



U.S. Immigration
and Customs
Enforcement

AUG 20 2004

MEMORANDUM FOR: Field Office Director
Deputy Assistant Directors
FROM: Victor X. Cerda
Acting Director

A handwritten signature in black ink, appearing to read "V. Cerda", written over the printed name.

SUBJECT: Age Determination Procedures for Custody Decisions

Purpose

This memorandum sets forth revised guidance for determining when the Immigration and Customs Enforcement (ICE), Office of Detention and Removal Operations, will treat an alien as a juvenile for custody purposes. The main points of this memorandum are summarized as follows:

- An alien claiming to be a juvenile may be treated as an adult for custody purposes if a reasonable person would conclude, based upon a preponderance of available and credible evidence, that the alien is an adult.
- Whenever a determination is made regarding juvenile status, all available evidence regarding an alien's age must be reviewed and considered, including the statements of the alien.
- If the alien claims to be a juvenile, but the ICE officer believes the alien to be an adult, clinical examinations may be conducted in order to estimate the age of the individual.
- ICE officers must base age determinations upon the totality of the evidence presented to them and not solely upon the results of dental and/or wrist-bone x-rays. Clinical examinations are one factor to be considered among other available and credible evidence of age, and in many cases will not constitute conclusive evidence of age.
- Only clinical examinations based on wrist-bone and/or dental x-rays may be considered.
- If the ICE officer elects to seek x-rays, the examination must be conducted as soon practicable.
- Clinical x-ray evaluation reports must be attached to the worksheet.

- The examining clinician must provide a statement in the report, expressing the percentage of probability that the alien is either a juvenile or adult.
- In cases where forensic testing (e.g., dental x-rays) is utilized, a supervising officer **must** review and approve the determination regarding the alien's age.
- An alien or his/her representative may submit new evidence of age at any time to ICE.
- When an alien claims to be a juvenile, the decision to place the alien in an adult detention facility or holding area must be approved in advance by a supervisor.
- If an alien is placed in an adult facility, the alien or his/her representative may request a re-determination of juvenile status from ICE, Office of Detention and Removal Operations, Field Office Juvenile Coordinator.

Discussion

1. Standard

Age determinations are based upon a preponderance of available evidence, as judged by a reasonable person. A fact is established by a preponderance of the evidence if the adjudicator finds, upon consideration of all the evidence, that it is more likely than not that the fact is true (in other words, there is more than a 50% chance that the fact is true). This standard is consistent with the Flores v. Reno Settlement Agreement. This decision often is difficult, since a juvenile should not be placed in an adult facility and an adult should not be placed in a juvenile facility. Erring on either side risks violating the Flores agreement. Placing an alien who may be an adult in a juvenile shelter care facility, risks exposing the juveniles housed there to living with an adult and, in some cases, may put the facility's license at risk. Thus, each case must be evaluated carefully based on the totality of circumstances.

2. Process

When an alien claims to be a juvenile, but the ICE officer questions the claim, the officer must consult with the Field Office Juvenile Coordinator, who will make the determination regarding the alien's age. However, in cases where forensic testing (e.g., dental x-rays) is utilized, a supervising officer **must** approve the determination regarding the alien's age. The Field Office Juvenile Coordinator must ensure that the A-file is properly documented and includes all relevant evidence regarding the alien's age. If the alien is determined to be a juvenile, the Field Office Juvenile Coordinator must contact the Office of Refugee Resettlement (ORR) to secure placement in an appropriate facility. If the alien is determined to be an adult, s/he shall be placed in an adult detention facility.

After placement in an adult facility, if an alien claiming to be a juvenile submits new information or evidence to the Field Office Juvenile Coordinator, the new information should be considered. The Field Office Juvenile Coordinator must review all the information provided to him/her to determine

whether to maintain an adult classification. A supervisor must approve the Field Office Juvenile Coordinator's decision. If the new information results in a juvenile finding, the juvenile should be temporarily separated from the adults, and the Field Office Juvenile Coordinator will assist in transferring the alien to an ORR placement as quickly as possible.

3. Consideration of All Available Evidence

ICE officers must base age determinations upon the totality of the evidence presented to them and not solely upon the results of dental and/or wrist-bone x-rays. The following information must be considered, if available:

- Statement(s) by the alien regarding his/her age. When an age determination is based in whole, or in part, on the statement of an alien, the interviewing ICE officer must make a written record of the alien's statement, whether the officer finds the statement to be credible, and why or why not. The interviewing officer must sign the written record. When such a statement is taken upon apprehension, the 1-213, *Record of Deportable/Inadmissible Alien* may be used. If the alien makes the age-related statements after the initial apprehension (for example, during a later interview by the officer), the above information must be recorded in the A-file. The ICE officer may request the juvenile to sign a statement attesting to his/her claimed age and date of birth.
- Information or records obtained from another government agency (federal, state, local or foreign) indicating a prior claim to juvenile status or handling as an adult. A juvenile incarcerated as a result of an adult criminal conviction is not covered by the Flores v. Reno settlement.
- Statements by individuals with personal knowledge of the alien's age that the ICE officer concludes credibly attest to the age of the alien.
- Documents that credibly attest to the birth date and/or age of the alien. Such documents may include a birth certificate, baptismal record, school records, or identity cards.
- Documents and/or information regarding age obtained by ICE pursuant to a discretionary investigation. For example, ICE may contact the appropriate foreign embassy or government officials to determine the validity or accuracy of the provided documents. Information obtained through such investigative efforts shall also be considered if deemed helpful in establishing the age of an alien. Regulatory privacy protections afforded to asylum seekers must be followed.
- Results of dental and/or wrist-bone x-rays conducted by an expert.
- Assessment of the alien's physical appearance and behavior during apprehension, processing, and detention. Officers must be extremely cautious when basing conclusions about a person's age upon such an assessment. Where age is in dispute, the physical

