



# UPDATED USCIS POLICY ON CSPA

By Ariel Brown

Last year, USCIS announced a new interpretation of when a visa “becomes available” for purposes of the Child Status Protection Act (CSPA).<sup>1</sup> This new interpretation affects noncitizens hoping to immigrate through adjustment of status as the “child” of a lawful permanent resident or other derivative “child” beneficiary and who might rely upon CSPA to remain classified as a “child” even if their true, biological age is 21 or older.

**Note: This change only affects those applying to adjust status with USCIS.** This is a change in USCIS guidance and thus only affects those applying for adjustment of status with USCIS. Those who are consular processing fall under the purview of the Department of State, which still interprets when a visa becomes available as when the priority date is current according to the “Final Action Dates” chart (Chart A) in the Visa Bulletin.<sup>2</sup>

## I. Brief Background on CSPA as It Relates to This Change

The Child Status Protection Act (CSPA) is meant to mitigate the harms of “aging out” when a person who was hoping to immigrate as a “child”—defined in immigration law as someone who is unmarried and under age 21<sup>3</sup>—turns 21. In certain circumstances, CSPA creates a legal fiction that allows a person who no longer qualifies as a child based on their true, biological age to continue to immigrate as a “child.” CSPA is an imperfect fix, however, especially for children of LPRs and other derivative child beneficiaries; in some cases, even with CSPA the individual will be too old to immigrate as a child. When CSPA fails to preserve someone’s ability to immigrate as a child, for family-based second preference beneficiaries this means they move to a new category (2A to 2B) with a longer wait; for other derivative beneficiaries this means they lose their ability to immigrate altogether.

<sup>1</sup> USCIS, *Policy Alert: Age Calculation under Child Status Protection Act* (Feb. 14, 2023), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20230214-CSPA.pdf>. USCIS followed up this update with a related memo, elaborating on the effect of this change as it relates to the sought to acquire requirement. USCIS, *Sought to Acquire Requirement Under the Child Status Protection Act*, (Aug. 24, 2023), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20230824-CSPA.pdf>.

<sup>2</sup> See 9 FAM § 502.1-1(D)(4).

<sup>3</sup> INA § 101(b)(1).

For children of LPRs and other derivative child beneficiaries,<sup>4</sup> CSPA provides that the child can deduct the amount of time the I-130 petition was pending from their age on the date a visa “becomes available,”<sup>5</sup> thereby artificially reducing their age. In some cases this means they can deduct five years, in others it may mean only five months, depending on how long the petition was pending.

**Example:** Samar is a beneficiary of a petition filed by his LPR father when he was 10 years old. The petition was pending for roughly 6 years before it was approved when he was 16 years old. He’s now 25 years old—technically too old to qualify as a “child” anymore—but if he deducts the 6 years the petition was pending, his CSPA-adjusted age is 19 years old, enabling him to potentially still immigrate as an under-21 “child” as long as he is still single and meets other requirements detailed below.

If the resulting CSPA-adjusted age is under 21 after doing the CSPA age calculation (deducting the amount of time the petition was pending from the person’s age on the date the visa becomes available), then the noncitizen can continue to immigrate as a “child” even though they are in fact 21 or older as long as they also “seek to acquire” within one year of the visa first becoming available.<sup>6</sup> In general, for someone hoping to adjust, filing the I-485 adjustment application satisfies the “seek to acquire” requirement.<sup>7</sup> If someone fails to fulfill the sought to acquire requirement within one year of visa availability, but can show that the reason was due to extraordinary circumstances, they may still be able to benefit from CSPA even though they failed to seek to acquire within the one year.<sup>8</sup>

## II. The Change: USCIS’s New Interpretation of When a Visa “Becomes Available” for CSPA

USCIS’s policy change has to do with when a visa is considered to “become available” for CSPA purposes. The date when a visa “becomes available” affects (1) a person’s age when you perform the CSPA calculation and (2) the start of the timeframe within which the individual must seek to acquire to lock in their CSPA-adjusted age (if the resulting CSPA-adjusted age is under 21).

<sup>4</sup> USCIS’s policy change only pertains to children of LPRs and other derivative beneficiaries, so this practice alert does not discuss how CSPA benefits children of U.S. citizens (USCs). For information on how CSPA applies to children of USCs, see ILRC, *Application of the Child Status Protection Act to the Children of U.S. Citizen Petitioners* (Dec. 21, 2018),

[https://www.ilrc.org/sites/default/files/resources/appli\\_chld\\_stat\\_prtcnt\\_act\\_chldrnc\\_usc-20181221.pdf](https://www.ilrc.org/sites/default/files/resources/appli_chld_stat_prtcnt_act_chldrnc_usc-20181221.pdf).

<sup>5</sup> See INA § 203(h). While people are often intimidated by the math involved in a CSPA age calculation, the formula is simple: take their age on the date a visa becomes available (e.g., 24 years old) and subtract the amount of time the petition was pending (e.g., 3.5 years) and the result (24 minus 3.5 equals 20.5 years old) is their CSPA-adjusted age. Online calculators can help with this math, see, e.g.,

<https://www.timeanddate.com/date/dateadd.html>.

<sup>6</sup> INA § 203(h).

<sup>7</sup> This is the safest way to satisfy the seek to acquire requirement in an adjustment case, although other actions may also qualify. See 7 U.S. Citizenship and Immigration Services Policy Manual (USCIS-PM) A.7(G)(1).

<sup>8</sup> See 7 USCIS-PM A.7(G)(3).

