

FAQ for Indian EB-5 Applicants Subject to Retrogression

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1. Is there a mechanism by which my child or children may continue to be eligible for immigrant visas as my dependents based on my approved I-526 petition and if so, how does it work?

Yes, the Child Status Protection Act (CSPA) was enacted in order to protect children of petitioners against lengthy petition processing times. Where its protection applies, the dependent's age is "frozen" under that of 21, allowing the child to obtain permanent residence as a derivative beneficiary of the I-526 petition by the parent. The determination of whether or not the protection of CSPA applies is made when the petition priority date becomes current. At that time, the number of days the petition was pending is deducted from the child's biological age. Assuming the resulting number is under 21 (even if it's days shy), the CSPA protections apply and the child has one year to seek to acquire his or her immigrant visa.

2. What if I have a child who may turn 21 after my I-526 petition has been approved? How do I determine whether my child can avail themselves of the protections of CSPA?

If the I-526 petition is approved **prior** to the retrogression taking effect, the priority date of the petition will still be current. If this is the case, the child's "CSPA age" would be under 21, and the child would have one year to seek to acquire his or her permanent resident status. The Department of State (DOS) has previously issued guidance that the following can serve to qualify as "seeking to acquire" an immigrant visa:

- Submission of the I-485 Adjustment of Status Application ("AOS", "adjustment of status");
- Submission of the DS-260;
- Payment of the immigrant visa fee bill; Submission of a DS-230 to the NVC;
- Submission of a Form I-824, Application for Following to Join Beneficiary, where the child is located abroad and the I-526 investor is located in the U.S.; or

- Other Steps

It is important to remember each of those activities listed by themselves would serve to qualify under the CSPA requirements as “seeking to acquire” an immigrant visa, preserving the child’s CSPA protection. Where the petition was approved and forwarded to the National Visa Center (NVC), DOS recommends paying the visa fee bill via cashier’s check, or electronically where possible. Alternatively, case law and DOS guidance show that repeated contacts and requests to DOS, including continuing inquiries and specific expression of intent to proceed can also qualify as satisfying the requirement of “seeking to acquire.” Finally, DOS guidance states that it may be possible to satisfy the CSPA requirements even after the priority date has once again become current after the retrogression announcement.

3. What do I do if I haven’t received a fee bill from the NVC but my I-526 Petition is approved before July 1, 2019?

If you have a dependent child who may potentially age out (those children over the age of 17 at the time of I-526 Petition approval), there may be other ways to preserve the dependent child’s age for immigration purposes, and it is advisable to contact legal counsel.

4. What do I do if my I-526 Petition is approved after the retrogression cut-off date listed in the Visa Bulletin?

You will be subject to retrogression. Accordingly, you must continually check the DOS visa bulletin each month to find out if your priority date is current.

5. What do I do if I received a fee bill from NVC prior to the retrogression cut-off date but my dependents have not?

You can make a payment for you and your dependents by sending a cashier’s check via certified mail to the NVC using the case number of the principal application (the investor).

6. If I have paid my fee bill and filed my DS-260 application, what action can I expect on July 1, 2019?

You will likely **not** be scheduled for an immigrant visa interview unless your priority date is prior to the cut-off date listed in the DOS visa bulletin. You will have to continually check the DOS visa bulletin each month to find out if your priority date is current.

7. If I reside in the U.S. in lawful status and have not yet filed my adjustment of status based on my approved I-526 Petition, can I file my adjustment of status after the retrogression cut-off date?

No. You will have to continually check the DOS's visa bulletin each month to find out if your priority date is current and the filing of the adjustment of status application is permissible.

8. I reside in the U.S. in lawful status and have filed my adjustment of status based on my approved I-526 Petition prior to the retrogression announcement. What is my status? Can I remain in the U.S. and work and travel? Do I have to renew my advance parole and employment authorization?

Yes, you can remain in the U.S. and continually renew your advance parole (travel permission) and employment authorization so long as your adjustment of status remains pending and no other inadmissibility issues arise. USCIS will hold off on adjudicating the adjustment of status application until your priority date is current.

9. Where can I check my priority date?

The DOS announces priority dates in each month's visa bulletin on this [website](#). Additionally, the DOS maintains a "Priority Date Checker" which is an interactive form that will automatically populate the cut-off date applicable for you. Please note that the monthly Visa Bulletin includes two charts: Chart A provides information regarding **final adjudication** cut-off dates, whereas Chart B provides cut-off information for AOS filings. The USCIS [website](#) provides monthly updates with respect to whether it is accepting filings based on Chart B.

10. What is the estimated wait time due to retrogression?

As indicated above, the estimated wait time due to retrogression is approximately 8.4 years for Indian nationals between the time when an I-526 petition is filed and the time when an EB-5 visa becomes available, including the I-526 processing times.

11. If I am eligible for cross-chargeability based on my spouse's non-Indian nationality, are my children also eligible?

Yes.

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