



May 19, 2021

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Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
5900 Capital Gateway Drive
Camp Springs, MD 20746
Submitted via Federal eRulemaking Portal

RE: RIN 1615-ZB87, USCIS-2021-0004: Identifying Barriers Across U.S. Citizenship and Immigration Services (USCIS) Benefits and Services; Request for Public Input

Dear Ms. Deshommès:

Kids in Need of Defense (KIND) submits the following comments in response to the April 19, 2021 call for public feedback on administrative barriers and other obstacles facing petitioners and applicants who interact with USCIS. 86 Fed. Reg. 20398 (April 19, 2021). KIND staff and pro bono attorneys have practiced extensively before USCIS and are well-placed to discuss areas in which changes in policy, practice, or regulation could significantly improve the experience for unaccompanied children. Our observations focus primarily on four categories: customer service, efficiencies and delays, training, and regulatory or policy improvements. KIND does not revisit every regulatory action or policy change that has resulted in legal obstacles for noncitizens seeking benefits but focuses instead on those issues most specifically affecting unaccompanied children.

KIND is the leading national organization working to ensure that no child faces immigration court alone. With ten field offices and a presence at the southwest border, KIND has received referrals for more than 20,000 unaccompanied children in removal proceedings and has formed pro bono partnerships with over 670 corporations, law firms, law schools, and bar associations. KIND's social services program facilitates access to counseling, educational support, medical care, and other services. Additionally, the organization's programs in Mexico and Central America work to address the root causes of migration by children and help promote the safety and well-being of migrant children at every phase of their migration journey.

I. General Observations—Restore Trust and Confidence

KIND recognizes that USCIS processes millions of applications and petitions each year, and that personnel engaged in this work must balance maintaining a high quality of work against timely adjudication of significant caseloads. Various practices during the past administration had a negative impact on the quality of service offered as well as the morale of many USCIS employees—such as deleting the concept of America’s immigrant history from the mission statement; excising references to customers and customer service from documents; minimizing the role of public engagement and customer service offices; insinuating that fraud exists in every corner; and insisting on using the word “alien” to describe non-citizens. KIND applauds the Biden administration for its initial efforts to instill greater sensitivity and respect into the immigration adjudication system through its decision to restore a focus on customer service and eliminate language that dehumanizes applicants. KIND also applauds the administration’s commitment to review agency practices and regulations that further impede access to benefits and services.

We note that USCIS, in particular, has made significant strides in reversing some of the worst decisions of the past administration. Agreeing to revisit fee structures, rescinding the public charge rule, and expanding the use of parole for vulnerable populations are all examples of actions that will make it easier for non-citizens to access critical immigration services and benefits. We welcome this opportunity to discuss in greater detail additional measures that can and should be taken to improve customer service and reduce legal and other obstacles to obtaining benefits.

KIND is also encouraged by the prospect of expanded public engagement. Outreach and dialogue are critical to rebuilding trust in USCIS functions, and we look forward to opportunities to partner with USCIS to create a more equitable and balanced approach to delivering services and benefits.

II. Enhance and Expand Customer Service

KIND attorneys report an overall low rate of satisfaction with customer service at USCIS. Among the issues frequently noted are difficulties in using the 1-800 customer service line, where answers to voice activated prompts are frequently misdirected or the prompts themselves do not match customer needs; the difficulty of reaching an actual customer representative; and the limited information and authority available to those representatives to assist customers. The ability to elevate questions and concerns to subject matter experts or specific product lines is extremely limited and contributes to overall frustration with the customer service process. KIND attorneys praised certain improvements to the system, however, such as the use of dedicated email addresses for Special Immigrant Juvenile Status (SIJS) inquiries and the friendliness and helpfulness of individual customer service representatives. Website tools designed to permit tracking of individual cases were also cited as bright spots, but many attorneys countered that these tools are only helpful when cases are

“on track.” For instance, lost receipts and files, transfers of files to other offices, and redundant requests for evidence can all contribute to inaccurate or outdated information within the tracking systems. Other glitches lead to Catch-22 situations, such as reports that updating G-28s when the attorney of record changes can be difficult, in part because USCIS may maintain multiple files or have transferred A files, and yet the new attorney of record cannot talk to a customer service representative to locate the file because the G-28 has not been updated.

Increased personnel and resources, as well as additional quality control measures, should be put in place to enhance the customer experience, with a particular emphasis on ensuring that there are sufficient specialized staff to troubleshoot more difficult or complex issues that arise. Applicants should not have to turn to their Congressional representatives to obtain personalized service, yet in many cases this is the only way to obtain information in situations where the basic customer service tools have been exhausted.

