

ACF Administration For Children and Families	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Office of Refugee Resettlement	
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PROGRAM INSTRUCTION

To:

Subject: Age Determinations of Aliens in the Custody of HHS and DHS

Legal and Related: The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA of 2008), Pub. L. No. 110-457, § 235(b)(4); Homeland Security Act of 2002, 6 U.S.C. § 279.

Purpose: The TVPRA of 2008 instructs HHS to devise age determination procedures for aliens in consultation with the U.S. Department of Homeland Security.

Aliens in DHS Custody

After DHS apprehends and takes an alien into custody, DHS officials make reasonable and practicable efforts to establish accurate identification of the alien, including the alien's date of birth.

When difficulties are experienced in determining age, the apprehending agency's officers consider multiple forms of available evidence and consult first-line and second-line supervisors, if necessary. The apprehending agency shall document any evidence collected at the time of processing.

Unaccompanied Alien Children (UAC) in HHS Custody

HHS may make age determinations of UAC when they are in HHS custody.

In the event there is a discrepancy regarding the age of an alien in HHS custody, the HHS-funded care provider case worker shall

immediately notify the HHS Federal Field Specialist (FFS).¹ The FFS will make the age determination based on his/her review of the multiple forms of evidence collected by the care provider. Until the age determination is made, the alien is entitled to all services provided to UAC in HHS care and custody.

There may be occasions when an alien's age is questioned at the time of admission to a HHS-funded care provider facility by a facility case manager who is completing the required intakes process. In that case, the intakes process is not to be completed and the HHS FFS shall be notified and consulted for making the age determination.

Both DHS and HHS may be presented with certain challenges in determining an alien's accurate age, such as

- Unavailable documentation on the birth date.
- Contradictory or fraudulent identity documentation and/or statements.
- Physical appearance of the alien.
- Diminished mental capacity of the alien.

Instructions

1. In making an age determination, both DHS' apprehension officials and HHS Federal Field Specialists shall consider the following information or documentation.
 - Birth certificate. If there is no original birth certificate or the authenticity of the original birth certificate is questionable, DHS and/or HHS must consult the consulate or embassy of the alien's home country to verify the validity of the birth certificate.²
 - Other objective documentation, including baptismal certificates, school records, medical records, etc. that indicate an individual's date of birth.
 - Statements provided by the alien regarding his/her age or birth date. Uncorroborated declarations by aliens regarding their age cannot be used as the sole basis for an age determination.

¹ The equivalent of the Federal Field Specialists for HHS-funded long term foster care providers in the voluntary agencies' network is the HHS Division of Unaccompanied Children's Services (DUCS) Foster Care Case Manager.

² Embassy or consular officials MUST NOT be contacted if the alien is from a known refugee producing country, e.g., Burma, or if the alien has expressed a credible fear of persecution by his/her government.

- Statements from parents, if the parent(s) can be contacted at the time of apprehension.
 - Statements from other persons apprehended with the alien.
 - If the alien is already in HHS custody, sworn affidavits from parents and other relatives as to the alien's age or birth date.
 - Biometric age determination (e.g. bone density examination or dental forensics) only if the above information is not available.
 - Records systems checks by DHS officials at the time of the alien's apprehension.³
2. Forensic dental examinations, radiographs, and bone density tests will be used as a last resort to determine the age of an alien.⁴ Ambiguous, debatable or borderline forensic examination results will be resolved in favor of finding the alien a minor (i.e., if the forensic exam shows an age range between 16 and 18 years old, the alien will be determined to be 16 years old).
3. Correcting an alien's age when in HHS custody
- The FFS consults with the DHS Juvenile Coordinator and the consular officials as appropriate when considering the above-referenced information and documentation.
 - The FFS emails his/her age determination with any available supporting documentation to the HHS-funded care provider facility housing the alien, the alien's attorney of record, if any, the DHS Juvenile Coordinator and the HHS FFS Supervisor.
 - The correct date of birth is entered into DUCS Tracking and Management System database and all supporting documentation is kept in the alien's case file.

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³ DHS conducts record checks and biometric examinations only on UAC who are presumed to be over 13 years old.

⁴ If the alien is in HHS custody at the time of an age determination, HHS must approve any and all requests for forensic examinations.