



Teleconference Recap: Child Status Protection Act (CSPA) – How Is It Working For You?

On January 31, 2011, the [CIS Ombudsman's Office](#) hosted a public teleconference on the Child Status Protection Act (CSPA) to share information from USCIS and interview Charles Wheeler, author of the book "AILA's Focus on the Child Status Protection Act," as well as numerous articles on the Child Status Protection Act.

Child Status Protection Act

The CSPA was enacted on August 6, 2002, to provide a remedy for applicants who would have otherwise aged out (turned 21) and lost the possibility of gaining an immigration benefit. The CSPA addresses problems with USCIS processing delays that are not within the control of children beneficiaries, which inevitably caused the beneficiaries to lose their status. The law has different formulas for how the CSPA age should be calculated depending on whether the person is the child of a U.S. citizen, the child of a green card holder, a derivative in the family- or employment-based categories, an asylee/refugee derivative, or a derivative based on the Violence Against Women Act (VAWA). Although it does not protect all applicants, the CSPA ensures that certain family members who turn 21 will not be penalized due to USCIS processing delays.

CSPA Coverage for Immediate Relatives

Immediate-relative children who were unmarried and under 21 at the time their U.S. citizen parent filed a Form I-130, Petition for Alien Relative, on their behalf are allowed to preserve their immediate relative status upon turning 21. Thus, they will never age out and are still eligible for the immigration benefit for which they applied. Under the prior law, they would have automatically moved into the first-preference category upon turning 21.

Children who were married and under 21 at the time their U.S. citizen parent filed an I-130 on their behalf and who subsequently divorced before turning 21 convert to the immediate-relative category. The CSPA preserves their immediate-relative status when they turn 21.

Children who were unmarried and under 21 at the time their legal permanent resident (LPRs) parent filed an I-130 on their behalf, and whose parent subsequently naturalized before the child turned 21, convert to the immediate-relative category. The CSPA preserves their immediate relative status when they turn 21.

CSPA Coverage for Children of Green Card Holders

Mr. Wheeler explained that unmarried children of LPRs have a strong incentive to remain in the second-preference 2A category, as opposed to “aging out” and moving into the 2B category, because the 2B category is backlogged much further than the 2A category. In an example, Mr. Wheeler noted that for citizens of most countries, the difference between being in the 2A versus the 2B category means waiting approximately five years for the visa to become current versus waiting almost nine years otherwise. For citizens of Mexico and the Philippines, the disparity and additional wait is even longer.

Children in the second-preference 2A category will preserve their 2A status upon turning 21, if they are under 21 using their “adjusted age” (see below) on the date the 2A category visa becomes available for their priority date.

The adjusted age is determined by subtracting the number of days the I-130 petition was pending before being approved by USCIS from the biological age:

Adjusted Age:

Current Age – (the number of days in between the I-130 adjudicated date and the date filed) = CSPA Age

Under current law, they have one year from the date they became current to seek adjustment of status or an immigrant visa.

CSPA and Family Derivatives

Derivative children in the family-based categories will retain their derivative status upon turning 21 if they are under 21 using their adjusted age on the date the principal beneficiary's visa becomes available.

The adjusted age is determined by subtracting the number of days the I-130 was pending before being approved from the biological age:

Adjusted Age:

Current Age – (the number of days the I-130 was pending before being approved by USCIS) = CSPA Age

Under the current law, they have one year from the date they became current to seek adjustment of status or an immigrant visa.

Derivative children in family-based categories who age out should automatically convert to the 2B category and retain the original priority date when their parent, after acquiring LPR status, files a new I-130 petition on their behalf. One interpretation is that the conversion is automatic and the LPR parent does not need to file a new I-130 on their child's behalf. Mr. Wheeler described that USCIS' current position is that only derivative children in the 2A category automatically convert to the 2B category upon aging out and only they can retain the original priority date upon the petitioner's filing a new I-130 petition on their behalf. USCIS' interpretation is that the automatic conversion and retention of the priority date does not apply to derivatives in other family-based categories.

CSPA and Employment Derivatives

Derivative children in employment-based categories will retain their derivative status upon turning 21 if they are under 21 using their "adjusted age" on the date their principal beneficiary's category becomes current. The adjusted age is determined by subtracting the number of days the I-140, Immigrant Petition for Alien Worker, was pending before approval from their biological age:

Adjusted Age:

Current Age – (the number of days the I-140 was pending before being approved by USCIS) = CSPA Age

Derivative children in employment-based categories have one year from the date they become current to seek adjustment of status or an immigrant visa. According to Mr. Wheeler, at the present time derivative children in employment-based cases who age out do not automatically convert to the family-based 2B category.

