



AMERICAN  
IMMIGRATION  
LAWYERS  
ASSOCIATION

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Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of the Director  
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Washington, DC 20529-2140

Submitted via e-mail: [USCISPolicyManual@uscis.dhs.gov](mailto:USCISPolicyManual@uscis.dhs.gov)

**Re: USCIS Policy Manual, Volume 7: Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 7, Child Status Protection Act**

To Whom It May Concern:

The American Immigration Lawyers Association (AILA) submits the following comments in response to updated USCIS policy guidance regarding the age and “sought to acquire” requirement under the Child Status Protection Act found in Volume 7: Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 7, Child Status Protection Act of the USCIS Policy Manual as announced in a Policy Alert dated November 13, 2020 (“Policy Alert”).<sup>1</sup>

AILA is a voluntary bar association of more than 15,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. We appreciate the opportunity to provide comments to USCIS relating to its recent updates to Volume 7, Part A, Chapter 7 of the USCIS Policy Manual pertaining to the Child Status Protection Act. We believe that our collective expertise and experience makes us particularly well-qualified to offer views that will benefit the public and the government.

#### **A. AILA Comments to USCIS Policy Manual**

AILA submits the following comments specifically to highlight the agency’s apparent omission of the EB-5 visa program from its recent CSPA policy manual update. Please note that AILA plans to submit supplemental comments in the coming weeks regarding the agency’s CSPA policy update more generally for the agency’s consideration.

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<sup>1</sup> See *Age and “Sought to Acquire” Requirements under Child Status Protection Act*, U.S. CITIZENSHIP & IMMIGRATION SERV., PA-2020-19 (Nov. 13, 2020), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20201113-CSPA.pdf>.

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## 1. USCIS's Most Recent Revisions to the Policy Manual Omit References to Form I-526, which is Incorrect as a Matter of Law

We write with reference to the Policy Alert, which gave notice of clarifications to existing guidance in Chapter 7 of the USCIS Policy Manual on the Child Status Protection Act (CSPA). As noted in Section B of the same chapter, CSPA protections apply to all employment-based preference derivatives, which necessarily would include derivatives of EB-5 petitioners who filed under section 203(b)(5) of the Immigration and Nationality Act (“INA”).

The Policy Manual explains that CSPA applies where “one of the following underlying forms” is filed or pending on or after August 6, 2002 (the effective date of the CSPA):

- 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](#)).<sup>2</sup>

While correct, the above list is not complete. USCIS has conspicuously omitted the petition relating to EB-5 immigration, which is the Form I-526, Immigrant Petition by Alien Investor. The relevant provision of the INA, section 203(h)(1)(A), encompasses all preference categories, necessarily encompassing EB-5. As cited above, the Policy Manual refers to Form I-140 (used with EB-1, EB-2, and EB-3) and Form I-360 (used with EB-4). There is no basis to exclude Form I-526 from the discussion of CSPA applicability because INA section 203(b)(5) is clearly contemplated by INA section 203(h)(1)(A).

We believe this may be an oversight by USCIS given that there are generally more Forms I-140 and Forms I-360 filed with USCIS each year.<sup>3</sup> However, this omission may confuse members of the public and EB-5 stakeholders. We respectfully request the agency amend its Policy Manual to specify the CSPA applies where a Form I-526 is filed or is pending on or after August 6, 2002.

## B. Conclusion

In closing, we thank you for providing this opportunity to comment on updates to the policy guidance contained in Volume 7, Part A, Chapter 7 of the USCIS Policy Manual. We look forward to a continuing dialogue regarding this policy manual update as AILA intends to submit supplemental comments in the coming weeks regarding the CSPA policy manual update more generally for the agency's consideration.

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<sup>2</sup> See <https://www.uscis.gov/policy-manual/volume-7-part-a-chapter-7> (Section B) (last accessed Dec. 7, 2020).

<sup>3</sup> See, e.g., *USCIS All Forms Data, Fiscal Year 2019*, U.S. CITIZENSHIP & IMMIGRATION SERV.

[https://www.uscis.gov/sites/default/files/document/data/Quarterly\\_All\\_Forms\\_FY19Q4.pdf](https://www.uscis.gov/sites/default/files/document/data/Quarterly_All_Forms_FY19Q4.pdf) (last accessed Dec. 7, 2020).

Respectfully submitted,

AMERICAN IMMIGRATION LAWYERS ASSOCIATION