

**UPDATE ON LEGAL RELIEF OPTIONS FOR UNACCOMPANIED ALIEN  
CHILDREN FOLLOWING THE ENACTMENT OF THE WILLIAM WILBERFORCE  
TRAFFICKING VICTIMS PROTECTION REAUTHORIZATION ACT OF 2008**

**Practice Advisory**

**By: Deborah Lee, Manoj Govindaiah, Angela Morrison & David Thronson<sup>1</sup>  
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This practice advisory will discuss recent developments in legal relief for unaccompanied alien children<sup>2</sup> brought about by the enactment of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (P.L. 110-457; “TVPRA”) on December 23, 2008. In addition to expanding protections for trafficking victims generally, the TVPRA made procedural and substantive changes to immigration legal relief for unaccompanied alien children. Specifically, section 235 of the TVPRA increased many protections for unaccompanied alien children seeking relief from removal, including Special Immigrant Juvenile status and asylum.<sup>3</sup> This section of the TVPRA also provides more child-sensitive procedures for those in immigration custody and at imminent risk of removal. The following is a practice advisory regarding some of these significant developments for unaccompanied alien children created by the TVPRA.<sup>4</sup>

While this advisory’s focus is on the expansion in legal relief options for unaccompanied alien children, it is strongly encouraged that legal advocates carefully review the TVPRA in order to understand the full scope of changes this new law provides. Some of these changes are not

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<sup>1</sup>Deborah Lee (Florida Immigrant Advocacy Center, Miami, Florida); Manoj Govindaiah (National Immigrant Justice Center, Chicago, Illinois); Angela Morrison (University of Nevada- Las Vegas, Las Vegas, Nevada); David Thronson (University of Nevada- Las Vegas, Las Vegas, Nevada). The authors especially thank fellow children’s advocates, Gregory Chen, Rebecca Sharpless, A. Michelle Abarca, Kristen Jackson, and Ragini Shah for their helpful comments and suggestions to this practice advisory.

<sup>2</sup> The term ‘unaccompanied alien child’ means one who:

- (A) has no lawful immigration status in the United States;
- (B) has not attained 18 years of age; and
- (C) with respect to whom—
  - (i) there is no parent or legal guardian in the United States; or
  - (ii) no parent or legal guardian in the United States is available to provide care and physical custody.

*See* Homeland Security Act of 2002 § 462(g); 6 U.S.C. § 276(g); adopted by TVPRA § 235(g).

<sup>3</sup> For a summary of many changes under TVPRA § 235, please see Attachment A: Summary Chart of Changes Affecting Legal Relief Options Post-William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (P.L. 110-457; “TVPRA”).

<sup>4</sup> As certain logistics regarding the implementation of the TVPRA have not been resolved and regulations have yet to be issued, future practice advisories will most likely be needed to further guide practitioners in their representation and advocacy for unaccompanied alien child clients.

directly related to legal relief or unaccompanied alien children, however, and will therefore not be addressed in this practice advisory.<sup>5</sup>

## **I. STATUTORY OVERVIEW OF TVPRA § 235 CHANGES TO LEGAL RELIEF OPTIONS FOR UNACCOMPANIED ALIEN CHILDREN**

### **A. Unaccompanied Alien Children Apprehended By Immigration Authorities And Facing Imminent Removal**

With the exception of children arriving from contiguous countries,<sup>6</sup> unaccompanied alien children apprehended by immigration authorities and subject to removal from the United States are afforded expanded rights, including being placed in removal proceedings under Immigration and Nationality Act (“INA”) § 240.<sup>7</sup> The TVPRA provides that these children shall be eligible for Voluntary Departure under INA § 240B at no cost to the child.<sup>8</sup> For legal practitioners, Voluntary Departure at no cost to the child is significant because many unaccompanied alien children are indigent and have no other means to assume the financial cost of returning to their home country. For those children who may have a legal means of returning to the United States in the future, and who do not want to incur the time-barred consequences of a prior removal order, this availability of Voluntary Departure under INA § 240B is now a viable legal relief option.

In addition to the availability of Voluntary Departure under INA § 240B, unaccompanied alien children should now have broader access to legal counsel to assist them with their removal proceedings. “To the greatest extent practicable,” the Secretary of Health and Human Services is obliged to provide these children access to counsel, including pro bono counsel, to provide free legal services to these children.<sup>9</sup> While this provision of the TVPRA appears subject to financial appropriations and other resource constraints, the Secretary of Health and Human Services now has a clear duty to ensure that unaccompanied alien children are able to access legal counsel to assist them in their immigration proceedings.

