USCIS Policy Manual

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Volume 7 - Adjustment of Status

Part A - Adjustment of Status Policies and Procedures

Chapter 7 - Child Status Protection Act

A. Purpose of the Child Status Protection Act

The core purpose of the Child Status Protection Act (CSPA) [1] was to alleviate the hardships faced by certain foreign nationals who were previously classified as children for immigrant visa purposes, but who, due to the time required to adjudicate petitions, had turned 21 years old and consequently became ineligible to receive such immigrant visas.[2]

Section 101(b)(1) of the Immigration and Nationality Act (INA) defines a child as a person who is unmarried and under 21 years old.[3] CSPA does not alter this definition. Instead, CSPA provides methods for calculating a foreign national's age for immigrant visa purposes. The resulting age is known as the foreign national's "CSPA age."

CSPA does not change the requirement that the foreign national must be unmarried in order to remain eligible for classification as a child for immigration purposes.

B. Child Status Protection Act Applicability

Foreign Nationals Covered by Child Status Protection Act

CSPA applies only to those foreign nationals specified in the statute:

- Immediate relatives (IRs);
- Family-sponsored preference principals and derivatives;
- Violence Against Women Act (VAWA) self-petitioners and derivatives;[4]
- Employment-based preference derivatives;[5]
- Diversity immigrant visa (DV) derivatives;
- Derivative refugees;[6] and
- Derivative asylees.

CSPA provisions vary based on the immigrant category of the applicant. Certain provisions of the CSPA apply to some categories of immigrants but not others. Such provisions and details regarding eligibility are described in

the following subsections.[7] CSPA only covers those immigrants explicitly listed in the statute; it does not apply to any other immigrants or nonimmigrants.

CSPA applies to both foreign nationals abroad who are applying for an immigrant visa through the Department of State (DOS) and foreign nationals physically present in the United States who are applying for adjustment of status through USCIS. This chapter primarily focuses on the impact of CSPA on adjustment applicants, though the same principles generally apply to foreign nationals seeking an immigrant visa through DOS.[8]

Effective Date

CSPA went into effect on August 6, 2002. Adjustment applicants are eligible for CSPA consideration if either the qualifying application (Application to Register Permanent Residence or Adjust Status (Form I-485)) or one of the following underlying forms was filed or pending on or after the effective date:

- Petition for Alien Relative (Form I-130);
- Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360);
- Immigrant Petition for Alien Worker (Form I-140);
- Application for Asylum and for Withholding of Removal (Form I-589);
- Registration for Classification as a Refugee (Form I-590); or
- Refugee/Asylee Relative Petition (Form I-730).[9]

CSPA does not apply to adjustment applications that were subject to a final determination prior to the effective date. However, if the qualifying underlying form was approved prior to the effective date, an applicant who applies for adjustment of status after the effective date may still qualify for CSPA coverage.[10]

Certain Preference Applicants with No Adjustment Application Pending on the Effective Date

CSPA may also still apply to a preference applicant whose immigrant petition was approved prior to August 6, 2002, and who did not have an adjustment application pending on August 6, 2002, but who subsequently applied for adjustment and was denied solely for aging out. The applicant may file an untimely motion to reopen or reconsider without a filing fee if:

- The applicant would have been considered under the age of 21 under applicable CSPA rules;
- The applicant applied for adjustment of status within 1 year of visa availability; and
- USCIS denied the adjustment application solely because the applicant had aged out.

Impact of USA Patriot Act

Special rules apply in cases where an adjustment applicant would otherwise age out on or after August 6, 2002. Under Section 424 of the USA PATRIOT Act, if a qualifying form was filed before September 11, 2001, then the applicant is afforded an additional 45 days of eligibility.[11]

C. Immediate Relatives

1. Applicability

In order to qualify for CSPA:

- The adjustment applicant must have had a qualifying Petition for Alien Relative (Form I-130), Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360), or adjustment application pending on or after the CSPA effective date;
- The applicant must have been under the age of 21 and unmarried at the time the qualifying Form I-130 or Form I-360 was filed; and
- The applicant must remain unmarried.

2. Determining Child Status Protection Act Age

For IRs and IR self-petitioners or derivatives under VAWA, a child's age is frozen as of the date the Form I-130 or Form I-360 is filed. If the adjustment applicant was under the age of 21 at the time the petition was filed, the applicant is eligible for CSPA and will not age out.

