Session 2A: U.S. Immigration Practices: Custody, Capacity and Representation

Speakers:
Maureen Dunn (HHS)
Jedidah Hussey (USCIS) – Moderator
Christopher Nugent (Holland and Knight, LLP)
Patricia Rohan (New York City Immigration Court)
Maria Woltjen (University of Chicago)

Children must have someone to assist them navigate the immigration process
- The system is too complex to navigate without an attorney.
- There are needs for support in other areas as well, such as meeting basic and social needs.
- Attorneys may be constrained in needing to adhere to client’s wishes even where not in the best interests of the child.

Helping children means ensuring they have representation
- Statistics show that representation greatly increases the likelihood of success in a children’s immigration claim.
- Consequences of not understanding can be extreme, e.g., failure to appear resulting in removal orders in absentia.
- ORR involvement ends when children are released from custody. Continuation of pro bono representation is often difficult post-release.
- Children should have a voice and be engaged. Immigration system often takes a much more paternalistic approach.

There are trafficking concerns in the immigration system
- For family reunifications in the DUCS (Division of Unaccompanied Children’s Services) system, suitability assessments are made for certain populations due to concerns of trafficking and smuggling.
- The role of a guardian ad litem has a big impact on child’s case, particularly when attorneys are retained by adults with unclear intentions.
- Asylum officers are encouraged to ask questions about care and custody to determine the next steps when child’s welfare and safety appear to be at risk. Pro bono attorneys or guardians ad litem are better equipped to deal with these issues than Asylum officers or Immigration judges.

There are several actions being taken
- DUCS handles custody of unaccompanied minors as well as family reunifications. Currently, 616 kids are in DUCS care. EOIR and DUCS are now data sharing, connecting kids to their immigration cases. ORR is funding a pilot project with the VERA Institute for Justice to ensure representation.
- USICS Asylum Division issued children’s guidelines as well as lesson plans on children issues and tracks unaccompanied minors. Worked on internal policies related to who
has the legal authority to speak for the child, whether parental notification is appropriate and ways to facilitate access to pro bono representation.

- Immigration court children’s docket has a procedure’s manual (OPPM) with child sensitive procedures in immigration court. In the NY courts, pro bono representatives are on hand on the day of children’s docket to speak to children.
- KIND Initiative (Kids in Need of Defense) has a goal to provide representatives for all minors irrespective of the merits of their claims.
- Immigrant Child Advocacy Center, an ORR funded pilot program, facilitates child advocates to operate like a guardian *ad litem* in that role. This can be particularly helpful when there are concerns about the child’s care arrangement or designated representative.

Notetaker: Maureen Gaffney