### **B. SPECIAL IMMIGRANT JUVENILE STATUS**

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<sup>5</sup> Some of these changes include mandating a pilot program to ensure the safe repatriation of unaccompanied alien children, creating more safety and suitability assessments for the release of unaccompanied alien children within the United States, authorizing the Secretary of Health and Human Services to appoint independent child advocates who will promote the child’s best interests, mandating training by the Secretaries of State, Homeland Security, Health and Human Services and the Attorney General for personnel who deal with unaccompanied alien children. *See* TVPRA §§ 235(a)(5); (c)(3); (c)(6); (e).

<sup>6</sup> Unaccompanied alien children from contiguous countries, i.e., Mexico and Canada, have limited rights under TVPRA § 235(a)(2).

<sup>7</sup> *See* TVPRA § 235(a)(5)(E)(i).

<sup>8</sup> *See* TVPRA § 235(a)(5)(E)(ii).

<sup>9</sup> *See* TVPRA § 235(a)(5)(E)(iii); *see also* TVPRA § 235(c)(5).

The TVPRA makes significant changes regarding Special Immigrant Juvenile status, a form of legal relief available to unaccompanied alien children who have been abused, abandoned or neglected.

### 1. CHANGE IN SPECIAL IMMIGRANT JUVENILE DEFINITION

The TVPRA clarifies and expands the definition of Special Immigrant Juvenile. A Special Immigrant Juvenile is now defined as an immigrant who is present in the United States:

- (i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to or placed under the custody of, an agency or department of a *State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;*
- (ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence.<sup>10</sup>

The TVPRA eliminates the “eligible for long-term foster care” language for Special Immigrant Juveniles, which has over the years been a source of confusion for U.S. Citizenship and Immigration Services (USCIS).<sup>11</sup> Given 8 C.F.R. § 204.11, “eligible for long-term foster care” has always meant that family reunification was not a viable option for a Special Immigrant Juvenile. Now, this family reunification prong of the Special Immigrant Juvenile definition is clarified and should finally resolve any misinterpretation of the law that a child must literally have been in or remain in a foster home in order to qualify for Special Immigrant Juvenile status.

The TVPRA also expands the Special Immigrant Juvenile definition to allow for a juvenile court to consider family reunification with one or both of the child's parents.<sup>12</sup> The plain language of this statutory revision says that family reunification need only be “not viable” with one parent, not both parents. Further, the juvenile court may consider whether family reunification is viable due to abuse, abandonment, neglect or a similar basis under state law.<sup>13</sup> The plain language of the provision is that a juvenile court would only need to find abuse, abandonment, neglect, or a

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<sup>10</sup> See TVPRA § 235(d)(1) (amendments to Special Immigrant Juvenile definition are italicized); see also INA § 101(a)(27)(J).

<sup>11</sup> See Matter of Perez Quintanilla, A097383010 (AAO June 7, 2007). Among other issues, the Administrative Appeals Office found that the Special Immigrant Juvenile self-petitioner was “eligible for long-term foster care,” as prescribed by 8 C.F.R. § 204.11(a), because the juvenile court had determined that family reunification was not a viable option.

<sup>12</sup> See TVPRA § 235(d)(1).

<sup>13</sup> See *id.* (emphasis added).

similar basis under state law with one parent, not both, when considering family reunification. For example, in the case of a child who has experienced abuse, abandonment or neglect at the hands of his father, the juvenile court need only consider whether family reunification with the father is viable.<sup>14</sup> It appears that reunification possibilities with the child's mother would not bar the child from qualifying for Special Immigrant Juvenile status. As such, the expansion in the definition of Special Immigrant Juvenile allows for more vulnerable and mistreated children to qualify for this form of legal relief.<sup>15</sup>

## **2. TRANSFER OF SPECIFIC CONSENT AUTHORITY TO U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES**

In addition to expanding the definition of Special Immigrant Juvenile, the TVPRA also amends a procedural hurdle for those in immigration custody<sup>16</sup> seeking Special Immigrant Juvenile status: obtaining specific consent from the federal government to enter into a state juvenile court. This "specific consent" provision is derived from a subsection within the Special Immigrant Juvenile definition which states, in relevant part, that:

No juvenile court has jurisdiction to determine the custody status or placement of an alien in the actual or constructive custody of the [Department of Homeland Security] unless the [Department of Homeland Security] specifically consents to such jurisdiction...

