



February 14, 2023

PA-2023-02

## Policy Alert

SUBJECT: Age Calculation under Child Status Protection Act

### Purpose

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the [USCIS Policy Manual](#) to update when an immigrant visa “becomes available” for the purpose of calculating Child Status Protection Act (CSPA) age in certain situations.<sup>1</sup>

### Background

The CSPA protects certain beneficiaries from losing eligibility for immigrant visas and adjustment of status due to their aging during the immigration process which can lead to them no longer qualifying as a child for immigration purposes.<sup>2</sup>

For noncitizens seeking lawful permanent resident status in a preference category, the CSPA provides a method to calculate a noncitizen’s age based on the date an immigrant visa becomes available, but only if the noncitizen seeks to acquire lawful permanent resident status within 1 year of such immigrant visa availability.<sup>3</sup> Neither the statute nor regulations define when a visa becomes available for purposes of the CSPA age calculation, and there are no precedent federal court decisions, nor published administrative decisions on the issue.

Between the enactment of CSPA in 2001 and October 2015, it was clear that an immigrant visa “bec[ame] available” for the CSPA age calculation and was “immediately available” for accepting and processing adjustment of status applications on the same date, tied to the chart published in the U.S. Department of State (DOS) Visa Bulletin now known as the Final Action Dates chart.<sup>4</sup>

In October 2015, DOS began publishing two charts in the DOS [Visa Bulletin](#). The two charts consist of a “Dates for Filing” chart (which notifies beneficiaries when they may assemble and submit required documents to the DOS National Visa Center (NVC)) and a “Final Action Dates” chart (which informs when a visa is authorized for issuance).

Since DOS implemented this change in 2015, USCIS designates one of the two charts, Dates for Filing or Final Action Dates, in the DOS Visa Bulletin each month for noncitizens to use in

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<sup>1</sup> See [INA 203\(h\)\(1\)\(A\)](#).

<sup>2</sup> See [INA 101\(b\)\(1\)](#) (defines “child” as “an unmarried person under twenty-one years of age”).

<sup>3</sup> See [INA 203\(h\)\(1\)\(A\)](#) and [INA 203\(h\)\(1\)\(B\)](#).

<sup>4</sup> See [INA 245\(a\)\(3\)](#). See [8 CFR 245.1\(g\)](#).

determining when to file an adjustment of status application.<sup>5</sup> Importantly, in order to file an application for adjustment of status with USCIS, an applicant must have a visa “immediately available.”<sup>6</sup>

Under previous CSPA guidance, published in May 2018, USCIS only considered a visa available for CSPA age calculation based on the Final Action Dates chart.

After the publication of the May 2018 guidance, the same applicant for adjustment of status could have a visa “immediately available” for purposes of filing the application but not have a visa “become available” for purposes of CSPA calculation. Applicants who filed based on the Dates for Filing chart would have to pay the fee and file the application for adjustment of status without knowing whether the CSPA would benefit them.

To address this issue, USCIS has updated its policies, and now considers a visa available to calculate CSPA age at the same time USCIS considers a visa immediately available for accepting and processing the adjustment of status application. This update resolves any apparent contradiction between different dates in the visa bulletin and the statutory text regarding when a visa is “available.”

- When USCIS determines there are more immigrant visas available for a fiscal year than there are known applicants for such visas, and USCIS announces that prospective applicants may use the Dates for Filing chart when filing adjustment of status applications, then USCIS also uses the Dates for Filing chart when calculating the applicant’s CSPA age.
- When USCIS announces that a prospective applicant must use the Final Action Dates chart when filing the adjustment of status application, then USCIS uses the Final Action Dates chart when calculating the applicant’s CSPA age.

This guidance, contained in Volume 7 of the Policy Manual, is effective immediately and applies to adjustment of status applications adjudicated by USCIS on or after February 14, 2023. The guidance contained in the Policy Manual is controlling and supersedes any related prior guidance on the topic.

In addition, noncitizens may file a motion to reopen<sup>7</sup> their previously denied adjustment of status application with USCIS using a Notice of Appeal or Motion ([Form I-290B](#)). Noncitizens must generally file motions to reopen within 30 days of the decision. For a motion filed more than 30 days after the denial, if the noncitizen demonstrates that the delay was reasonable and was beyond their control, USCIS may in its discretion excuse the untimely filing of the motion.<sup>8</sup>

## Policy Highlights

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<sup>5</sup> See Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions [[7 USCIS-PM A.3](#)] and USCIS’ [Adjustment of Status Filing Charts from the Visa Bulletin](#) webpage.

<sup>6</sup> See [8 CFR 245.1\(g\)\(1\)](#).

<sup>7</sup> See [8 CFR 103.5\(a\)](#).

<sup>8</sup> See [8 CFR 103.5\(a\)\(1\)\(i\)](#).

- Explains that USCIS considers a visa available for purposes of CSPA age calculations at the same time USCIS considers a visa available for accepting and processing the adjustment of status application.
- Clarifies that the 1-year period during which a noncitizen must seek to acquire lawful permanent residence for CSPA starts when a visa becomes available for accepting and processing a potential adjustment of status application. However, USCIS may, in its discretion, take into account certain extraordinary circumstances for failure to seek to acquire lawful permanent residence within 1 year of visa availability.<sup>9</sup>
- Explains the effect of transferring the underlying basis of a pending adjustment of status application on CSPA age calculations and on the “sought to acquire” requirement.

### Summary of Changes

Affected Section: Volume 7 > Part A > Chapter 7 > Section F, Family and Employment-Based Preference and Diversity Immigrants

- Provides minor stylistic edits and technical updates throughout, such as additional citations to authorities and cross references.
- In Subsection 2 (Child Status Protection Act Age Calculation), makes technical updates to examples, adds a footnote to the first example, and revises footnotes.
- In Subsection 4 (Determining Age at Time of Visa Availability), revises the second bullet in the second bulleted list and removes associated footnote.
- In the same Subsection 4, revises first italicized subheading and guidance under that subheading, and removes second italicized subheading and the two following paragraphs.
- Revises Subsection 5 (Impact of When a Visa is Authorized for Issuance on the Child Status Protection Act Age Determination) in full and relocates and revises last two paragraphs to new Subsection 6 (Visa Was Available for Accepting and Processing the Adjustment of Status Application but Becomes Unavailable Before Application is Filed).

Affected Section: Volume 7 > Part A > Chapter 7 > Section G, Sought to Acquire Requirement

- Revises first paragraph in section introduction and makes minor stylistic and technical updates throughout section.
- In Subsection 1 (Satisfying the Sought to Acquire Requirement), adds a new paragraph after the bulleted list and revises the last paragraph.

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<sup>9</sup> See Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 7, Child Status Protection Act, Section G, Sought to Acquire Requirement, Subsection 3, Extraordinary Circumstances [[7 USCIS-PM A.7\(G\)\(3\)](#)].

- Revises Subsection 2 (Visa Availability and the Sought to Acquire 1-Year Period) in full.

**Citation**

Volume 7: Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 7, Child Status Protection Act [[7 USCIS-PM A.7](#)].