

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.

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. SHORT TITLE.**

4 This Act may be cited as the “Access to Justice Act”.

1 **SEC. 2. ESTABLISHING A RIGHT FOR AN ALIEN TO REOPEN**
2 **A CASE IN REMOVAL PROCEEDINGS IF THE**
3 **ALIEN CAN DEMONSTRATE THAT COUNSEL**
4 **OR A CERTIFIED REPRESENTATIVE PRO-**
5 **VIDED DEFICIENT PERFORMANCE.**

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

8 (1) In subparagraph (A), by adding at the end
9 the following new sentence: “A motion to reopen
10 proceedings may be filed under this section by an
11 alien on the grounds that counsel or a certified rep-
12 resentative provided deficient performance.”.

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

15 “(B) CONTENTS.—

16 “(i) IN GENERAL.—The motion to re-
17 open shall state the new facts that will be
18 proven at a hearing to be held if the mo-
19 tion is granted, and shall be supported by
20 affidavits or other evidentiary material.

21 “(ii) SPECIAL RULE FOR DEFICIENT
22 PERFORMANCE OF COUNSEL.—A motion to
23 reopen on the grounds that counsel or a
24 certified representative provided deficient
25 performance shall contain a sworn declara-
26 tion describing the deficient performance

1 in detail and stating what defense to re-
2 movability or relief or protection from re-
3 moval the alien would have been likely to
4 obtain absent the deficient performance.”.

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

7 “(v) DEFICIENT PERFORMANCE OF
8 COUNSEL.—There is no time limit on the
9 filing of a motion to reopen on the grounds
10 that counsel or a certified representative
11 provided deficient performance if the alien
12 demonstrates that the alien exercised due
13 diligence in discovering and seeking to cure
14 counsel’s alleged deficient performance.”.

15 **SEC. 3. REGULATIONS.**

16 Not later than 180 days after the date of the enact-
17 ment of this Act, the Attorney General shall issue regula-
18 tions to carry out the amendments made by this Act.

19 **SEC. 4. EFFECTIVE DATE.**

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

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