

Immigration Appeals Board

Procedural Guidelines for Assessing the Interests of a Child Applying for International Protection

December 2024

Assessment of Child's Interests

Children have an independent right to international protection.

For a child to have the right to international protection, the child must have a well-founded fear of persecution for reasons outlined in the first paragraph of Article 37 of the Foreigners Act or be at risk of the treatment described in the second paragraph of the same article. Applications for international protection by children are assessed based on child-friendly perspectives, aiming to evaluate the reasons for flight as they pertain to the child, in accordance with the guidelines from the United Nations High Commissioner for Refugees from 2009. Additionally, in processing children's applications, the best interests of the child must be considered in line with the United Nations Convention on the Rights of the Child. The interests of the child, along with other reasons and based on a holistic assessment, can impact whether an applicant has the right to international protection or whether there is a basis for granting a residence permit on humanitarian grounds. However, it is particularly in relation to residence permits based on humanitarian grounds where the interests of the child can be decisive in whether the child, and consequently their immediate family, receive permission to reside here.

Discussion by the Appeals Board on the Interests of the Child

In the decisions

of the Appeals Board, the main principles on which the assessment of the child's interests is based are explained. When assessing the interests of the child, the following points must be considered:

- Was the child given the opportunity to express their views, and were these views considered according to their age and maturity? (3rd paragraph of Article 25 and 5th paragraph of Article 28 of the Foreigners Act)
 - Was an interview conducted with the child, or were they given another way to express themselves?
 - If not, was this explained in the decision by the Directorate of Immigration (UTL), or can it be inferred from the documents why this was not done?
 - Are the explanations or information sufficient?
 - Does the decision indicate how and to what extent the child's views were taken into account?

- Does the decision show how the child's interests were considered as a guiding principle?
- Did the person conducting the interview have specialized knowledge in child affairs?
- If no interview was conducted with the child, were the child's circumstances sufficiently explained in other documents (e.g., advocate's report, transcript of the interview with parents, child welfare reports, etc.)?
- Is there a reason for the Appeals Board to offer the child an interview?
- Has consideration been given to the child's safety, well-being, and social development if they were to return to their home country?
 - Does the child have family support (nuclear or extended family)?
 - Are the family conditions such that there is reason to doubt their ability to care for and support the child (e.g., illness, violence, extreme poverty)?
 - Has the child experienced violence or harassment from individuals outside the family (and if so, what remedies are available in the home country)?
 - Does the child face discrimination in their home country?
 - Does the child have access to education? For children living in poverty: Is financial support available, such as free schooling and educational materials?
 - Have the child's circumstances in the home country negatively affected their mental or physical health? Does the child have access to health services? Is there a need for special services for the child, and is this available in the home country/receiving country?
 - Is there a social support system in place in the home country/receiving country that can support the child and their family (e.g., municipal social services, NGOs, or extended family)?
 - Is there a risk that the family will be separated upon repatriation?
- Additional considerations if the child is unaccompanied:
 - Are there relatives, guardians, or adequate receiving facilities for the child in the home country?

- Has the possibility of reuniting the child with their family been considered?
- If this possibility does not exist, what happens to the child in the home country? E.g., is child welfare service guaranteed for the child?
- Does the child require health services or disability services? Is such service ensured in the home country if the child comes under child welfare custody?
- Does the child face discrimination in the home country?
- Has an advocate been appointed according to the first paragraph of Article 30, and has the case been reported to child welfare services?
- Has the Child Protection Agency been informed about the case?
- Before deciding to deny a child continued residence here, was an opinion sought from the Child Protection Agency? How does this affect the Board's assessment?

How to Explain the Assessment in the Decision?

In the premises of the Appeals Board's decision, the main principles governing the assessment of the child's interests are outlined. It should be evident that the above points have been considered as applicable. At a minimum, the premises should include:

- How the child's opinions were expressed during the case handling. The child's views should be considered according to their age and development.
- How the child's access to education and other necessary services is arranged. If the child needs special arrangements (e.g., specialized health care or services for illness or disability), this must be discussed regarding access.
- Description of the support the child receives from family or other guardians, including how their sustenance is managed.
- If the family lives in poverty, it must be addressed whether a public social system or other support like extended family, housing, or other resources are available.

The conclusion of the Appeals Board regarding the child's interests and their impact on the decision is based on a comprehensive assessment of all circumstances of the case.

Disclaimer

These procedural guidelines are written as guidance for the processes of the Appeals Board. They do not create rights or obligations for applicants or authorities.

Legal Basis

2nd paragraph of Article 10 of the Foreigners Act

Any decision concerning a child must be made with the child's interests at heart. A child who can form their own views must be guaranteed the right to express those views in any matter affecting them, and their views must be taken into account according to their age and maturity.

3rd paragraph of Article 25 of the Foreigners Act

If a case under this chapter concerns a child, the child's interests must be considered paramount. A child who can form their own views must be guaranteed the right to express those views in any matter affecting them, and their views must be taken into account according to their age and maturity, as per the 2nd paragraph of Article 10. In decisions subject to administrative discretion, consideration must be given to the child's safety, welfare, social development, and the possibility of family reunification. If the case involves an unaccompanied minor or another individual in a particularly vulnerable situation, efforts must be made to ensure that an employee with appropriate expertise and experience handles the case.

