claim of a child refugee or asylum-seeker.

INSTRUCTIONAL METHODS

Interactive presentation

Discussion
Practical exercises

METHOD(S) OF EVALUATION

Written exam

REQUIRED READING

UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status*, paras. 181–188, 213–219, Annex 1.

UNHCR, *Guidelines on International Protection No.8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees* (December 22, 2009), HCR/GIP/09/08, 28 pp.

UNHCR, *Resettlement Handbook*, Section 5.2, *Children and Adolescents*, Department of International Protection (July 2011), pp. 184-194.

UNHCR, *Children – BID Guidelines Information Sheet* (3 pp.) (June 2008).

Division-Specific Required Reading - Refugee Division

Division-Specific Required Reading - Asylum Division

Division-Specific Required Reading - International Operations Division

ADDITIONAL RESOURCES

Brief of American Medical Association, et al., *Roper v. Simmons*, 543 U.S. 551 (2005).

(Canadian Guidelines) Immigration and Refugee Board of Canada, *Guideline 3: Child Refugee Claimants: Procedural and Evidentiary Issues* (Ottawa: 30 Sept. 1996), hereinafter "Canadian Guidelines."

Carr, Bridgette A., "Eliminating Hobson's Choice by Incorporating a 'Best Interests of the Child' Approach into Immigration Law and Procedure," *Yale Human Rights and Development Law Journal* 12, Spring 2009, pp.120–159.

Memorandum from Bo Cooper, INS General Counsel, to Doris Meissner, Commissioner, Elian Gonzalez, (3 Jan. 2000).

- Duncan, Julianne, Best Interest Determination for Refugee Children: An Annotated Bibliography of Law and Practice, United States Conference of Catholic Bishops, 15 October 2008.
- Geidd, Jay, "Inside the Teenage Brain," Frontline, PBS, January 2002.
- Memorandum from Joseph E. Langlois, INS Asylum Division, to Asylum Office Directors, et al., H.R. 1209 – Child Status Protection Act, (HQIAO 120/12.9) (7 August 2002).
- Lustig, Stuart L., MD, MPH, et al., Review of Child and Adolescent Refugee Mental Health: White Paper from the National Child Traumatic Stress Network Refugee Trauma Task Force, Substance Abuse and Mental Health Services Administration (SAMHSA), U.S. Department of Health and Human Services (HHS), Boston, MA, 2003.
- Lutheran Immigration and Refugee Service (LIRS), Working with Refugee and Immigrant Children: Issues of Culture, Law & Development, June 1998.
- National Organization for Victim Assistance, "Children's Reaction to Trauma and Some Coping Strategies for Children," Issues of War Trauma and Working with Refugees: A Compilation of Resources, edited by Susan D. Somach, 56–62, Washington, DC: Center for Applied Linguistics Refugee Service Center, 1995.
- Office of Refugee Resettlement, Office of Health and Human Services, Unaccompanied Minors Program.
- Perry, Nancy W. and Larry L. Teply, "Interviewing, Counseling, and In-Court Examination of Children: Practical Approaches for Attorneys," Creighton Law Review, 18, 1985, pp. 1369–1426.
- UN General Assembly, Convention on the Rights of the Child, G.A. Resolution 44/25, UN GAOR 20 Nov.1989.
- UNHCR, Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum (1997).
- UNHCR, Refugee Children: Guidelines on Protection and Care (Geneva: 1994).
- UNHCR, Trends in Unaccompanied and Separated Children Seeking Asylum in Industrialized Countries 2001-2003 (Geneva: July 2004).
- Walker, Anne Graffam, "Suggestions for Questioning Children," Working with Refugee and Immigrant Children: Issues of Culture, Law & Development, Lutheran Immigration and Refugee Service, 63–64. Baltimore, MD: LIRS, 1998.

SCHEDULE OF REVISIONS

Date	Section (Number and Name)	Brief Description of Changes	Made By
8/21/2014	Entire Lesson Plan	Lesson Plan published	RAIO Training
11/30/2015	Section 8.4, Nexus to a Protected Ground	Modified recommended PSG formulations for FGM and forced marriage	RAIO Training

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- Throughout this training module you will come across references to division-specific supplemental information located at the end of the module, as well as links to documents that contain division-specific, detailed information. You are responsible for knowing the information in the referenced material that pertains to your division. Officers in the International Operations Division who will be conducting refugee interviews are also responsible for knowing the information in the referenced material that pertains to the Refugee Affairs Division.
- For easy reference, each division's supplements are color-coded: Refugee Affairs Division (RAD) in pink; Asylum Division (ASM) in yellow; and International Operations Division (IO) in purple.

1 INTRODUCTION

The purpose of this module is to familiarize the student with guidelines for adjudicating children's refugee and asylum claims. The module will cover U.S. law and international guidance that bears on this issue, the procedural adjustments you must make when interviewing children, and the legal issues that must be considered when analyzing cases and making determinations.

The unique vulnerability and circumstances of children prompted USCIS and legacy INS to issue guidance relating to this vulnerable population. On Human Rights Day 1998, INS issued the *Children's Guidelines*, providing guidance on child-sensitive interview procedures and legal analysis of the issues that commonly arise in children's cases.

The *Children's Guidelines* resulted from a collaborative effort of INS and U.S. governmental and non-governmental organizations (NGOs), individuals, and the Office of the United Nations High Commissioner for Refugees (UNHCR). The Women's Commission for Refugee Women and Children was instrumental in the development of the guidance.

Changes in regulations and case law over the years have superseded much of the legal guidance set forth in the *Children's Guidelines*. However, guidance has been developed, and is provided in this module, based on current procedures and legal analysis that incorporate the principles of child-sensitive protection that were previously set forth in the *Children's Guidelines*.

A memorandum issued by RAIO's Asylum Division in 2007 serves as a resource on interviewing procedures for children.¹ It addresses the need to explore guardianship and parental knowledge and consent issues, which can assist in identifying unaccompanied children who may be victims of trafficking or other abuse.

During the last twenty years, the topic of child refugees and asylum seekers has drawn increasing attention from the international community. Human rights violations against children take a number of forms, such as abusive child labor practices, trafficking in children, rape, domestic violence, female genital mutilation, forced marriage, forced prostitution, and forced recruitment. Psychological harm may be a particularly relevant factor to consider. The effects of harm inflicted against a child's family member may also be a relevant factor to consider.

2 INTERNATIONAL GUIDANCE

As the issue of children as refugees and asylum-seekers has moved only relatively recently into the forefront of immigration law, relevant U.S. case law is somewhat scarce.² In the absence of case law, or when case law does not specifically address an issue, international instruments can provide helpful guidance and context on human rights norms.

The following international instruments and documents contain provisions specifically relating to children.³ They recognize and promote the principle that children's rights are universal human rights.

2.1 The Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) was adopted by the United Nations (U.N.) General Assembly on December 10, 1948.⁴ The UDHR sets forth a collective understanding of the rights that are fundamental to the dignity and development of every human being. Most relevant to your work are Article 14, which provides for the right to apply for asylum, and Article 25(2), which 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.

¹ See Joseph E. Langlois, USCIS Asylum Division, *Updated Procedures for Minor Principal Applicant Claims, Including Changes to RAPS*, Memorandum to Asylum Office Directors, et al. (Washington, DC: 14 August 2007), Section II.

² In addition to the sources cited below, the information in this section of the module derives from section I., Background and International Guidance, of the *Children's Guidelines*.

