

**“Children Detained at the US Border are Not Easy to Deport under US Law” by Adam Edward Rothwell, Esq.**

This article is not an opinion piece on what to do with the crisis of children at the US Border. Similarly I am not writing this article to argue either why the children should be allowed to stay or why they should be deported. Rather I am writing this article to provide information on why from a legal standpoint children at the US Border cannot be easily deported.

US Immigration Law is inherently flawed for a number of reasons, and one reason is certain applications are always at risk of highly over-burdening the system. This has always been a potential major issue for Asylum Applications. There is no fee to apply for asylum in the US. Also, while there are annual limitations on how many foreign citizens may receive green cards through Asylum, there are no limitations on how many foreign citizens may be approved for Asylee status each year. Additionally, US Asylum Law is based on ensuring the system allows applicants for Asylum to fully present their stories, with all possible supporting evidence.

The Asylum Adjudication process inherently protects Applicants for Asylum, and one protection provided to Asylum Applicants is a form of due process that enables an Applicant to supplement the record with very little limitation. This does not mean an Applicant for Asylum may just waste time needlessly, but the system protects Applicants by providing in many cases very substantial amounts of time (in some cases years) for Applicants to supplement the record.

Any evidence submitted by an Asylum Applicant will theoretically at least be considered, but all evidence considered is judged in light of probative value. And probative value increases as more corroborative evidence exists. When I handle Asylum cases, I fully expect my clients to have every point in their story, no matter how long their story may be, to be further supported with over corroborating evidence. And for major points, I expect clients to provide multiple pieces of corroborating evidence whenever possible.

Since Applicants for Asylum usually have to receive corroborating evidence from overseas, potential evidence once identified may take a long time to procure. Also, as legitimate Applicants for Asylum are in very difficult circumstances, the act of producing documents from overseas is often itself a very difficult process. The law appreciates these delays and affords Applicants time to build their cases.

Among detained children at the border, a high percentage will have Asylum Applications that at least will initially be deemed non-frivolous. From a practical standpoint the law seldom enables an Asylum Application to be considered frivolous, which is just a step above fraudulent. And once a detained child has an Asylum Application that is not initially recognized as frivolous, the law requires that the Asylum Applicant be provided with the opportunity to prepare an Application that adequately presents the case.

Since the children are unaccompanied minors, it will be very difficult and time-consuming to produce corroborating evidence in support of their cases. But the law provides them with the opportunity to do just that. The law does not make exceptions for due process in Asylum Applications based on the number of people who are currently applying.

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