4th paragraph of Article 25 of the Foreigners Act

If an unaccompanied minor applies for international protection, the authority responsible for implementing Articles 27 and 33 must ensure that the child receives services appropriate to their age and development, while the Directorate of Immigration must ensure that the child's case is handled in accordance with their age and development. After the application is submitted, the institution must, as soon as possible, appoint a guardian for the child according to the 1st paragraph of Article 30 and notify the child welfare services and inform the Child Protection Agency as per Article 31.

5th and 6th paragraphs of Article 28 of the Foreigners Act

The person interviewing a child must have specialized knowledge in child affairs. The Directorate of Immigration is authorized to engage a child affairs specialist for assistance. The child's advocate, according to Article 30, must be given the opportunity to speak with and guide the child before the interview takes place.

Article 31 of the Foreigners Act

The Child Protection Agency shall ensure the guardianship of the child's interests, as per point 14 of Article 3. This provision can be deviated from if it is evident that the individual is legally competent, see the 3rd paragraph of Article 26. This article applies when the applicant is a minor residing here without parents or other guardians, when the parents or those with guardianship cannot perform their duties towards the child, or when child welfare services consider the care of the child insufficient. This provision also applies to children believed to be victims of trafficking. The person responsible for the child's interests must have expertise in child welfare and a clean criminal record. The Child Protection Agency shall ensure that the child is provided with a foster home or other accommodation, prioritizing the child's interests and ensuring that child welfare services meet the child's needs appropriately according to child protection laws, including regarding residence, health services, and educational opportunities. The Child Protection Agency shall ensure that a child welfare employee: - is present during interrogations and other interviews with government representatives, - is present and protects the child's interests during age assessments if required, - assists the child in using services from the Red Cross in Iceland to find close family when needed, - receives information about the status of the child's application and communicates with the child's advocate, as per the 1st paragraph of Article 30, - ensures safe accommodation for the child in accordance with child protection laws; however, a child from the age of 15 may stay in a reception center, as per Article 27, until appropriate arrangements are found. In their work, the child welfare employee shall take into account the child's nationality, gender, language, and religious and cultural background, for instance, by ensuring adequate communication with the child with the help of an interpreter. The guardianship by the Child Protection Agency formally ends when: - the child becomes legally competent or when a child who claimed to be a minor is deemed legally competent according to the decision of the Directorate of Immigration, - the child is granted a residence permit here and child welfare services take over guardianship according to child protection laws, - the child leaves or is escorted out of the country, - the child's parents or guardian can perform their guardianship duties adequately. The cost of guardianship is covered by the state treasury.

5th paragraph of Article 37 of the Foreigners Act

In assessing according to paragraphs 1 and 2 in cases involving children, whether accompanied or unaccompanied, the best interest of the child shall be the primary consideration. When assessing what is in the best interest of the child, the Directorate of Immigration shall consider the child's opportunities for family reunification, safety, welfare, and social development, and take into account the child's views according to their age and maturity. Special attention must be paid to the youth of someone who has reached 18 but was undeniably an unaccompanied minor upon arrival. In any decision concerning the interests of the child, the Directorate of Immigration must take a written stance on the aspects mentioned in this article. In implementing this article, the institution shall consult with child welfare authorities. For unaccompanied minors, an opinion from the Child Protection Agency must be sought before a decision to deny the child continued residence here is made.

1st paragraph of Article 74 of the Foreigners Act, comments on the bill

Finally, it is proposed, in accordance with international commitments and general legal provisions, to take special consideration of children, whether unaccompanied or otherwise. Thus, less stringent requirements could be considered for children to receive protection and be granted a residence permit under Article 74 if they do not receive asylum or are not entitled to a residence permit on other grounds. In line with practices elsewhere, the conditions in the home country would also be considered, including whether the child's maintenance is secure and guardians are present if the child is denied a residence permit, especially if dealing with an unaccompanied minor.

3rd paragraph of Article 103 of the Foreigners Act

Before a decision is made requiring an unaccompanied minor to leave the country, the Directorate of Immigration must ensure that the child is provided with assistance from child welfare services so that the child's best interest is taken into account, as per the 5th paragraph of Article 37. Before such a decision is implemented, the Child Protection Agency must ensure that in the country to which the child is being sent, there are relatives, guardians, or adequate reception facilities for children.

2nd and 3rd paragraphs of Article 1 of the Children's Act

What is in the best interest of the child shall always take precedence when decisions are made concerning the child's affairs. A child has the right to express their views in all

matters affecting them, and due consideration must be given to their views according to their age and maturity.

1st paragraph of Article 3 of the United Nations Convention on the Rights of the Child, according to Act no. 19/2013

What is in the best interest of the child shall always take precedence when public or private social welfare institutions, courts, administrative authorities, or legislative bodies undertake actions concerning children.

Article 12 of the United Nations Convention on the Rights of the Child, according to Act no. 19/2013

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Further Reading:

- EASO Practical guide on the best interest of the child in asylum procedures, EASO, 2019.
- Guidelines on Assessing and Determining the Best Interest of the Child, UNHCR, 2018.
- General comment no. 14 (2013) on the right of the child to have his or her interest taken as primary consideration, CRC, 2013.
- Joint General Comment nr. 4 (2017) and 23(2017) regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, CMW and CRC, 2017.
- General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, CRC, 2013.

- Guidelines on International Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, UNHCR, HCR/GIP/09/08, 2009.