

279).

(c) RULE OF CONSTRUCTION- Nothing in this section may be construed to place the burden of proof in determining the age of an alien on the Government.

SEC. 106. EFFECTIVE DATE.

This title shall take effect on the date which is 90 days after the date of the enactment of this Act.

TITLE II--ACCESS BY UNACCOMPANIED ALIEN CHILDREN TO CHILD ADVOCATES AND COUNSEL

SEC. 201. CHILD ADVOCATES.

(a) ESTABLISHMENT OF CHILD ADVOCATE PROGRAM-

(1) APPOINTMENT- The Director may appoint a child advocate, who meets the qualifications described in paragraph (2), for an unaccompanied alien child. The Director is encouraged, if practicable, to contract with a voluntary agency for the selection of an individual to be appointed as a child advocate under this paragraph.

(2) QUALIFICATIONS OF CHILD ADVOCATE-

(A) IN GENERAL- A person may not serve as a child advocate unless such person--

(i) is a child welfare professional or other individual who has received training in child welfare matters;

(ii) possesses special training on the nature of problems encountered by unaccompanied alien children; and

(iii) is not an employee of the Department, the Department of Justice, or the Department of Health and Human Services.

(B) INDEPENDENCE OF CHILD ADVOCATE-

(i) INDEPENDENCE FROM AGENCIES OF GOVERNMENT- The child advocate shall act independently of any agency of government in making and reporting findings or making recommendations with respect to the best interests of the child. No agency shall

terminate, reprimand, de-fund, intimidate, or retaliate against any person or entity appointed under paragraph (1) because of the findings and recommendations made by such person relating to any child.

(ii) PROHIBITION OF CONFLICT OF INTEREST- No person shall serve as a child advocate for a child if such person is providing legal services to such child.

(3) DUTIES- The child advocate of a child shall--

(A) conduct interviews with the child in a manner that is appropriate, taking into account the child's age;

(B) investigate the facts and circumstances relevant to the child's presence in the United States, including facts and circumstances--

(i) arising in the country of the child's nationality or last habitual residence; and

(ii) arising subsequent to the child's departure from such country;

(C) work with counsel to identify the child's eligibility for relief from removal or voluntary departure by sharing with counsel relevant information collected under subparagraph (B);

(D) develop recommendations on issues relative to the child's custody, detention, release, and repatriation;

(E) take reasonable steps to ensure that--

(i) the best interests of the child are promoted while the child participates in, or is subject to, proceedings or matters under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.);

(ii) the child understands the nature of the legal proceedings or matters and determinations made by the court, and that all information is conveyed to the child in an age-appropriate manner;

(F) report factual findings and recommendations consistent with the child's best interests relating to the custody, detention, and release of the child during the pendency of the proceedings or matters, to the Director and the child's counsel;

(G) in any proceeding involving an alien child in which a complaint has been filed with any appropriate disciplinary authority against an attorney or representative for criminal, unethical, or unprofessional conduct in connection with the representation of the alien child, provide the immigration judge with written recommendations or testimony on any information the child advocate may have regarding the conduct of the attorney; and

(H) in any proceeding involving an alien child in which the safety of the child upon repatriation is at issue, and after the immigration judge has considered and denied all applications for relief other than voluntary departure, provide the immigration judge with written recommendations or testimony on any information the child advocate may have regarding the child's safety upon repatriation.

(4) TERMINATION OF APPOINTMENT- The child advocate shall carry out the duties described in paragraph (3) until the earliest of the date on which--

(A) those duties are completed;

(B) the child departs from the United States;

(C) the child is granted permanent resident status in the United States;

(D) the child reaches 18 years of age; or

(E) the child is placed in the custody of a parent or legal guardian.

(5) POWERS- The child advocate--

(A) shall have reasonable access to the child, including access while such child is being held in detention or in the care of a foster family;

(B) shall be permitted to review all records and information relating to such proceedings that are not deemed privileged or classified;

(C) may seek independent evaluations of the child;

(D) shall be notified in advance of all hearings or interviews involving the child that are held in connection with proceedings or matters under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), and shall be given a reasonable opportunity to be present at such hearings or interviews;

(E) shall be permitted to accompany and consult with the child during any hearing or interview involving such child; and

(F) shall be provided at least 24 hours advance notice of a transfer of that child to a different placement, absent compelling and unusual circumstances warranting the transfer of such child before such notification.

(b) TRAINING-

(1) IN GENERAL- The Director shall provide professional training for all persons serving as child advocates under this section.

(2) TRAINING TOPICS- The training provided under paragraph (1) shall include training in--

(A) the circumstances and conditions faced by unaccompanied alien children; and

(B) various immigration benefits for which such alien child might be eligible.

