

ADJUDICATOR GUIDANCE NOTE

UNACCOMPANIED CHILDREN

There is a need for careful case management and some additional cautions when adjudicators are dealing with appeals by unaccompanied children seeking asylum in the UK. This note aims to provide further guidance on such cases. It has been drafted by Sarah Young and colleagues in the LRU and draws on earlier work by Catriona Jarvis, to all of whom thanks.

1. Definition:

Child:

A person who is under 18 years of age or who, in the absence of documentary evidence establishing age, appears to be under that age.¹

Unaccompanied child:

A person below the age of eighteen who arrives in the UK unaccompanied by an adult responsible for them, whether by law or by custom, and for as long as they are not effectively taken into the care of such a person; it shall include minors who are left unaccompanied after they have entered the UK.²

2. Listing

- 2.1 Unaccompanied children are expected to be identified by the IAA Support Centre at Loughborough, and the file marked accordingly.
- 2.2 The appeal will be set down for first hearing and substantive hearing according to the usual listings procedures. Cases involving unaccompanied children should always be first on the list.

¹ Immigration Rules, paragraph 349 (HC 395)

² EU Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, preamble paragraph 15. This definition accords with that given by the UNHCR in their *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum* (UNHCR, 1997)

3. At the first hearing:

- 3.1 **Legal Representation:** An unaccompanied child should be legally represented. The child's legal representative must attend the first hearing. If the child is not legally represented, take steps to inform the Refugee Council's Panel of Advisers, and the Refugee Legal Centre or Immigration Advisory Service and adjourn the case for legal representation to be arranged.
- 3.2 **Legal Representative's details:** Check that the representative will attend at the appeal hearing. Are the representatives' details the same as those on the Reply/ Correspondence/Notice of Appeal?
- 3.3 **Service:** Check that documents have been served upon the Appellant's appropriate adult, legal representative and the Home Office.
- 3.4 **Age:** If the child has turned 18 by the date of the first hearing, they may be treated as an adult, but their youth and maturity should be considered at all stages of the proceedings. Where the age of the child is in dispute, consider making directions for appropriate expert evidence. Where age is in dispute, treat the appellant as a child for the purposes of these proceedings. In reaching a decision as to whether the child is a minor, the guidance of Stanley Burnton J in R (on the application of B) v Mayor & Burgesses of the London Borough of Merton should be borne in mind³.
- 3.5 **File preparation:** The file should be read in full in order to make an assessment, and if necessary a note, of the issues and any evidence and/or procedural matters to be resolved prior to the appeal hearing.
- 3.6 **Local authority care:** Ascertain the child's circumstances. Who are they living with? Is a local authority social services department involved in their case? Is the Refugee Council's panel of advisers involved in their case? Record information on the file.

³ R (on the application of B) v Mayor & Burgesses of the London Borough of Merton, [2003] EWHC 1689 (Admin) 6 June 2003. Summary in LRU Update, 15th August 2003 or IAS [2003] Issue 20. The relevant parts of Stanley Burnton J's guidance (at paragraphs 36-9) can be summarised as follows:

- a. The decision maker must not simply adopt the assessment of age made by the Home Office, nor the local authority.
- b. The decision maker cannot determine age solely on the basis of appearance of the applicant, except in clear cases.
- b. The decision maker must elicit the general background of the applicant, including family circumstances and history, educational background and his activities during the previous few years. Ethnic and cultural information may also be important.
- c. If there is reason to doubt the applicant's statement as to his age, the decision maker will have to make an assessment of his credibility, and ask questions designed to test credibility.
- d. The burden of proof rests with the applicant.

