



“What Happens When I Go To Immigration Court?”

A User's Guide

An educational video produced by the
Women's Commission for Refugee Women and Children



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Printed in the United States of America

Mission Statement

The Women's Commission for Refugee Women and Children works to improve the lives and defend the rights of refugee and internally displaced women, children and adolescents. We advocate for their inclusion and participation in programs of humanitarian assistance and protection. We provide technical expertise and policy advice to donors and organizations that work with refugees and the displaced. We make recommendations to policy makers based on rigorous research and information gathered on fact-finding missions. We join with refugee women, children and adolescents to ensure that their voices are heard from the community level to the highest levels of governments and international organizations. We do this in the conviction that their empowerment is the surest route to the greater well-being of all forcibly displaced people.

Acknowledgments

The Women's Commission would like to thank Christopher Nugent, Sarah Forney and Allison Feierabend of the law firm of Holland & Knight LLP for their excellent work in drafting this guide. Joanne Kelsey, the former Director of the Commission's Detention and Asylum Program, also made significant contributions to the guide.

The Women's Commission also thanks Kim Berner and the many professionals who produced the video "What Happens When I Go To Immigration Court?" and Doug Liman for his financial support.

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OVERVIEW

“What Happens When I Go To Immigration Court?” is an educational video produced to orient children who are placed in immigration proceedings and must appear in immigration court before the Executive Office for Immigration Review (EOIR). The video uses child-centered techniques to familiarize the child with these administrative legal proceedings. It also helps put the children at ease and begins to foster the trust and openness needed for representing the child during the immigration court proceeding.

This Users’ Guide is divided into two sections: 1) Developmental Considerations and 2) Strategies for Using the DVD. This manual is for child advocates, attorneys and other professionals who are assisting children through proceedings in front of the immigration court. It will help you develop a comprehensive strategy for representation and inform you of issues to consider when working with children of different age levels and cultural backgrounds. It suggests a variety of techniques that will help put the child at ease and get the maximum benefit and understanding from the video. It recommends methods to cultivate the child’s cooperation and comfort in telling his or her story confidently and candidly.

Please note: This is version 1.0 of the guide. The Women’s Commission for Refugee Women and Children welcomes and encourages users to provide as much feedback as possible in order to help us update and improve its contents. Please send any comments to wcrwc@womenscommission.org. Thank you.

I. DEVELOPMENTAL CONSIDERATIONS

It may be difficult to anticipate how a child will respond to you as an adult, authoritative figure. Cultural distinctions may impact the child’s perception in ways that you might not realize, including socioeconomic structures and gender norms. It may, therefore, be helpful to familiarize yourself with the child’s cultural and socioeconomic background to understand how cultural differences may affect the child’s perception.

Many resources exist that can assist with this research including:

- Department of State’s Country Reports on Human Rights Practices (which include a section on children) at <http://www.state.gov/g/drl/rls/hrrprt>;
- Human Rights Watch (which provides links to child-oriented websites on its webpage at <http://hrw.org/children/child-links.htm>;
- The Office of the United Nations High Commissioner for Refugees (UNHCR) at www.unhcr.org including their Washington, D.C. office (202) 296-5191 (which can provide country of origin information, advisory opinions and guidance on how children’s claims should be adjudicated);
- National Center for Refugee and Immigrant Children for access to their network of pro bono attorneys and mentors who have handled cases of children from around the world <http://www.refugees.org/article.aspx?id=1260&subm=75&area=Participate>; and
- UNICEF at <http://www.unicef.org/infobycountry/index.html>.

There are some age-specific developmental considerations to bear in mind with the particular child or children you are showing the video to since they may impact the child’s reactions or comprehension of the video. These age-specific considerations may be found in the Appendix. While a majority of the children you encounter will be adolescents, and that is the age group to which the video is geared, many

children have developmental or other issues arising from their background and experiences that could influence their reactions or comprehension. Remember, any child:

- May experience a great deal of fear from being in a foreign place without any support;
- Is and feels vulnerable;
- Does not know whom to trust;
- Likely has limited English skills;
- May be uneducated;
- May have learning disabilities;
- May have been abused;
- May have been abandoned;
- May have been orphaned;
- May have experienced more horrific situations than you could even imagine;
- May have learned not to trust people due to the circumstances from which they fled;
- May have been separated from parents and/or other family members.