(c) PILOT PROGRAM-

(1) IN GENERAL- Not later than 180 days after the date of the enactment of this Act, the Director shall establish and begin to carry out a pilot program to test the implementation of subsection (a). Any pilot program existing before the date of the enactment of this Act shall be deemed insufficient to satisfy the requirements of this subsection.

(2) PURPOSE- The purpose of the pilot program established pursuant to paragraph (1) is to--

(A) study and assess the benefits of providing child advocates to assist unaccompanied alien children involved in immigration proceedings or matters;

(B) assess the most efficient and cost-effective means of implementing the child advocate provisions under this section; and

(C) assess the feasibility of implementing such provisions on a nationwide basis for all unaccompanied alien children in the care of the Office.

(3) SCOPE OF PROGRAM-

(A) SELECTION OF SITE- The Director shall select 3 sites at which to operate the pilot program established under paragraph (1).

(B) NUMBER OF CHILDREN- Each site selected under subparagraph (A) should have not less than 25 children held in immigration custody at any given time, to the greatest extent possible.

(4) REPORT TO CONGRESS- Not later than 1 year after the date on which the first pilot program site is established under paragraph (1), the Director shall submit a report on the achievement of the purposes described in paragraph (2) to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

(5) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 202. COUNSEL.

(a) ACCESS TO COUNSEL-

(1) IN GENERAL- The Director shall ensure, to the greatest extent practicable, that all unaccompanied alien children in the custody of the Office or the Department, who are not described in section 101(a)(2), have competent counsel to represent them in immigration proceedings or matters.

(2) PRO BONO REPRESENTATION- To the greatest extent practicable, the Director shall--

(A) make every effort to utilize the services of competent pro bono counsel who agree to provide representation to such children without charge; and

(B) ensure that placements made under subparagraphs (D), (E), and (F) of section 102(a)(1) are in cities in which there is a demonstrated capacity for competent pro bono representation.

(3) DEVELOPMENT OF NECESSARY INFRASTRUCTURES AND SYSTEMS- The Director shall develop the necessary mechanisms to identify and recruit entities that are available to provide legal assistance and representation under this subsection.

(4) CONTRACTING AND GRANT MAKING AUTHORITY-

(A) IN GENERAL- The Director shall enter into contracts with, or award

grants to, nonprofit agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out the responsibilities of this Act, including providing legal orientation, screening cases for referral, recruiting, training, and overseeing pro bono attorneys.

(B) SUBCONTRACTING- Nonprofit agencies may enter into subcontracts with, or award grants to, private voluntary agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out this subsection.

(C) CONSIDERATIONS REGARDING GRANTS AND CONTRACTS- In awarding grants and entering into contracts with agencies under this paragraph, the Director shall take into consideration the capacity of the agencies in question to properly administer the services covered by such grants or contracts without an undue conflict of interest.

(5) MODEL GUIDELINES ON LEGAL REPRESENTATION OF CHILDREN-

(A) DEVELOPMENT OF GUIDELINES- The Director of the Executive Office for Immigration Review of the Department of Justice, in consultation with voluntary agencies and national experts, shall develop model guidelines for the legal representation of alien children in immigration proceedings. Such guidelines shall be based on the children's asylum guidelines, the American Bar Association Model Rules of Professional Conduct, and other relevant domestic or international sources.

(B) PURPOSE OF GUIDELINES- The guidelines developed under subparagraph (A) shall be designed to help protect each child from any individual suspected of involvement in any criminal, harmful, or exploitative activity associated with the smuggling or trafficking of children, while ensuring the fairness of the removal proceeding in which the child is involved.

(C) IMPLEMENTATION- Not later than 180 days after the date of the enactment of this Act, the Director of the Executive Office for Immigration Review shall--

(i) adopt the guidelines developed under subparagraph (A); and

(ii) submit the guidelines for adoption by national, State, and local bar associations.

(b) DUTIES- Counsel under this section shall--

(1) represent the unaccompanied alien child in all proceedings and matters relating to the immigration status of the child or other actions involving the Department;

(2) appear in person for all individual merits hearings before the Executive Office for Immigration Review and interviews involving the Department; and

(3) owe the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due to an adult client.

(c) ACCESS TO CHILD-

(1) IN GENERAL- Counsel under this section shall have reasonable access to the unaccompanied alien child, including access while the child is--

(A) held in detention;

(B) in the care of a foster family; or

(C) in any other setting that has been determined by the Office.

(2) RESTRICTION ON TRANSFERS- Absent compelling and unusual circumstances, a child who is represented by counsel may not be transferred from the child's placement to another placement unless advance notice of at least 24 hours is made to counsel of such transfer.

