

Young Center Proposal for Best Interests of the Child Standard¹

The following proposed section would incorporate the *best interests of the child standard* – a universally accepted principle—in the Immigration and Nationality Act (INA). The language would bring our immigration law in line with the child welfare laws of all 50 states, under which the state is required to consider the best interests of the child.² International law has recognized the special protection needs of unaccompanied and separated child refugees and asylum seekers for the best part of a century. Both those concerned with refugee rights and those focused on child welfare have identified this group as particularly vulnerable and deserving of international attention. The different measures set out in a range of international instruments were codified into one comprehensive treaty, the Convention on the Rights of the Child (CRC) in 1989.³

The term “best interests” appears in Sec. 1232 of the Wilberforce TVPRA.⁴ The proposed section would provide a definition to guide the assessment of best interests and thereby ensure best interests language is interpreted and applied consistently throughout the INA, and not a piecemeal consideration. It is important to note that the proposed section requires consideration of the *best interests of the child*. It does not in any way prohibit Immigration Judges, Asylum Officers, USCBP or USCIS officials from considering other important factors, for example safety to the community or national security concerns. Those and many other factors are, and will continue to be incorporated into the decision-making process.

SEC. _____. BEST INTEREST OF THE CHILD.

- (a) **IN GENERAL.** --- In all procedures and decisions concerning unaccompanied alien children that are made by a Federal agency or a Federal court pursuant to the Immigration and Nationality Act (8 U.S.C. 1101 et. seq.) or regulations implementing the Act, the best interests of the child shall be a primary consideration.
- (b) **DETERMINATIONS RELATED TO SECTION 101(A)(27)(J) OF THE IMMIGRATION AND NATIONALITY ACT.** --- Best interests determinations made in administrative or judicial proceedings described in section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101 (a)(27)(J)) shall be conclusive in assessing the best interests of the child under this section.
- (c) **FACTORS.** --- In assessing the best interests of the child, the entities referred to in subsection (a) shall consider, in the context of the child’s age and maturity, the following factors:

¹ The revisions to the best interests standard were drafted in consultation with Lisa Frydman, Center for Gender and Refugee Studies, Megan McKenna, Kids in Need of Defense (KIND), the Women’s Refugee Commission, and Aryah Somers, attorney.

² https://www.childwelfare.gov/systemwide/laws_policies/statutes/best_interest.cfm

³ United Nations, Convention on the Rights of the Child. Adopted by the United Nations General Assembly, 20 November 1989. Entry into force 2 September 1990.

⁴ 8 U.S.C. § 1232(c)(2) and (6) (2008).

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- 1. The views of the child.**
- 2. The safety and security considerations of the child.**
- 3. The mental and physical health of the child.**
- 4. The parent-child relationship and family unity, and the potential effect of separating the child from the child's parent or legal guardian, siblings, and other members of the child's extended biological family.**
- 5. The child's sense of security, familiarity and attachments.**
- 6. The child's well-being, including the need of the child for education and support related to child development.**
- 7. The child's ethnic, religious, and cultural and linguistic background.**