**Example:** Natalia hopes to adjust based on a petition where she is classified as a child, but while waiting for her turn to immigrate she turned 21. Now, she will only be able to immigrate if CSPA helps her. In November 2023, a visa became available for Natalia. That means you calculate Natalia’s true age on November 1, 2023 and then perform the CSPA age calculation to subtract the number of years, months, and days her petition was pending from her age on November 1, 2023. If the result is under 21, she must seek to acquire by filing an adjustment application by November 1, 2024 to benefit from the CSPA-adjusted age.

Traditionally, USCIS has interpreted the date a visa “becomes available” as the date the priority date is current (i.e., when the priority date is earlier than the date listed in the Visa Bulletin for the corresponding category and country). Since 2015, when the Visa Bulletin split into two different charts, “Final Action Dates” and “Dates for Filing,” USCIS has looked to the “Final Action Dates” chart as the date a visa “becomes available.”

**However, effective February 14, 2023, USCIS now says that the date a visa “becomes available” will be according to whichever chart in the Visa Bulletin USCIS is allowing applicants to use for filing their adjustment applications in a given month.<sup>9</sup>** In some months, USCIS uses the “Final Action Dates” chart for determining when applicants can file for adjustment. In other months, USCIS allows applicants to use the “Dates for Filing” chart. The dates on the “Dates for Filing” chart are slightly earlier than the dates in the “Final Action Dates” chart, which may enable more people to benefit from the CSPA age calculation when it is performed at an earlier point in time. However, it also means that the “seek to acquire” clock starts ticking sooner for some, so it is imperative that practitioners be aware of this change.

In recognition that this is a big departure from previous policy, six months after announcing this policy change, USCIS issued a second memo stating that this change may be considered an “extraordinary circumstance” excusing a person’s failure to “seek to acquire” within one year of visa availability.<sup>10</sup> In effect, this creates a grace period as people transition from previous policy to current policy.

In addition to potentially moving earlier in time the date at which you perform the CSPA age calculation and also the date at which the seek to acquire timeframe starts, this policy change also resolves some of the uncertainty that existed previously when people might have been able to file their adjustment applications early according to the “Dates for Filing” chart, but would not know whether they would ultimately be able to benefit from CSPA until later on. Under previous policy, a person could file for adjustment under the “Dates for Filing” chart but would not know if they would benefit from CSPA until their priority date was current under the “Final Action Dates” chart. This meant many applicants filed for adjustment (including paying the hefty adjustment of status filing fees) under the “Dates for Filing” chart only to be ultimately too old even with the CSPA age calculation at the time their priority date was current according to the “Final Action Dates” chart (or have missed the seek to acquire window because they were unwilling to face the risk they might ultimately be too old when the definitive age calculation occurred later on). With the new policy guidance, applicants will do their CSPA age

<sup>9</sup> USCIS indicates which chart is being used each month here: <https://www.uscis.gov/visabulletininfo>.

<sup>10</sup> USCIS, *Sought to Acquire Requirement Under the Child Status Protection Act*, (Aug. 24, 2023), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20230824-CSPA.pdf>.

calculation when the visa first becomes available according to whichever chart in the Visa Bulletin USCIS is allowing applicants to use in a given month, and thus will know at the time of filing if they benefit from CSPA.

**Example:** Maylin was born in June 2002 in Guatemala. Maylin’s USC uncle filed a petition on February 3, 2008 for Maylin’s mother. At that time, Maylin was 5 years old and therefore qualified as a derivative beneficiary child, because she was under 21. The petition was pending for two years before it was approved. In January 2024, the petition is not yet current according to the “Final Action Dates” chart in the Visa Bulletin. However, since USCIS is using the “Dates for Filing” chart in January 2024 to determine whether a visa is available for CSPA purposes, a visa *is* considered available in January 2024 (and actually has been available since July 2023 under this new interpretation).

Under USCIS’s prior interpretation of visa availability, Maylin would have had to decide whether to take advantage of the opportunity to file early in reliance on the “Dates for Filing” chart, which provides the benefit of getting a work permit sooner, while risking that when the priority date was current according to the “Final Action Dates” chart she would be too old even with CSPA, since CSPA only allows her to deduct the amount of time the petition was pending (here, two years) and her true biological age is already 21 years old.

But under USCIS’s new interpretation, she would do her CSPA age calculation on July 1, 2023 when a visa first became available and when she was first able to file her adjustment application, leading to an under-21 CSPA-adjusted age of roughly 19 years old (taking 21, her current age at that time, minus 2 for the two years the petition was pending), and would have until July 1, 2024 to seek to acquire. If she missed the July 1, 2024 deadline because she was unaware of this change, she might be able to cite this policy change as an extraordinary circumstance excusing her failure to seek to acquire within the one year.

### III. Conclusion

This change will help some adjustment applicants hoping to immigrate as children even if their true, biological age is 21 or older. However, this change only pertains to adjustment applicants, and also since CSPA protections for children of LPRs and other derivative beneficiaries only alleviate age out consequences based on petition processing times, but do not provide a remedy for the far longer wait many of these beneficiaries face in the preference categories due to the quota system, for many people the wait will still prove to be too long.



**San Francisco**

1458 Howard Street  
San Francisco, CA 94103  
t: 415.255.9499  
f: 415.255.9792

[ilrc@ilrc.org](mailto:ilrc@ilrc.org)  
[www.ilrc.org](http://www.ilrc.org)

**Washington D.C.**

1015 15<sup>th</sup> Street, NW  
Suite 600  
Washington, DC 20005  
t: 202.777.8999  
f: 202.293.2849

**Austin**

6633 East Hwy 290  
Suite 102  
Austin, TX 78723  
t: 512.879.1616

**San Antonio**

10127 Morocco  
Street  
Suite 149  
San Antonio, TX  
78216

**About the Immigrant Legal Resource Center**

The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC's mission is to protect and defend the fundamental rights of immigrant families and communities.