(d) NOTICE TO COUNSEL DURING IMMIGRATION PROCEEDINGS-

(1) IN GENERAL- Except when otherwise required in an emergency situation involving the physical safety of the child, counsel shall be given prompt and adequate notice of all immigration matters affecting or involving an unaccompanied alien child, including adjudications, proceedings, and processing, before such actions are taken.

(2) OPPORTUNITY TO CONSULT WITH COUNSEL- An unaccompanied alien child in the custody of the Office may not give consent to any immigration action, including consenting to voluntary departure, unless first afforded an opportunity to consult with counsel.

(e) ACCESS TO RECOMMENDATIONS OF CHILD ADVOCATE- Counsel shall be given an opportunity to review the recommendations of the child advocate affecting or involving a client who is an unaccompanied alien child.

(f) COUNSEL FOR UNACCOMPANIED ALIEN CHILDREN- Nothing in this Act may

be construed to require the Government of the United States to pay for counsel to any unaccompanied alien child.

SEC. 203. EFFECTIVE DATE; APPLICABILITY.

(a) EFFECTIVE DATE- This title shall take effect on the date which is 180 days after the date of the enactment of this Act.

(b) APPLICABILITY- The provisions of this title shall apply to all unaccompanied alien children in Federal custody before, on, or after the effective date of this title.

TITLE III--STRENGTHENING POLICIES FOR PERMANENT PROTECTION OF ALIEN CHILDREN

SEC. 301. SPECIAL IMMIGRANT JUVENILE CLASSIFICATION.

(a) J CLASSIFICATION-

(1) IN GENERAL- Section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) is amended to read as follows:

`(J) an immigrant, who is 18 years of age or younger on the date of application for classification as a special immigrant and present in the United States--

`(i) who, by a court order supported by written findings of fact, which shall be binding on the Secretary of Homeland Security for purposes of adjudications under this subparagraph--

`(I) was declared dependent on a juvenile court located in the United States or has been legally committed to, or placed under the custody of, a department or agency of a State, or an individual or entity appointed by a State or juvenile court located in the United States; and

`(II) should not be reunified with his or her parents due to abuse, neglect, abandonment, or a similar basis found under State law;

`(ii) for whom it has been determined by written findings of fact in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's

previous country of nationality or country of last habitual residence; and

` (iii) with respect to a child in Federal custody, for whom the Office of Refugee Resettlement of the Department of Health and Human Services has certified to the Director of U.S. Citizenship and Immigration Services that the classification of an alien as a special immigrant under this subparagraph has not been made solely to provide an immigration benefit to that alien.'.

(2) RULE OF CONSTRUCTION- Nothing in subparagraph (J) of section 101(a)(27) of the Immigration and Nationality Act, as amended by paragraph (1), shall be construed to grant, to any natural parent or prior adoptive parent of any alien provided special immigrant status under such subparagraph, by virtue of such parentage, any right, privilege, or status under such Act.

(b) ADJUSTMENT OF STATUS- Section 245(h)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1255(h)(2)(A)) is amended to read as follows:

` (A) paragraphs (4), (5)(A), (6)(A), (7)(A), 9(B), and 9(C)(i)(I) of section 212(a) shall not apply; and'.

(c) ELIGIBILITY FOR ASSISTANCE-

(1) IN GENERAL- A child who has been certified under section 101(a)(27)(J) of the Immigration and Nationality Act, as amended by subsection (a)(1), and who was in the custody of the Office at the time a dependency order was granted for such child, shall be eligible for placement and services under section 412(d) of such Act (8 U.S.C. 1522(d)) until the earlier of--

(A) the date on which the child reaches the age designated in section 412(d)(2)(B) of such Act (8 U.S.C. 1522(d)(2)(B)); or

(B) the date on which the child is placed in a permanent adoptive home.

(2) STATE REIMBURSEMENT- If foster care funds are expended on behalf of a child who is not described in paragraph (1) and has been granted relief under section 101(a)(27)(J) of the Immigration and Nationality Act, the Federal Government shall reimburse the State in which the child resides for such expenditures by the State.

(d) TRANSITION RULE- Notwithstanding any other provision of law, a child

described in section 101(a)(27)(J) of the Immigration and Nationality Act, as amended by subsection (a)(1), may not be denied such special immigrant juvenile classification after the date of the enactment of this Act based on age if the child--

(1) filed an application for special immigrant juvenile classification before the date of the enactment of this Act and was 21 years of age or younger on the date such application was filed; or

(2) was younger than 21 years of age on the date on which the child applied for classification as a special immigrant juvenile and can demonstrate exceptional circumstances warranting relief.

(e) RULEMAKING- Not later than 90 days after the date of the enactment of this Act, the Secretary shall promulgate rules to carry out this section.

(f) EFFECTIVE DATE- The amendments made by this section shall apply to all aliens who were in the United States before, on, or after the date of enactment of this Act.

SEC.