Session 1B: U.S. Immigration Practices: Legal Remedies

Speakers:
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This session provided an overview of protections available in the U.S. for minors, focusing on asylum, T and U visas, and Special Immigrant Juvenile Status (SIJS).

Asylum
- Minors must meet the same legal standard as adults to qualify for asylum, but child-specific vulnerabilities and circumstances are considered in assessing past harm experienced, credibility factors, and ability to articulate nexus. USCIS Adjudicators follow the 1998 Children’s Guidelines and are trained in child-sensitive listening and questioning techniques.
- The Asylum Division is now tracking whether children are accompanied or unaccompanied. The issue of whether there should be a non-adversarial procedure for determining asylum eligibility for all children in defensive applications was raised.
- The U.S. is a signatory to the Convention on the Rights of the Child (CRC), but has not ratified it, however USCIS uses the CRC and its “best interests of the child” approach is to guide procedural issues, while not committing the U.S. to the CRC in terms of substantive eligibility. The question of who has the authority to speak for the child is of particular concern. There is concern of a “protection gap” in U.S. law that allows children to be refouled, even if it is not in their best interests. The existence of this gap defeats the purpose of the CRC and therefore, complementary forms of protection, such as those available in some European countries, should be considered where a child is not eligible for currently available forms of protection.
- In the asylum context, many children’s’ claims are based on membership in a particular social group (PSG) because of their experience with FGM, domestic violence, gang-related violence, or because of their family or youth. Recent U.S. jurisprudence has affirmed that to find a PSG, a characteristic must be immutable and the group must be sufficiently socially distinct. This interpretation conflicts with the UNHCR’s guidelines that require a PSG based either on immutability or social visibility. There was concern over whether targeting a group because it is vulnerable should satisfy the nexus requirement.

T visas
T visas provide an immigration benefit for those who are victims of severe forms of trafficking and are in the U.S. because of trafficking. Adults seeking this benefit must comply with a reasonable request to assist in the prosecution or investigation of trafficking, but this requirement does not apply to children. Age is considered in evaluating whether removal of the child would result in extreme hardship.

U visas

U visas are available for victims of crime (that either occurs in the U.S. or is in violation of U.S. law), law enforcement must certify (via a supplemental form) that the individual has been helpful to the prosecution, or investigation of the crime.

SIJS

SIJS is unique to the U.S. SIJS is a faster track to getting a green card, because it is not a visa and therefore you do not need to wait for a visa to open up. Unlike other forms of protection, SIJS depends on the child welfare system to identify those who may be eligible for this benefit. Children in actual or constructive custody of the federal government must first have the specific consent of DHS before state court can hear the case. There is a concern over distrust on the part of DHS adjudicators as state courts (as opposed to CIS) make the initial determination on best interests. There was suggestion that ORR (as opposed to DHS/CIS) make this determination as ORR has custody of the child and has more expertise in child welfare.

Notetaker: Lisa Yu