III. Identify and Correct Administrative Inefficiencies and Delays

Without question, the backlogs in processing petitions and applications for asylum, employment authorization documents (EADs) SIJS petitions, and T and U visas impose a significant burden on unaccompanied children. Despite a statutory processing deadline of 180 days for both SIJS petitions and asylum applications, average processing times from the date of application frequently exceed a year. Not only do delays create further anxiety and uncertainty for unaccompanied children about their immigration status, but lengthy processing delays and other backlogs also make it more difficult for unaccompanied children to obtain pro bono representation. Consistent and predictable timelines make it easier for pro bono counsel to commit to volunteering to represent a child and increase the likelihood that the same individual or team will be able to see a case through to its end.

Regardless of overall delays, KIND attorneys report numerous practices that contribute to delay in individual cases. For example, attorneys report that they frequently must answer requests for additional information even when that information is already included in the application packet. Many attorneys reported that the initial review of applications for completeness, submission of applicable fees or other screenings were inadequate, frequently resulting in returned case packets. Others noted that breakdowns in communication within USCIS often resulted in wasted effort. For example, one attorney sought a postponement of an interview for a disabled client well in advance of the interview but received no word and ultimately spent an entire weekend preparing her client for the interview. Upon arrival, however, the attorney discovered that the postponement had been granted, but that this information was never conveyed to the customer service representative who was expected to convey it to the attorney. This example suggests that reducing the number of interactions needed to obtain a clear answer on scheduling or other time-sensitive questions could reduce the possibility of error and inconvenience.

The most frequent processing concerns raised, however, relate to redundancies, unnecessary paperwork, and confusing or misleading forms. For example, KIND staff note that SIJS applicants for adjustment of status are required to fill out fee waiver forms even though USCIS policy states applicants with SIJS do not need to provide proof of income to be fee exempt. They also note that the slow adoption of electronic filing and ability to track cases in real time frequently requires submitting the same information numerous times in order to obtain an answer to a case processing question. Questions included on forms raise other problems related to these concerns. Attorneys noted that the asylum form is not child-friendly, and often poses questions in fragmented phrases that are difficult to translate or explain to children. This problem is compounded when a question asks an applicant to reach a legal conclusion. The most recently proposed version of the Form I-589, for example, is filled with questions that would require legal knowledge to answer as well as confusing messages about what information should be included on the form. While that form is so closely tied to asylum regulations that are themselves under review or mired in litigation that it is unlikely to be approved in its current state, the public comments submitted in response to the proposed changes are [illuminating](#).

We urge USCIS to carefully consider the impact of every question it asks and requirement it imposes on applicants, and to take into account how differences in language, age, history of trauma, understanding, or legal knowledge may all affect the ability of an applicant to complete a form. New questions and instructions should receive additional scrutiny, above and beyond that which USCIS usually undertakes, to make sure that forms are truly accessible and easily understood by those who will use them.

IV. Improve Training at All Levels of the Organization, Particularly as to Unaccompanied Children's Issues.

In addition to the needs for policy changes identified thus far, additional training and quality control measures would also improve customer service and reduce unnecessary requests for evidence and unnecessary filing rejections. Specific training on the particular issues and needs of unaccompanied children is essential. KIND has long advocated for the creation of a specialized corps of adjudicators who have been trained in the use of child-friendly hearing and interviewing techniques that are necessary to afford children due process, and in substantive issues common in unaccompanied children's cases. Required trainings should include initial in-person, headquarters-level training in which non-government experts in children's protection issues participate, reinforced by continuing in-person training with such professionals. Such training should not be limited to first-line adjudicators and supervisors but should reach broadly throughout the agency. As caseloads involving unaccompanied children grow, USCIS leadership must have a deeper understanding of the agency's critical role in ensuring that children can fairly access humanitarian protection, and the practical and policy implications of failing to address the unique needs of children throughout the adjudication process. In its broader recommendations to the Biden administration, KIND has urged the creation of a point person

within the White House who can coordinate the government's response to children's issues, and USCIS has the opportunity to lead in this work. We urge USCIS to commit to fully revisiting its approach to adjudicating children's applications and petitions and to set up its own point person and task force on improving the delivery of services to all children.

V. Improve Policies and Regulations Applicable to Children's Cases

Over the course of the last four years, KIND has submitted numerous public comments in response to notices of proposed rulemaking in which KIND addressed the past administration's efforts to restrict access to asylum and reduce eligibility. While many of those regulations have been enjoined or rescinded, KIND urges USCIS to continue to reverse policies and regulations that limit children's access to asylum, replacing them with policies that reflect appropriate legal standards for analyzing claims based on family relationships, gender, age, or gang violence and control, consistent with international norms. Further, children's cases, in particular, must be approached with a level of flexibility appropriate to children's unique needs and capacities.