³ See RAIO modules on International Human Rights Law and Overview of UNHCR and Concepts of International Protection.

⁴ Universal Declaration of Human Rights. G.A. Res. 217(a)(III), U.N. GAOR, Dec. 10, 1948.

2.2 Convention on the Rights of the Child

Many of the components of international policy regarding children derive from the U.N. Convention on the Rights of the Child (CRC).⁵ Adopted by the United Nations in November 1989, the CRC codifies standards for the rights of all children.

Article 3(1) of the CRC provides that “the ‘best interests of the child’ should be the primary consideration” in all actions involving children.⁶ The “best interests of the child” principle holds that the state is ultimately responsible for ensuring that the basic needs of children are met and that the fundamental rights of children are protected. The internationally recognized “best interests of the child” principle is a useful measure for determining appropriate interview procedures for children, but it does not play a role in determining substantive eligibility for immigration benefits under the U.S. law. Additionally, under Article 12(1), children’s viewpoints should be considered in an age and maturity-appropriate manner.⁷

Because the United States has signed but not ratified the CRC, its provisions, including those noted above, provide guidance only and are not binding on adjudicators.⁸ However, having signed the CRC, the United States is obliged under international treaty law to refrain from acts that would defeat the object and purpose of the Convention.

On December 23, 2002, the United States ratified the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography.⁹ The Optional Protocol calls for States Parties to prohibit and create criminal penalties for the sale of children, child prostitution, and child pornography.

Additionally, the United States ratified the Optional Protocol to the CRC on the involvement of children in armed conflict on January 23, 2003.¹⁰ In violation of current international standards that establish a minimum age for participation in armed conflicts, children under age eighteen are forcibly recruited by state-sanctioned armies or private militias to participate in military combat in some countries. Among other things, the Optional Protocol calls for States Parties to ensure that children under eighteen years of age do not take a direct part in hostilities, sets out safeguards for those under eighteen years of age who are voluntarily recruited into their nation’s armed forces, and prohibits

⁵ Convention on the Rights of the Child (CRC), G.A. Res. 44/25, U.N. G.A.O.R., Nov. 20, 1989.

⁶ CRC, Article 3.

⁷ CRC, Article 12.

⁸ Vienna Convention on the Law of Treaties, Art. 18(a), signed May 23, 1969, entered into force January 27, 1980.

⁹ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, G.A. Res. 54/263, U.N. GAOR, May 25, 2000.

¹⁰ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, G.A. Res. 54/263, U.N. GAOR, May 25, 2000.

non-governmental armed groups from recruiting or using persons under eighteen years of age as soldiers. In 2008, the Child Soldiers Accountability Act became U.S. law, providing criminal and immigration penalties for individuals who recruit or use child soldiers.¹¹

2.3 The Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption (Hague Adoption Convention)

The Hague Adoption Convention establishes internationally agreed upon rules and procedures for adoptions between countries that have a treaty relationship under the Convention. The goal of the Convention is to protect the best interests of children, and also to protect birth parents and adoptive parents involved in intercountry adoptions.

The Hague Adoption Convention applies to all intercountry adoption initiated on or after April 1, 2008, by a U.S. citizen habitually resident in the United States seeking to adopt and bring to the United States a child habitually resident in any Convention country.

You will not see Hague applications or petitions because the USCIS National Benefits Center currently processes all Hague forms (Form I-800A and Form I-800). The U.S. Department of State grants final Form I-800 approval and issues the necessary Hague Adoption or Custody Certificates in the child's country of origin.

2.4 The United Nations High Commissioner for Refugees (UNHCR)

2.4.1 ExCom Conclusions

Over the years, the Executive Committee of the High Commissioner's Program¹² (or "ExCom") has adopted a number of conclusions concerning refugee children. Safeguarding the wellbeing of refugee children has long been a high priority of the UNHCR and the United States.

UNHCR ExCom Conclusion No. 47

In 1987, the Executive Committee issued its first conclusion devoted exclusively to children – Conclusion No. 47.¹³ This Conclusion urged action to address the human rights and needs of children who are refugees, highlighted the particular vulnerability of unaccompanied and disabled refugee children, and highlighted the need for action by UNHCR to protect and assist them. Conclusion No. 47 condemned specific violations of

¹¹ Child Soldiers Accountability Act of 2008 (CSAA), P.L. 110-340 (Oct. 3, 2008). See Asylum Supplement, Bars to Applying for Asylum, below, for more detail on the CSAA.

¹² For additional information on the Executive Committee, see RAIO module, *UNHCR Overview*.

¹³ UN High Commissioner for Refugees, Conclusion on Refugee Children, 12 Oct. 1987. No. 47 (XXXVIII) - 1987.

basic human rights, including sexual abuse, trafficking of children, acts of piracy, military or armed attacks, forced recruitment, political exploitation, and arbitrary detention. The document also called for national and international action to prevent such violations and assist the victims.

Conclusion No. 47 also emphasized that all action taken on behalf of refugee children must be guided by the principle of the "best interests of the child."¹⁴

UNHCR ExCom Conclusion No. 59

In Conclusion No. 59, issued in 1989, the Executive Committee reaffirmed and expanded upon the need for particular attention to the needs of refugee children, particularly in regards to access to education.¹⁵ It also drew special attention to the needs of unaccompanied minors, emphasizing the need to develop legal methods to protect them from irregular adoption and forced recruitment into armed forces.

UNHCR ExCom Conclusion No. 107

The Executive Committee issued Conclusion No. 107 on Children at Risk in 2007. It recognizes that children should be prioritized in receiving refugee protection and assistance.¹⁶ It also calls for UNHCR, Member States, and others to identify children at heightened risk due to the wider protection environment and individual circumstances, and to work to prevent such heightened risks.

2.4.2 UNHCR Policies and Guidelines

UNHCR has enacted policies and issued several sets of child-related guidelines in recent years.

Policy on Refugee Children

UNHCR's *Policy on Refugee Children*, issued in 1993, points out that children's needs are different from adults' due to their developmental needs, their dependence, including in legal matters, and their vulnerability to harm.¹⁷ Thus, 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.

Refugee Children: Guidelines on Protection and Care

¹⁴ See section on Convention on the Rights of the Child, above.

¹⁵ UNHCR, Conclusion on Refugee Children, 13 Oct. 1989. No. 59 (XL), 1989.

¹⁶ UNHCR, Conclusion on Children at Risk, 5 Oct. 2007. No. 107 (LVIII), 2007.

¹⁷ UNHCR, Policy on Refugee Children, EC/SCP/82 (August 6, 1993).

In 1994 UNHCR issued *Refugee Children: Guidelines on Protection and Care*, incorporating international norms relevant to the protection and care of refugee children.¹⁸ These Guidelines adopt a human rights perspective using the articles in the CRC to set UNHCR's standards. For the survival and development of children, UNHCR endorses a "triangle of rights:" the "best interests" rule, a policy of non-discrimination towards all refugee children, and age-appropriate participation of children in issues affecting their lives.

Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum

In 1997, UNHCR published the *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*.¹⁹ The purpose of these Guidelines is threefold:

- to increase awareness of the special needs of unaccompanied children and the rights reflected in the CRC;
- to highlight the importance of a comprehensive approach to child refugee issues; and
- to stimulate internal discussion in each country on how to develop principles and practices that will ensure that the needs of unaccompanied children are met.