II. USING THE DVD

Obviously no two children will respond to the video in the same manner. It may be a good idea for some children to watch the video several times or to watch only a few minutes of it at a time. Below are some considerations and techniques to keep in mind when showing the video to a child.

- Meet the child at his or her level of understanding, including simply sitting at the same level as the child; try not to stand while talking with kids, particularly younger ones.
- Try to put the child at ease, perhaps by making the child smile and laugh. Begin by talking with the child about “neutral” topics, his or her likes and dislikes, without jumping directly into legal issues.
- Be aware that some children find too much direct eye contact very stressful. If you find that this is the case, be conscious of looking away from the child to allow him or her time to get comfortable.
- If time and language skills permit, consider playing an age appropriate game with the child. One possible game is “I Spy” geared to establish rapport and accustom him or her to the question and answer process with you. Explain that you will pick something in the room and give the child one clue about what it is. Then the child may ask questions about what the object is, which you will answer. Select an easily identifiable object in the room and start with “I spy something in the room ...” (that is brown, or that begins with C, etc.) Have the child ask questions and guess what the object is. You might pick a chair or window. This activity puts the child in the position of asking questions and wanting answers. It helps focus the child’s attention. It is empowering and establishes a bond through a short and fun activity. It helps develop the child’s trust and confidence in the advocate, candor in testimony and ability to confer with counsel during the proceedings.
- If such a game does not feel like a good fit with the child, in the alternative, drawing is often a terrific choice. Introduce yourself, bring out some paper and crayons, and ask the child if he or she knows how to draw. This could include drawing anything from his or her name to the place where he or she

grew up. Both you and the child (and the translator as well, if one is present) might draw and compare what you have. If drawing names, do they share any letters? Is it a long or short name? Do you know anyone else with that name? If drawing where you grew up, were there trees? Did you have pets? Did it rain? Try to emphasize anything that shows a shared or common experience. Note that if the child seems overly concerned with or aware of the adult's picture and is not drawing, the adult might stop drawing and offer to help the child.

- Other possible game choices may include dominoes, cards, marbles, jacks or pick-up-sticks, with the caveat that children from other cultures might not be familiar with particular rules concerning these games. This will require you to be flexible and capable of improvising such games with the child. The purpose of playing such games is to develop mutual trust and respect and ensuring the child's comprehension rather than winning or losing lest such an experience stigmatize the child.

After playing a game or drawing, explain in simple terms that you have a short movie about immigration court. Tell the child that it is a movie that is 15 minutes long and has nine parts. It will give the child a general overview of what will happen that will help determine his or her future. The movie will introduce the child to the courtroom itself and all the important people who will be there on the day(s) he or she goes to court including you if you are the attorney representing the child.

You can express your understanding and sympathy that this may be the most difficult and confusing period of the child's life where his or her immigration situation has yet to be resolved and that the court process can be intimidating or appear scary. You can reassure the child that everyone wants to make sure that he or she understands everything that is happening in this process. You should encourage the child to share all of his or her information and opinions with his or her attorney to ensure the best outcome possible.

You should describe each section of the movie briefly before it begins. Explain that the child can watch for certain things, which you will ask about after playing that part of the movie. Both you and the child will benefit from your testing the child's comprehension after each section of the DVD. Each section is listed below, with suggested questions to ask. Remember to phrase questions and explanations in simple terms. Choose easy words rather than hard ones. For example, "help" is preferred over "assist" or "show" is better than "demonstrate." Using one syllable words where possible is best. Use shorter sentences with one main idea rather than long complicated sentences with many ideas.

You may also be comfortable with role-playing exercises after each section, or after the entire DVD, where you can play the child and the child can practice playing the judge, his or her attorney, the interpreter or the government attorney.

Please be attentive to the child's reactions to the different sections since the child might react differently to different characters and scenarios presented including the types of relief from removal available. Feel free to stop and take a break during the video. You may want to ask the child questions about what he or she thinks about the section, how it makes him or her feel and why it makes him or her feel in such a way. Point out in certain places that the video is to give the child an idea of what will happen but that it might not be exactly as shown in the video (for example, the judge always wears black robes but might be a man or a woman; or the judge and the lawyers always sit in the same spot but the courtroom may not look exactly the same).

Find multiple ways throughout the video to remind the child to feel free to ask questions. And also find ways to help the child feel comfortable telling his or her story, answering any questions truthfully. Remind the child not to be afraid, and if he or she is afraid, to tell his or her lawyer and, when in court, to tell the judge.