INA § 101(a)(27)(J)(iii)(I).

Previously, the U.S. Department of Homeland Security required that children in actual or constructive custody obtain "specific consent" from it in order to proceed forward in a state court proceeding, and ultimately to pursue Special Immigrant Juvenile status.<sup>17</sup> The TVPRA transfers the authority to grant this "specific consent" from the U.S. Department of Homeland Security to the U.S. Department of Health and Human Services.<sup>18</sup> This transfer of specific consent authority to the Secretary of Health and Human Services is noteworthy, as the Department of Homeland Security's policies and practices regarding specific consent have been convoluted, inconsistent, and detrimental to the legal rights of these unaccompanied alien children. As many legal practitioners working with unaccompanied alien children already know, these violations of legal

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<sup>14</sup> This is assuming that the mother's own failure to remove her child from the abusive environment did not, in and of itself, constitute abuse or neglect under state law.

<sup>15</sup> Despite this change in only needing to establish that reunification with one parent is not viable due to abuse, abandonment, neglect or other similar basis under state law, practitioners should keep in mind that the TVPRA did not eliminate the statutory provision prohibiting a Special Immigrant Juvenile from petitioning from their natural or prior adoptive parent. A Special Immigrant Juvenile still cannot file a family petition on behalf of their natural or prior adoptive parent. *See* INA § 101(a)(27)(J)(iii)(II).

<sup>16</sup> The TVPRA clarifies that this specific consent is only needed when a child is in the custody of the U.S. Department of Health and Human Services. *See* TVPRA § 235(d)(1).

<sup>17</sup> *See* INA § 101(a)(27)(J)(iii)(I); *see also* Memorandum #3 – Field Guidance on Special Immigrant Juvenile Status Petitions ("Yates Memo"), William R. Yates, Associate Director for Operations, Citizenship and Immigration Services, HQADN 70/23 (May 27, 2004).

<sup>18</sup> *See* TVPRA § 235(d)(1).

rights of unaccompanied alien children to pursue Special Immigrant Juvenile status led to recent federal litigation in Perez-Olano v. Gonzales, et al., No. 05-03604 (C.D. CA, Jan. 8, 2007) regarding, among other issues, the need to obtain specific consent (from the U.S. Department of Homeland Security) where the unaccompanied alien child does not seek a transfer in her custody or placement. This litigation even led to the U.S. District Court for the Central District of California enjoining the U.S. Department of Homeland Security, since January 8, 2008, from requiring specific consent except in cases in which the state juvenile court seeks to exercise jurisdiction to change the child's custody status or placement.

This transfer of specific consent authority to the U.S. Department of Health and Human Services overlaps with this on-going litigation in Perez-Olano v. Gonzales, but does not appear to alter the conditions under which a child needs to obtain specific consent. Section 235(d)(1)(B)(ii) of the TVPRA leaves intact the existing limitation that specific consent may be required of a Special Immigrant Juvenile self-petitioner only where a state court seeks to exercise jurisdiction to "determine custody status or placement." Therefore, the transfer of authority to grant specific consent to the Secretary of Health and Human Services does not expand the circumstances in which specific consent is required.

At the present time, it is unclear how the U.S. Department of Health and Human Services will exercise its specific consent authority, as well as the effective date of its authority to grant specific consent. The U.S. Department of Health and Human Services has stated that it will not have specific consent authority until March 23, 2009, ninety days from the December 23, 2008 enactment of this Act.<sup>19</sup> The U.S. Department of Homeland Security acknowledges that this transfer in specific consent authority, effective March 23, 2009, but apparently will not act on pending cases in which a state court seeks to exercise jurisdiction to determine custody status or placement.<sup>20</sup>

In apparent contradiction to the positions of the U.S. Department of Health and Human Services and the U.S. Department of Homeland Security, section 235(h) of the TVPRA provides that amendments to the Special Immigrant Juvenile definition, including the specific consent authority amendment, are immediately effective "to all aliens in the United States in pending proceedings before the Department of Homeland Security or the Executive Office for

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<sup>19</sup> See TVPRA § 235(h); see also January 8, 2009 Redacted Letter from the U.S. Department of Health and Human Services to A. Michelle Abarca, Florida Immigrant Advocacy Center, stating that the Department of Health and Human Services' specific consent authority would not be effective until 90 days after the December 23, 2008 enactment of the TVPRA (on file with authors).