The Guidelines emphasize that all children are "entitled to access to asylum procedures, regardless of their age," and that the asylum process should be prioritized and expedited for children's cases. UNHCR recommends that adjudicators take into account "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." It also notes that children may face child-specific persecution, such as recruitment of child soldiers, forced labor, trafficking of children for prostitution, and female genital mutilation. Finally, UNHCR recommends that where there is "doubt as to the veracity of the account presented or the nature of the relationship between caregiver and child,...the child should be processed as an unaccompanied child."

UNHCR Guidelines on Determining the Best Interests of the Child

The *Best Interests Determination (BID) Guidelines* set forth the formal process that UNHCR has established to determine the best interests of refugee children confronted with major decisions regarding their care or durable solutions, such as the possibility of voluntary repatriation, local integration, or resettlement.²⁰ UNHCR commits to undertake

¹⁸ UNHCR, *Refugee Children: Guidelines on Protection and Care* (Geneva: 1994).

¹⁹ UNHCR, *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum* (1997).

²⁰ UNHCR, *Guidelines on Determining the Best Interests of the Child*, May 2008.

a BID in three contexts: (1) identification of the most durable solution for unaccompanied and separated refugee children; (2) temporary care decisions for unaccompanied and separated refugee children in certain exceptional circumstances; and (3) decisions which may involve separating a child against his or her will from parents.

UNHCR'S Guidelines on International Protection No. 8: Child Asylum Claims

In 2009 UNHCR issued its *Guidelines on International Protection No. 8*, addressing child asylum and refugee claims.²¹ The Guidelines provide substantive and procedural guidance on making determinations on children's claims, highlighting the specific rights and protection needs of children during this process and also addressing the application of the exclusion clauses (bars to protection) to children. Recommending a child-sensitive interpretation of the 1951 Refugee Convention, the Guidelines point out that the definition of a refugee has traditionally been interpreted in light of adult experiences, which has led to incorrect assessments of the refugee and asylum claims of children.

UNHCR's Framework for the Protection of Children

Reflecting the priority it places on safeguarding the wellbeing of children of concern and an evolution in its policy and practice, in 2012 UNHCR published *A Framework for the Protection of Children*.²² It focuses on prevention and response to child abuse, neglect, violence and exploitation, building on UNHCR's policy and guidelines on the protection of children and relevant Executive Committee conclusions.

3 U.S. LAW

3.1 Definition of "Child"

The definition of the term "child," "minor," or "juvenile" for immigration purposes may differ depending on the context in which it is used.

- Under the CRC, eighteen years has been almost universally recognized as the legal age of adulthood.²³ Most laws in the United States recognize eighteen-year-olds as legal adults.²⁴ Under federal immigration law, however, there are a number of different statutory and regulatory provisions that govern specific contexts and set

²¹ UNHCR, *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, HCR/GIP/09/08.

²² UNHCR, *A Framework for the Protection of Children*, 26 June 2012.

²³ CRC, Article 1.

²⁴ Child Welfare Information Gateway, *Determining the Best Interests of the Child: Summary of State Laws*, U.S. Department of Health and Human Services' Administration for Children and Families, Washington, DC, 2005.

out specific definitions and categories of children.

Following are some of the different contexts and definitions:

- The INA defines a “child” as “an unmarried person under twenty-one years of age”²⁵ for purposes of eligibility for most immigration benefits under the INA, including derivative refugee or asylum status. In the case of a derivative, the child would not be the principal applicant, but rather would have derivative status based on a parent’s refugee or asylum claim. *See* Derivative versus Independent Status, below.
 - Refugee and IO officers adjudicate Refugee/Asylee Relative Petitions (Form I-730) for children up to age twenty-one.²⁶
 - An unmarried child of a principal applicant granted asylum may receive a derivative grant of asylum if the child was under twenty-one at the time the application was filed.²⁷
- For purposes of determining admissibility, “juvenile” is a term used in INA section 212 when discussing exceptions to criminal responsibility for persons under eighteen years of age.²⁸
- DHS regulations also use the term “juvenile” to describe an individual under eighteen for purposes of determining detention and release and parental notification.²⁹
- DHS regulations use the term “minor under the age of 14” for the following purposes:
 - A parent or legal guardian may sign for a person who is under fourteen (8 C.F.R. 103.5a(c)).
 - Service of any DHS document shall be made upon the person with whom the minor under fourteen lives, and if possible upon a near relative, guardian, committee, or friend (8 C.F.R. 103.5a(c) and 236.2).
- The Homeland Security Act of 2002³⁰ introduced a new term – “unaccompanied alien child” (or “UAC”) – to define a child who has no lawful immigration status in the United

²⁵ INA § 101(b)(1); INA § 101(c)(1).

²⁶ INA § 209(b)(3) as amended by the Child Status Protection Act of 2002, P.L. 107-208; Memorandum from Joseph E. Langlois, Director, INS Asylum Division, to Asylum Office Directors, et al., H.R. 1209 – Child Status Protection Act, (HQIAO 120/12.9) (7 August 2002).

²⁷ *Id.*

²⁸ INA § 212(a)(2)(A)(ii).

²⁹ *See* 8 C.F.R. § 236.3.

³⁰ Homeland Security Act of 2002, Section 462, 6 U.S.C. § 279(g)(2).

States, has not attained eighteen years of age, and has no parent or legal guardian in the United States available to provide care and physical custody. This definition is discussed further in the Asylum Supplement. The Asylum Division has initial jurisdiction over the asylum claims filed by UACs, including those who are in immigration court proceedings.³¹

- When adjudicating children's refugee and asylum applications, the following definitions are helpful to know. For the Asylum Division, a "minor principal applicant"³² is a principal applicant who was under eighteen years of age at the time of filing an asylum application. In the refugee context, such applicants are generally referred to as unaccompanied refugee minors (URMs) or Unaccompanied or Separated Children (UASCs).

You will review all refugee and asylum claims for principal applicants under eighteen using this Training Module. However, for purposes of derivative determinations, this Training Module applies to all individuals under the age of twenty-one.

Barring unusual circumstances, under USCIS procedures and policies, children age fourteen and above are able and expected to sign their own applications and other documents. If available, a parent signs on behalf of children younger than fourteen.³³

3.2 Derivative versus Independent Status

Much of this module will focus on children applying independently as principal applicants for refugee or asylum status. Many will be unaccompanied or separated children. As principal applicants, they must establish that they are refugees. However, officers will also adjudicate claims in which a parent is the principal applicant and a child has derivative status.

Under the statute and DHS regulations, the child of a refugee or asylee is usually afforded the same status as his or her parent,³⁴ unless the child is ineligible for protection.³⁵

³¹ See Memorandum from Joseph E. Langlois, Chief, USCIS Asylum Division, to Asylum Office Directors, et al., *Updated Procedures for Minor Principal Applicant Claims, Including Changes to RAPS*, (HQRAIO 120/9.7) (14 August 2007).

³² Although most minor principal applicants are also UACs, some are accompanied by a parent or legal guardian (or have lawful immigration status in the United States) but are filing independently.

³³ 8 C.F.R. § 103.2

³⁴ 8 C.F.R. §§ 207.7 and 208.21(a).

³⁵ For additional information, see RAIO Training modules, *Persecutor Bar, Grounds of Inadmissibility, and National Security*.

You should follow the guidance covered in this Training Module when interviewing child beneficiaries. While the guidance covered in this Training Module is particularly relevant for children who raise independent claims, the procedural sections of this Training Module are useful for *all* cases involving children and young adults.

