

<b>ACF</b> Administration For Children and Families	<b>U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES</b>	
	<b>Office of Refugee Resettlement</b>	
	<b>1. Log No.:</b> 10-01	<b>2. Issuance Date:</b> December 24, 2009
	<b>3. Originating Office:</b> Division of Unaccompanied Children's Services	
<b>4. Key Words:</b> special immigrant juvenile status, dependency, unaccompanied alien children, custody		

## PROGRAM INSTRUCTION

**Subject:** Specific Consent Requests

**Legal and Related:** The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA of 2008); modified section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) concerning special immigrant juvenile (SIJ) status; Homeland Security Act of 2002, 6 U.S.C. § 279(b)(1).

**Purpose:** To obtain SIJ status under the TVPRA 2008 modifications, a child must be declared dependent by a juvenile court.<sup>1</sup> However, an unaccompanied alien child (UAC) in HHS custody who seeks to invoke the jurisdiction of a state court for a dependency order **and who also seeks to invoke the jurisdiction of a state court to determine or alter his or her custody status or placement** must first receive "specific consent" to such jurisdiction from HHS.<sup>2</sup>

In other words, if a UAC in HHS custody seeks to have a state court make decisions concerning his or her placement or custody, the UAC must receive HHS' "specific consent." For example, if a UAC wishes to have a state court, not HHS, decide to move him/her out of HHS custody and into a state-funded foster care home, the UAC must first receive "specific consent" from HHS to go before the state court.

**If a UAC only seeks a dependency order and does not seek to have the state court determine or alter his or her custody status or placement, the UAC is not required to seek any**

<sup>1</sup> Specifically, the child "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 one or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law." See TVPRA of 2008, §235(d)(1)(A).

<sup>2</sup> See TVPRA of 2008, § 235(d)(1)(B)(ii). See also *Perez-Olano v. Holder*, Case No. CV 05-03604 DDP (RZx), C.D. Cal., "Order Granting in Part and Denying in Part Plaintiffs' Motion for Class Certification and Granting in Part and Denying in Part Plaintiffs' Motion for Partial Summary Adjudication," January 8, 2008, pp. 38 – 40 (Appeal and Cross-Appeal Pending).

**consent from HHS.** If the UAC wishes to go to state court only to be declared dependent in order to make an application for SIJ status (i.e., receive an “SIJ-predicate order”<sup>3</sup>), the child does not need HHS’ consent.

HHS will review and provide decisions on “specific consent” requests, including those requests made by children who were in pending proceedings before the Department of Homeland Security or the Executive Office for Immigration Review, or related administrative or Federal appeals, on the date of the enactment of the TVPRA of 2008 (i.e., December 23, 2008).<sup>4</sup>

**Instructions:**

- (1) Attorneys or others acting on behalf of a UAC must fill out both sections of the Form *HHS-Request for Specific Consent* and attach a G-28, EOIR-28, EOIR-29 or other form of authorization to act on behalf of the UAC.
- (2) This completed form with proof of authorization to represent or act on behalf of the child must be submitted to the Office of Refugee Resettlement (ORR) by email to the following address: [DUCSconsent@acf.hhs.gov](mailto:DUCSconsent@acf.hhs.gov)
- (3) ORR will acknowledge by email receipt of the request within two business days.
- (4) The ORR Director will consider the request and provide by email a decision on the request in no more than thirty business days. If the ORR Director denies a request, he/she will provide, along with the decision, any documentation reviewed in reaching the decision.
- (5) If this request is urgent (e.g., the UAC will soon turn 18 years old), the request must be marked “urgent” in the subject line of the requestor’s email.
- (6) In the event the request is denied, the Attorney of Record or other individual or entity authorized to act for the child will have thirty business days from the date of the email notice of denial to submit a request to the Assistant

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<sup>3</sup> See *Id.* at p. 38.

<sup>4</sup> See TVPRA § 235(h)(2).

Secretary for the Administration for Children and Families (ACF) for reconsideration of the decision.

- (7) The ACF Assistant Secretary will send his/her decision on the reconsideration to the Attorney of Record or other individual or entity authorized to act for the child within fifteen business days from the date of the receipt of the reconsideration request. This will be considered a final administrative decision.
- (9) If a material change in circumstances develops in a child's situation after a final administrative denial, such that there may be a need to review the original decision, the Attorney of Record or other individual or entity authorized to act for the child should submit a new *Request for Specific Consent* form.

### **CONSIDERATIONS:**

As noted in the attached *Request for Specific Consent* form, UAC seeking specific consent must provide a brief statement concerning the basis for their request to change their placement or custodial arrangement.

Taking into consideration its responsibilities under the TVPRA of 2008 and the Homeland Security Act to provide safe and secure care and placement for UAC, HHS will evaluate whether continued HHS custody is required to ensure a child's safety or the safety of the community, or to prevent risk of flight.<sup>5</sup> HHS may review its files concerning a child prior to making a decision. However, HHS will not make a *prima facie* determination on whether the child is eligible for SIJ status and will not evaluate any documentation for this purpose.

### **Attachments:**

HHS' *Request for Specific Consent* Form

**Inquiries:** Maureen Dunn, Director, Division of Unaccompanied Children's Services, at 202-401-5523.

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<sup>5</sup> See TVPRA of 2008, § 235(c)(2). Also see 6 U.S.C. § 279(b)(1).