



OOD
PM 20-03

Effective: November 15, 2019

To: All of EOIR
From: James R. McHenry III, Director *JRM*
Date: November 15, 2019

CHILD ADVOCATES IN IMMIGRATION PROCEEDINGS

PURPOSE:	Memorialize EOIR policy regarding child advocates appointed by the Secretary of Health and Human Services under 8 U.S.C. § 1232(c)(6)
OWNER:	Office of the Director
AUTHORITY:	8 C.F.R. § 1003.0(b)
CANCELLATION:	None

Section 235(c)(6) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), codified in 8 U.S.C. § 1232, authorizes the Secretary of Health and Human Services (HHS Secretary) to appoint “independent child advocates for child trafficking victims and other vulnerable unaccompanied alien children” (UAC). This authority to appoint a child advocate exists only for “child trafficking victims and other vulnerable unaccompanied alien children”—not for all UAC. The child advocates are generally appointed at detention sites, 8 U.S.C. § 1232(c)(6)(B), while the UAC is in HHS custody. In its discretion, HHS may also appoint a child advocate after a UAC’s release from its custody.

A child advocate’s duties include:

- **Client Visits:** The child advocate meets with the UAC regularly and speaks with the child’s care provider staff in order to understand the child’s background and current situation.
- **Decision Making:** The child advocate helps the UAC understand legal and care-related issues, explains the consequences of decisions made in response to those issues, and assists the child in making decisions when the child requests such help.
- **Best Interests Advocacy:** The child advocate develops a service plan containing best-interest recommendations with respect to the care, placement, and release options; and keeps the care provider, HHS, and the legal service provider or attorney of record apprised of the plan and advocacy efforts.

- Case updates: The child advocate collaborates and regularly communicates with the care provider, HHS, and other stakeholders in the planning and performance of advocacy efforts. For children who have been released from HHS care, child advocates provide timely updates as appropriate or as requested by HHS.

United States Department of Health and Human Services, *Children Entering the United States Unaccompanied*, Section 2.3.4 Child Advocates (Aug. 1, 2016), available at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-2>

A child advocate is not a party to a respondent UAC's immigration court case, and neither the statute nor applicable regulations provide a formal mechanism for a child advocate to appear before an immigration judge. Although a respondent may choose to call a child advocate to testify or submit documentary evidence generated by that child advocate, such as a Best Interest Determination, a child advocate "shall not be compelled to testify or provide evidence in any proceeding concerning any information or opinion received from the child in the course of serving as a child advocate." 8 U.S.C. § 1232(c)(6). As with any witness, a child advocate who chooses to testify may be subject to cross-examination. Moreover, as with all evidence, testimonial or documentary evidence submitted from a child advocate remains subject to an immigration judge's authority to determine its admissibility and weight.

Most UAC in immigration proceedings have legal representation, and immigration judges should be mindful that a child advocate appointed by the HHS Secretary is not a UAC's legal representative in immigration proceedings.¹ Thus, it is not appropriate for an immigration judge to consider actions of legal representation—such as motions, pleadings, waivers, other legal filings or other legal advocacy acts—made by a child advocate on behalf of a respondent, especially in cases in which a UAC respondent has legal representation of record.

Further, situations in which the child advocate may urge a different course of action than the respondent's legal representative may raise significant ethical or professional responsibility issues, may implicate issues of attorney-client privilege, and may raise questions of attorney misconduct or ineffective assistance of counsel. Accordingly, immigration judges should seek additional guidance, as appropriate, if confronted with such a situation.

Finally, because authorization to appoint a child advocate is statutorily committed to the HHS Secretary, 8 U.S.C. § 1232(c)(6)(A), immigration judges have no authority to appoint such an advocate. If an immigration judge has questions about the appropriateness or actions of a child advocate in a particular case, the immigration judge should contact his or her ACIJ for additional guidance.

¹ Only individuals described in 8 C.F.R. § 1292.1 are authorized to provide legal representation to aliens in immigration proceedings. 8 C.F.R. §§ 1240.3, 1292.1(e).

This PM supersedes any prior guidance issued by EOIR regarding child advocates appointed by the Secretary of Health and Human Services under 8 U.S.C. § 1232(c)(6).

This PM is not intended to, does not, and may not be relied upon to create, any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Please contact your supervisor if you have any questions.