CSPA and Asylee/Refugee Derivatives

Children who are over 21 at the time their Form I-589, Application for Asylum and Withholding of Removal, is approved will receive derivative asylum status if:

- They were under 21 years of age at the time their parent filed Form I-589;
- They were named in that application; and
- They are residing in the United States.

Children who meet the first two requirements but are residing outside of the United States may be eligible to receive derivative asylum status under certain circumstances. Children of refugees who filed an application for refugee status have similar protection from aging out under the CSPA. The CSPA coverage also extends to age-out situations under VAWA.

One Year Filing Requirement

During the teleconference, Mr. Wheeler described compliance issues after a child's age is adjusted under the CSPA calculation. To preserve 2A status, the child of an LPR must seek to acquire LPR status within one year of the visa being available. If the child fails to do this, the CSPA protections will not apply and the child's biological age will control. USCIS has defined the term "sought to acquire" as filing for adjustment of status, filing for an immigrant visa, or filing a Form I-824, Application for Action on an Approved Application or Petition. As long as the child files a Form I-485, Application to Register Permanent Residence or Adjust Status, with USCIS within one year of the visa becoming available, he or she has satisfied this requirement. The date on which the visa becomes available is the first day of the month when the Visa Bulletin indicates that the priority date is current. The U.S. Department of State (DOS) concurs with this interpretation. DOS has also defined the term "sought to acquire" for those who are applying for a visa from outside of the U.S. through a U.S. consulate. Submitting a completed Form DS-230 Part 1, Application for Immigrant Visa and Alien Registration, within one year of the visa becoming available satisfies that requirement.

In some cases, the immigrant visa applicant will have returned the Form DS-230 Part 1 before the visa becomes available because the National Visa Center (NVC) often sends out the instruction packet in anticipation of the visa becoming current in the near future. In those cases, the applicant will satisfy the one-year filing requirement if the Form DS-230 Part 1 is received before the visa is current.

Derivative beneficiaries may not adjust status until the principal beneficiary has obtained LPR status. Mr. Wheeler suggested that may cause a problem for those who are in the United States and waiting for the principal beneficiary's application to be approved by DOS. They can file an application for an immigrant visa, explained below as a protective measure to satisfy the one-year requirement. Then they would withdraw it to pursue adjustment of status. Mr. Wheeler noted that the alternative – filing for adjustment of status before the principal beneficiary has immigrated – would not be permitted since the status requires that the applicant be eligible to receive an immigrant visa. For consular processing, a derivative child will satisfy the one-year filing requirement by submitting a separate Form DS-230 Part 1. It is not enough that the principal beneficiary submitted one application covering the principal.

Visa Retrogression and CSPA Beneficiaries

Mr. Wheeler noted that while the Visa Bulletin moves in both directions, most countries experienced visa retrogression in January and February 2011. He explained that children under 21 who filed for adjustment of status when they were current in the 2A category may find themselves ineligible to adjust due to visa retrogression. The National Benefits Center (NBC) follows a policy of holding onto the adjustment applications in those cases and adjudicating the case or rescheduling the adjustment interviews once the 2A visa category becomes current again. If the applicant attempts to file when the visa has retrogressed and is no longer available, the NBC will reject the application. Mr. Wheeler stated the NVC will not schedule the visa interview until the visa is available, and will suspend processing if the visa has retrogressed and is no longer current. Visa retrogression affects both the adjusted age calculation and the one year filing requirement.

Mr. Wheeler highlighted three categories of applicants affected by visa retrogression that may be interested in seeking CSPA coverage:

- Applicant has waited more than one year to seek LPR status after the visa became available, and then the visa retrogresses. That child may not take advantage of the CSPA and visa retrogression is essentially irrelevant.
- Applicant is under 21 using his or her adjusted age and then filed for adjustment of status during the one-year window before visa retrogression. The subsequent visa retrogression will not affect that child; his or her 2A status is locked in. It does not matter when the visa becomes available again or how long it takes to complete the adjustment process. The same outcome should occur if the visa retrogressed before the child filed for adjustment, but then became available again during that initial one-year window and the child filed for adjustment before the end of that one year.
- Applicant is under 21 using the adjusted age delays filing for adjustment of status and the visa retrogresses, preventing the child from filing before the one year period has passed. In that case, USCIS calculates the applicant's age using CSPA principles on the date the visa becomes available the second time. If the child is under 21 on that date, he or she has one year from that date to seek LPR status (file for adjustment of status, an immigrant visa, or an I-824 under the agencies' current interpretations). Thus, a second one year window opens up on the date the priority date becomes current again, but the applicant's CSPA age is calculated on that date, not on the date the 2A category first became current.