D. Derivative Asylees

CSPA allows children who turn 21 years old after an asylum application is filed but prior to adjudication to continue to be classified as children and remain eligible for derivative asylum status and adjustment of status.

1. Applicability

In order to qualify for CSPA:

- The adjustment applicant must have had a qualifying Refugee/Asylee Relative Petition (Form I-730), principal applicant's Application for Asylum and for Withholding of Removal (Form I-589), or adjustment application pending on or after the CSPA effective date;
- The applicant must have been under the age of 21 and unmarried at the time the principal asylum applicant's Form I-589 was filed; and
- The applicant must be unmarried at the time he or she seeks adjustment of status.

2. Determining Child Status Protection Act Age

For derivative asylees, an adjustment applicant's CSPA age is his or her age on the date the principal applicant's Form I-589 is filed. In other words, the applicant's age is frozen on the date the Form I-589 is filed. If the applicant was under the age of 21 at the time of filing, the applicant is eligible for CSPA and will not age out.

Generally, in order to establish eligibility, a derivative asylee must have been listed on the principal applicant's Form I-589 prior to a final decision on the principal's asylum application. However, the derivative asylee may overcome this by providing evidence establishing the parent-child relationship, including evidence of the child's age, and a reasonable explanation as to why the derivative was not included on the principal's Form I-589.[12]

E. Derivative Refugees

CSPA allows children who turn 21 years old after a refugee application is filed but prior to adjudication to continue to be classified as children and remain eligible for derivative refugee status. For purposes of adjustment of status of a derivative refugee, CSPA protection is not needed because a derivative refugee does not need to remain the child of the principal refugee in order to adjust status under INA 209.[13]

1. Applicability

In order to qualify for CSPA:

- The applicant must have had a qualifying Registration for Classification as a Refugee (Form I-590) or Refugee/Asylee Relative Petition (Form I-730) pending on or after the CSPA effective date; and
- The applicant must have been under the age of 21 and unmarried at the time the qualifying Form I-590 was filed.[14]

While the child must have been unmarried in order to qualify for refugee derivative status, he or she does not need to remain unmarried in order to adjust status under INA 209.[15]

2. Determining Child Status Protection Act Age

For derivative refugees, an adjustment applicant's CSPA age is his or her age on the date the principal applicant's Form I-590 is filed. The date a Form I-590 is considered filed is the date of the principal refugee parent's interview with a USCIS officer. The applicant's age is frozen on the date of the refugee parent's interview. So long as the child was under 21 on the date of the interview, he or she will not age out of eligibility for derivative refugee status or adjustment of status.

Generally, in order to qualify, the derivative refugee must be listed as a child on the principal applicant's Form I-590 prior to a final decision. However, the derivative refugee may overcome this by providing evidence establishing the parent-child relationship, including evidence of the child's age, and a reasonable explanation as to why the derivative was not included on the principal's Form I-590.[16]

F. Family and Employment-Based Preference and Diversity Immigrants

1. Applicability

CSPA applies differently to family and employment-based preference and DV adjustment applicants than it does to refugee, asylee, and IR applicants. Instead of freezing the age of the applicant on the filing date, CSPA provides a formula by which the applicant's CSPA age is calculated that takes into account the amount of time the qualifying petition was pending. Furthermore, the applicant's eligibility depends not only on the CSPA age calculation but also on whether the applicant sought to acquire lawful permanent residence within 1 year of visa availability.[17]

In order for a family or employment-based preference or DV applicant to qualify for CSPA, he or she must meet the following requirements:

- The applicant must have had a qualifying petition[18] or adjustment application pending on or after the CSPA effective date;
- The applicant's calculated CSPA age must be under 21 years old;
- The applicant must remain unmarried; and
- The applicant must have sought to acquire lawful permanent residence within 1 year of visa availability, absent extraordinary circumstances.[19]

2. Child Status Protection Act Age Calculation

For family (including VAWA)[20] and employment-based preference and DV categories, an adjustment applicant's CSPA age is calculated by subtracting the number of days the petition was pending (pending time)

from the applicant's age on the date the immigrant visa becomes available to him or her (age at time of visa availability).[21] The formula for calculating CSPA age is as follows:

Age at time of visa availability - Pending Time = CSPA Age

While an applicant must file an adjustment application or otherwise seek lawful permanent resident status in order to benefit from CSPA, the date the applicant files an adjustment application is not relevant for the CSPA age calculation.[22]

Example

The applicant is 21 years and 4 months old when an immigrant visa becomes available to him or her. The applicant's petition was pending for 6 months. The applicant's CSPA age is calculated as follows:

21 years and 4 months - 6 months = 20 years and 10 months

Therefore, the applicant's CSPA age is under 21.

