

HR 1651 IH

111th CONGRESS

1st Session

H. R. 1651

To amend the Immigration and Nationality Act to establish a right for an alien to file a motion to reopen a case in removal proceedings if the alien can demonstrate that counsel or a certified representative provided deficient performance.

IN THE HOUSE OF REPRESENTATIVES**March 19, 2009**

Mr. MORAN of Virginia (for himself and Ms. LEE of California) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to establish a right for an alien to file a motion to reopen a case in removal proceedings if the alien can demonstrate that counsel or a certified representative provided deficient performance.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Access to Justice Act'.

SEC. 2. ESTABLISHING A RIGHT FOR AN ALIEN TO REOPEN A CASE IN REMOVAL PROCEEDINGS IF THE ALIEN CAN DEMONSTRATE THAT COUNSEL OR A CERTIFIED REPRESENTATIVE PROVIDED DEFICIENT PERFORMANCE.

Section 240(c)(7) of the Immigration and Nationality Act (8 U.S.C. 1229a(c)(7)) is amended as follows:

(1) In subparagraph (A), by adding at the end the following new sentence: 'A motion to reopen proceedings may be filed under this section by an alien on the grounds that counsel or a certified representative provided deficient performance.'

(2) By striking subparagraph (B) and inserting the following:

[+]
FEEDBACK

`(B) CONTENTS-

`(i) IN GENERAL- The motion to reopen shall state the new facts that will be proven at a hearing to be held if the motion is granted, and shall be supported by affidavits or other evidentiary material.

`(ii) SPECIAL RULE FOR DEFICIENT PERFORMANCE OF COUNSEL- A motion to reopen on the grounds that counsel or a certified representative provided deficient performance shall contain a sworn declaration describing the deficient performance in detail and stating what defense to removability or relief or protection from removal the alien would have been likely to obtain absent the deficient performance.'

(3) In subparagraph (C), by adding at the end the following:

`(v) DEFICIENT PERFORMANCE OF COUNSEL- There is no time limit on the filing of a motion to reopen on the grounds that counsel or a certified representative provided deficient performance if the alien demonstrates that the alien exercised due diligence in discovering and seeking to cure counsel's alleged deficient performance.'

SEC. 3. REGULATIONS.

Not later than 180 days after the date of the enactment of this Act, the Attorney General shall issue regulations to carry out the amendments made by this Act.

SEC. 4. EFFECTIVE DATE.

The amendments made by this Act shall take effect as if enacted on January 6, 2009.

END