

Child Status Protection Act Explanation and Process

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The difficult process of immigrating to the U.S. is often pursued by parents seeking future opportunities for their children. However, long U.S. quota delays can mean that children “age out” or lose eligibility for the green card accorded to parents and younger siblings. One legal protection under the “CSPA” blunts the impact of aging out for some children.

Unmarried children under the age of 21 may immigrate with their parents as “derivative beneficiaries” under certain immigrant visa categories. Problems arise, however, when a child of the petitioner ages out of this eligibility before his/her parents’ immigrant visas are issued. In these situations, the petitioner has filed his/her application while the child is under the age of 21, but quota or processing delays prevent immigration before the child loses eligibility.

In 2002, Congress passed the ***Child Status Protection Act (CSPA)*** to protect derivative beneficiary children from losing their eligibility solely because of slow processing times at USCIS. CSPA does not protect children from aging out due to quota delays. CSPA allows a child to recoup the amount of time the immigrant visa (“IV”) petition (I-130, I-140, I-360 or I-526) was pending adjudication at USCIS.

Determining CSPA 21st birthday

The first step in determining whether a derivative beneficiary child retains eligibility despite having a biological age over 21 is calculating the “CSPA 21st birthday” of the child. The CSPA 21st birthday is the biological 21st birthday of the child plus the number of days between IV petition receipt and approval.

$$21^{\text{st}} \text{ birthday} + \text{Number of days IV petition was pending} = \text{CSPA } 21^{\text{st}} \text{ birthday}$$

The CSPA does *not* protect a child from age-out problems that occur as a result of visa backlogs.

Thus, once the IV petition is approved, the clock starts ticking again on the child's age until the moment of visa availability. As a result, the CSPA-protected child may still age out if the quota delay is too long. It is possible for a child to be CSPA-protected at the moment the IV petition is approved and then age out while waiting for visa availability.

If the child's CSPA 21st birthday passes before visa availability

For many immigrants, there is a waiting period of several years after the IV petition is approved before a visa number is available. These waiting periods are the result of quotas on how many visas are allocated in each category. If a visa number is not available, the child's age continues to increase from the date of IV approval.

On the date of IV approval, the CSPA essentially restores the child to the age the child was on the date of IV filing. However, the CSPA does not "freeze" or "lock in" the child's restored age unless the child takes the next step in the immigrant visa process (filing DS-260 or I-485) prior to reaching his/her CSPA 21st birthday. Many children are prevented from taking these next steps by quota delays.

When is a child's age frozen or locked in?

A child's CSPA-adjusted age is only frozen or locked in on the date of visa availability. Visa availability is the first day of the month when the filing date of the specific petitioner is *before* the date listed in the Visa Bulletin. Whether or not a child will age out is only certain on the visa availability date.

Under present law, taking the next step either by filing I-485 for Adjustment of Status ("AOS"), if the applicants are in the U.S., or by filing DS-260, if the applicants are living abroad, is effective in freezing a child's age if the child has not yet passed his/her CSPA 21st birthday on the date of visa availability. "Early filings" of AOS or DS-260 prior to visa availability are ineffective unless the child remains under his/her CSPA-adjusted age on the date of visa availability.

One-year deadline: "Sought to Acquire"

When a child's age (biological or CSPA-adjusted) is less than 21 on the date of visa availability, it is important that the child take the next step by filing AOS or DS-260 within one year of visa availability. This one-year deadline, called "Sought to Acquire," is rarely an issue in retrogressed (quota delay) categories. However, for current categories, families must be aware of the one-year deadline and not wait too long before securing a child's immigrant visa eligibility with a DS-260 or AOS filing.

Children who have aged out of CSPA protection

Because CSPA does not "freeze" a child's age indefinitely, children may age out before immigrating. In these situations—and in situations in which the parents are told at the consular interview that the child(ren) may not immigrate—the next step is for the parents to file a Form I-130, Petition for an Alien Relative. The I-130 allows citizens or permanent residents to petition the government for immigration status on behalf of a family member. While age-out situations are difficult, the older child may be reunited with the family through family-based I-130 sponsorship.

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