3. Determining Length of Time Petition Was Pending

For family and employment-based preference adjustment applicants, the length of time a petition was pending (pending time) is the number of days between the date that it is properly filed (filing date)[23] and the approval date. The formula for determining the length of time the petition was pending is as follows:

Approval Date - Filing Date = Pending Time

Example

The applicant's mother filed a petition on the applicant's behalf on February 1, 2016. USCIS approved the petition on August 1, 2016.

August 1, 2016 - February 1, 2016 = 6 months (or 182 days)

Therefore, the applicant's petition pending time is 6 months (or 182 days).

Pending time includes administrative review, such as motions and appeals, but does not include consular returns.

For DV applicants, the number of days the petition was pending is the period of time between the first day of the DV application period for the program year in which the principal applicant qualified and the date on which notifications that entrants have been selected become available.[24] In other words, the pending time is the period of time between the start of the DV Program registration period to the date of the DV Selection Letter.

Example

The DV Program registration period began on October 1, 2012, and the DV Selection Letter is dated May 1, 2013.

May 1, 2013 - October 1, 2012 = 7 months

Therefore, the applicant's pending time is 7 months.

4. Determining Age at Time of Visa Availability

In order to calculate an adjustment applicant's CSPA age according to the formula above, the officer must first determine the age at time of visa availability.

In order for the immigrant visa to be considered available, two conditions must be met:

- The petition must be approved; and
- The visa must be available for the immigrant preference category and priority date.

Therefore, the date the visa is considered available for family and employment-based preference applicants is the later of these two dates:

- The date of petition approval; or
- The first day of the month of the DOS Visa Bulletin that indicates availability for that immigrant preference category and priority date in the Final Action Dates chart. [25]

For DVs, the date a visa is considered available is the first day on which the principal applicant's rank number is current for visa processing.[26]

Determining When an Applicant May File an Adjustment Application

Adjustment applicants can determine when to file their applications by referring first to the USCIS website and then to the DOS Visa Bulletin.[27]

In September 2015, DOS and USCIS announced a revision to the Visa Bulletin, which created two charts of dates.[28] DOS publishes a new Visa Bulletin on a monthly basis. Since October 2015, the Visa Bulletin has featured two charts per immigrant preference category:

- Dates for Filing chart; and
- Final Action Dates chart.

USCIS designates one of the two charts for use by applicants each month.[29] Applicants must check the USCIS website to see which chart to use in determining when they may file adjustment applications. Applicants cannot rely on the DOS Visa Bulletin alone because the Visa Bulletin merely publishes both charts; it does not state which chart can be used. The DOS Visa Bulletin website contains a clear warning to applicants to consult with the USCIS website for guidance on whether to use the Dates for Filing chart or Final Action Dates chart.

Visa Bulletin Final Action Dates Chart used for Child Status Protection Act Age Determination

While an adjustment applicant may choose to file an adjustment application based on the Dates for Filing chart, USCIS uses the Final Action Dates chart to determine the applicant's age at the time of visa availability for CSPA age calculation purposes. Age at time of visa availability is the applicant's age on the first day of the month of the DOS Visa Bulletin that indicates availability according to the Final Action Dates chart.

An applicant who chooses to file based on the Dates for Filing chart may ultimately be ineligible for CSPA if his or her calculated CSPA age is 21 or older at the time his or her visa becomes available according to the Final Action Dates chart. In such cases where the applicant's CSPA age is 21 or older, USCIS denies the application.

5. Impact of Visa Retrogression on Child Status Protection Act Age Determination

The impact of visa retrogression depends on:

- Whether the adjustment applicant filed the application before or after the retrogression, and

- Whether the applicant filed the application based on the Dates for Filing or the Final Action Dates chart.

Retrogression After Applicant Filed Adjustment Application

If an eligible adjustment applicant filed an adjustment application but the visa availability date subsequently retrogresses, USCIS holds the application until the visa becomes available again and the application can be adjudicated.

If the applicant filed an adjustment application based on the Final Action Dates chart, and his or her CSPA age at the time of filing the application was under 21, then the applicant's CSPA age is locked in through final adjudication of the application.[30] However, if the applicant filed based on the Dates for Filing chart, the applicant's age is not immediately locked in at the time of filing. Rather, the applicant's CSPA age is calculated and locked in when his or her visa becomes available according to the Final Action Dates chart.

