

Improving Access: Immigration Relief for Children in Federal Foster Care Before and After the Trafficking Victims Protection Reauthorization Act of 2008



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EXECUTIVE SUMMARY

Thousands of undocumented children attempt to enter the United States every year. For some children, the decision to migrate is made on their behalf, and are brought to the United States by relatives, friends, smugglers or human traffickers. Other children make the decision on their own to cross the border to reunite with family members, seek education or employment, escape a life of poverty and abuse, or flee gang and other violence.

The United States Conference of Catholic Bishops/Migration and Refugee Services (USCCB/MRS) began an analysis in 2011 of the journey some of these children take as they navigate the immigration legal system in the United States. In particular, we studied the cases of unaccompanied alien children (UAC) in the care of the Department of Health and Human Services' (DHHS) Office of Refugee Resettlement/Division of Children's Services (ORR/DCS) who had been referred through USCCB/MRS to long-term foster care programs during federal fiscal years 2009 and 2010. All these children were seeking to avoid removal from the United States. The goal of this study was to understand the impact of the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008 on the legal outcomes of these children and to assess the remaining challenges to fair and timely adjudication of their cases.

Post TVPRA 2008: 23 percent more attain legal status in half the time

We found that the passage and implementation of TVPRA 2008 have clearly improved immigration legal outcomes for UAC in ORR/DCS custody. They have also made the process more efficient and easier for children to navigate.

Based on the sample, 23 percent more UAC in care are attaining legal status since the enactment of TVPRA 2008. Of even greater significance is the fact that the average time for a child to obtain legal status after entry into long-term foster care has dropped by more than half.

These significant improvements indicate that TVPRA 2008 is having the intended effect of affording these vulnerable children additional protections and keeping them from harm. However, to best serve these children and make efficient use of available resources, the process should be strengthened and streamlined even further. This paper makes a number of recommendations for doing this, including:

- Provide additional support (funding, recruitment, and training) for legal representation in all areas where UAC are in care.
- Make education about Special Immigrant Juvenile Status (SIJS) a priority for family court judges, immigration judges, attorneys and child advocates.
- Develop and support community-based care for children who are still awaiting the outcome of their SIJS application at age 18.

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I. INTRODUCTION

Unaccompanied alien children (UAC) arriving in the United States are among the most vulnerable in the world. Section 462 of the Homeland Security Act defines UAC as “children who have no lawful immigration status in the United States; have not attained 18 years of age; have no parent or legal guardian in the United States; or no parent or legal guardian in the United States is available to provide care and physical custody.”¹ Some have lost their family to war or conflict; others have been abused, abandoned, or neglected by those who should be providing their care. All have some reason that has motivated them to make the dangerous journey to reach the United States if the decision was not made for them. Children seeking protection from abuse/abandonment/neglect by family or from trafficking or persecution may be determined eligible for immigration relief, which, if they have the means to pursue, will allow them to remain in the United States lawfully and may eventually lead to citizenship.

All children should experience safety, well-being, and permanency. However, the arduous process UAC must take to pursue immigration relief in the United States can hinder their feelings of stability and well-being. They have had to wait—sometimes years—to attain the status to which they are legally entitled. Only then are they able to fully settle into their new lives in the United States.

Prior to the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) 2008, there were many obstacles facing children pursuing immigration relief. For those pursuing Special Immigrant Juvenile Status (SIJS), there was no deadline for the United States Citizenship and Immigration Services (USCIS) to process applications, increasing the risk that the child would turn 18 prior to adjudication of relief. The Department of Homeland Security was also required to give consent for a youth to apply for SIJS.² Thus, certain children were automatically ruled out from applying for SIJS based on the conditions around which they entered the United States. Those who were granted SIJS prior to the TVPRA 2008 were not eligible for a specialized, federally-funded foster care program known as the Unaccompanied Refugee Minor (URM) program.³ Children pursuing asylum prior to TVPRA 2008 had to file their application within one year of arrival in the United States and were required to pursue their case before federal Immigration Court, which could be intimidating. Some children were unable to attain legal status due to onerous requirements and the unnecessarily high burden of proof placed on the child to be granted relief from removal. TVPRA 2008 sought to address these issues and ensure that unaccompanied children receive adequate care and protection and are able to successfully navigate the immigration legal system.

The United States Conference of Catholic Bishops/Migration Refugee Services (USCCB/MRS) began an analysis in 2011 of the experiences some children have navigating the immigration legal system in the United States. In particular, we studied the cases of children in the care of the

¹ Section 462 of the *Homeland Security Act of 2002*, Public Law 107-296 (November 25, 2002).

² *TVPRA Analysis*. Trafficking Victims Protection and Reauthorization Act of 2008, H.R. 7311, December 11, 2008, AILA InfoNet Doc. No. 08121565, Posted 12/15/08.

³ Read about the URM network under the Office of Refugee Resettlement at http://www.acf.hhs.gov/programs/orr/programs/unaccompanied_refugee_minors.htm.

Department of Health and Human Services' (DHHS) Office of Refugee Resettlement/Division of Children's Services (ORR/DCS) who had been referred through USCCB/MRS to long-term foster care during federal fiscal years 2009 and 2010. All the children were seeking to avoid removal from the United States. This paper uses quantitative and qualitative data to assess the impact of TVPRA 2008 on immigration legal outcomes for UAC and outlines some remaining challenges to the fair and timely adjudication of these cases.

II. BACKGROUND

Children attempting to cross the border into the United States are often fleeing gang violence or sexual or physical violence. Others are in fear of their lives because they have witnessed gang-affiliated murders, or they are attempting to escape pressure to join a gang. Some children have been orphaned or end up on the streets due to abandonment by a parent/caregiver. Others are coming from poverty and seek a better life in the United States.

