



U.S. Department of Justice
Immigration and Naturalization Service

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Office of the Executive Associate Commissioner

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MEMORANDUM FOR REGIONAL DIRECTORS
DEPUTY EXECUTIVE ASSOCIATE COMMISSIONER,
IMMIGRATION SERVICES
DIRECTOR, OFFICE OF INTERNATIONAL AFFAIRS

FROM: Johnny N. Williams /s/
Executive Associate Commissioner
Office of Field Operations

SUBJECT: The Child Status Protection Act

Purpose

On August 6, 2002, President Bush signed into law the Child Status Protection Act (CSPA) (attached). This law amends the Immigration and Nationality Act (Act) by changing how an alien is determined to be a child for purposes of immigrant classification. This law changes who can be considered to be a child for the purpose of the issuance of visas by the Department of State and for purposes of adjustment of status of aliens by the Immigration and Naturalization Service (Service). The purpose of this memorandum is to provide preliminary guidance to Service officers concerning the amendments made to the Act by the CSPA. While this memorandum will provide examples of cases that may be effected by the CSPA, it is impossible to anticipate and address every possible scenario. As a note, the sections of the CSPA that address children of asylees and refugees will be addressed in a separate memorandum.

Immediate Relatives

Section 2 of the CSPA addresses the rules for determining whether certain aliens are immediate relatives. This section was enacted to prevent a child from "aging-out" due to Service processing delays. Specifically, the Service will now use the date of the filing of a Form I-130, Petition for Alien Relative, to determine the age of a beneficiary adjusting as the child of a United States citizen (USC). For example, if a Form I-130 is filed for the child of a USC when the child is 20, that child will remain eligible for adjustment as an IR-2 or as an IR-7, even if the adjustment does not occur until after the child turns 21, provided the child remains unmarried.

Section 2 of the CSPA also amends the Act to allow the children of individuals who

naturalize to remain classifiable as IR-2s or IR-7s if the parent naturalized while the child was under 21. The Service will now use the child's age on the date of the parent's naturalization to determine whether the child will be eligible for immediate relative status. For example, if a lawful permanent resident (LPR) files a Form I-130 for her 16-year old daughter and then naturalizes when the daughter is 20, that daughter will remain eligible for adjustment as an IR-2 or as an IR-7, even if the adjustment does not occur until after she turns 21.

Section 2 of the CSPA also amends the Act to allow married children of USCs to use their age on the date of the termination of their marriage when determining under which immigrant category to adjust. For example, if a USC files a Form I-130 for his 18-year old married son and that son subsequently obtains a divorce prior to turning 21, that son will be classifiable as an IR-2 or as an IR-7, even if the adjustment does not occur until after he turns 21.

Preference Categories

Section 3 of the CSPA addresses whether certain aliens will be able to adjust as children of LPRs even if they are no longer under the age of 21. This section is different from Section 2 of the CSPA in that the Service will not be looking at the Form I-130 receipt date to determine whether an individual over the age of 21 can continue to be classified as a child for immigration purposes. Rather, the beneficiary's age will be locked in on the date that the priority date of the Form I-130 becomes current (which is the first day of the month that the priority date became current), less the number of days that the petition is pending, provided the beneficiary seeks to acquire the status of an LPR within one year of such availability. For example, if a Form I-130 was filed in 1998 when the child was 20, the priority date became available today, and the Form I-130 was not adjudicated until today, the beneficiary's "age" when determining preference category would be 20 (the beneficiary is 24 today, but the petition was pending for the 4 years), provided the "child" applies for an immigrant visa or for adjustment of status within one year of the priority date becoming available. If, however, this same Form I-130 had been adjudicated in 2000, the beneficiary's "age" when determining preference category would be 22 (the beneficiary is 24 today, but the petition was pending for only 2 years).

It is important to remember that section 3 of the CSPA requires that the beneficiary apply for adjustment of status or for an immigrant visa within one year of the date the priority date became available. Thus, if a Form I-130 was filed on behalf of the child of an LPR, the priority date became available 3 years ago when the beneficiary was still under 21, but that beneficiary did not apply for adjustment of status within one year of the priority date becoming available and has since turned 21, the provisions of the CSPA will not apply to this beneficiary.

Unmarried Sons and Daughters of Naturalized Citizens

Section 6 of the CSPA provides for the automatic transfer of preference categories when the parent of an unmarried son or daughter naturalizes, but also provides the unmarried son or

daughter the ability to request that such transfer not occur. Examples follow:

Example 1: For August 2002, the priority date for unmarried sons and daughters of LPRs is December 8, 1993 and the priority date for unmarried sons and daughters of USCs is July 1, 1996. Thus, if a LPR files a Form I-130 for his 24-year old, unmarried French son and then naturalizes, the son's immigrant category would automatically transfer from the second preference to the first preference. This would be to the advantage of the beneficiary and he would most likely not prevent such automatic conversion.

Example 2: For August 2002, the priority date for Filipino unmarried sons and daughters of LPRs is December 8, 1993, but the priority date for Filipino unmarried sons and daughters of USCs is November 1, 1989. Thus, if a LPR files a Form I-130 for his 24-year old, unmarried Filipino son and then naturalizes, the son would most likely request that the automatic conversion to the first preference category not occur because a visa would become available to him sooner if he remained in the second preference category than if he converted to the first preference category. In this case, the son would continue to be considered a second preference immigrant.

Effective Date

The CSPA took effect on August 6, 2002. Thus, any petition that is currently pending with the Service is subject to the provisions of the new law. Also, any petition that has already been approved by the Service, but where no final action on the beneficiary's application for adjustment of status or for an immigrant visa has been taken, is subject to the provisions of the new law.

[Attachment](#)