Example 1: Application Filed Based on Dates for Filing Chart

The applicant files an adjustment application in March based on the Dates for Filing chart. However, it is not until May 1 that the Final Action Dates chart indicates availability for the applicant's immigrant preference category and priority date (based on the Final Action Dates chart). In July, the visa retrogresses.

In this case, USCIS calculates the applicant's CSPA age using May 1 as the visa availability date. If the applicant's calculated CSPA age was under 21, his or her CSPA age is locked in through final adjudication and USCIS holds the application until the visa becomes available again (based on the Final Action Dates chart).

Example 2: Application Filed Based on Final Action Dates Chart

In May, the Final Action Dates chart indicates availability for the applicant's immigrant preference category and priority date. The applicant files an adjustment application in June, and then the visa retrogresses in July (based on the Final Action Dates chart). In this case, USCIS calculates the applicant's CSPA age using May 1 as the visa availability date (based on the Final Action Dates chart). If the applicant's calculated CSPA age was under 21, his or her CSPA age is locked in through final adjudication and USCIS holds the application until the visa becomes available again.

For both examples, if the applicant's calculated CSPA age was 21 or older using the May 1 visa availability date, the applicant has already aged out and will not be eligible when the visa becomes available again. In these cases, USCIS denies the application.

Retrogression Before Applicant Files Adjustment Application

If a visa initially becomes available (based on the Final Action Dates chart) and then retrogresses before the adjustment applicant has filed an adjustment application, the applicant's age is not locked in. When the visa becomes available again (based on the Final Action Dates chart), the applicant's age is calculated based on the new visa availability date. If the applicant's CSPA age is over 21 at the time of subsequent visa availability, he or she is no longer eligible for CSPA. Therefore, it is always in the applicant's best interest to apply for adjustment of status as soon as possible when a visa first becomes available according to the Final Action Dates chart, so as to lock in his or her CSPA age.

Example 3: Retrogression Before Filing

In May, the Final Action Dates chart indicates availability for the applicant's immigrant preference category and priority date. In July, the visa retrogresses before the applicant has filed an adjustment application. Because the applicant has not yet filed an adjustment application, his or her age is not locked in and will be calculated based upon the next visa availability date.

G. Sought to Acquire Requirement

In order for family and employment-based preference and DV adjustment applicants to benefit from CSPA, they must seek to acquire lawful permanent residence status within 1 year of visa availability.[31] This requirement does not apply to refugee derivatives, asylee derivatives, and IRs.[32]

1. Satisfying the Sought to Acquire Requirement

An adjustment applicant may satisfy the sought to acquire requirement by:

- Properly filing an Application to Register Permanent Residence or Adjust Status (Form I-485);[33]
- Submitting a completed Immigrant Visa Electronic Application (Form DS-260), Part I to the Department of State;[34] or
- Having a properly filed Application for Action on an Approved Application or Petition (Form I-824) filed on the applicant's behalf.[35]

Actions an applicant might take prior to filing an adjustment application, such as contacting an attorney or organization about initiating the process for obtaining a visa that has become available or applying for permanent residence, are not equivalent to filing an application and do not fulfill the sought to acquire requirement. However, USCIS may excuse the applicant from the requirement as an exercise of discretion if the applicant is able to establish that the failure to satisfy the sought to acquire requirement within 1 year was the result of "extraordinary circumstances."[36]

From the date of visa availability, the applicant has 1 year to fulfill the sought to acquire requirement. If the applicant does not seek to acquire within 1 year of visa availability, he or she cannot benefit from the age-out protections of the CSPA. Officers should review the comprehensive list of final action dates broken out by year on the DOS Visa Bulletin website to determine whether the applicant had a prior 1-year period of visa availability. Officers may use the comprehensive list to track movement of dates over time but should confirm consequential dates in the relevant monthly bulletin.

2. Visa Availability and the Sought to Acquire 1-Year Period

The date of visa availability is the date of petition approval or the first day of the month of the DOS Visa Bulletin that indicates availability for that immigrant preference category and priority date according to the Final Action Dates chart, whichever is later.[37] From the date of visa availability, family and employment-based preference and DV adjustment applicants have 1 year in which to seek to acquire permanent resident status in order to qualify for CSPA coverage.[38]

While the Final Action Dates chart determines the date of visa availability for CSPA purposes and starts the 1-year clock, an applicant may choose to file an adjustment application based on the Dates for Filing chart. In this case, the applicant will have filed prior to the date of visa availability according to the Final Action Dates chart. If an applicant files based on the Dates for Filing chart prior to the date of visa availability according to the Final Action Dates chart, USCIS considers the applicant to have met the sought to acquire requirement. However, the applicant's CSPA age calculation is dependent on visa availability according to the Final Action Dates chart.[39] Applicants who file based on the Dates for Filing chart may not ultimately be eligible for CSPA if their calculated CSPA age based on the Final Action Dates chart is 21 or older.