Of children apprehended entering the United States, 90 percent are eventually reunited with family members already in the United States.⁴ Six percent are returned to their home country. One percent is referred for long-term foster care. Children are referred for care based on eligibility for some form of immigration relief and because they do not have adult relatives to care for them. This could be because they have lost contact with their family or because the family cannot care for them, either by their own choice or situation or due to certain members being found abusive or neglectful to the child. These children have arrived typically alone and in a strange land without help or support.

When a UAC is brought to the attention of immigration authorities, he or she enters a complex legal process that lies at the intersection of child welfare and immigration law. The UAC may interact with a variety of agencies, depending on when and where he or she enters the United States, or if he or she is already living in the United States. These agencies, all divisions of DHS, include Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), and the U.S. Coast Guard. The *Homeland Security Act of 2002*, Section 462, has delegated responsibility to ORR to provide a child-friendly setting for these children.⁵ The 1993 Flores Settlement states that children must be moved within 72 hours of apprehension to a "facility that meets or exceeds the standards established by the Alien Minors Care Program of the Community Relations Service (CRS), Department of Justice, 52 Fed. Reg. 15569 (1987)."⁶ Once they enter the shelter system, children are screened for family reunification options and immigration relief potential. Because of their undocumented status, children are at the same time placed in removal proceedings and given a "Notice to Appear" (NTA) requiring them to present themselves at an immigration court for the adjudication of their legal case.

ORR/DCS will typically refer any child who does not have reunification options but who has potential eligibility for immigration relief to an agency contracted to provide long-term foster

⁴ "ORR UAC Program Overview," Presented via email by ORR/DCS to the UAC programs on July 24, 2012.

⁵ Section 462 of the *Homeland Security Act of 2002* outlines the transfer of UAC care to ORR and responsibilities therein.

⁶ *Reno v. Flores*, 507 U.S. 292, Sec. 242.24(d), (1993).

care. USCCB/MRS provides this care through its URM foster care network,⁷ which also serves refugee children, child trafficking victims, children granted asylum, and other eligible populations.⁸

Upon entry into a long-term foster care program, children are screened for immigration relief a second time. These children typically pursue four primary types of immigration relief: Special Immigrant Juvenile status (SIJS), asylum, T nonimmigrant visa (T visa), or U nonimmigrant visa (U visa) status. Long-term foster care providers pursue pro bono representation for every child entering foster care. Although the majority of children are linked within a month to a couple of months, some children are not matched for six months or more. This lag is due to the dearth of free or low-cost representation for this population.

Before an attorney can represent a child in Immigration Court, she or he must file a Notice of Entry of Appearance of Attorney or Accredited Representative (Form G-28) with DHS. This form must also be filed before the attorney can request the child's case file from ORR. The child's file contains information essential for working the child's case, including identifying documents, medical records, and historical information.

SIJS

Most UAC placed in foster care pursue SIJS. To be eligible for SIJS, the child must be under the jurisdiction of a family or probate court. This means the court must establish someone—an entity or person—as responsible for the child or establish dependency. This responsibility can come in many different forms, such as guardianship, custody, or conservatorship. To do this, the applicant must obtain “specific consent” from DHHS (DHS pre-TVPRA 2008) to ask the local court for a dependency determination. The entity given responsibility for the child (legal, physical, or both) may be the court itself, the local child welfare agency, a foster care program, or an individual. In applicable situations, before assigning responsibility, the court will often attempt to reach out to the child's family to ensure that they are not able or willing to care for the child. Depending on the court's requirements for making a guardianship or dependency determination, the time frame varies, with this study finding the process can take anywhere from a couple of days to six months.

Once responsibility has been established, the child can apply for SIJS with USCIS, which is part of DHS. Meanwhile, because children in ORR/DCS care are in removal proceedings, they must continue to defer the adjudication of their immigration case by attending regular hearings and asking for continuance, thus participating in two legal processes at the same time.

Once the child has been granted SIJS status, she or he is eligible to apply for designation into the URM program, which is also long-term foster care, but administered by states versus the ORR. A child with immigration relief can also apply for lawful permanent residency (LPR).⁹ If

⁷ Levels of placement available in long-term foster care vary to include traditional home placements, group and specialized care, independent and semi-independent living placements, and residential treatment facilities.

⁸ Lutheran Immigrant and Refugee Services (LIRS) is the other national voluntary agency working with a network of URM programs.

⁹ A child who is not in removal proceedings can apply for LPR and SIJS simultaneously.

designated to the URM program, a child will have the option to remain in care through age 21 or 24, depending on state regulations regarding age limits for foster care, independent living and transitional youth services, and certain other benefits. Children who do not attain status and/or do not designate must exit long-term care at 18 when they are considered adults.

T Nonimmigrant Visa

The T nonimmigrant visa was established with the TVPA in 2000¹⁰ to offer victims of human trafficking a means through which to receive services and obtain legal status. The visa is valid for three years, at the end of which the person may apply for adjustment of status to LPR. In order to be eligible for the T visa, the person must be found to be a victim of a severe form of human trafficking and in the United States or its territories, or in a port of entry as a result of trafficking. In addition, the person must comply with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking (not required if under the age of 18 or unable to cooperate due to physical or psychological trauma). Lastly, the applicant must demonstrate he or she would suffer extreme hardship involving unusual and severe harm if removed from the United States.

The benefits of the T visa include an opportunity for persons less than 21 years of age to apply for a derivative T visa on behalf of their family members, including spouse, children, parents, and unmarried siblings under the age of 18 to enter the United States. Once over the age of 21, the person may only apply for derivative status on behalf of their spouse and children. Those with a T visa or derivative T visa may be eligible for benefits and services to the same extent as refugees.