The following is a breakdown on the video by sections with questions indicated you can use to ensure the child's comprehension of each section:

PART 1 INTRODUCTION TO THE IMMIGRATION COURTROOM

Possible Questions for the Child after Showing the Segment:

1. Where will you sit?
2. Who will sit with you?
3. Who else is in the room?

PART 2 MEET THE IMMIGRATION JUDGE

Possible Commentary for the Child before Showing the Segment:

Explain/remind the child that this is not a criminal court. The child will not go to prison. The judge is here to help understand why you want or need to stay in the United States.

Possible Questions for the Child after Showing the Segment:

1. What is the Judge's job?
2. What does the Judge do?
3. What should you tell the Judge when he asks you questions?

Follow up with talking about the fact that the Judge is not on either the child or the government's "side." The judge is like a referee in a soccer match, and the child's lawyer is there to help.

PART 3 MEET YOUR LAWYER

Possible Commentary for the Child before Showing the Segment:

Explain/remind the child that the Lawyer works only for him or her and that the Lawyer cannot tell anyone anything the child says unless the child says it's okay. You will want to emphasize that unfortunately not all children get lawyers since United States law does not require lawyers for children in immigration cases. However, there are many volunteer attorneys who help children in such circumstances for free and there might be the possibility of getting a volunteer attorney. If you are an attorney representing the child, you may explain that it is a distinct privilege to have the opportunity to represent the child in his or her case.

Possible Questions for the Child after Showing the Segment:

1. What is the Lawyer's job?
2. When do you meet with your Lawyer?
3. What should you tell your Lawyer?
4. What does your Lawyer do?
5. When can your Lawyer tell someone else what you tell your Lawyer?
6. Can anyone else in the courtroom talk about you outside the courtroom?
7. How can your Lawyer help you in court?
8. What happens when you don't understand something?

Follow up with talking about the fact that the child's Lawyer is there to help and that the Lawyer can help the most if s/he knows the child's reasons for wanting or needing to stay in the United States.

If a child watching this segment does not have a lawyer, the adult viewing the video with the child should explain that the child can come to the court without a lawyer and tell his or her story to the Judge. The child should not be afraid if they do not have a lawyer. The Judge will help the child by asking the child relevant questions and the child should answer the Judge honestly and thoroughly.

PART 4 MEET THE IMMIGRATION COURT INTERPRETER

Possible Commentary for the Child before Showing the Segment:

Explain/remind the child that the Interpreter is there to help the child understand what everyone says. The Interpreter also helps everyone understand what the child says.

Possible Questions for the Child after Showing the Segment:

1. What's the Interpreter's job?
2. What is the language of the court?
3. What should you do if you don't understand the Interpreter?
4. Who should you look at when you answer questions?
5. What should the Interpreter translate?

PART 5 MEET THE LAWYER FOR THE GOVERNMENT

Possible Commentary for the Child before Showing the Segment:

Explain/remind the child that the Lawyer for the Government is there to explain why s/he thinks you should go home.

Possible Questions for the Child after Showing the Segment:

1. What's the Lawyer for the Government's job?
2. How should you answer the questions of the Lawyer for the Government?
3. What should you do if you do not understand the government Lawyer's questions?

PART 6 RELIEF UNDER UNITED STATES IMMIGRATION LAW

Possible Commentary for the Child before Showing the Segment:

Explain/remind the child that immigration laws are rules in writing that the Judge uses to decide if the child can stay in the United States. The laws give different reasons why the child may be allowed to stay. The child may stay if s/he is afraid to go back to his or her country because s/he has been hurt or will be hurt there. The child may stay if his or her family cannot take care of the child. The child may stay if someone seriously hurt him or her while in the United States. The child may stay if someone has made the child to do something s/he didn't want to when coming here or if s/he had to leave. A child may stay with family who are allowed to stay and can help the child. The Lawyer understands the rules and will help the child.

Possible Questions for the Child after Showing the Segment:

1. Can you stay if you have family in the United States with legal immigration status? What if they do not have legal immigration status? Can you stay with them while your case is going through the immigration court? (Answer: Yes).
2. Who do you tell why you want to stay?
3. Who uses the law?