Refugee and International Operations Officers may adjudicate Refugee/Asylee Relative Petitions (Form I-730) filed for children outside of the United States who are derivative beneficiaries of refugees or asylees. This topic will be covered separately during the Refugee Division Officer Training Course. Asylum Officers will also adjudicate claims in which a child is included as a derivative applicant on a parent's claim.

While derivative status is statutorily available to children and spouses, there is no statutory or regulatory right of parents to be eligible for derivative status in the refugee and asylum context. The parent applicant must establish eligibility in his or her own right.³⁶

Children Who Turn Twenty-One Years of Age before the Interview

Under the INA, as amended by the Child Status Protection Act of 2002 (CSPA), an unmarried child of a principal applicant may qualify as a beneficiary on a petition or as a derivative on an application if the child was under twenty-one at the time of filing the petition or application.³⁷ Children who turn twenty-one after the date of filing, but before the adjudication are not ineligible for beneficiary or derivative status on that basis.

For refugee and asylum purposes, there is no requirement that the child have been included as a dependent on the principal applicant's application at the time of filing. The child must be included prior to the adjudication.

If, however, the child turned twenty-one prior to August 6, 2002, he or she is not eligible for continued classification as a child unless the petition or application was pending on August 6, 2002.³⁸

Children Who Turn Twenty-One Years of Age before Adjustment

The CSPA also amends INA section 209(b)(3) to allow dependents who are the subjects of pending adjustment petitions who turn twenty-one on or after August 6, 2002, to

³⁶ *Matter of A-K-*, 24 I&N Dec. 275 (BIA 2007).

³⁷ INA §§ 201(f); 207(c)(2)(b); 208(b)(3) as amended by the Child Status Protection Act of 2002, P.L. 107-208. See also Memorandum from Joseph E. Langlois, Director, INS Asylum Division, to Asylum Office Directors, et al., *H.R. 1209 – Child Status Protection Act*, (HQIAO 120/12.9) (7 August 2002).

³⁸ William Yates, USCIS Associate Director for Operations, *The Child Status Protection Act – Children of Asylees and Refugees*, Memorandum to Regional Directors, et al, (Washington, DC, 17 August 2004), pp.1-2; Michael Petrucelli, BCIS Deputy Director and Chief of Staff, *Processing Derivative Refugees and Asylees under the Child Status Protection Act*, Memorandum to Overseas District Directors (Washington, DC, 23 July 2003).

continue to be classified as children for adjustment purposes (which avoids the need to file an independent petition).³⁹

As noted above, if an individual turned twenty-one prior to August 6, 2002, he or she is not eligible for continued classification as a child unless an application was pending with then-INS on August 6, 2002. While the Domestic Operations Directorate of USCIS issued revised guidance on the CSPA for family and employment-based petitions, which eliminated the requirement for a pending application on the CSPA effective date, this guidance memo does not apply to applications for children of refugees and asylees.⁴⁰ As a result, a dependent of a refugee or asylee who turned twenty-one years of age and whose principal's adjustment petition was adjudicated prior to the enactment of the CSPA lost his or her ability to adjust as a dependent of the principal applicant. While he or she did not lose the refugee or asylum status already granted, the former derivative does not gain the ability to adjust to legal permanent resident status as a principal applicant. In such situations, a *nunc pro tunc* (retroactive approval) procedure is permitted, although the need for such an adjudication will become increasingly rare as more time passes.

Child Applying as Derivative of One Parent in Refugee and Asylum Claims

If a child seeking refugee or asylum status is with one parent, USCIS does not need a parental release from the absent parent. However, in some circumstances for overseas cases, the Resettlement Support Center does require such a release based on the laws or regulations of the host country. Such a requirement does not affect the USCIS adjudication. See RAD Supplement regarding married children.

4 CHILD DEVELOPMENT

4.1 General Considerations

The needs of a child applicant are best understood if the applicant is regarded as a child first and an applicant second.⁴¹ Child applicants will generally approach the interview and adjudication process from a child's perspective, not as applicants for a legal status before a government official.

³⁹ INA § 209(b)(3) as amended by the Child Status Protection Act of 2002, P.L. 107-208.

⁴⁰ William Yates, USCIS Associate Director for Operations, *The Child Status Protection Act – Children of Asylees and Refugees*, Memorandum to Regional Directors, et al, (Washington, DC, 17 August 2004), pp.1-2; Michael Petrucelli, BCIS Deputy Director and Chief of Staff, *Processing Derivative Refugees and Asylees under the Child Status Protection Act*, Memorandum to Overseas District Directors (Washington, DC, 23 July 2003).

See also USCIS Asylum Division, Affirmative Asylum Procedures Manual; "INS Discusses Adjustment of Status Issues For Children of Asylees," 69 Interpreter Releases 847 (1992).

⁴¹ Jacqueline Bhabha and Wendy A. Young, "Through a Child's Eyes: Protecting the Most Vulnerable Asylum Seekers," 75 Interpreter Releases 757, 760 (1 June 1998). (hereinafter Bhabha and Young)

Most of the information in this section is taken from the Lutheran Immigration and Refugee Service (LIRS) publication, *Working with Refugee and Immigrant Children: Issues of Culture, Law & Development*.⁴² This information, however, is applicable to any interview with a child.

Children's ages and stages of development affect their ability to apply for refugee and asylum status or other benefit and to articulate their claim and respond effectively in an interview.

4.2 Developmental Stages

Children worldwide develop physical, mental, and emotional capacity in universal stages, although culture and environment affect the outward display of the child's abilities and may cause delays in growth. According to these universal stages:

Children ages five and younger are fully dependent on their caretakers in all realms.

Between ages six and twelve, children begin to gain independent skills and the emotional, mental, and physical capacity to manage some life issues on their own.

At about age twelve, children begin to develop increasing ability to navigate on their own emotionally, physically, and mentally.⁴³

Adverse circumstances may delay a child's development, sometimes permanently. Severe malnutrition or illnesses affect growth if they occur at crucial developmental stages. For example, a child lacking nutrition at certain stages may miss developmental milestones. We may see this effect in stunted growth or other outward physical manifestations.⁴⁴

While general developmental stages have been studied for many years, new techniques that were developed during the 1990's now help researchers understand much about brain development that was poorly understood previously. The National Institute of Mental Health (NIMH) has funded longitudinal brain development studies from early childhood through young adulthood using non-invasive techniques.⁴⁵

A child's ability to participate in an interview will vary based on a number of factors in the child's development.

⁴² LIRS, *Working with Refugee and Immigrant Children: Issues of Culture, Law & Development* (June 1998) hereinafter LIRS.

⁴³ Child Development Institute, "Stages of Social-Emotional Development In Children and Teenagers."

⁴⁴ *Id.*

⁴⁵ National Institute of Mental Health, *Brain Development During Childhood and Adolescence Fact Sheet*, Science Writing, Press & Dissemination Branch, 2011.

4.3 Factors that Influence Development

At each stage in development, numerous factors interact to shape the child's personality and abilities.⁴⁶ Factors influencing development are:

- chronological age;
- physical and emotional health;
- physical, psychological, and emotional development;
- societal status and cultural background;
- cognitive processes;
- educational experience;
- language ability; and
- experiential and historical background.

4.4 Factors that Accelerate or Stunt Development

Some children may seem to be much older or much younger than their chronological age. A number of environmental and experiential factors can stunt or accelerate dramatically the development of a child.⁴⁷ They include, but are not limited to:

- chaotic social conditions;
- experience with forms of violence;
- lack of protection and caring by significant adults;
- nutritional deficits;
- physical disabilities; and
- mental disabilities.