Asylum

In order to qualify for asylum, an applicant must factually prove persecution based on one of these five categories: race, religion, nationality, political opinion, or participation in a particular social group.¹¹ Similar to T visa recipients, grantees of asylum are entitled to receive benefits and services to the same extent as refugees as well. An asylee also has the benefit of applying for family members to enter the United States with an affidavit of relationship and Refugee/Asylee Relative Petition.¹² Though the process to obtain asylum is much more direct than SIJS, it is more difficult to for children to obtain by virtue of being young and not necessarily having a strong tie to a group or belief system. As well, the process for children in removal proceedings prior to TVPRA 2008 was that they had to present their case in Immigration Court. There was also a one year filing deadline for asylum applicants. However, it is not always in a child's best interest or ability to share all the details of their trauma story that would prove asylum within so soon after arrival.

¹⁰ "Questions & Answers: Victims of Human Trafficking, T Nonimmigrant Status," (USCIS), Accessed August 25, 2011, <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=a53dc7f5ab548210VgnVCM100000082ca60aRCRD&vgnnextchannel=02ed3e4d77d73210VgnVCM100000082ca60aRCRD>.

¹¹ *Convention and Protocol Relating to the Status of Refugees*, (Geneva, Switzerland: UNHCR, December 2010), 14.

¹² "Family of Refugees & Asylees," (USCIS), Accessed August 24, 2011, <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=3ea83e4d77d73210VgnVCM100000082ca60aRCRD&vgnnextchannel=3ea83e4d77d73210VgnVCM100000082ca60aRCRD>.

TVPRA 2008 made important changes to the asylum process for children in ORR/DCS care. Most importantly, it made the process less adversarial by providing UAC who had an NTA the ability to apply through USCIS rather than in federal Immigration Court.¹³ It also amended the law so the one-year deadline does not apply for UAC. DHHS was authorized to ensure the child has pro bono representation or legal advocate in the process.¹⁴

Despite these changes meant to benefit the child, UAC continue to have difficulty obtaining asylum. In this sample, there were a few cases in which UAC had applied for both SIJS and asylum simultaneously but all obtained SIJS before their asylum claim was proven.

U Nonimmigrant Visa

The passage of the TVPA of 2000 also created the U nonimmigrant visa.¹⁵ The U visa is intended for those who have suffered substantial physical or mental abuse as the result of a crime committed within the United States. To be eligible for the U visa, the person must possess information about the criminal activity and must be helpful in the investigation or prosecution of the criminal activity. Applicants can petition for derivative U visas for family members similar to the T visa.

The U visa is the least desirable status for children in ORR/DCS custody due to the fact that it does not grant access to refugee benefits and services, nor does it make a child eligible for the URM program.

There were no youth in this sample who applied for the U visa.

III. METHODOLOGY

USCCB/MRS reviewed the records of children in ORR/DCS long-term foster care between October 1, 2008, and September 30, 2010. The majority of the data was collected from the case files available at USCCB/MRS headquarters in Washington, D.C. Data were also collected from USCCB/MRS sub recipient long-term foster care sites throughout the country. Legal documents, case summaries, individual service plans (ISPs), and case notes all provided essential data.

Twenty-five indicators were reviewed, and data were collected up through July 15, 2011. Categories of time¹⁶ included the number of months between entry into long-term foster care and dependency achieved, the number of months between dependency achieved and legal status

¹³ “Questions & Answers: USCIS Initiates Procedures for Unaccompanied Children Seeking Asylum,” (USCIS), Accessed August 25, 2011,

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=b3b6040faa930210VgnVCM1000004718190aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>.

¹⁴ Ibid

¹⁵ “Questions & Answers: Victims of Criminal Activity, U Nonimmigrant Status,” (USCIS), Accessed August 25, 2011,

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=1b15306f31534210VgnVCM100000082ca60aRCRD&vgnnextchannel=ee1e3e4d77d73210VgnVCM100000082ca60aRCRD>.

¹⁶ Some of these categories overlap, so each step does not necessarily follow the one listed before it.

attained, the number of months between applying for immigration relief and attaining legal status, the number of months between entry into long-term foster care and legal status attained, and the number of months between immigration relief achieved and URM designation achieved. Apart from the quantitative information retrieved from records, qualitative information was gathered through phone interviews with foster care staff and at least one pro bono attorney or legal representative at each of the program locations (with the exceptions of Houston, Texas, and Richmond, Virginia, where legal representatives could not be reached).

Sample

The sample included 190 UAC in long-term foster care through USCCB/MRS referral between October 1, 2008, and September 30, 2010. The sample size of 127 was determined to be statistically significant with a 95 percent confidence level and a confidence interval of 5. The sample was found using the Microsoft Excel tool for random sampling without replacement. This sample constitutes 68 percent of the total 190.

The sample included 84 males and 43 females. The average age at entry into the program was 16.7 years old. Thirteen countries were represented: 45 children came from Guatemala, 43 from Honduras, 14 from Mexico, 10 from El Salvador, 4 each from Ecuador and China, and 1 each from Costa Rica, Eritrea, Ethiopia, India, Kenya, Nigeria, and Togo. The children in the sample came from all eight foster care programs to which USCCB/MRS refers: Catholic Charities of Fort Worth, Texas; Catholic Charities of Houston, Texas; Bethany Christian Services of Grand Rapids, Michigan; Catholic Charities Community Services of Phoenix, Arizona; Commonwealth Catholic Charities of Richmond, Virginia; Catholic Family Center of Rochester, New York; Catholic Charities of Santa Clara County in San Jose, California; and Catholic Community Services of Tacoma, Washington.

The sample was divided into two groups: pre- and post-TVPRA 2008. Although TVPRA was passed on December 10, 2008, it did not take effect until March 23, 2009. Therefore, this was the date at which the sample was divided. The pre-TVPRA 2008 group consisted of children who began their legal process (defined as applying for legal status or dependency) between October 1, 2008, and March 23, 2009, while the post-TVPRA 2008 group was made up of children who began their legal process between March 23, 2009, and September 30, 2010. The pre-TVPRA 2008 group had 55 children, and the post-TVPRA 2008 group had 72 children.