Mr. Wheeler detailed additional interpretations, including (1) the one year clock does not begin to run until the visa becomes available the second time. In other words, if the visa retrogressed before the one-year period had run, then the child would be provided a second one-year period when the visa became current again. This is similar to the current USCIS interpretation, only without the CSPA age calculation on the date the visa subsequently becomes available; and (2) visa retrogression merely tolls the running of the one year period, and it begins where it left off once the visa becomes available the second time.

LPR Naturalization & Impact on Unmarried Children

Under current law, an LPR parent's I-130 petition filed on behalf of an unmarried son or daughter over 21 will automatically convert from second-preference 2B to first preference when the LPR parent naturalizes. The same is true if the child was under 21 at the time the I-130 was filed but later turned 21 before the LPR naturalized; the petition converts from 2A to 2B. However, the first preference category is now backlogged much further than the second preference 2B category for beneficiaries from the Philippines, and on occasion it has been backlogged further for beneficiaries from Mexico. Therefore, when their parents naturalize, and these children over 21 convert from 2B to first preference, they actually extend the time they must wait for their visa to become current. The CSPA attempts to eliminate this disparity

and inequity by allowing these beneficiaries to elect whether they want to automatically convert to the first preference or opt out and stay in the 2B category.

Mr. Wheeler noted that USCIS has released a memo defining the opt-out request procedure. Affected children may file their request in writing with the USCIS District Office having jurisdiction over the beneficiary's residence. Beneficiaries who are approved will be treated as if their petitioning parents never naturalized. To expedite the request, include the following information about the case: case number, date of beneficiary's birth, name of petitioner, priority date, preference category, and a copy of the I-130 approval notice.

In response to questions from callers on the teleconference, Mr. Wheeler noted the May 2008 Neufeld memo. This USCIS policy says the one-year filing requirement is satisfied when an applicant files an adjustment application after his or her priority date becomes available for the second time. Mr. Wheeler said this argument can be extended to consular processing so that people subject to retrogression, and waiting outside the United States, should be able to come back in when their priority date becomes available the second time.

Contact

Please send inquiries related to CSPA to Margaret Gleason, Senior Advisor to the Ombudsman, at Margaret.Gleason@dhs.gov.

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How Is It Working For You? The CIS Ombudsman's Community Call-In Teleconference Series

The Office of the CIS Ombudsman is hosting teleconferences to discuss your interactions with U.S. Citizenship and Immigration Services (USCIS). Join us to share your comments, thoughts, and suggestions as well as any issues of concern.

Upcoming Teleconference

Child Status Protection Act: How Is It Working for You?

January 31, 2011, 2:00 – 3:00 p.m. EST

The Ombudsman's Office invites you to participate in a public teleconference on the "Child Status Protection Act – How Is It Working for You?" The Ombudsman's Office will share information from USCIS and will interview Charles Wheeler, author of "Focus on the Child Status Protection Act" about ongoing issues in Child Status Protection Act implementation.

How to Participate

To participate in these calls, please RSVP to cisombudsman.publicaffairs@dhs.gov specifying which call you would like to join. Participants will receive a return e-mail with the call-in information.

Teleconference procedures

1. To ensure your participation, we encourage you to RSVP 48 hours before the call.
2. Please send us your questions and issues related to the teleconference topics ahead of the call.

If you are unable to participate in these calls, please visit our Web page at www.dhs.gov/cisombudsman for upcoming teleconference dates. Also, if you have a topic of interest for a future call, please send it to cisombudsman.publicaffairs@dhs.gov.

Teleconference Recaps

- [FOIA: How Is It Working For You?](#)

Questions and Answers from Teleconferences

Links may go to www.uscis.gov.

- [Fee Waivers: How are They Working for You?](#)
- [USCIS Website Redesign: How is It Working for You?](#)
- [Change of Address: How is It Working for You?](#)
- [I-601 Waivers: How are They Working for You?](#)
- [Refugee Processing: How is It Working for You?](#)
- [USCIS Adoptions Petition Processing: How is It Working for You? \(PDF, 6 pages - 63 KB\)](#)
- [USCIS Refunds: How is the Process Working for You?](#)
- [The K3 Visa Family Unification Process: How is It Working for You?](#)
- [N-648 Medical Waivers - How are They Working for You?](#)
- [Questions and Answers on The New Naturalization Test](#)
- [USCIS Receipting Delay - How Does this Affect You?](#)
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