Impact of Visa Retrogression on the 1-Year Sought to Acquire Clock

When visa availability retrogresses before a continuous 1-year period has elapsed, the 1-year clock "resets" upon any subsequent visa availability. If the visa retrogresses before the applicant has had 1 full year in which to seek

to acquire, the 1-year clock starts again when the visa once again becomes available. The adjustment applicant then has 1 full year from the subsequent date of visa availability to seek to acquire.

If a continuous 1-year period of visa availability elapsed and the applicant did not seek to acquire during the 1-year period, the applicant cannot benefit from the age-out protections of the CSPA. Any retrogression and subsequent visa availability does not reset the clock because the applicant has already had a continuous 1-year period of time in which to seek to acquire.

For purposes of CSPA, only retrogression in the Final Action Dates chart is relevant. The 1-year clock begins when a visa becomes available according to the Final Action Dates chart. If the Final Action Dates chart retrogresses before 1 year elapses, the clock resets when a visa becomes available again according to the same chart. Any retrogression in the Dates for Filing chart is not considered retrogression for CSPA purposes and does not reset the 1-year clock.

Example 1

A visa initially becomes available to the applicant according to the Final Action Dates chart on March 1, 2016. Four months later on July 1, 2016, visa availability according to the Final Action Dates chart retrogresses. The visa subsequently becomes available again the following year on May 1, 2017. Since the applicant only had 4 months of time in which to seek to acquire during the initial period of availability, the 1-year clock resets on May 1, 2017, giving the applicant a fresh 1- year period in which to seek to acquire.

Example 2

A visa initially becomes available to the applicant according to the Final Action Dates chart on March 1, 2016. Twelve and a half months later, on March 15, 2017, visa availability according to the Final Action Dates chart retrogresses. Just a few short months later, on June 1, 2017, the visa becomes available again according to the Final Action Dates chart. Under these facts, the 1-year period does not reset for the applicant in this case. It does not matter that a visa became available again on June 1 because the applicant has already had the opportunity to seek to acquire for a continuous 1-year period. The applicant cannot benefit from the age-out protections of the CSPA.

3. Extraordinary Circumstances

Adjustment applicants who fail to fulfill the sought to acquire requirement within 1 year of visa availability may still be able to benefit from CSPA if they can establish that their failure to meet the requirement was the result of extraordinary circumstances.[40]

In order to establish extraordinary circumstances, the applicant must demonstrate that:

- The circumstances were not created by the applicant through his or her own action or inaction;
- The circumstances directly affected the applicant's failure to seek to acquire within the 1-year period; and
- The delay was reasonable under the circumstances.

Examples of extraordinary circumstances that may warrant a favorable exercise of discretion include, but are not limited to:

- Serious illness or mental or physical disability of the applicant during the 1-year period;
- Legal disability, such as instances where the adjustment applicant suffered from a mental impairment, during the 1-year period;

- Instances where a timely adjustment application was rejected by USCIS as improperly filed and was returned to the applicant for corrections where the deficiency was corrected and the application re-filed within a reasonable period thereafter;

- Death or serious illness or incapacity of the applicant's attorney or legal representative or a member of the applicant's immediate family; and

- Ineffective assistance of counsel, when certain requirements are met.

An applicant may only establish extraordinary circumstances due to ineffective assistance of counsel (the applicant's legal representative or attorney) if he or she completes the following:

- The applicant must submit an affidavit explaining in detail the agreement that was entered into with counsel regarding the actions to be taken and what information, if any, counsel provided to the applicant regarding such actions;

- The applicant must demonstrate that he or she has made a good faith effort to inform counsel whose integrity or competence is being questioned of the allegations brought against him or her and that counsel has been given an opportunity to respond; and

- The applicant must indicate whether a complaint has been filed with the appropriate disciplinary authorities about any violations of counsel's legal or ethical responsibilities, or explain why a complaint has not been filed.