Limitations

A few case files were missing key pieces of data, the most common being the date the G-28 was filed and the date that dependency was petitioned pre-TVPRA 2008. Despite missing data, the final outcomes are known for all but 12 of the 127 in the sample. Those 12 are still awaiting final case adjudication. Thus, while some data were missing, the impact is not significant on the overall results of the study. For example, although we obtained the dates on which dependency was petitioned for only 84 percent of the cases pre-TVPRA 2008, we found dates of dependency achieved for 92 percent of the cases and dates legal status was obtained for 98 percent of the cases. These missing dates have lessened the count (and hence statistical significance) for certain data sets, but do not affect the final legal outcomes data.

IV. FINDINGS

By the time UAC enter the legal system in the United States, they have typically experienced considerable trauma, whether in their home country or during the often treacherous journey to the United States. Legal cases frequently run long due to a variety of factors discussed in this document, and the wait for legal relief can affect a child's sense of permanency and well-being. Interviews with program staff found that the wait affects UAC in a number of ways, including depression, lack of concentration in school, inability to trust caregivers, and general feelings of hopelessness. Without knowing whether they will be deported back to the situation from which they fled, some children run away or contemplate suicide.

One youth described his feelings on his legal case this way:

Waiting. Every day and everywhere, I am waiting for news from my lawyer. At first, I thought I could get my legal status in about a year, but it dragged on day by day. I wish I had someone whom I could call when I have questions about my legal case. I am able to call the Mandarin-speaking student who works in my lawyer's office, but the student is not always there. The only thing I can do is to wait for news from my lawyer.

Only when a child is found to be in need of international protection and granted legal status is he or she able to truly begin a new life in the United States and start to be a happy and healthy member of a family and the community. They no longer live in fear of return to their home country from which they fled persecution or victimization.

We found that the passage and implementation of TVPRA 2008 made it easier for children to do exactly that. It allowed more qualifying children to earn the status for which they are eligible and reduced the time these vulnerable children wait while their fate is being decided. At the same time, we must look for other ways to streamline this process so we can better serve children and reduce inefficiencies.

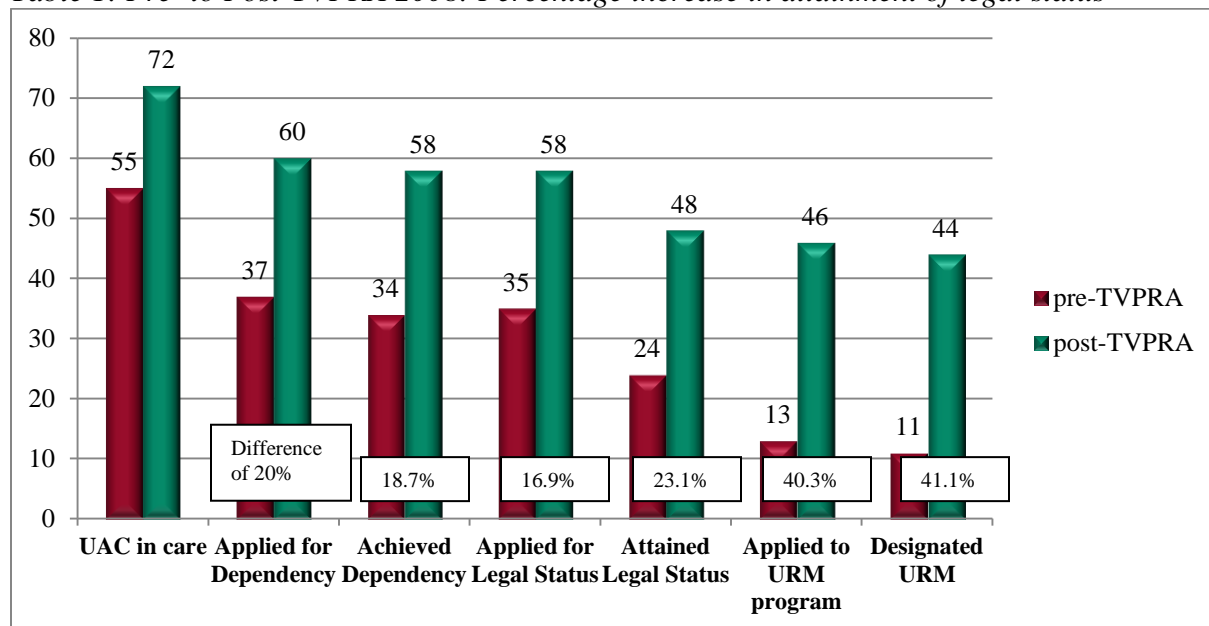
The same youth spoke about what helped him cope with the process:

During the past two years, with the support of Catholic Charity, I didn't have to work (illegally) to support myself while pursuing my legal case. That has been very helpful. Meanwhile, I am able to learn English, to learn about living in America. These are all very helpful to me.

Finding: Greater Numbers of Children Are Attaining Legal Status

As reflected in Table 1, the sample showed a 23.1 percent increase in legal status attained after TVPRA 2008 took effect. We see greater numbers of children successfully completing each step of the process: achieving dependency, attaining legal status, and designating URM.

Table 1: Pre- to Post-TVPRA 2008: Percentage increase in attainment of legal status



This 23.1 percent increase does not include the 12 children who were still awaiting case adjudication at the time the data were analyzed. If all 12 children eventually attain legal status, the percentage increase would rise to 39.8 percent.

We noted a number of reasons for this increase. First, TVPRA 2008 clarified the criteria for determining dependency, which is a necessary step in applying for SIJS. Prior to passage of the TVPRA, the court had to find that reunification with both parents was impossible due to abuse, neglect, or abandonment. TVPRA 2008 changed the finding from being on both parents to being for one only, stating that UAC for whom “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,” and whose return to their country of origin is not in their best interest, may be eligible for SIJS.¹⁷ This is an important change because, in the past, it was often difficult to conclusively prove both parents had been abusive and/or negligent. Also, in cases in which one parent was found capable, returning the child to the home country to be with that parent might still place the child at risk for abuse/neglect at the hands of the other parent.