<sup>20</sup> See February 6, 2009 Redacted Letter from the U.S. Department of Homeland Security to Deborah Lee, Florida Immigrant Advocacy Center, stating the TVPRA transferred specific consent authority to the U.S. Department of Health and Human Services, effective 90 days after the December 23, 2008 enactment of the TVPRA (on file with authors). The letter is in response to a renewed request for specific consent so that a state court could exercise jurisdiction to transfer a Special Immigrant Juvenile self-petitioner into the custody of the state's child welfare agency. The U.S. Department of Homeland Security does not address the underlying request for specific consent, despite stating that the change in specific consent authority would not be effective for 90 days.

Immigration Review, or related administrative or Federal appeals, on the date of the enactment...” Since specific consent is required only for juveniles in immigration custody, nearly all of whom are in removal proceedings, the effective date exception appears to authorize the U.S. Department of Health and Human Services, not the U.S. Department of Homeland Security, to grant specific consent at the present time. As stated above, however, the U.S. Department of Health and Human Services does not appear to interpret the effective date exception in this way.

### **3. 180-DAY TIMELINE FOR ADJUDICATION OF SPECIAL IMMIGRANT JUVENILE APPLICATIONS**

The TVPRA mandates the expeditious adjudication of Special Immigrant Juvenile applications, requiring that the Secretary of Homeland Security process these applications within 180 days after the application is filed.<sup>21</sup> Requiring the Secretary of Homeland Security to more quickly adjudicate Special Immigrant Juvenile applications should resolve long delays in the handling of these cases and mandate that all USCIS offices prioritize Special Immigrant Juvenile cases.

### **4. SPECIFIC EXEMPTIONS TO GROUNDS OF INADMISSIBILITY FOR SPECIAL IMMIGRANT JUVENILES SEEKING ADJUSTMENT OF STATUS**

The TVPRA creates specific waivers to various grounds of inadmissibility for those Special Immigrant Juveniles seeking Adjustment of Status. The TVPRA amends INA § 245(h)(2) to specifically waive the following grounds of inadmissibility: INA § 212(a)(4) (Public Charge); INA § 212(a)(5)(A) (Labor Certification); INA § 212(a)(6)(A) (Present Without Admission or Parole); INA § 212(a)(6)(C) (Misrepresentation/Fraud); INA § 212(a)(6)(D) (Stowaway); INA § 212(a)(7)(A) (Lack of Valid Entry Documentation); and INA § 212(a)(9)(B) (Unlawful Presence).<sup>22</sup> This expanded list of specific waivers for Special Immigrant Juveniles seeking adjustment of status will make it easier for otherwise eligible children to become lawful permanent residents.

### **5. TRANSITION PROTECTION FOR THOSE ALREADY SEEKING SPECIAL IMMIGRANT JUVENILE STATUS BEFORE THE DATE OF ENACTMENT OF TVPRA**

The TVPRA provides protection to those who were already seeking Special Immigrant Juvenile status before its December 23, 2008 enactment but may otherwise “age-out” of either state juvenile court jurisdiction or the pre-existing cap of being under 21 years old for the Special Immigrant Juvenile eligibility.<sup>23</sup> Specifically, the TVPRA states that one:

may not be denied special immigrant [juvenile] status...after the date of the enactment of this Act based on age if the alien was a child on the date on which the alien applied for such status.

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<sup>21</sup> See TVPRA § 235(d)(2).

<sup>22</sup> See TVPRA § 235(d)(3).

<sup>23</sup> See 8 C.F.R. § 204.11(c)(1).

TVPRA § 235(d)(6). U.S. Citizenship and Immigration Services is prohibited now from denying Special Immigrant Juvenile status to a self-petitioner, solely based on age, if she was a child<sup>24</sup> on the date of her application. Special Immigrant Juvenile self-petitioners should not fear aging out of eligibility, so long as they were eligible at the time of filing.

However, legal practitioners should note that 8 C.F.R. § 204.11(c)(5) still maintains a continuing jurisdictional requirement for the juvenile court, in order for the Special Immigrant Juvenile self-petitioner to remain eligible for this immigration status. It appears that this regulation will need to be amended to reflect the TVPRA's statutory age-out protection.<sup>25</sup> Practitioners should be cautious about age-out cases and might wish to seek adjustment of status for their Special Immigrant Juvenile clients before the lapse of juvenile court jurisdiction.