When considering a claim of extraordinary circumstances, the officer should weigh the totality of the circumstances and the connection between the circumstances presented and the failure to meet the sought to acquire requirement within the 1-year period, as well as the reasonableness of the delay. In order to warrant a favorable exercise of discretion, the circumstances must truly be extraordinary and beyond the adjustment applicant's control.

Commonplace circumstances, such as financial difficulty, minor medical conditions, and circumstances within the applicant's control (such as when to seek counsel or begin preparing the application package), are not considered extraordinary. Furthermore, the fact of being or having been a child is common to all applicants seeking protection under the CSPA and does not constitute extraordinary circumstances.

When an applicant seeks to acquire after the 1-year period of visa availability has elapsed and does not provide an explanation or evidence of extraordinary circumstances, the officer issues a notice of intent to deny (NOID) to give the applicant an opportunity to rebut the apparent ineligibility.

4. Remedies for Certain Adjustment Applicants Who Failed to Seek to Acquire

Motions to Reopen Following Matter of O. Vazquez

Denials that were based on the failure to seek to acquire and issued prior to the decision in *Matter of O. Vazquez* [41] were proper based on the law in effect at the time of the decision. However, USCIS considers untimely motions to reopen for denials issued after the *Matter of O. Vazquez* precedent (June 8, 2012), but only if the denial was based solely on the adjustment applicant's failure to seek to acquire within 1 year.

Applicants must file the Notice of Appeal or Motion (Form I-290B) with the proper fee and should present their claim that the finding in *Matter of O. Vazquez* constitutes changed circumstances justifying the reopening of the adjustment application. Officers consider new evidence of extraordinary circumstances submitted with the motion to reopen, consistent with the guidance in this section.

Certain Preference Applicants Who Did Not Have an Adjustment Application Pending on the Effective Date

CSPA may still apply for a preference applicant who did not have an adjustment application pending on August 6, 2002, and who did not timely seek to acquire. A preference applicant whose visa became available on or after August 7, 2001 who did not seek to acquire within 1 year of such visa availability but who would have qualified for CSPA coverage had he or she applied, but for prior policy guidance concerning the CSPA effective date, may still apply for adjustment of status.

H. Summary of Child Status Protection Act Applicability

The following table outlines immigrant categories covered by CSPA, methods by which CSPA age is calculated, whether the sought to acquire requirement applies, and references to legal authorities and additional guidance.

Summary of CSPA Applicability

Immigrant Category	CSPA Age Determination	Sought to Acquire Requirement	Legal Authorities and Additional Guidance
Derivative Refugees	CSPA age is frozen on the date the principal refugee parent's Form I-590 is filed (the date of the parent's interview)	Not Applicable	See INA 207(c)(2)(B) and INA 209(a)(1). See Part L, Refugee Adjustment, Chapter 2, Eligibility Requirements, Section F, Special Considerations for Refugee Adjustment of Status Applicants, Subsection 2, Child Status Protection Act Provisions [7 USCIS-PM L.2(F)(2)].
Derivative Asylees	CSPA age is frozen on the date the principal asylee parent's Form I-589 is filed.	Not Applicable	See INA 208(b)(3)(B). See Part M, Asylee Adjustment, Chapter 2, Eligibility Requirements, Section C, Derivative Asylee Continues to be the Spouse of Child of the Principal Asylee, Subsection 2, Derivative Asylees Ineligible for Adjustment of Status [7 USCIS-PM M.2 (C)(2)].
Immediate Relatives (including VAWA)[42]	CSPA age is frozen on the date the Form I-130 or Form I-360 is filed.	Not Applicable	See INA 201(f). See AFM 21.2(e), The Child Status

			Protection Act of 2002.
Family-Sponsored Preference Principals and Derivatives (including VAWA)[43]	CSPA age is calculated by subtracting the number of days the petition was pending from the applicant's age on the date an immigrant visa becomes available to the applicant.	Applicant must seek to acquire lawful permanent residence within 1 year of the visa becoming available.	See INA 203(h). See AFM 21.2(e), The Child Status Protection Act of 2002.
Employment-Based Preference Derivatives	CSPA age is calculated by subtracting the number of days the petition was pending from the applicant's age on the date an immigrant visa becomes available to the applicant.	Applicant must seek to acquire lawful permanent residence within 1 year of the visa becoming available.	See INA 203(h).
Diversity Immigrant Visa Derivatives	CSPA age is calculated by subtracting the number of days the petition was pending from the applicant's age on the date an immigrant visa becomes available to the applicant.	Applicant must seek to acquire lawful permanent residence within 1 year of the visa becoming available.	See INA 203(h).