This is a lot of information about laws and the child cannot be expected to learn or memorize this information. It is the lawyer's job to know all these things since they have gone to school to learn how to help children like you. However, it would be good to review some of the information in this part for you to discuss with your attorney.

PART 7 OTHER PEOPLE IN THE IMMIGRATION COURTROOM

Possible Commentary before Showing the Segment:

Explain/remind the child that there may be other people in the courtroom but the child will be able to limit some people from being in the courtroom.

Possible Questions after Showing the Segment:

1. Who else may be in the room?
2. Where do they sit?
3. Can you ask these other people to leave?

PART 8 WHAT HAPPENS IN IMMIGRATION COURT

Possible Commentary before Showing the Segment:

Explain/remind the child that s/he may need to come to court more than one time.

Possible Questions after Showing the Segment:

1. Who does most of the talking at the 1st visit (Master Calendar)?
2. At the other hearings, what will you be asked to tell?
3. Who will ask you questions?

PART 9 FINAL REVIEW

Possible Commentary before Showing the Segment:

Explain/remind the child that the Judge, Lawyer, Interpreter and Lawyer for the Government have different jobs.

Possible Questions after Showing the Segment:

1. What does the Judge do?
2. What does your Lawyer do?
3. What does the Interpreter do?
4. What does the Lawyer for the Government do?
5. Can any of these people talk about your case outside the courtroom?

In conclusion, you can and should remind the child that if you are the child's attorney, you do not work for the Government, but that you work for the child and that you are there to argue what the child wants under U.S. immigration law. Your job is to help the child through the court process. You need to know what happened to the child. You need to know why s/he wants to stay in the United States. You cannot overemphasize that you will not tell anyone anything that the child does not want you to tell. Also, you can explain that no other person in the courtroom is allowed to talk about your case or anything you say in court. Doing so will encourage the child to be open and honest both with you and the judge throughout the whole process.

APPENDIX

The Lutheran Immigration and Refugee Services (LIRS) has developed an excellent resource entitled “Working with Refugee and Immigrant Children: Issues of Culture, Law and Development.” In particular, it provides the following Developmental Considerations for Children:¹

A child up to age 5:

- Depends upon adults for care and protection;
- Is capable of developing trust;
- May lack trust in the outside world due to the loss of a caregiver;
- Is capable of describing an event factually but may lack capacity to interpret its meaning or significance;
- Has capacity for moral reasoning limited to understanding actions in terms of absolute good and bad;
- Identifies moral reasoning in terms of obeying adults in authoritative positions as the child approaches age 5;
- Cannot distinguish gradations in feelings;
- Tends to feel intensely;
- Tends to feel totally one way or another;
- May have difficulty appreciating the differences between fantasy and reality, given evolving skills in logic;
- May, through play, reenact a traumatic event or scene they have witnessed or experienced.

A child between the ages of 6 and 12:

- Will have his or her self-esteem and perception of competence affected by the child’s experiences;
- Has the capacity for social ties and bonds, such as teachers and friends in school or in their neighborhood/village;
- Is sensitive to peer cruelty;
- Develops the mental capacity for abstraction with increased understanding of right and wrong for him- or herself independent from adult authority;
- Lacks awareness of more relative areas of morality;
- Assumes blame for events beyond the child’s control;
- Is vulnerable to physical and sexual abuse, believing that he or she is responsible or deserves the treatment;
- Better understands time and space, past and future, and cause and effect due to growth in logical reasoning;
- May respond inconsistently due to fear of punishment.²

A child between the ages of 13 to 18 (the majority of children in custody):

- Experiences physical change and growth, psychoemotional development, volatile emotions and feelings, and increased interest in sex and sexuality as a result of puberty;
- Develops a sense of self-identity independent of family;
- Realizes the world is complex and beyond the child's control;
- May have experienced cultural and religious rites of passage into adulthood, including female genital mutilation, expectations of labor and contribution to the family economy, sex with a prostitute;
- Increases his or her capacity for abstract, logical and moral reasoning, including understanding individual responsibility in a larger social system, "human rights," "oppression," and "evil."³

END NOTES

1. *See* "Working with Refugee and Immigrant Children: Issues of Culture, Law and Development," at 7-8, Lutheran Immigration and Refugee Service (1998), a unique, essential primer for immigrant and refugee children's advocacy. More information is provided at <http://www.lirs.org/What/children/manual.htm>.
2. *Id.* at 8-10.
3. *Id.* at 10-11.

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