Another contributing factor can be found in the changed criteria for age and SIJS eligibility. TVPRA 2008 clarified that any qualified applicants who applied for SIJS prior to their twenty-first birthday were eligible for the status, no matter their age when the application was finally affirmed or denied.¹⁸ Prior to the passage of TVPRA 2008, it was required that minors be

¹⁷ *William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008*. Public Law 110-457, HR 7311, Sec. 235, <http://www.uscis.gov/ilink/docView/PUBLAW/HTML/PUBLAW/0-0-0-40656.html>.

¹⁸ “Implementation of the Special Immigrant Juvenile *Perez-Olano* Settlement Agreement,” USCIS Policy Memorandum, April 4, 2011, <http://www.uscis.gov/USCIS/Laws/Memoranda/2011/April/perez-olano-settlement.pdf>.

younger than 21 years old at the time they were granted SIJS.¹⁹ Pre-TVPRA 2008, many children lost their opportunity to get the SIJS visa because they turned 21 while waiting for a response to their application, which could take months or even years.²⁰ As shown in Table 2, 18 out of 55, or 32.7 percent, of UAC pre-TVPRA 2008 aged out of ORR/DCS care before achieving legal status.

This change is incredibly important, because the consequences of aging out and becoming ineligible for legal status and/or assistance are dire for these children. Without legal status, they are not eligible to remain in foster care after 18, nor can they receive public benefits such as medical care, food assistance, or student loans. One of the most devastating effects is that these children cannot legally work, leaving them unable to support themselves and contribute positively to society. Instead of beginning productive new lives, they may end up alone and unsupported, even homeless, and face a very real threat of deportation back to their home country.

Despite this important change, another risk UAC in foster care face while awaiting adjudication of their SIJS application is the fact that they must remain under a valid dependency order until they achieve SIJS. Generally the court's jurisdiction expires at age 18,²¹ meaning children risk aging out of eligibility despite the allowance for adjudication until age 21. In some instances, the court can provide an extension of dependency, but this is not guaranteed. In the case of two of the four children in the post-TVPRA 2008 sample who aged out of ORR/DCS care, such an extension was provided. Had this not happened, those children would have lost their right to apply for SIJS once they turned 18.

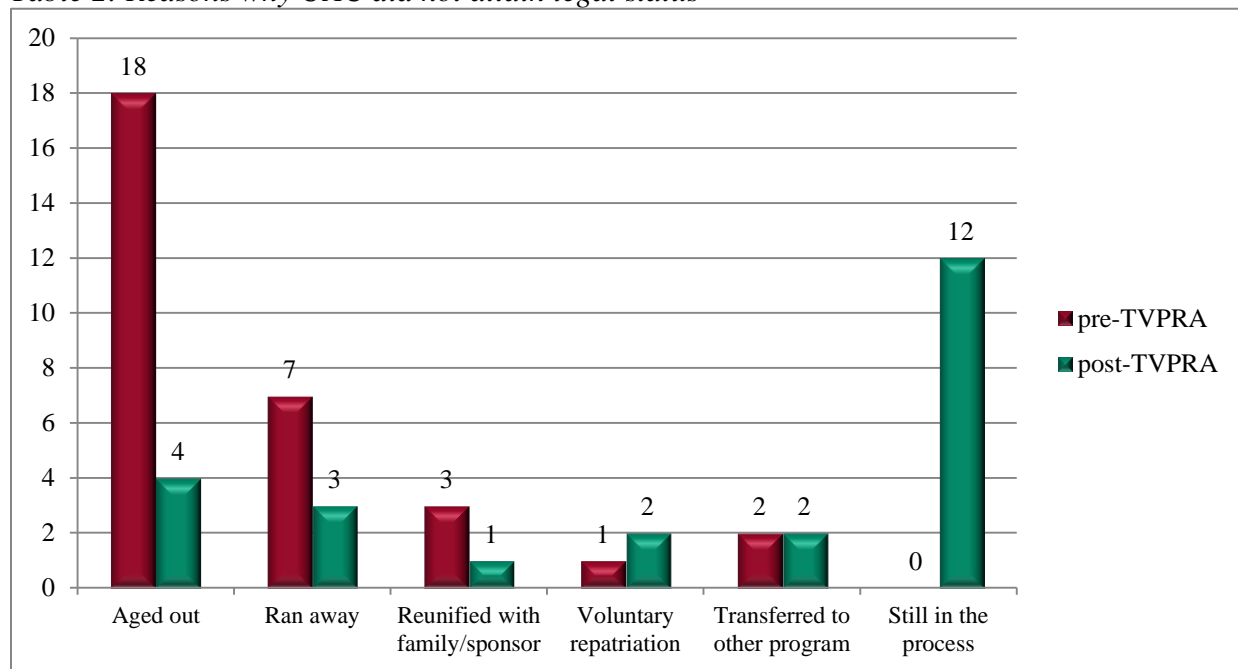
Prior to the passage of TVPRA 2008, most abused, abandoned, and neglected children who sought relief from removal would apply for asylum. However, because asylum is more challenging for children to attain, many were not approved prior to aging out of ORR/DCS care. Unlike SIJS, asylum requires that a child prove she or he has a well-founded fear of persecution upon return to the home country on one of five grounds: race, religion, nationality, political opinion, or membership in a social group. The child must go on to prove that the government is either a party to the persecution or is unable to prevent it. Many children in ORR/DCS care cannot necessarily meet the high burden of proof and specific requirements needed to be granted asylum, despite the fact that they would be in danger of domestic abuse, gang violence, or homelessness if returned to their home countries. Many children also would have no one to care for them.