### **C. ASYLUM AND RELATED RELIEF FROM REMOVAL**

Recognizing the unique and vulnerable situation of unaccompanied alien children, the TVPRA provides additional protections for those applying for asylum. INA § 208 is amended to specifically exempt unaccompanied alien children from the standard safe third country limitation on asylum.<sup>26</sup> Unaccompanied alien children are also exempted from the one-year deadline for applying for asylum.<sup>27</sup> Legal practitioners should take note especially of this exemption of the one-year deadline for unaccompanied alien children applying for asylum. Many unaccompanied alien children have had little control over the circumstances of their entry into the United States or their subsequent life in this country. Virtually none have knowledge of immigration laws or options for seeking legal relief. These additional protections are much-needed recognition of the specialized needs of this class of vulnerable asylum applicants.

The TVPRA also amends the procedure for processing asylum applications of unaccompanied alien children. An asylum officer from USCIS has initial jurisdiction over any asylum application filed by an unaccompanied alien child, including applications filed by children in removal proceedings.<sup>28</sup> Given the non-adversarial nature of asylum interviews, in contrast to the inherently adversarial and formalized nature of removal proceedings before an Immigration Judge, this manner of processing asylum applications is a welcome change. This procedural change in the processing of asylum applications more appropriately addresses the needs of unaccompanied children applying for asylum.

The TVPRA also states that an unaccompanied alien child's application for asylum and other relief from removal should take into account the child's status and developmental needs as an

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<sup>24</sup> See INA § 101(b)(1).

<sup>25</sup> This is in addition, of course, to the need to amend 8 C.F.R. § 204.11(c)(1)'s requirement that one must be under 21 years of age in order to be eligible for Special Immigrant Juvenile status.

<sup>26</sup> See TVPRA § 235(d)(7)(A).

<sup>27</sup> See *id.*

<sup>28</sup> See TVPRA § 235(d)(7)(B).

unaccompanied alien child. The TVPRA mandates that regulations be implemented to govern the procedural and substantive aspects of adjudicating an unaccompanied alien child's case.<sup>29</sup>

If representing an unaccompanied alien child seeking asylum in removal proceedings, legal practitioners should inform the particular Immigration Judge presiding over the child's removal proceedings, as well as Department of Homeland Security opposing counsel, that USCIS' Asylum Office has initial jurisdiction over the asylum application. Practitioners should consider requesting termination of proceedings, or alternatively seeking administrative closure, as this may be the most efficient use of the Immigration Court's time and resources, as well as being in the child's legal interests.

#### **D. EFFECTIVE DATE OF SECTION 235 OF THE TVPRA**

Section 235 of the TVPRA will take effect 90 days after its December 23, 2008 enactment, i.e., March 23, 2009.<sup>30</sup> However, as noted above, there appears to be some confusion regarding the effective date of this section for those unaccompanied alien children in pending proceedings. The effective date subsection within section 235 of the TVPRA reads:

This section---

- (1) Shall take effect on the date that is 90 days after the enactment of this Act; and
- (2) Shall also apply to all aliens in the United States in pending proceedings before the U.S. Department of Homeland Security, Executive Office for Immigration Review, or related administrative or federal appeals, on the date of the enactment of this Act.

TVPRA § 235(h).

To the authors of this advisory, it appears that section 235 of the TVPRA would generally take effect on March 23, 2009 but that an exception was carved out to essentially protect and "grandfather in" those already in pending proceedings. Thus, those who are in pending proceedings are immediate beneficiaries of different provisions within section 235 of the TVPRA, including provisions regarding Special Immigrant Juvenile status and asylum. For legal practitioners, it is important to note that local practice with USCIS District Offices, Asylum Offices, and Immigration Courts may vary and these governmental agencies may differ in their interpretation of the effective date of section 235 of the TVPRA. Given this uncertainty, it is critical that legal practitioners advocate for a valid interpretation of the effective date provision that is in the best interests of their client while, at the same time, be cognizant of how the provision is being interpreted by the different agencies.

## **II. QUESTIONS AND ANSWERS**

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<sup>29</sup> See TVPRA § 235(d)(8).

<sup>30</sup> See TVPRA § 235(h).

The following questions and answers address some emerging issues since the passage of the TVPRA.