KIND recommends the following regulatory and policy actions:

- Promulgate regulations called for by the TVPRA, using notice-and-comment procedures. Since 2008, the Trafficking Victims Protection Reauthorization Act has required the promulgation of regulations governing relief applications of unaccompanied children, a mandate that has yet to be fulfilled. We urge USCIS, working with DOJ and HHS, to adopt regulations that ensure the agencies' uniform understanding of and compliance with TVPRA protections, that USCIS's initial jurisdiction to adjudicate the asylum claims of unaccompanied children is respected, and that the rights and benefits conferred on unaccompanied children at the time of the initial status determination endure throughout a child's removal proceedings and pursuit of relief. This would ensure that custody and release matters, processing delays, and scheduling issues do not prevent unaccompanied children from accessing TVPRA protections, including access to a non-adversarial asylum interview and exemption from the one-year filing deadline, even after they turn 18 or are reunited with a parent or legal guardian.
- Enable SIJS recipients whose visa priority date is not current to pursue employment authorization documents (EADs) through deferred action, parole pursuant to INA § 245(h), or another mechanism. Children who are granted SIJS but come from one of the countries where the visa category is oversubscribed face wait times between the SIJS grant and adjustment of status. During that time, unaccompanied children are at risk of removal unless their removal case is administratively closed or continued. While we have urged the Executive Office for Immigration Review to work with DHS to address this problem, we also recommend that USCIS assert its authority on behalf of those children it has found eligible for and in need of protection. In addition, either deferred action status or the parole deemed to occur when SIJS is granted may serve as a basis

for employment authorization, reducing the risk of exploitation of unaccompanied children who need to work, and allowing access to an EAD that is often their only available form of government-issued identification.

- Rescind employment authorization regulations that impose year-long delays and other restrictions on access to work authorization for asylum seekers. Regulations adopted during the prior administration in effect made it impossible for many asylum applicants to lawfully work during pendency of their claims, significantly delaying their financial self-sufficiency, and making it more difficult for unaccompanied children to access education, health, and other benefits that depend on a government-issued ID.¹
- In forthcoming rulemaking on particular social group, include language that recognizes the impact of age, family relationships, and the unique vulnerabilities of children in analyzing proposed particular social groups.
- Update and revise the 1998 Children’s Asylum Guidelines to reflect significant advances in legal, psycho-social, and cultural understanding as to children and child asylum-seekers. These guidelines should reflect not only the developments in administrative and statutory law, but also advances in understanding of the developmental and psychological needs of children, trauma-informed adjudications, techniques for interviewing and eliciting information from children, and a far more nuanced approach to evaluating children’s claims than is currently followed.
- Rescind PM 602-0163, Issuance of Certain RFEs and NOIDs (July 13, 2018), and restore practices that support notice and a reasonable opportunity to respond before a relief application is denied.
- Affirmatively exempt unaccompanied children from fees and remove requirements to submit fee waiver applications.
- Reduce barriers for accessing employment authorization. Instructions to Form I-765 (Application for Employment Authorization) should clearly exempt all unaccompanied children, asylum applicants, and applicants for adjustment of status on the basis of SIJS from the following instruction: “If you were not previously issued an EAD, you must submit a copy of a government-issued identity document (such as a passport) showing your picture, name, and date of birth; a birth certificate with photo ID; a visa issued by a foreign consulate; or a national ID document with photo and/or fingerprint.” (Instructions, Form I-765 (8/25/20 ed.) at 25). EAD applicants in any of the three groups

¹ KIND represents plaintiffs in one lawsuit challenging the validity of these asylum EAD regulations. *AsylumWorks v. Mayorkas*, No. 20-cv-3815 (D.D.C.).

may be unable to obtain an ID document from the government of the country of origin or the U.S.

Conclusion

KIND appreciates the opportunity to offer suggestions for improving access to benefits and services, and we stand ready to work with USCIS to further this important goal. Morale, recommitment to mission, and re-establishing excitement and purpose in the work of USCIS are equally important to improving the quality of service. The work to come will require leadership, vision, and explicit commitments to value each customer as an individual who has something to bring to the nation, whether as a temporary visitor or immigrant or as a permanent member of our community.

Respectfully submitted,

A handwritten signature in blue ink that reads "Maria M. Odom". The signature is fluid and cursive, with the first name "Maria" being the most prominent part.

Maria M. Odom
Senior Vice President for Legal Programs