¹⁹ Deborah Lee, Manoj Govindaiah, Angela Morrison, and David Thronson, "Update on Legal Relief Options for Unaccompanied Alien Children Following the Enactment of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008," in *Immigration & Nationality Law Handbook* (Washington, DC: American Immigration Lawyers Association, 2009), 833–42. See also http://www.ilrc.org/files/235_tvptra_practice_advisory.infonet.pdf

²⁰ Maria Virginia Martorell, "Special Immigrant Juvenile Status: Problems with Substantive Immigration Law and Guidelines for Improvement" (working paper, Social Science Research Network, January 18, 2011), p17. See also <http://ssrn.com/abstract=1832043>.

²¹ Emily Rose Gonzalez, "Battered Immigrant Youth Take the Beat: Special Immigrant Juveniles Permitted to Age-Out of Status," *Seattle Journal for Social Justice* 1, no. 8 (2009): 414. See also <http://www.law.seattleu.edu/Documents/sjsj/2009fall/GonzalezE.pdf>.

Table 2: Reasons why UAC did not attain legal status



Finding: Wait Times for Attaining Legal Status Have Decreased

The length of time it takes UAC to attain legal status—from entry into long-term foster care to a final grant of status—dropped by 53.4 percent after implementation of TVPRA 2008. As seen in Table 3, wait times were reduced by anywhere from 42 percent to 69.3 percent across the various steps in the process.²² Information collected in qualitative interviews confirmed this significant change.

Prior to implementation of TVPRA 2008, the average time between entering care and final case adjudication was 20.6 months. This does not include the time that the children had already spent in an ORR/DCS shelter prior to being referred to USCCB/MRS and entering long-term foster care. In contrast, the average wait time post-TVPR was 9.6 months. This is a significant decrease in time. Considering the fact that many children come into care close to age 18, this decrease in time allowed more children to attain status rather than age out.

Post TVPRA 2008: Time to attain legal status dropped 46 percent

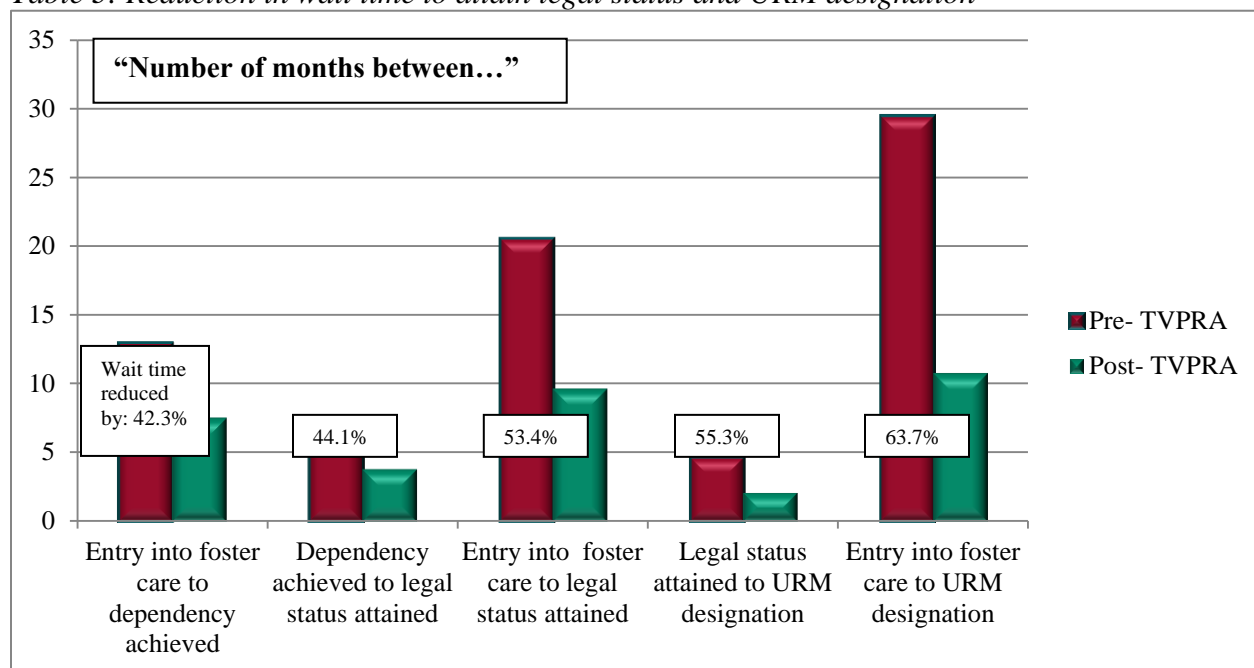
Decreased Wait Time to Achieve Dependency

The first step in the journey from entry into the URM program to attaining immigration relief is the granting of dependency by the state juvenile court. Prior to implementation of TVPRA 2008, dependency was the step at which UAC could wait years to be adjudicated. This delay led many children to age out of the ORR/DCS program before attaining legal status.²³

²² The wait-time reduction differed between states and URM programs.

²³ Gonzalez, “Battered Immigrant Youth,” 414.

Table 3: Reduction in wait time to attain legal status and URM designation²⁸



The wait time for achieving dependency decreased 44.1 percent, an average of three months per child post-TVPR 2008. One potential contributor to this decrease is the newly modified criteria for determining dependency, which have made the process more straightforward. Once the absent or abusive parent is served notice, whether or not he or she appears in court, the court can make a valid finding of abuse, neglect, or abandonment.²⁴ This change has resulted in much speedier findings of abuse, abandonment, and neglect because, in many cases, at least one parent is absent from the child’s life.

