



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 22041

**Rado, Rachel L.  
Law Offices of Rachel L. Rado  
100 State Street  
3rd Floor  
Boston, MA 02109**

**DHS/ICE Office of Chief Counsel - BOS  
P.O. Box 8728  
Boston, MA 02114**

**Name: M [REDACTED]-C [REDACTED], C [REDACTED] F [REDACTED]... A [REDACTED]-962**

**Date of this notice: 5/13/2020**

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

*Donna Carr*

Donna Carr  
Chief Clerk

Enclosure

Panel Members:  
O'Connor, Blair  
Donovan, Teresa L.  
Foote, Megan E.

Userteam: Docket

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Falls Church, Virginia 22041

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File: A ██████-962 – Boston, MA

Date: **MAY 13 2020**

In re: C ██████ F ██████ M ██████-C ██████

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Rachel L. Rado, Esquire

APPLICATION: Asylum; withholding of removal; Convention Against Torture; remand

The respondent, a native and citizen of Ecuador, timely appeals an Immigration Judge's October 28, 2019, decision. The Immigration Judge found the respondent removable as charged, denied his applications for asylum and withholding of removal pursuant to sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158 and 1231(b)(3), respectively, and protection under the Convention Against Torture pursuant to 8 C.F.R. § 1208.16(c)(2), and ordered the respondent removed. On appeal, the respondent contests the denial of all three forms of relief and protection. The record will be remanded to the Immigration Judge for further action consistent with this decision.

The respondent was determined to be an "unaccompanied alien child" ("UAC") when he entered the United States on September 30, 2013 (Office of Refugee Resettlement ("ORR") Verification of Release). At that time, he was 16 years old. The respondent was placed in removal proceedings. The respondent filed an application for asylum (Form I-589) with the United States Citizenship and Immigration Services ("USCIS") on or about August 5, 2014 (Tr. at 4-5; Exh. 3). The respondent was still under the age of 18 when he filed his application (Tr. at 2-3, 4-5; Exh. 3). His application appears to have still been pending with USCIS at the time of his removal hearing (IJ Dec. dated 8/5/14 administratively closing case; Tr. at 11-17, 20-21, 26).

As the respondent was designated a UAC and filed his asylum application prior to attaining the age of 18, USCIS had initial jurisdiction over his application pursuant to the provisions of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"), Pub. L. No. 110-457, 122 Stat. 5044. Section 235(d)(7)(B) of the TVPRA, codified at section 208(b)(3)(C) of the Act, provides that "[a]n asylum officer . . . shall have initial jurisdiction over any asylum application filed by an unaccompanied alien child . . . ." The term "unaccompanied alien child" is defined in the Act by reference to "section 462(g) of the Homeland Security Act of 2002 (6 U.S.C. § 279(g))," which in turn defines the term as "a child who (A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom (i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody." *See also Matter of M-A-C-O*, 27 I&N Dec. 477 (BIA 2018) (holding that an Immigration Judge has initial jurisdiction over asylum applications filed by UACs if first filed after the applicant reaches age 18, but that otherwise USCIS has initial jurisdiction over any asylum application filed by an UAC).

On the record before us, we conclude that a remand is necessary to allow USCIS to complete its adjudication of the respondent's application.<sup>1, 2</sup> As we are remanding this matter, we need not reach the respondent's additional arguments, including his arguments contesting the Immigration Judge's denial of relief, and his assertion of Immigration Judge bias.

Accordingly, the following order will be entered.

ORDER: The record is remanded to the Immigration Judge for further action consistent with the foregoing opinion.

  
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FOR THE BOARD

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<sup>1</sup> The Immigration Judge did not provide any legal authority for his apparent adoption of the government attorney's contention that the respondent's detention after he filed his asylum application stripped USCIS of jurisdiction over the application, nor are we aware of any such authority. *See, e.g.,* section 208(b)(3)(C) of the Act; 6 U.S.C. § 279(g).

<sup>2</sup> We note that there may be an issue on remand as to whether the respondent was still an UAC at the time he filed his asylum application, insofar as the record suggests he was released from ORR custody into the custody of his mother. *See generally Matter of M-A-C-O-*, 27 I&N Dec. at 480 (noting that "UAC status is not static, as both a UAC's age and his or her accompaniment may change") (internal quotation marks and citation omitted). Given that no factual findings were made on this issue, we are unable to resolve it on appeal. *See* 8 C.F.R. § 1003.1(d)(3)(iv).