4.5 Effects of Stress and Violence

⁴⁶ LIRS, pp. 6-7.

⁴⁷ LIRS, p. 7.

Children who experience stress or emotional disturbances are more severely affected in their ability to reason or to control impulses than children who do not have such experiences.

Children who have been separated from parents and other traditional caretakers, even in non-violent situations, may be so severely traumatized that their mental and emotional development is delayed. When children are exposed to violence and war even while with protective adults, all aspects of their development are affected. If children are unprotected by parents or other competent adults during such situations, they are profoundly affected. Children who witness their parents or other caretakers harmed or killed are themselves deeply harmed. Children who are forced to harm others are also profoundly traumatized.⁴⁸

4.6 Culture and Development

Culture affects the appearance of maturity of children in complex ways. The norms of the group determine the type of education and productive work a child participates in or whether the child remains at home or spends periods with groups of youth. Many other factors determine how various developmental stages are expressed. Additionally, children's development is interrupted by the factors that caused them to flee their homes.⁴⁹

Children may act younger than their age if they are from a culture in which deference and respect to adults is a valued norm. They may, therefore, develop or express independent opinions only after reaching a culturally specified older age.

Example

Among Bhutanese refugee families, even adult children who continue to live with their parents are not expected to form independent political or social opinions but are expected to follow the guidance of their father who speaks for the whole family. When a young man marries and moves out of his father's home, he is expected to begin interacting with other men and offer opinions on community matters.

⁴⁸ Graça Machel, *UN Study on the Impact of Armed Conflict on Children*, UN GAO A/51/306 (3 August 1996); UN Children's Fund (UNICEF), *Machel Study 10-Year Strategic Review: Children and Conflict in a Changing World*, (April 2009).

⁴⁹ Stuart L. Lustig, MD, MPH, et al., *Review of Child and Adolescent Refugee Mental Health: White Paper from the National Child Traumatic Stress Network Refugee Trauma Task Force*, Substance Abuse and Mental Health Services Administration (SAMHSA), U.S. Department of Health and Human Services (HHS), Boston, MA, 2003.

Children may act older than their chronological age if they are the oldest child in a family and have been expected to manage complex household obligations, such as caring for the safety of younger children.

Example

A Congolese refugee girl of fourteen was culturally expected to assume the role of head of family after the death of her parents. She managed to survive and escape with two younger siblings. The younger siblings exhibited age-appropriate development of self-care and independence. The fourteen year old, on the other hand, because of her experience as caretaker, appeared to be a much older teen.

4.7 Preconceptions

Children will bring to the interview a unique set of preconceived notions that could hinder your attempts to elicit information. Such preconceptions may include the ideas that:

- **All governments are corrupt**

The child may be arriving from a country where he or she has already had extensive interaction with or knowledge of a corrupt government.⁵⁰ Such a child may assume that the fraud, abuse of authority, and mistreatment of the citizens he or she witnessed in the country of origin is just as pervasive in the United States.

- **Others still at home will be harmed**

Especially when a child comes from a country in which informants and their family members are harmed, the child may not understand that the U.S. government has no interest in harming, or doing anything to bring about the harm of, his or her relatives still in the country of origin.⁵¹

- **He or she should feel guilty for fleeing**

It is not uncommon for any refugee or asylum applicant to experience "survivor's guilt" for having fled to a country of asylum, especially when family members were left behind.⁵²

- **Others will be privy to the testimony**

⁵⁰ LIRS, p. 35.

⁵¹ LIRS, p. 36.

⁵² LIRS, p. 36.

Many young people do not understand that in the setting of interviews conducted by RAIO officers, confidentiality protections generally prevent USCIS from sharing information with others without the applicant's consent. This misconception is most likely to hinder an interview when an applicant feels shame as a result of his or her mistreatment, most commonly in cases of sexual abuse.

You must earn the trust of the child applicant in order to dispel these preconceptions and put the applicant at ease.⁵³

5 PROCEDURAL CONSIDERATIONS

The majority of children who appear before you do so as a dependent of a parent who has filed an application or petition for an immigration benefit. However, this Training Module provides useful guidance for all individuals under the age of twenty-one and regardless of whether they are derivative or independent applicants.

While this Training Module is particularly relevant for children who raise independent refugee or asylum claims, the procedural sections may be useful for all cases involving children and young adults. Although young people between the ages of eighteen and twenty-one will be interviewed much in the same manner as adults, you should bear in mind that an applicant whose claim is based on events that occurred while under the age of eighteen may exhibit a minor's recollection of the past experiences and events.

5.1 Officers in the RAIO Directorate

All officers in the RAIO Directorate are trained on interviewing children and adjudicating their claims in the event that they are called upon to interview a child. It is in the child's best interests to be interviewed by an official who has specialized training in children's claims. To the extent that personnel resources permit, RAIO should attempt to assign officers with relevant background or experience to interview children.

5.2 Interview Scheduling

RAIO should make every effort to schedule siblings' interviews with the same officer and in the same time period, provided that such cases are identified in advance of the interviews. In cases where siblings are interviewed by different officers, the officers should consult with one another about the claims and, to the extent possible, should be reviewed by the same supervisory officer.

5.3 USCIS Initial Jurisdiction for Unaccompanied Alien Children's Asylum Cases

⁵³ See section 6, *Interview Considerations*.

For asylum procedural considerations, see ASM Supplement – Procedural Considerations.

6 INTERVIEW CONSIDERATIONS

Child applicants may be less forthcoming than adults and may hesitate to talk about past experiences in order not to relive their trauma. RAIIO has designed the following procedures with children's behavior and cognitive ability in mind to help you interact more meaningfully with children during an interview.

6.1 Presence of a Trusted Adult at the Interview

It is usually appropriate for a trusted adult to attend an interview with the minor applicant in order to establish the interview conditions most likely to elicit a full story.⁵⁴ A child's lack of experience in talking with government officials can make testifying difficult, particularly when discussing traumatic events. A trusted adult is a support person who may help to bridge the gap between the child's culture and the environment of a USCIS interview. The function of the adult is not to interfere with the interview process or to coach the child during the interview, but to serve as a familiar and trusted source of comfort. As appropriate, you may allow the adult to provide clarification, but you should ensure that those children able to speak for themselves are given an opportunity to present the claim in their own words.

The policy of allowing a trusted adult to participate in this process does not mean to suggest that the trusted adult serve as a substitute for a guardian or legal representative, neither is there a requirement that a trusted adult or legal representative be present at the interview. The child may be accompanied at the interview by both a trusted adult and a legal representative.

When conducting an interview of a child in the presence of an adult, you should assess whether the child is comfortable speaking freely in front of the adult. In order to ascertain the child's level of comfort with the adult, you may initially bring the child into the interview room alone, and ask if the child would like for the accompanying adult to be present. This approach will generally work best with adolescents. Where warranted, you may additionally ask the child at the end of the interview if he or she has anything to add in private. If at any point during the course of the interview you determine that the child is uncomfortable or afraid of the adult, you should continue the interview without that person. Given concerns regarding human trafficking, particularly in children, attention to the nature of the relationship between the child and the adult is particularly important.

⁵⁴ See UNHCR, *Refugee Children: Guidelines on Protection and Care* (Geneva: 1994) p. 102; and RAIIO Training Module, *Interviewing - Introduction to the Nonadversarial Interview*, Sec.5.5: "In some interviews the applicant has another person present. In the case of children, this may be a "trusted adult" who participates in order to help the child feel at ease."

