Questions and Answers

June 15, 2009

USCIS Guidance on the Applicability of the Child Status Protection Act (CSPA)

Introduction

The Child Status Protection Act (CSPA) amended the Immigration Nationality Act by changing how an alien is determined to be a child for purposes of immigrant classification. The Act permits an applicant for certain benefits to retain classification as a "child," even if he or she has reached the age of 21.

Since its enactment on Aug. 6, 2002, USCIS provided several field guidance memoranda regarding the adjudication of immigration benefits in accordance with the CSPA. A memo issued April 30, 2008 made some substantive changes to how USCIS applies CSPA.

Questions and Answers

Q. What is Child Status Protection Act (CSPA)?
A. A "child" is defined in the Act as an unmarried person under the age of 21. Prior to the enactment of the CSPA on August 6, 2002, anyone who turned 21 at any point prior to receiving permanent residence could not be considered a child for immigration purposes. This situation is described as "aging out." Congress recognized that many people were aging out because of large backlogs and long processing times for visa petitions. CSPA is designed to protect an individual's immigration classification as a child when the person aged out due to excessive processing times.

Q. How does CSPA work?

If you are…	
Immediate Relative of a Naturalized U.S. Citizen	**Preference Classification for Permanent Residence or Derivative**
The child's age freezes at time the visa petition is filed (Form I-130). If a child becomes an immediate relative through the petitioner's naturalization or the termination of the beneficiary's marriage while the beneficiary is under 21, the child's age freezes on the date such action occurred.	CSPA allows the time a visa petition was pending to be subtracted from an applicant for permanent residence's biological age so that the applicant is not penalized for the time in which USCIS did not adjudicate the petition.

Q. What are the general requirements to benefit from CSPA?
A. Several requirements must be met to be eligible for CSPA age out protection:

- The child must have been the beneficiary (principal or derivative) of a pending or approved visa petition on or after August 2, 2002.
- The child must not have had a final decision on an application for adjustment of status or an immigrant visa before the date of enactment of the CSPA.
- The child must "seek to acquire" permanent residence within one year of a visa becoming available. USCIS interprets "seek to acquire" as having a Form I-824, *Application for Action on*

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an Approved Application or Petition, filed on the child's behalf or the filing of a Form I-485, *Application to Register Permanent Residence or Adjust Status*, or Form DS-230, Application for Immigrant Visa and Alien Registration from the Department of State. The date of visa availability means the first day of the first month a visa in the appropriate category was listed as available in the Department of State's visa bulletin or the date the visa petition was approved (if a visa was already available in that category).

Q. Are people who did not file an application for permanent residence within one year of the visa becoming available still able to apply under CSPA?
A. Generally, no. However, because of the recent change in interpretation of the CSPA, USCIS will permit certain individuals to apply outside of this one year period.

Individuals that are eligible to apply for permanent residence under CSPA *after* one year of a visa becoming available include:

- Beneficiaries (or derivatives) of a visa petition that was approved prior to August 6, 2002 AND
- had not received a final decision on an application for permanent residence based on that visa petition prior to August 6, 2002 AND
- the visa became available on or after August 7, 2001 AND
- who met all of the other eligibility requirements for CSPA (see above)

Q. What can I do if I had an application for permanent residence that was denied because I aged out?
A. If you would have been eligible for CSPA protection under the revised guidance, you can file a Motion to Reopen/Reconsider with the office that denied the application with no fee if you meet the following requirements:

- you were the beneficiary of a visa petition that was approved prior to August 6, 2002 and filed for permanent residence after August 6, 2002 AND
- you would have been considered a child under CSPA requirements (see above) AND
- you applied for permanent residence within one year of visa availability AND
- your application was denied solely because you aged out

When an application is denied, the applicant receives a written decision that cites the section of law and describes why the alien is not eligible for the benefit. An application may be denied for one reason or for multiple reasons. If an application was denied for more than one reason including aging-out or for any reason other than for aging out, the alien is not eligible to file a motion to reopen under the new guidance.

Q. Is there a deadline to file under the new guidance?
A. No.

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