

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SM 1008

SPONSOR: Senator Dawson and others

SUBJECT: Immigration and Nationality Act

DATE: March 30, 2003 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Roberts</u>	<u>Kassack</u>	<u>RC</u>	<u>Favorable</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

This memorial urges the Congress of the United States to amend the Immigration and Nationality Act and specifically, to enact House Resolution 505 (the Alien Unaccompanied Minor Adjustment and Protection Act of 2001), or similar legislation, to provide assistance to alien unaccompanied minor children in immigration proceedings.

H.R. 505 was introduced by Congressman Alcee Hastings on February 7, 2001, to amend the Immigration and Nationality Act to authorize the Attorney General of the United States to adjust the status of certain unaccompanied alien children who have no lawful immigration status in the United States to that of an alien lawfully admitted for permanent residence under certain circumstances. Further, the resolution provides for the establishment of a panel of advisors outside the Immigration and Naturalization Service to serve as guardians ad litem to assist unaccompanied alien children in immigration proceedings.

Copies of the memorial are to be sent to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

## II. Present Situation:

House Resolution 505, the "Alien Unaccompanied Minor Adjustment and Protection Act of 2001", would amend section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) to authorize the Attorney General of the United States to adjust the status of an alien under 18 years of age who has no lawful immigration status in the United States to that of an alien lawfully admitted for permanent residence if:

- the alien (or a parent or legal guardian acting on the alien's behalf) has applied for the status; *and*
- the alien has resided in the United States for a period of five consecutive years; *or*
- no parent of legal guardian requests the alien's return to the country of the parent's or guardian's domicile, or with respect to whom the Attorney General finds that returning the child to his or her country of origin would subject the child to mental or physical abuse; *and*
- the Attorney General determines that it is in the best interests of the alien to remain in the United States notwithstanding the fact that the alien is not eligible for asylum protection under section 208, or protection under section 101(a)(27)(J).

The Attorney General must base his or her determination on input from a person or entity that is not employed by or a part of the Immigration and Naturalization Service (the Service), and that is qualified to evaluate children and opine as to what is in their best interest in a given situation. Upon approval of the adjustment of status, the Attorney General must record the alien's lawful admission for permanent residence as of the date of such approval. The Secretary of State is prohibited from reducing the number of visas authorized to be issued as a result of such action.

H. R. 505 also provides for the establishment of a panel of advisors for unaccompanied alien children. Specifically, the resolution requires the Attorney General to provide for the establishment outside of the Immigration and Naturalization Service of a panel of independent advisors whose responsibility is to serve as guardians ad litem for covered unaccompanied alien children who are in proceedings before the Service. Employees of the Service are prohibited from serving on the panel. At least 200 advisors would be designated by the Attorney General. The advisors shall be individuals who are skilled in social services, psychology, education, and other fields relevant to serving as such guardians. Distribution would be done in such a manner as to ensure that alien children in all parts of the United States are adequately served. The Attorney General must assign an individual of the panel to each covered unaccompanied alien child who is a party to an immigration proceeding. The guardian is required to provide advocacy, independent advice, and support to the child in connection with the immigration proceedings. The Attorney General is required to service notice of all matters affecting a covered unaccompanied alien child's immigration status on the child's assigned guardian.

The term "covered unaccompanied alien child" is defined in the resolution as a child who is under the age of 18, who has no lawful immigration status in the United States and is not within the physical custody of a parent or legal guardian, and whom no parent or legal guardian requests the child's return to the country of the parent's or guardian's domicile, or to whom the Attorney General finds that returning the child to his or her country or origin would subject the child to physical or mental abuse.

Nothing in the proposed act shall be construed as affecting or superseding the appointment of guardians ad litem under other provisions of law.

No action has been taken on H.R. 505 since February 23, 2001, when it was referred to the House Subcommittee on Immigration and Claims.

The term “alien” is defined in 8 U.S.C. 1101(a)(3) as “any person not a citizen or national of the United States”. The term “national of the United States” is defined in 8 U.S.C. 1101(a)(22) as “a person who, though not a citizen of the United States, owes permanent allegiance to the United States.” The term “lawfully admitted for permanent residence” is defined in 8 U.S.C. 1101(20) as “the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.”

Legal immigrants, also known as “lawful permanent residents”, are individuals who have been granted admission for permanent residence to the United States on the basis of family relation or job skill. Legal immigrants entering the United States apply for immigrant visas and are issued the “green card” after arrival, which is proof of lawful permanent residence in the United States. Nonimmigrants are individuals allowed to enter the United States for a specific purpose and for a *temporary* or limited period of time, such as tourists, students, and business visitors. There are approximately 70 specific types of nonimmigrant visas, with the largest category being temporary business or pleasure visitors.<sup>1</sup> The United States also accepts “refugees” and asylum applicants, “those who have a well-founded fear of persecution because of race, religion, nationality, political opinion, or membership in a particular social group.” *See*, 8 U.S.C.A. 1158.

As part of the Homeland Security Act of 2002 (Pub. L. 107-296, Nov. 25, 2002, 116 Stat. 2135), the Director of the Office of Refugee Resettlement of the Department of Health and Human Services was transferred the responsibilities under the immigration laws with respect to the care of unaccompanied alien children that were vested by statute in, or performed by, the Commissioner of Immigration and Naturalization. Under the Act, the Director of the Office of Refugee Resettlement is responsible for specific functions as they relate to the care of unaccompanied alien children including, but not limited to, coordinating and implementing the care and placement of unaccompanied alien children who are in Federal custody by reason of their immigration status, including developing a plan to be submitted to Congress on how to ensure that qualified and independent legal counsel is timely appointed to represent the interests of each such child. *See*, 6 U.S.C.A. 279.

### **III. Effect of Proposed Changes:**

Under SM 1008, Congress is requested to amend the Immigration and Nationality Act and to enact House Resolution 505, the Alien Unaccompanied Minor Adjustment and Protection Act of 2001, or similar legislation, to provide specific assistance to alien unaccompanied minor children in immigration proceedings.

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<sup>1</sup> Issue Brief Health Policy Tracking Service, *Immigrants, Nonimmigrants, and Visas*, Prepared by the Immigrant Policy Project, National Conference of State Legislatures, June 14, 2002.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.