U.S. Citizenship and Immigration Services

USCIS Updates Child Status Protection Act (CSPA) Age Calculation for Certain Adjustment of Status Applicants

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WASHINGTON—U.S. Citizenship and Immigration Services has issued guidance in the USCIS Policy Manual to update when an immigrant visa number "becomes available" for the purpose of calculating a noncitizen's age in certain situations under the Child Status Protection Act (CSPA).

For a child to obtain lawful permanent resident status in the United States based on their parent's approved petition for a family-sponsored or employment-based visa, the child generally must be under the age of 21. If the child turns 21 and "ages out" during the immigration process, the child generally is no longer eligible to immigrate with the parent based on the parent's petition.

Congress enacted the CSPA to protect certain noncitizen children from losing eligibility to obtain lawful permanent resident status based on an approved visa petition by providing a method to calculate the child's age that considers when an immigrant visa number "becomes available." The Department of State's Visa Bulletin is used to determine when a visa number becomes available. The Visa Bulletin has two charts – the Dates for Filing chart and the Final Action Date chart. Under the previous CSPA guidance, USCIS considered a visa available for purposes of the CSPA age calculation based only on the Final Action Date chart, even if a noncitizen could apply for adjustment of status using the earlier date in the "Dates for Filing" chart.

This USCIS policy change is effective immediately and applies to pending applications. Therefore, some noncitizens with a pending application may now have a CSPA age that is under 21 based on this change. For example, between October and December of 2020, certain noncitizens were permitted to file their adjustment of status applications under the Dates for Filing chart of the Visa Bulletin. However, the Final Action Date chart never advanced sufficiently for their applications to be approved. These noncitizens filed their adjustment of status applications with the requisite fee without knowing whether the CSPA would benefit them.

Under this new guidance, USCIS will now use the Dates for Filing chart to calculate these noncitizens' ages for CSPA purposes, which provides these noncitizens with more certainty about their eligibility to adjust status. If these noncitizens are eligible to adjust status because of the change in policy and they have filed for adjustment of status, they will also be eligible to apply for employment and travel authorization based on their pending adjustment of status application, and they generally will not lose previously issued employment or travel authorization.

Noncitizens may file a motion to reopen their previously denied adjustment of status application with USCIS by using Form I-290B, Notice of Appeal or Motion. Noncitizens must generally file motions to reopen within 30 days of the decision. For a motion filed more than 30 days after the denial, USCIS may, in its discretion, excuse the untimely filing of the motion if the noncitizen demonstrates that the delay was reasonable and was beyond the noncitizen's control.

This Policy Manual update will not prevent all children from aging out before an immigrant visa is available to them, nor will it prevent children from losing nonimmigrant status derived from their parents upon reaching the actual age of 21. USCIS continues to explore all options available under the law to aid this population. For example, the Department of Homeland Security regulatory agenda includes an anticipated notice of proposed rulemaking on improving the regulations governing adjustment of status to lawful permanent residence and related immigration benefits.

More information is available in the Policy Alert (PDF, 345 KB) and on the Child Status Protection Act page.

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