As appropriate and with the consent of the child, you are encouraged to interview the trusted adult, if any, in order to confirm his or her relationship to the child, any guardianship arrangement, and the adult's legal authority to speak on behalf of the child.⁵⁵ The adult may also have information about parental knowledge of and consent to the application. The trusted adult may also be able to provide information on the child's claim where the child's age at the time of harm or interview prevents him or her from fully detailing events. Where inconsistencies arise between the applicant's and the adult's testimony, an opportunity must be given to the child to reconcile inconsistencies apparent at the interview. Note that it is not a requirement that a witness or trusted adult be present at the interview.

6.2 Guardianship, Parental Knowledge, and Consent

If a child appears at the interview without a parent or guardian, you should inquire into the location of the child's parents, and whether the parents are aware of the child's whereabouts and that the child has applied for an immigration benefit.⁵⁶

You should elicit information about issues of guardianship and parental knowledge of and consent to the application. Questions of guardianship may be particularly important for unaccompanied minors because whether or not there is a parent or legal guardian informs your decision of whether to categorize the applicant as an unaccompanied minor or unaccompanied alien child (in the asylum context) or unaccompanied refugee minor (in the refugee context). Attention must be paid to the child's capacity to apply as a principal applicant, the parents' knowledge of the child's application, and the identity and trustworthiness of the guardian, if any. Additionally, the information you elicit is useful in identifying any potential conflict of interest and informing policy-making.

Below are questions and issues that you should take into account when conducting an interview with a minor principal applicant. These questions provide a general framework for exploration of issues of guardianship and parental knowledge and consent. Interview notes should reflect the below-requested information. A minor principal applicant's inability to demonstrate a guardianship arrangement or parental knowledge and consent does not foreclose the adjudication or approval of the application. If there is a concern regarding parental notification and confidentiality, or a concern for the child's welfare and/or safety, please contact your division's Headquarters for further guidance.

- With whom is the child living?

⁵⁵ See Memorandum from Joseph E. Langlois, Chief, USCIS Asylum Division, to Asylum Office Directors, et al., *Updated Procedures for Minor Principal Applicant Claims, Including Changes to RAPS*, (HQRAIO 120/9.7) (14 August 2007).

⁵⁶ *Id.*

- Did anyone accompany the child to the interview?
- Is there a guardianship arrangement (for purposes of the unaccompanied minor definition, guardianship refers to a formal – legal/judicial – arrangement)?
- If there is an adult caregiver but not a legal guardian, what arrangements has the adult made to provide for the child?
- Is there one or more living parent?
- Do the parents know that the child is applying for an immigration benefit?

6.3 Conducting a Non-Adversarial Interview

Although all interviews with child applicants are to be conducted in a non-adversarial manner, it is crucial when interviewing children that the tone of the interview allows the child to testify comfortably and promotes a full discussion of the child's past experiences.⁵⁷ Research into child development and particularly brain and cognitive development has shed light on obstacles to children's ability to encode and recall information and best practices that help overcome those obstacles.⁵⁸

In many cases, girls and young women may be more comfortable discussing their experiences with female officers, particularly in cases involving rape, sexual abuse, prostitution, and female genital mutilation.⁵⁹ To the extent that personnel resources permit, offices should have female officers interview such applicants.

6.4 Working with an Interpreter

Interpreters play a critical role in ensuring clear communication between you and the child, and the actions of an interpreter can affect the interview as much as those of an officer.⁶⁰ As in all interviews, you should confirm that the child and the interpreter fully understand each other. You should also confirm that the child understands the role of the interpreter. This is particularly important in cases where the interpreter does not have the child's best interests at heart, such as when there is a possibility that the private

⁵⁷ 8 C.F.R. § 208.9(b).

⁵⁸ For additional information, see *European Asylum Curriculum*, Module 6.1 "Interviewing Children," May 2011 (Unit 3.2 discusses the Dialogical Communication Method); and Michael E. Lamb, et al., "Structured forensic interview protocols improve the quality and informativeness of investigative interviews with children: A review of research using the NICHD Investigative Interview Protocol," *Child Abuse & Neglect* 31, no.11-12, Nov.-Dec. 2007, pp. 1201-1231.

⁵⁹ See Phyllis Coven, INS Office of International Affairs, *Considerations For Asylum Officers Adjudicating Asylum Claims From Women* (Gender Guidelines), Memorandum, May 26, 1995, p. 5.

⁶⁰ For additional information, see RAIO module, *Interviewing - Working with an Interpreter*.

interpreter is part of a trafficking ring. In cases where the child appears to be uncomfortable with the interpreter, or where the interpreter does not appear to be interpreting correctly, you should stop the interview and reschedule with a different interpreter.

The identity of the interpreter is especially significant when children have been victims of sexual violence.⁶¹ In such situations, or when children have suffered abuse within the family, children may be very reluctant to share such information if the interpreter is of the opposite gender or if the interpreter is a parent, relative, or family friend. Every effort should be made to make sure that the child is comfortable testifying through the interpreter.

6.5 Building Rapport

The child may be reluctant to talk to strangers due to embarrassment or past emotional trauma.⁶² You may have to build rapport with the child to elicit the child's claim and to enable the child to recount his or her fears and/or past experiences. Where the child finds you friendly and supportive, the child is likely to speak more openly and honestly.

You must be culturally sensitive to the fact that applicants are testifying in a foreign environment and may have had experiences leading them to distrust persons in authority. A fear of encounters with government officials in countries of origin may carry over to countries of reception.⁶³ This fear may cause some children to be initially timid or unable to fully tell their story.⁶⁴

You 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, family, pets, hobbies, and sports. You may wish to ask family members or the attorney about the child's interests before the interview to ease conversation. This rapport-building phase also permits you to assess the child's ability to answer questions.

Once the child appears comfortable, you should make a brief opening statement before beginning the formal interview.⁶⁵ You can explain in very simple terms in the opening statement what will happen during the interview and the roles that you, the applicant,

⁶¹ See Gender Guidelines, p. 5; and RAIO Training module, *Interviewing - Working with an Interpreter*.

⁶² LIRS, p. 45.

⁶³ UNHCR Handbook, para. 198.

⁶⁴ LIRS, p. 38; Nancy W. Perry and Larry L. Teply, "Interviewing, Counseling, and In-Court Examination of Children: Practical Approaches for Attorneys," *Creighton Law Review* (vol. 18, 1985), pp. 1369-1426, reprinted in Jean Koh Peters, *Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions* (Charlottesville, Virginia: Lexis, 1997), pp. 584-585 (hereinafter Perry and Teply).

⁶⁵ For an example of an opening statement to be used in interviews of children, see ASM Supplement – Sample Opening Statement for Children.

interpreter, and/or attorney will play. Knowing what to expect will help ease the child applicant's anxiety.⁶⁶

The tone of the opening statement is intended to build trust and to assure the child that you will be asking questions to help you understand his or her claim. The statement gives children permission to tell you when they do 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, unless the child consents, embarrassing or traumatic events from the past generally will not be shared with others, including family members, friends, or individuals from their home country.⁶⁷

6.6 "Reading" the Applicant

During the interview you must take the initiative to determine whether the child understands the process and the interview questions. You should watch for non-verbal cues, such as puzzled looks, knitted eyebrows, downcast eyes, long pauses, and irrelevant responses. While these behaviors may signal something other than lack of comprehension, they may also signal that a child is confused.⁶⁸ In such circumstances, you should pause, and if no appropriate response is forthcoming, rephrase the question.