Footnotes

1. See Pub. L. 107-208 (August 6, 2002).

2. The situation in which foreign nationals can no longer be classified as children for immigrant visa purposes due to turning 21 is commonly referred to as "aging out."

3. See INA 101(b)(1).

4. In addition to CSPA protections, VAWA self-petitioners and derivatives who turn 21 prior to adjusting status may be eligible for age-out protections provided in the Victims of Trafficking and Violence Protection Act (VTPVA) of 2000, Pub. L. 106-386 (October 28, 2000). VAWA self-petitioners and derivatives who do not qualify for CSPA may qualify for age-out relief under VTPVA. See INA 204(a)(1)(D)(i)(I) and INA 204(a)(1)(D)(i)(III). Officers should follow guidance in Age-Out Protections Afforded Battered Children Pursuant to The Child Status Protection Act and the Victims of Trafficking and Violence Protection Act, issued August 17, 2004.

5. Eligible derivatives of special immigrants are covered by CSPA as their immigrant visas fall under the employment-based fourth preference visa category. For more information, see Part F, Special Immigrant-Based (EB-4) Adjustment [7 USCIS-PM F].

6. The CSPA protects a derivative refugee from aging out prior to his or her refugee admission, but such protection is not needed at the adjustment stage because a derivative refugee does not need to remain the spouse or child of the principal refugee in order to adjust status under INA 209. See INA 209(a)(1).

7. See Section H, Summary of Child Status Protection Act Applicability [7 USCIS-PM A.7(H)] for a condensed guide to basic provisions for each category of CSPA-eligible immigrants.

8. For information about the impact of CSPA on applicants for an immigrant visa, see 9 FAM 502.1-1(D), Child Status Protection Act.

9. Pending time may also include administrative review, such as motions and appeals, but does not include consular returns.

10. See *Matter of Avila-Perez*, 24 I&N Dec. 78 (BIA 2007).

11. See Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Pub. L. 107-56, 115 Stat. 272, 362 (October 26, 2001).

12. See Part M, Asylee Adjustment, Chapter 2, Eligibility Requirements, Section C, Derivative Asylee Continues to be the Spouse or Child of the Principal Asylee [7 USCIS-PM M.2(C)].

13. See INA 209(a)(1).

14. The date a Form I-590 is considered filed is the date of the principal refugee parent‘s interview with a USCIS officer.

15. See INA 209(a)(1).

16. See Part L, Refugee Adjustment, Chapter 2, Eligibility Requirements, Section F, Special Considerations for Refugee Adjustment of Status Applicants, Subsection 2, Child Status Protection Act Provisions [7 USCIS-PM L.2(F)(2)].

17. See Section G, Sought to Acquire Requirement [7 USCIS-PM A.7(G)] for detailed information.

18. Qualifying underlying forms include Petition for Alien Relative (Form I-130); Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360); and Immigrant Petition for Alien Worker (Form I-140). For DVs, the qualifying petition is the DV Program electronic entry form. See 9 FAM 502.6-4, Diversity Visa Processing.

19. See INA 203(h) and 204(k).

20. In addition to CSPA protections, VAWA self-petitioners and derivatives who turn 21 prior to adjusting status may be eligible for age-out protections provided in the Victims of Trafficking and Violence Protection Act (VTPVA) of 2000, Pub. L. 106-386 (October 28, 2000). VAWA self-petitioners and derivatives who do not qualify for CSPA may qualify for age-out relief under VTPVA. See INA 204(a)(1)(D)(i)(I) and INA 204(a)(1)(D)(i)(III). Officers should follow guidance in Age-Out Protections Afforded Battered Children Pursuant to The Child Status Protection Act and the Victims of Trafficking and Violence Protection Act, issued August 17, 2004.

21. For CSPA purposes, the age at time of visa availability is the applicant's age when his or her visa is available according to the Final Action Dates chart in the DOS Visa Bulletin. See Subsection 4, Determining Age at Time of Visa Availability [7 USCIS-PM A.7(F)(4)]. VAWA derivatives who age out prior to adjusting status are considered self-petitioners for preference status and retain the priority date of their parents' Form I-360 VAWA petition. See INA 204(a)(1)(D)(i)(III).