Another positive change made by TVPR 2008 that may have contributed to the drop in wait times for achieving dependency is the transfer of the “specific consent” granting function from DHS to DHHS. To apply for dependency, a child must obtain “specific consent” from the federal government to ask the local court for a dependency determination. When this task rested with DHS, the process was long and arbitrary, largely because DHS is primarily a law enforcement agency and lacks the child welfare expertise necessary to make such a judgment.²⁵ Now that this function rests with DHHS, the dependency process takes much less time than it took pre-TVPR 2008.

Decreased Wait Time to Attain Legal Status

Under the new law, SIJS applications must now be adjudicated within 180 days of filing. Because of this change, the wait time between filing for legal status and attaining that status has

²⁴ Lee et al., “Update on Legal Relief,” 3.

²⁵ Bhabba, Jacqueline and Susan Schmidt, *Seeking Asylum Alone: Unaccompanied and Separated Children and Refugee Protection in the United States*, (Cambridge, MA: University Committee on Human Rights Studies, Harvard University, June 2006), 52.

decreased to an average of 2 months—a staggering 69.2 percent decrease. Prior to implementation of TVPRA 2008, children waited an average of 6.5 months at this step, with some cases delayed up to 20 months between filing and receiving status. This decrease also meant that more children were able to apply for URM designation instead of aging out of care. Although this is a significant improvement, the stipulation that USCIS adjudicate within 180 days has not fully addressed the age-out concern. USCIS has the right to restart the 180-day period if it has questions about an application; USCIS has done this to some children in ORR/DCS care. In one situation, the child was already 17 years old when he applied for SIJS, and USCIS waited almost the full 180 days before coming back with questions, thus restarting the 180-day period close to the child’s eighteenth birthday.

Finding: Few Children Are Granted Asylum, T Visas, or U Visas

Very few of the children we studied were granted asylum before or after implementation of TVPRA 2008, due to the aforementioned high burden of proof and specific requirements of that status. No UAC achieved a T visa or U visa in this sample, although it included several UAC who eventually entered long-term foster care with an eligibility letter issued by ORR/Anti Trafficking in Persons (ATIP) Division.²⁶ All UAC with these letters pursued SIJS, and a few simultaneously pursued the T visa. All of those who pursued more than one type of status were granted SIJS.

One obstacle for child trafficking victims is the fact that even traumatized children are expected to share their story in the application for the T visa. Considering the personal histories of these child victims, it may be difficult for them to share the traumatic details of their lives, making them appear non-credible or uncooperative. These children may have a tough time explaining what has happened to them, or they may feel unsafe revealing personal details due to fear of retribution by their traffickers. Thus, while a child may have a legitimate basis for receiving a T visa, her or his inability to effectively communicate this can prevent the child from attaining this form of immigration relief.

Children granted a U visa, which is intended for victims of crime, are not eligible for the URM program. That makes pursuing the U visa far less attractive for children who would have no care options were they to attain the visa. Children with SIJS, asylum, and T visas are eligible for the URM program.

V. REMAINING CHALLENGES

When reviewing the situations of those children whose cases were still not moving quickly after implementation of TVPRA 2008, we found that the inability to obtain legal representation was the biggest contributing factor to these delays. Inefficiencies in the process of attaining legal status also resulted in drawn-out cases for some children. In the cases of the four children in the

²⁶ ORR/ATIP has the authority to issue letters of eligibility to those persons they deem have evidence of being trafficked. These letters make the individual eligible for certain state and federal benefits, including those available to refugees.

sample who aged out of the ORR/DCS system before attaining status, the prolonged wait can be attributed to their unusually complicated legal cases. Ten children in the post-TVPRA 2008 sample waited for over a year to attain status, mostly due to the late assignment of an attorney. All but two of those ten were assigned an attorney six or more months after entry into ORR/DCS foster care. All ten children were aged 16 or younger when they entered long-term foster care, making them a lower priority for assignment of an attorney, since there was little risk of them aging out before the completion of their legal cases. Due to limited availability of pro bono representation, younger children and those with more complicated cases will often wait longer to be connected to an attorney.

Limited Legal Resources

Each program seeks out attorneys for its child clients in a different manner. Some have connections to federally funded agencies that conduct legal screenings for free and find pro bono representation for the children. Other programs do not have access to federally funded programs and must find attorneys on their own. This is a difficult task, because fees can be prohibitively high and pro bono counsel is a limited resource in most communities.

The limited availability of pro bono representation can cause a child to wait six months or more to be assigned an attorney. Many of these children have already spent many months in an ORR/DCS shelter, and some are nearing their eighteenth birthday. Children with more complicated legal cases have waited as long as a year until an attorney can be found who understands immigration law well enough to represent them.

Court Delays in Establishing Jurisdiction

As greater numbers of children pursue SIJS, courts are becoming more familiar with the SIJS process and requirements. However, TVPRA 2008 has not been interpreted at individual state level so that courts fully understand their jurisdiction on such cases. This means courts do not have clear guidelines for establishing the abuse/abandonment/neglect finding necessary for SIJS. Some courts have also complained that parenting expectations are different in each country, and the court may not be as willing to make the finding based on actions that occurred outside the United States. However, even within the United States, individual states have varying expectations for child welfare. It also seems that some courts are hesitant to establish jurisdiction if there are child behavior issues (for example, juvenile justice history), or if the child has contact with family in other countries. It is quite common for six months—and several court appearances—to pass before a dependency or predicate order is issued.

Missing Documentation

Because of their challenging histories and limited access to legal documents, many UAC cannot easily obtain their birth certificate. Waiting for these documents can further delay a child's legal case. Some consulates have a process by which a child can obtain a second birth certificate or another kind of legitimate identification, which is a very helpful alternative. However, the process is time consuming.

Because the SIJS application is a catchall form (used for applying for other visas as well) it does not direct the applicant to supply the predicate/dependency order with the finding of

abuse/abandonment/neglect. Without this order, the application for SIJS cannot be processed by USCIS. However, since the form does not ask for the order, it would seem that it is not important or necessary.