- 3.7 **Appropriate adult:** Who is going to act as the child's appropriate adult? The child should have an appropriate adult with them at all hearings.
- 3.8 **Immigration Rules:** Consider whether paragraphs 349-352 of the Immigration Rules have been followed by the initial decision-maker. If not, consider making directions, if appropriate.
- 3.9 **Interpreter:** Ascertain the Appellant's preferred language. Every effort should be made to ensure that a child has an interpreter who speaks their primary language. Consider whether it is necessary to make any further directions as to the interpreter appropriate for this particular child, e.g., a male or female, or an interpreter with similar tribal affiliations.
- 3.10 **Interview:** Has the Home Office interviewed the child? Take a preliminary view on whether it will be appropriate for this child to give oral evidence. Consider whether additional reports from social services, teachers or other professionals caring for the child would be appropriate. Issue directions if necessary.
- 3.11 **Witness statement:** Is a witness statement available? If not, issue directions that a full statement be taken from the child.⁴
- 3.12 **Outline of issues:** Consider making a direction that the parties provide a joint statement of the issues between them, together with skeleton arguments. Ask for an estimate of how long the child is likely to take in giving evidence.
- 3.13 **Expert evidence:** Consider any applications or the necessity for expert evidence, including evidence regarding the health and development of the child, e.g. a paediatrician, child psychologist, or specialist relating to the particular history of the child. If the child is not able to give evidence, or there are reasons to believe that the weight of the child's evidence would be affected by his or her age, psychological or other relevant condition, serious consideration should be given to making directions for appropriate expert evidence to be obtained. Expert evidence should be served on the respondent and agreed in advance of the hearing where possible.
- 3.14 **Time estimate:** Consider a realistic time estimate, taking into account the length of time necessary to consider all professional reports and to allow full time for the child to give evidence if appropriate.
- 3.15 **Listing:** Balance the interests of the child in determining the case quickly against the interests of the child in having all the relevant

⁴ Adjudicators might find it helpful to have regard to the *Statement of Good Practice*, published by the Separated Children in Europe Programme (2nd edition, October 2000).⁴ A copy is available in each hearing centre library.

evidence available. The case should be set down for a full hearing on the earliest available date, marked FIRST ON THE LIST.

- 3.16 **Closure date:** Consider whether there are grounds for extending beyond the closure date.
- 3.17 **Hearing room:** Consider whether all future hearings should be held in private, in order to help the child to feel at ease. An order should normally be made to exclude members of the public from the hearing room, in accordance with rule 50(3)(b)⁵.

4. At the full hearing:

- 4.1 Check whether the above notes have been complied with. Where any direction has not been complied with, consider how to proceed.
- 4.2 Where an appropriate adult is not present, consider how to proceed.
- 4.3 If the child is not represented, consider whether it is appropriate to adjourn to allow for representation to be obtained, involving the Refugee Council's Panel of Advisers if necessary.
- 4.4 Create a child-friendly hearing room, by sitting around a table or moving to chambers or other appropriate room. Try to put the child at ease. Introduce everyone on the room and explain their roles.⁶
- 4.5 The child should be invited to tell the Adjudicator (not the interpreter) if they do not understand what is said, or what is happening in the proceedings.
- 4.6 Consider whether it is appropriate for the child to give evidence, taking into account their age, maturity, their capacity to give evidence, any relevant expert evidence on the child's condition, and relevant cultural differences. If so, consider whether cross-examination should be permitted.
- 4.7 If giving oral evidence, the child should be invited to concentrate on the questions asked and to their best to answer, with the proviso that, if they do not know the answer, they should simply say so.
- 4.8 Questioning of the child should be carried out gently, using clear and simple language, and allowing plenty of time for the child to answer. Offer the child the opportunity to add anything else at the end of their evidence.

⁵ Immigration and Asylum Appeals (Procedure) Rules 2003

⁶ Follow the advice set out in paragraph 3.17 above.

- 4.9 Adjudicators should be aware of the risk of trafficking for abuse of children. If an adjudicator has significant grounds for concern as to the safety of the child, the case should be referred to the Chief Adjudicator.

5. Assessment of evidence:

- 5.1 In assessing the evidence of a child, it should not be assumed that the child does not have a well-founded fear of persecution, merely because they do not have sufficient maturity to have formed a well-founded fear.⁷
- 5.2 It should be borne in mind that the younger a child is, the less likely they are to have full information about the reasons for leaving their country of origin, or the arrangements made for their travel.
- 5.3 Depending on the maturity of a child and the appropriate weight which can be attached to their evidence, the emphasis might be upon documentary and expert evidence, rather than the oral evidence or statement of the child.
- 5.4 The assessment of the well-foundedness of the child's fear "may call for a liberal application of the benefit of the doubt."⁸

HHJ Henry Hodge OBE
Chief Adjudicator
April 2004

⁷ UNHCR Handbook on Procedures for Determining Refugee Status, Geneva, 1992, paragraphs 213-219.

⁸ Ibid, paragraph 219. *Jatikay* (12658) 15 November 1995 (IAT).