Correspondingly, you should expect the child to be attuned to your body language. Children rely on non-verbal cues much more than adults to determine whether they can trust the person.⁶⁹ You should be careful neither to appear judgmental nor to appear to be talking down to the child.

6.7 Explaining How to Respond to Questions

Children in some cultures are taught to listen to adults but not to speak in their presence. Other children may have spent time in school or other environments where providing answers to questions is expected and responding with "I don't know" is discouraged.

If necessary, you may explain to the child how to use the "I don't know" response.⁷⁰

Example

⁶⁶ LIRS, pp. 45-46.

⁶⁷ See 8 C.F.R. § 208.6 on disclosure to third parties.

⁶⁸ LIRS, pp. 46-47.

⁶⁹ *Id.* at 27; Perry and Teply, p. 1380.

⁷⁰ *Id.* at 50.

Officer: 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: I don't know.

This approach helps to ensure that the child understands when to provide an "I don't know" response. This approach could also be used to let the child know that it is also fine to respond "I don't understand" when a question is not clear.

6.8 Reassuring the Applicant

If at any time during the course of the interview the child begins to feel uncomfortable or embarrassed, you should offer verbal reassurances. You 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."⁷¹ Additionally, a simple expression of interest (e.g., "I see" or "uh-huh") may be enough for the child to continue.

You may also shift the focus of the questioning to a non-threatening subject until the child regains his or her confidence. Reassurance, empathetic support, carefully framed questions, encouragement, and topic-shifting are crucial techniques for facilitating interviews of children.

- Note, however, that it is important not to interrupt a child in the middle of a narrative response. See General Rules below in section on Child-Sensitive Questioning and Listening Techniques.

6.9 Taking Breaks

You should take the initiative in suggesting a brief recess when necessary. Sometimes a child's way of coping with frustration or emotion is "to shut down during the interview, to fall into silence, or respond with a series of 'I don't know' and 'I don't remember' responses."⁷² Many children may not take the initiative to request a recess if needed. A young child, for example, may stop answering questions or cry rather than interrupt you with a request to go to the bathroom or rest. The responsibility may fall to you to monitor the child's needs.

6.10 Concluding the Interview

⁷¹ Perry and Teply, p. 1381, citing John Rich, MD. *Interviewing Children and Adolescents* (London: MacMillan & Co., 1968), p. 37.

⁷² Symposium: Child Abuse. Psychological Research On Children As Witnesses: Practical Implications Forensic Interviews And Courtroom Testimony, 28 PAC. L.J. 3 (1996), p. 70, (hereinafter Symposium).

As the interview draws to a close, you 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.⁷³ As with all cases, you should ask the child if he or she has any final questions or anything to add and inform the child of the next steps in the application process.

6.11 Child-Sensitive Questioning and Listening Techniques

Children may not understand questions and statements about their past because their cognitive and conceptual skills are not sufficiently developed. Your questions during the interview should be tailored to the child's age, stage of language development, background, and level of sophistication. A child's mental development and maturity are important considerations when determining whether the child has satisfied his or her burden to establish eligibility for an immigration benefit, including that he or she meets the definition of a refugee.⁷⁴ In order to communicate effectively with a child applicant, you must ensure that both the officer and the child understand one another.

You should take care to evaluate the child's words from the child's point of view. Most children cannot give adult-like accounts of their experiences and memories, and you should be conscientious of age-related or culturally-related reasons for a child's choice of words.

Example

The phrase "staying awake late" may indicate after 10 p.m. or later to you, while the phrase could mean early evening for a child.⁷⁵

Children's perceptions of death can cloud their testimony concerning such matters. Children may not know what happened or may feel betrayed by an adult who has died, and some may not understand the permanence of death.⁷⁶ Even older children may not fully appreciate the finality of death until months or years after the event.

Example

Instead of saying that a relative died or was killed, a child may state that the individual "went away" or "disappeared," implying that the individual may return.

⁷³ UNHCR, *Interviewing Applicants for Refugee Status* (1995), p. 48.

⁷⁴ *UNHCR Handbook*, para. 214.

⁷⁵ *Perry and Teply*, p. 1383.

⁷⁶ *Perry and Teply*, p. 1419, citing R. Kastenbaum. "The Child's Understanding of Death: How Does it Develop?" *Explaining Death to Children* (E. Grollam, ed. 1967), p. 98.

Proper questioning and listening techniques will result in a more thorough interview that allows the case assessment to be more complete and accurate. The following techniques should help you elicit more thorough information.

GENERAL INTERVIEWING AND LISTENING RULES	
You should endeavor to:	
1	<ul style="list-style-type: none"> • Use short, clear, age-appropriate questions.⁷⁷ • Example: "What happened?" as opposed to "What event followed the arrest?"
2	<ul style="list-style-type: none"> • Avoid using long or compound questions.⁷⁸ • Example: "What time of year did it happen?" and "What time of day did it happen?" as opposed to "What time of year and what time of day did it happen?"
3	<ul style="list-style-type: none"> • Use one- or two-syllable words in questions; avoid using three- or four-syllable words.⁷⁹ • Example: "Who was the person?" as opposed to "Identify the individual."
4	<ul style="list-style-type: none"> • Avoid complex verb constructions.⁸⁰ • Example: "Might it have been the case....?"

⁷⁷ Symposium, p. 40.

⁷⁸ Ann Graffam Walker, *Handbook on Questioning Children: A Linguistic Perspective* (Washington, DC: ABA Center on Children and the Law, 1994), pp. 95-98 reprinted in LJRS, p. 63. (hereafter Walker); and Symposium, p. 40.

⁷⁹ Symposium, p. 40 (note that this technique is generally more important when conducting the interview in English without an interpreter).

⁸⁰ Symposium, p. 40.

5	<ul style="list-style-type: none"> • Ask the child to define or explain a term or phrase in the question posed in order to check the child's understanding.⁸¹
6	<ul style="list-style-type: none"> • Ask the child to define or explain the terms or phrases that he or she uses in answers, and then use those terms. • Example: If a child says that his father "disappeared," ask him what he means by "disappeared," and then use that term in questions involving that event.
7	<ul style="list-style-type: none"> • Use easy words, not complex ones.⁸² • Example: "Show," "tell me about...," or "said" instead of "depict," "describe," or "indicate."
8	<ul style="list-style-type: none"> • Tolerate pauses, even if long.⁸³
9	<ul style="list-style-type: none"> • Ask the child to describe the concrete and observable, not the hypothetical or abstract.⁸⁴
10	<ul style="list-style-type: none"> • Use visualizable, instead of categorical, terms.⁸⁵ • Example: Use "gun," not "weapons."
11	<ul style="list-style-type: none"> • Avoid using legal terms, such as "persecution."⁸⁶ • Example: Ask, "Were you hurt?" instead of "Were you persecuted?" • Example: Explain, "Asylum is a way to stay in the United States if

⁸¹ Walker, reprinted in *LIRS*, p. 63; *Symposium*, p. 40.

⁸² Walker, reprinted in *LIRS*, p. 63.

⁸³ *Perry and Teply*, p. 1380.

⁸⁴ *Symposium*, p. 40.