Involvement in Simultaneous Legal Processes

UAC must apply for SIJS with the USCIS. Meanwhile, they must continue to defer the adjudication of their immigration case by attending regular immigration court hearings and asking for continuance, thus participating in two legal processes at the same time. This is an inefficient use of government resources as well as the attorney's and child's time.

Exceptions to the 180-Day Deadline

The 180-day deadline for adjudicating an SIJS petition that was put into place by TVPRA 2008 has sped up the processing of SIJS cases considerably, but there are exceptions to this 180-day rule. In some cases, USCIS will interview an applicant near the end of the 180-day period and then request more information, resetting the 180-day period. For children close to their eighteenth birthday, this creates a real risk of aging out of foster care.

Lack of Care Options for 18-21 Year Olds

Although a child can apply for SIJS through the age of 21, dependency orders usually expire at age 18. Legally, ORR/DCS can only provide care up to the age of 18. Although the courts will often grant extensions of dependency up to the age of 21 for the purpose of applying for SIJS, no exceptions are made for age of exit from ORR/DCS care. Thus, at age 18, children must leave ORR/DCS care with or without their immigration status. Once they exit care, they are vulnerable to placement in adult immigration detention.

VI. RECOMMENDATIONS

Although TVPRA 2008 made great strides toward strengthening and streamlining this process, we must look for other ways to improve this system so it better serves children and reduces inefficiencies. To address the issues raised in this report, we suggest a number of changes to the immigration legal process for children seeking relief and advocate for more awareness and education on the issue.

- **Provide additional support (funding, recruitment, and training) for legal representation in all areas where UAC are in care.** This addresses the issue of limited legal representation for this population and would ensure all UAC are matched with an attorney to pursue immigration relief as early as possible, hence meeting the permanency need.
- **Make education about SIJS a priority for family court judges, immigration judges, attorneys and child advocates.** This addresses the issue of the lack of knowledge about SIJS causing delays in court and would ensure dependency/guardianship findings are determined efficiently to create a sense of permanency for the child.

- **Develop and support community-based care for children who are still awaiting the outcome of their SIJS application at age 18.** This addresses the issue that children continue to age out of ORR/DCS care while pursuing SIJS. Although ORR/DCS-funded programs engage in concurrent permanency planning for those youth close to 18, the options are limited.

VII. QUESTIONS FOR FURTHER STUDY

This study raised numerous questions that warrant further research, including the following:

- What is the long-term impact of TVPRA 2008 on legal outcomes and permanency for unaccompanied alien children?
- What happens to the children who age out of the ORR/DCS system while pursuing legal status?
- How does SIJS prevent or hinder potential family reunification for a child later?
- What are the outcomes for children who get the U visa, since they are not eligible for URM care?
- What are the long-term outcomes for all children who leave ORR/DCS care, regardless of whether or not they obtain legal status?

VIII. CONCLUSION

We found that the passage of TVPRA 2008 has clearly increased the number of UAC in ORR/DCS care who were able to attain legal status while in our long-term foster care programs, and it has enabled them to do so more quickly. TVPRA has also allowed more of these children to access care past age 17, because it made the URM program accessible to all unaccompanied children with Special Immigrant Juvenile status.

This trend is overwhelmingly positive in terms of ensuring the well-being of children who have no other options for safety and permanency. However, the process of pursuing legal status remains unnecessarily time-consuming and challenging. It is far too difficult for these children to obtain legal representation, and more education is needed to enable judges, attorneys, and advocates to quickly and efficiently work the cases with which they may not be familiar, such as SIJS cases.

UAC are placed in foster care because they have no identified family reunification options and do have potential for legal relief. They come from incredibly precarious situations and have the same right as any child to be well cared for and kept from harm. It is essential that those children who are legally entitled to immigration relief have access to that relief and not languish in restrictive settings or end up on the street while awaiting crucial case decisions. TVPRA 2008 made great strides toward that goal, allowing greater numbers of children to receive protection and begin their new lives in a safe and welcoming place. We hope continued advocacy and education will further address these children's needs and affect positive advances in the area of safety, permanency, and well-being.

About USCCB/MRS

The United States Conference of Catholic Bishops/Migration and Refugee Services (USCCB/MRS) is the largest nongovernmental refugee resettlement agency in the world. In addition to its work with more than 100 local refugee resettlement programs to provide reception and integration services to approximately 20,000 refugees each year, USCCB/MRS has been collaborating with a national network of Unaccompanied Refugee Minor (URM) programs to place and serve unaccompanied foreign-born children into specialized foster care settings for more than thirty years. Refugees, victims of trafficking, Cuban/Haitian entrants, grantees of asylum, certain grantees of Special Immigrant Juvenile Status (SIJS), and unaccompanied alien children (UAC) in federal custody are populations eligible for long-term foster care the URM program. USCCB/MRS also coordinates family reunification services for children who are released from federal custody.

USCCB/MRS assists its various programs through monitoring for compliance and quality assurance, national case placement coordination, technical assistance and training, program analysis, and capacity building assistance. A particular focus of USCCB/MRS is to research and write papers addressing key issues affecting the populations served through its programs. These papers include analysis of programmatic trends that can suggest or affect policy and program development and highlight practice shifts and recommendations. We focus in particular on using the information unique to USCCB/MRS—information within our programming—that benefits both an external and internal audience to achieve continual quality improvement in our work.

Learn more about USCCB/MRS at <http://www.usccb.org/mrs/>

Report Authors

*Elizabeth Drevlow, Children’s Services Specialist, Foster Care, USCCB/MRS
Pilar Siman, Children’s Services Specialist Temp, Foster Care, USCCB/MRS*

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U.S. Conference of Catholic Bishops
Migration and Refugee Services
3211 4th Street
Washington, D.C. 20017
202-541-3352
MigratingChildren@usccb.org