

106TH CONGRESS
2D SESSION

H. R. 5061

To provide for the appointment of a guardian ad litem to protect the interests under Federal immigration law of certain alien minor children present in the United States without a parent or other legal guardian.

IN THE HOUSE OF REPRESENTATIVES

JULY 27, 2000

Mr. McCOLLUM (for himself, Mr. DIAZ-BALART, Ms. ROS-LEHTINEN, Mr. FOLEY, Mr. SHADEGG, and Mr. SMITH of New Jersey) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide for the appointment of a guardian ad litem to protect the interests under Federal immigration law of certain alien minor children present in the United States without a parent or other legal guardian.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. APPOINTMENT OF GUARDIAN AD LITEM FOR**
4 **CERTAIN ALIEN CHILDREN.**

5 Section 235(a) of the Immigration and Nationality
6 Act (8 U.S.C. 1225(a)) is amended by adding at the end
7 the following:

8 “(6) APPOINTMENT OF GUARDIAN AD LITEM.—

1 “(A) IN GENERAL.—

2 “(i) DEADLINE FOR APPOINTMENT.—

3 Subject to subparagraph (F), the Attorney
4 General shall appoint for an alien a guard-
5 ian ad litem described in subparagraph (E)
6 not later than 30 days after the date on
7 which all of the conditions described in
8 subparagraph (D) are fulfilled with respect
9 to the alien.

10 “(ii) TERMINATION OF APPOINT-
11 MENT.—The guardian ad litem shall carry
12 out the duties described in subparagraph
13 (B) until—

14 “(I) the alien departs from the
15 United States;

16 “(II) a final administrative order
17 with respect to an asylum claim is
18 made; or

19 “(III) the alien attains 18 years
20 of age;

21 whichever occurs first.

22 “(iii) NOTICE.—The Attorney General
23 shall serve notice of all matters affecting
24 any duty described in subparagraph (B) on
25 the guardian.

1 “(B) DUTIES.—The guardian ad litem—

2 “(i) in connection with an actual or
3 potential application for asylum by the
4 alien—

5 “(I) shall conduct an interview of
6 the alien in a manner that is appro-
7 priate, taking into account the alien’s
8 age;

9 “(II) shall otherwise investigate
10 the facts and circumstances relevant
11 to such an application, including facts
12 and circumstances arising in the
13 country of the alien’s nationality or
14 last habitual residence and facts and
15 circumstances arising subsequent to
16 the alien’s departure from such coun-
17 try; and

18 “(III) not later than 30 days
19 after the appointment of the guard-
20 ian, shall provide to all parties in any
21 immigration proceeding involving the
22 alien a report containing the results of
23 this investigation, a statement of the
24 wishes of the alien, and the guardian’s
25 recommendations, and shall provide

1 subsequent similar reports as nec-
2 essary;

3 “(ii) shall advise the alien on whether
4 the alien should voluntarily depart from
5 the United States under paragraph (4) or
6 section 240B;

7 “(iii) otherwise shall ensure that the
8 covered alien’s best interests are promoted
9 while the alien participates in, or is subject
10 to, proceedings under this section, asylum
11 proceedings, or removal proceedings under
12 any provision of this title; and

13 “(iv) shall ensure that the alien un-
14 derstands such determinations and pro-
15 ceedings.

16 “(C) POWERS.—

17 “(i) AUTHORITIES.—The guardian ad
18 litem—

19 “(I) may be present at all hear-
20 ings involving the alien that are held
21 in connection with proceedings under
22 this section, asylum proceedings, or
23 removal proceedings under any provi-
24 sion of this title;

1 “(II) may review all records and
2 information related to such pro-
3 ceedings; and

4 “(III) may seek independent
5 evaluations of the alien.

6 “(ii) LIMITATION.—The guardian ad
7 litem shall not have authority under this
8 paragraph to file a petition under this Act
9 on behalf of the alien in contravention of
10 the wishes of any parent of the alien.

11 “(D) MINORS DESCRIBED.—With respect
12 to an alien, the conditions described in this sub-
13 paragraph are the following:

14 “(i) The alien is under 18 years of
15 age.

16 “(ii) The alien is deemed to be an ap-
17 plicant for admission under paragraph (1)
18 or is a stowaway described in paragraph
19 (2).

20 “(iii) The alien is not lawfully in the
21 physical custody of a natural or adoptive
22 parent, a stepparent, or any other person
23 legally authorized to stand in loco parentis.

24 “(iv) If the alien is a citizen or na-
25 tional of a foreign state that is not des-

1 ignated as a state sponsor of terrorism
2 under section 6(j) of the Export Adminis-
3 tration Act of 1979 (50 U.S.C. App.
4 2405(j)) or section 620A of the Foreign
5 Assistance Act of 1961 (22 U.S.C. 2371),
6 the alien indicates an intention to apply for
7 asylum or a fear of persecution, or the At-
8 torney General determines that there is a
9 significant possibility that the alien could
10 establish eligibility for asylum.

11 “(E) GUARDIAN DESCRIBED.—A guardian
12 ad litem described in this subparagraph is an
13 individual who—

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

17 “(ii) is recognized by the Attorney
18 General as being qualified to serve as a
19 guardian ad litem; and

20 “(iii) is not an officer or employee of
21 the Service, is not acting as the alien’s im-
22 migration attorney, is not a relative of the
23 alien, and is not a person with a conflict
24 of interest.

1 “(F) STAY OF PROCEEDINGS PENDING AP-
2 POINTMENT.—Upon determining that the ap-
3 pointment of a guardian ad litem is required
4 under this section, the Attorney General, until
5 such appointment has taken effect—

6 “(i) shall stay all proceedings under
7 this Act or any other Federal immigration
8 law; and

9 “(ii) may not take any action to in-
10 duce or facilitate the alien’s voluntary de-
11 parture.

12 “(G) DEFERENCE TO DECISIONS AND REC-
13 OMMENDATIONS OF GUARDIAN.—Pursuant to
14 regulations promulgated by the Attorney Gen-
15 eral under this paragraph, the decisions and
16 recommendations made, and the actions taken,
17 by a guardian ad litem appointed under this
18 paragraph shall be treated the same as the de-
19 cisions, recommendations, and actions of a
20 guardian ad litem appointed for a minor child
21 in a child welfare proceeding under State law.

22 “(H) SUBJECT TO INTERNATIONAL AGREE-
23 MENTS.—Nothing in this paragraph shall be
24 construed to supersede any requirement under

1 any international agreement or treaty to which
2 the United States is a party.”.

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