22. See Section G, Sought to Acquire Requirement [7 USCIS-PM A.7(G)] for detailed information.

23. While the priority date is often the same as the filing date (also referred to as the receipt date), there are instances in which the priority date is not the same, such as in employment-based cases based on the filing of a labor certification. The priority date should not be used for purposes of determining CSPA eligibility. Instead, the filing date (receipt date) is the appropriate date.

24. For DVs, the qualifying petition is the DV Program electronic entry form. See 9 FAM 502.6-4, Diversity Visa Processing.

25. In addition to providing the individual monthly visa bulletins, the DOS Visa Bulletin website also provides a comprehensive list of final action dates broken out by year. Officers may use the comprehensive list to track movement of dates over time but should confirm consequential dates in the relevant monthly bulletin.

26. The rank number is the number following the two-letter region code and should correspond with cut-off numbers available in the Visa Bulletin.

27. For more information, see Chapter 3, Filing Instructions, Section B, Definition of Properly File, Subsection 4,Visa Availability Requirement [7 USCIS-PM A.3(B)(4)] and Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [7 USCIS-PM A.6(C)]. DV applicants also use the DOS Visa Bulletin to determine visa availability.

28. See USCIS.gov.

29. USCIS typically designates one of the two charts within 1 week of the publication of the Visa Bulletin.

30. In order to qualify under CSPA, the applicant must also remain unmarried through final adjudication and must seek to acquire within 1 year of availability. See Section G, Sought to Acquire Requirement [7 USCIS-PM A.7(G)].

31. See INA 203(h)(1)(A). Seek or sought to acquire is used as shorthand in this chapter to refer to this requirement.

32. VAWA preference cases are subject to the sought to acquire requirement, but VAWA IRs are not.

33. See Chapter 3, Filing Instructions, Section B, Definition of Properly File [7 USCIS-PM A.3(B)].

34.

Submitting a Form DS-260 that covers only the principal applicant does not meet the sought to acquire requirement for a derivative child.

35. Applicants may file the Form I-824 concurrently with the adjustment application. A previously filed Form I-824 that was denied because the principal applicant's adjustment application had not yet been approved may serve as evidence of having "sought to acquire." See 9 FAM 502.1-1(D)(6), Sought to Acquire LPR Status Provision, for more information regarding how overseas applicants may satisfy the sought to acquire requirement in the consular processing context.

36. For more information, see Subsection 3, Extraordinary Circumstances [7 USCIS-PM A.7(G)(3)].

37. For DVs, the date a visa is considered available is the first day on which the principal applicant's rank number is current for visa processing.

38. Though the CSPA technically requires DV derivatives to seek to acquire within 1 year, this requirement does not generally affect DV derivatives, as they are only eligible to receive a visa through the end of the specific fiscal year in which the principal applicant was selected under INA 203(c). See INA 204(a)(1)(I).

39. For more information, see Section F, Family and Employment-Based Preference and Diversity Immigrants, Subsection 4, Determining Age at Time of Visa Availability [7 USCIS-PM A.7(F)(4)].

40. In *Matter of O. Vazquez*, the Board of Immigration Appeals (BIA) ruled that extraordinary circumstances could warrant the exercise of discretion to excuse an applicant who failed to meet the sought to acquire requirement during the 1-year period. See *Matter of O. Vazquez*, 25 I&N Dec. 817 (BIA 2012).

41. In *Matter of O. Vazquez*, the BIA ruled that extraordinary circumstances could warrant the exercise of discretion to excuse an applicant who failed to meet the sought to acquire requirement during the 1-year period. See *Matter of O. Vazquez*, 25 I&N Dec. 817 (BIA 2012).

42. For more detailed guidance on CSPA applicability and VAWA, see INA 204(a)(1)(D)(i) and Age-Out Protections Afforded Battered Children Pursuant to The Child Status Protection Act and the Victims of Trafficking and Violence Protection Act, issued August 17, 2004.

43. For more detailed guidance on CSPA applicability and VAWA, see INA 204(a)(1)(D)(i) and Age-Out Protections Afforded Battered Children Pursuant to The Child Status Protection Act and the Victims of Trafficking and Violence Protection Act, issued August 17, 2004.

Appendices

Updates

POLICY ALERT – Child Status Protection Act

May 23, 2018

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the USCIS Policy Manual regarding the Child Status Protection Act (CSPA).

POLICY ALERT – Adjustment of Status Policies and Procedures and 245(a) Adjustment

February 25, 2016

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance addressing the general policies and procedures of adjustment of status as well as adjustment under section 245(a) of the Immigration and Nationality Act (INA).