

BLJ – 9-29-2005

**Unpublished BIA Decision Finds IJ, Not ORR Has
Jurisdiction to Determine Whether to Detain
Unaccompanied Minors**

In an unprecedented, yet unpublished Board of Immigration Appeals (BIA or Board) decision, the BIA held that an Immigration Judge (IJ) has jurisdiction in a bond redetermination hearing for an unaccompanied minor.

The respondent in the matter before the court was an unaccompanied minor. The IJ found that, pursuant to 6 USCA § 279, the Department of Health and Human Services' Office of Refugee Resettlement (ORR) had jurisdiction over the respondent's custody matters.¹ The BIA, however, held that, notwithstanding 6 USCA § 279, an IJ retains jurisdiction over the threshold issue of whether an unaccompanied minor should be detained. If an IJ determines that an unaccompanied minor should be detained, then, the Board stated, the ORR would have exclusive authority over decisions relating to the care and placement of the unaccompanied minor.

Accordingly, the Board remanded the matter to the IJ to consider the threshold issue of whether the respondent should be detained.

Board Member Edward R. Grant wrote the opinion for the Board. Also on the panel were Members Anthony S. Moscato and Frederick D. Hess.

The respondent was represented by Christopher H. Howard of Holland & Knight LLP, Seattle, Washington, and Julianne Bildhauer of Volunteer Advocates for Immigrant Justice, Seattle, Washington.

Editor's note: Advocates have noted that, while the respondent in this case was present without admission, this decision arguably applies to establish IJ jurisdiction

for bond redetermination hearings for children who arrived under the visa waiver pilot program or as stowaways provided that they are placed and held in ORR custody as unaccompanied alien children. In this regard, it is important to remember that ORR can only care for and exercise custody over unaccompanied alien children as defined by the Homeland Security Act. ■

¹ The Homeland Security Act, . L. No 107-296, 116 Stat. 2135, codified primarily at 6 USCA § 101 et seq., transferred responsibility for the care and custody of unaccompanied minors from the then INS to the ORR. For an in-depth discussion of HSA provisions regarding unaccompanied alien children, see Nugent and Schulman, "A New Era in the Legal Treatment of Alien Children: The Homeland Security and Child Status Protection Acts," 80 Interpreter Releases 233 (Feb. 19, 2003).