**Q1: My client filed an asylum application prior to his 18th birthday, but he has since turned 18. He is scheduled for an individual hearing before the Immigration Judge on his pending asylum application. Will the TVPRA changes regarding children's asylum claims apply to my case? Does the Asylum Office still have initial jurisdiction if my client was an "unaccompanied alien child" when he filed his asylum application?**

The Asylum Office has initial jurisdiction over your client's case. TVPRA § 235(d)(7)(C) states that the Asylum Office has initial jurisdiction over "any asylum application filed by an unaccompanied alien child" (emphasis added). *Id.* Therefore, as long as your client's application was filed when he was an unaccompanied alien child, the Asylum Office would have jurisdiction even if he has since turned 18.

For those in removal proceedings with a pending asylum application which was filed when the applicant was (or remains) an unaccompanied alien child, practitioners should notify the court of TVPRA § 235(d)(7)(C) and move that proceedings be terminated or administratively closed pending the processing of the applicant's asylum application with the Asylum Office.

**Q2: While the one-year filing deadline no longer applies to children's asylum claims, will the deadline be triggered once the unaccompanied alien child turns 18? Will the client need to file within one year of turning 18?**

The TVPRA amends the statute to excuse unaccompanied alien children altogether from the one-year filing deadline. *See* TVPRA § 235(d)(7)(A). It is unclear from the TVPRA if the one-year filing deadline would go into effect if the unaccompanied alien child later turns 18. However, pursuant to 8 C.F.R. § 208.4(a)(5)(ii), status as an unaccompanied minor has long been considered an extraordinary circumstance that could excuse failure to meet the one-year filing deadline.

Practitioners are strongly advised to file a client's asylum application as soon as possible after their client's last entry into the United States. These legal advocates may cite to TVPRA § 235(d)(7)(A) and 8 C.F.R. § 208(a)(5)(ii) in order to argue against any application of the one-year filing deadline for their clients.

**Q3: Several years ago, my unaccompanied alien child client was ordered removed *in absentia* by an immigration judge. This client is eligible for asylum. Do I need to file a Motion to Reopen with the immigration judge even though the Asylum Office should have initial jurisdiction over my client's application?**

It is not entirely clear from the TVPRA how this situation would be resolved. The TVPRA, however, states that "An asylum officer . . . shall have initial jurisdiction over any asylum application filed by an unaccompanied alien child..." TVPRA § 235(d)(7)(C) (emphasis added).

Despite your client's *in absentia* order, it appears that she would still file an asylum application with the Asylum Office and that it would have jurisdiction to adjudicate the application.<sup>31</sup>

Practitioners should be extremely cautious, however, in situations in which their client has an *in absentia* order and whose removal may be enforced at any time. Without a stay of removal, either from the Executive Office for Immigration Review or the U.S. Department of Homeland Security, filing an affirmative application alerts DHS to your client's whereabouts and could result in your client's apprehension and placement in federal custody. For those unaccompanied alien children already in federal custody who, despite a prior *in absentia* removal order, have a claim for asylum, the need to obtain a stay of removal is imperative.

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<sup>31</sup> If the Asylum Office grants asylum to this client, the legal practitioner should then move to reopen and, presumably, terminate the client's removal proceedings before the Executive Office for Immigration Review.

**ATTACHMENT A:**

Summary Chart of Changes Affecting Legal Relief Options Post-William Wilberforce  
Trafficking Victims Protection Reauthorization Act of 2008 (P.L. 110-457; “TVPRA”)

<b>What has changed under section 235 of the TVPRA?</b>	<b>Under TVPRA</b>	<b>Prior to TVPRA</b>
<p>TVPRA amends INA § 101(a)(27)(J)(i) &amp; (ii), making changes to the definition of a Special Immigrant Juvenile.</p>	<p>In relevant part, the definition of Special Immigrant Juvenile requires that:</p> <ul style="list-style-type: none"> <li>(1) The juvenile is dependent on a juvenile court or the juvenile court has committed or placed the juvenile into custody of an agency or department of the state, or to an entity or individual appointed by a State or juvenile court;</li> <li>(2) Reunification with 1 or both parents is not viable due to abuse, neglect, abandonment, or other similar basis found under State law; AND</li> <li>(3) It is not in the juvenile’s best interests to return to his or her country of residence, or his or her parent’s country of residence</li> </ul>	<p>Previously, the definition of Special Immigrant Juvenile required that:</p> <ul style="list-style-type: none"> <li>(1) The juvenile is dependent on a juvenile court or the juvenile court has committed or placed the juvenile into custody of an agency or department of the state;</li> <li>(2) The Juvenile is eligible for long-term foster care due to abuse, neglect, or abandonment; AND</li> <li>(3) It is not in the juvenile’s best interests to return to his or her country of residence, or his or her parent’s country of residence</li> </ul>
<p>TVPRA amends INA § 101(a)(27)(J)(iii), making changes to which federal entity has jurisdiction to grant specific consent so that a state court may exercise jurisdiction to determine custody status or placement over an unaccompanied alien child.</p>	<p>Now, the Secretary of Health and Human Services has specific consent authority.</p>	<p>Previously, the Attorney General (and then, afterwards the Department of Homeland Security) had this authority.</p>
<p>TVPRA creates a</p>	<p>The Department of Homeland</p>	<p>Previously, there was no</p>