appearance and demeanor of an alien should not be the sole or deciding factor for determining that the alien is an adult, absent clear and compelling articulable facts.

The discretion to seek authentication of a particular document lies with the ICE officer. Documents suspected to be fraudulent can be authenticated in several ways. First, the documents can be forwarded to the Forensic Document Laboratory (FDL). Second, the document can be sent to the appropriate American Embassy or Consulate. Third, field offices may ask a stateside foreign embassy or consulate for authentication assistance. The requesting officer should monitor such requests to ensure a rapid response. When a foreign embassy or consulate cannot properly authenticate a document, it may be necessary to seek the assistance of either the FDL or the local American Embassy or Consulate. Finally, field officers through ICE procedures may contact the Department of Homeland Security offices overseas to facilitate requests for information from an American Embassy and/or to conduct a formal investigation. Overseas requests must be monitored to avoid undue delay.

4. Consideration of Medical Reports Regarding Age

Medical reports based on dental and wrist bone x-rays may be used to help determine the age of an alien. When considering these reports, it is important that ICE officers understand their degree of reliability.

Medical studies recognize the usefulness of dental and skeletal age estimation methods, but acknowledge a significant margin of variability in determining the age of persons between the ages of 16 and 20. A variety of factors can affect the ability to precisely determine a person's age when s/he is between the ages of 16 and 20. These factors may include normal biologic variation, nutritional status, race, ethnicity, geographic location, socioeconomic status, as well as variations among interpretations by professionals who are reading the results of these examinations. In some cases, the expert may state with near 100% confidence that the person is either an adult or a juvenile, but in other cases the confidence will be significantly lower.

Given the margin of variability, it is essential that the examining doctor state in the written report a probability percentage that the alien is a juvenile or adult (e.g., there is an 80% probability that the patient is over the age of 18). Effective as of the date of this memorandum, the attached Clinical Examination Worksheet for Age Estimations must be given to all examining clinicians. Use of this form will ensure consistency and uniformity of the reporting results of such examinations. A statement that the alien is younger or older than 18 years is insufficient. When this occurs, the worksheet must be returned to the examiner with a request to include a statement of probability percentage.

X-ray estimations are an important piece of information to be considered among all available age-related evidence and may be conducted whenever an alien claims to be a juvenile and the officer doubts that claim. When used, x-ray evaluations should generally be conducted as soon as practicable. When a dental or wrist-bone x-ray alone is inconclusive in determining the age of a juvenile, the officer must ensure that both types of evaluations are completed. This memorandum modifies prior guidance regarding when x-ray evaluations are mandatory, including prior guidance for aliens of Indian and Chinese nationality.

Dental and wrist-bone x-rays are the only clinical evaluations authorized by ICE for the purpose of determining age. Field offices must consult with the United States Public Health Service when selecting a medical professional to conduct these clinical evaluations. Under no circumstances should DRO field offices use an alternative process for selecting medical professionals without receiving prior headquarters approval.

Age determinations are important decision making instances, since a juvenile should not be placed in an adult facility and an adult should not be placed in a juvenile facility. As stated previously, erring on either side risks violating the Flores agreement. Thus, each case must be evaluated carefully based on the totality of circumstances. Given the important interests at stake, you are requested to ensure that your staff is fully apprised of this guidance and has a full understanding of the requirements for making such determinations, including the need for recording such decisions and obtaining supervisor review and approval of such determinations. Each field office is requested to provide an affirmative response on dissemination and implementation of these policies within a week of this memorandum's date via e-mail notice to: (b)(6),(b)(7)(C) in the Office of Detention and Removal Operations. Should you have any questions regarding this policy, please do not hesitate to have your staff contact him at (202) (b)(6),(b)(7)(C)

Attachment



AGE ESTIMATION CLINICAL EXAMINATION WORKSHEET

Alien's Name: _____ A Number: _____

Claimed DOB: _____ Nationality: _____

Height: _____ Race: _____

Weight: _____ Ethnicity: _____

Type of Clinical Examination Performed: _____ Date Examination Completed _____

Dental Radiograph(s) Y N _____ / _____ / _____

Wrist Radiograph(s) Y N _____ / _____ / _____

Name of Medical Facility at which Radiograph(s) Taken: _____

Address of Medical Facility at which Radiograph(s) Taken _____

Occupation, Name, and License Number (if applicable) of Expert Providing Age Estimation Examination:

Physician: _____

Dentist: _____

Forensic Anthropologist: _____