⁸⁵ *Id.*

⁸⁶ *Id.*

	there are people who hurt or want to hurt [you] back home and [you are] afraid of returning. ⁸⁷
12	<ul style="list-style-type: none"> • Avoid using idioms. • Idioms are phrases that mean something other than what the words actually say. Such phrases could be difficult for both the interpreter and the child applicant. • Example: Ask, "Do you understand?" not, "Is this over your head?"
13	<ul style="list-style-type: none"> • Use the active voice instead of the passive when asking a question.⁸⁸ • Example: Ask, "Did the man hit your father?" instead of "Was your father hit by the man?"
14	<ul style="list-style-type: none"> • Avoid front-loading questions.⁸⁹ • Front-loading a question places a number of qualifying phrases before asking the crucial part of the question. • Example: "When you were in the house, on Sunday the third, and the man with the gun entered, did the man say...?"
15	<ul style="list-style-type: none"> • Keep each question simple and separate.⁹⁰ • Example: The question, "Was your mother killed when you were 12?" should be avoided. The question asks the child to confirm that the mother was killed and to confirm his or her age at the time of the event.

⁸⁷ Christopher Nugent and Steven Schulman, "Giving Voice to the Vulnerable: On Representing Detained Immigrant and Refugee Children," 78 No. 39 INTERPRETER RELEASES 1569, 1575 (2001).

⁸⁸ Symposium, p. 40.

⁸⁹ *Id.*

⁹⁰ LIRS, p. 47.

16	<ul style="list-style-type: none"> • Avoid leading questions. • Research reveals that children may be more highly suggestible than adults and are more likely to answer according to what they think the interviewer wants to hear.⁹¹ Leading questions may influence them to respond inaccurately.
17	<ul style="list-style-type: none"> • 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.⁹² Try not to interrupt the child in the middle of a narrative response.
18	<ul style="list-style-type: none"> • Explain any repetition of questions. • Make clear to the child that he or she should not change or embellish earlier answers.⁹³ Explain that you repeat some questions to make sure you understand the story correctly. "Repeated questions are 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."⁹⁴
19	<ul style="list-style-type: none"> • Never coerce a child into answering a question during the interview.⁹⁵ • Coercion has no place in any USCIS interview. For example, you may never tell children that they cannot leave the interview until they answer your questions.
20	<ul style="list-style-type: none"> • Accept that many children will not be immediately forthcoming about events that have caused great pain.

⁹¹ *Id.* at 26; Perry and Teply, pp. 1393-1396.

⁹² LIRS, p. 47.

⁹³ Walker, reprinted in LIRS, p. 64; Symposium, p. 23.

⁹⁴ Walker, reprinted in LIRS, p. 64.

⁹⁵ Symposium, p. 41.

7 CREDIBILITY CONSIDERATIONS

You must be sensitive to the applicants' cultural and personal experiences irrespective of the applicant's age. This becomes critical when assessing whether testimony is credible.⁹⁶ The task of making an appropriate decision when interviewing children, including making a credibility determination, requires that you be aware of the following issues involving the testimony of children.

7.1 Detail

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 own vulnerability in that country.

For both developmental and cultural reasons, children cannot be expected to present testimony with the same degree of precision as adults.⁹⁷ More probing and creative questions are required.

Example

The child may not know whether any family members belonged to a political party. You should probe further and ask the child whether his or her parents attended any meetings and when the meetings were held. You 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.

Measurements of Time and Distance

Children may try to answer questions regarding measurements of distance or time without the experience to do so with any degree of accuracy. You must make an effort to ascertain the child's quantitative reasoning ability.

Example

You should determine the child's ability to count before asking how many times something happened.⁹⁸

⁹⁶ For additional information, see RAIO modules, *Cross-Cultural Communication and Credibility*.

⁹⁷ *Canadian Guidelines*, p. 8.

⁹⁸ *Symposium*, p. 41.

Even older children may not have mastered many of the concepts relating to conventional systems of measurement for telling time (minutes, hours, calendar dates).

Not only is imprecise time and date recollection a common problem for children owing to their cognitive abilities, it can also be a product of their culture.⁹⁹ 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.

Example

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.” These answers may appear vague and may not conform to linear 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 the Gregorian calendar used in the western world.

Examples

Many Guatemalans still use the Mayan calendar of twenty-day months. In certain Asian cultures, a baby is considered to be “one” on his or her date of birth thereby causing, to the western mind at least, a one-year discrepancy between the child’s age and date of birth.

In many Latin cultures, two weeks is often “15 days” because the first and last days are counted.

Certain Asian cultures count the first day or year, adding one day or year to the time of the event.

“I don’t know” Responses

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.

Example

⁹⁹ For additional information, see RAI0 module, *Cross-Cultural Communication*.

A child may respond "I don't know" when asked who killed his or her parents, but upon further inquiry may state that everyone in his or her home village believes that it was government forces. You 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."

7.2 Demeanor

The term "demeanor" refers to how a person handles himself or herself physically – for example, maintaining eye contact, shifts in posture, and hesitations in speech. A child may appear uncooperative for reasons having nothing to do with the reliability of his or her testimony.

Example

Different cultures view expressions of emotion differently: An individual raised in the United States might question the credibility of a child who, without crying or expressing emotion, is able to retell how his or her parents were killed in front of him. It could be, however, that the child was raised in a culture that deems improper any expression of emotion in front of an authority figure. Trauma, discussed below, may also affect demeanor.

Trauma

You should be careful when interpreting certain emotional reactions or psychiatric symptoms as indicators of credibility. Children who have been subjected to extreme abuse may be psychologically traumatized. Lengthy confinement in refugee camps, repeated relocation, or separation from family can also greatly impact the psychological well-being of children. Children who are separated from their families due to war or other violence are placed at even greater psychological risk than those children who remain in the care of parents or relatives.

Any applicant, regardless of age, may suffer trauma that may have a significant impact on the ability of an applicant to present testimony.¹⁰⁰ Symptoms of trauma can include depression, indecisiveness, indifference, poor concentration, avoidance, or disassociation (emotionally separating oneself from an event). A child may appear numb or show emotional passivity when recounting past events of mistreatment. A child 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 retelling what happened. Inappropriate laughter or long pauses before answering can also be a sign of trauma or embarrassment.

¹⁰⁰ For additional information, see RAIO module, *Interviewing Survivors of Torture*.

These symptoms can be mistaken as indicators of fabrication or insincerity, so it is important for you to be aware of how trauma can affect an applicant's behavior.

Age and Developmental Considerations

In reviewing a child's testimony, you should consider the following:

- the child's age and development at the time of the events
- the child's age and development at the time of the retelling
- the child's ability to recall facts and communicate them

Other Considerations

You may encounter gaps or inconsistencies in the child's testimony. The child may be unable to present testimony concerning every fact in support of the claim, not because of a lack of credibility, but owing to age, gender, cultural background, or other circumstances.¹⁰¹ See section on Detail, above.

You should keep the following in mind:

- the impact of the lapse of time between the events and the retelling
- the difficulty for all individuals in remembering events that took place many years earlier; children who may have been very young at the time of an incident will have greater difficulty in recalling such events
- the needs of children with special mental or emotional issues
- the limited knowledge that children may have of the circumstances surrounding events

Example

A child may not know the political views of his or her family, despite the fact that his parents were among the most visible individuals in the opposition party. When asking follow-up questions, you learn that the applicant was seven years old when his parents were assassinated and the relatives who raised him were reluctant to share any information about his parents' activities.

- the role of others in preparing children for interview

All children have been coached to some degree. Some children may have been coached by a human trafficker or an ill-informed adult to tell a particular story, which the child repeats at the interview 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 you should

¹⁰¹ For additional information, see RAO module, *Credibility*, see also Bhabha and Young.