<p>deadline by which the Department of Homeland Security must adjudicate a Special Immigrant Juvenile application.</p>	<p>Security must adjudicate a Special Immigrant Juvenile application within 180 days from the date the application is filed. TVPRA § 235(d)(2).</p>	<p>statute that required the Department of Homeland Security to adjudicate Special Immigrant Juvenile applications within a certain time frame.</p>
<p>TVPRA amends INA § 245(h)(2)(A), specifically waiving additional grounds of inadmissibility for Special Immigrant Juveniles.</p>	<p>These grounds of inadmissibility are specifically waived for Special Immigrant Juveniles:</p> <ul style="list-style-type: none"> <li>• INA § 212(a)(4) (Public Charge)</li> <li>• INA § 212(a)(5)(A) (Labor Certification)</li> <li>• INA § 212(a)(6)(A) (Present Without Admission or Parole)</li> <li>• INA § 212(a)(6)(C) (Misrepresentation/Fraud)</li> <li>• INA § 212(a)(6)(D) (Stowaway)</li> <li>• INA § 212(a)(7)(A) (Lack of Valid Entry Documentation)</li> <li>• INA § 212(a)(9)(B) (Unlawful Presence)</li> </ul>	<p>Previously, INA § 245(h)(2)(A) specifically waived only the following grounds of inadmissibility:</p> <ul style="list-style-type: none"> <li>• INA § 212(a)(4) (Public Charge)</li> <li>• INA § 212(a)(5)(A) (Labor Certification)</li> <li>• INA § 212(a)(7)(A) (Lack of Valid Entry Documentation)</li> </ul> <p>INA § 245(h)(2)(B) allowed for the discretionary waiver of many other grounds of inadmissibility.</p>
<p>TVPRA increases access to federal funds to assist Special Immigrant Juveniles and states providing services to them.</p>	<p>TVPRA § 235(d)(4)(A) provides that:</p> <ul style="list-style-type: none"> <li>• Special Immigrant Juveniles (who were either in the custody of the Department of Health and Human Services or receiving services pursuant to section 501(a) of the Refugee Education Assistance Act of 1980 at the time a dependency order was granted) are eligible for placement and services under INA § 412(d), in parity with refugee children. This includes, among other things, eligibility for Title IV federal financial aid.</li> </ul> <p>TVPRA § 235(d)(4)(B) provides</p>	<p>Previously, there were no federal funds to assist Special Immigrant Juveniles or states providing services to them.</p>

	<p>that:</p> <ul style="list-style-type: none"> <li>• “[s]ubject to the availability of appropriations,” the federal government shall reimburse the state for state foster care funds expended on behalf of children granted Special Immigrant Juvenile status.</li> </ul>	
<p>TVPRA protects those self-petitioners who may “age-out” of eligibility for Special Immigrant Juvenile status.</p>	<p>TVPRA § 235(d)(6) provides that U.S. Citizenship and Immigration Services is prohibited from denying Special Immigrant Juvenile status to a self-petitioner, solely based on age, if she was a child on the date the petition was filed.</p> <p><u>NOTE</u>: 8 C.F.R. § 204.11(c)(5) still maintains a continuing jurisdictional requirement for the juvenile court, in order for the Special Immigrant Juvenile self-petitioner to remain eligible for this immigration status. It appears that this regulation will need to be amended to reflect the TVPRA’s statutory protection from “aging out.”</p>	<p>8 C.F.R. § 204.11(c)(1) required that a self-petitioner be under 21 years old in order to be eligible for Special Immigrant Juvenile status.</p>