Office of Communications

U.S. Citizenship and Immigration Services

Fact Sheet

May 6, 2008

USCIS ISSUES REVISED GUIDANCE ON THE APPLICABILITY OF THE CHILD STATUS PROTECTION ACT (CSPA)

The Child Status Protection Act (CSPA) amended the Immigration Nationality Act by changing how an alien is determined to be a child for purposes of immigrant classification. The Act permits an applicant for certain benefits to retain classification as a "child," even if he or she has reached the age of 21.

Since its enactment on Aug. 6, 2002, USCIS provided several field guidance memoranda regarding the adjudication of immigration benefits in accordance with the CSPA. Today, USCIS has revised its guidance that modifies a prior interpretation of certain provisions of the CSPA.

Questions & Answers

Q: What is the Child Status Protection Act (CSPA)?
A: CSPA changes who can be considered to be a "child" for the purpose of the issuance of visas by the Department of State and for purposes of adjustment of status of aliens by USCIS.

The Act provides that if you are a U.S. citizen and you file a Petition for Alien Relative (Form I-130) on behalf of your child before he or she turns 21, your child will continue to be considered a child for immigration purposes even if USCIS does not act on the petition before your child turns 21. Children of lawful permanent residents also benefit if a Form I-130 is filed on behalf of their children (see below).

Q: Who benefits under the new CSPA guidance?
A: The new guidance allows aliens who had an approved immigrant visa petition prior to the enactment of the CSPA, but had not yet applied for permanent residence (either an application for adjustment of status or an immigrant visa) on the date of enactment to benefit from the CSPA. Under prior guidance, the CSPA did not apply to such applicants. The new guidance includes many aliens who, subsequent to the enactment of the CSPA, never filed an application for permanent residence and aliens who filed an application for permanent residence but such application was denied solely based on the applicant's age.

Q: Are there other considerations impacting eligibility requirements?
A: Yes.

- The new guidance does not include aliens who, prior to Aug. 6, 2002 (date CSPA was enacted), had a final decision on an application for permanent residence based on the immigrant visa petition upon which the applicant claimed to be a child.
- If an alien filed an application for permanent residence after the enactment of the CSPA, and the application was denied, that denial must be 'solely based' on a finding that the applicant was not a child because the CSPA did not apply. An I-485 can be denied for various reasons; if your I-485 denial was based for a reason other than for CSPA, then this revised CSPA guidance does not apply to you.

Finally, if you had an approved immigrant visa petition before August 6, 2002, and did not file an I-485 after the enactment of the CSPA, you could still benefit if (1) you are filing as an immediate relative or (2) your

visa became available on or after Aug. 7, 2001, you did not apply for permanent residence within one year of petition approval and your visa becoming available.

Q: How do I know if I was denied solely based on CSPA?
A: The written denial decision you received from USCIS will state the basis for the denial.

Q: Will it matter whether the child reaches the age of 21 before or after the enactment date of the CSPA to benefit from this revised policy?
A: No, provided the applicant did not have a final decision prior to Aug. 6, 2002 on an application for permanent residence based on an immigrant visa petition upon which the applicant claimed to be a child.

Q: Please explain the differences of benefit for an immigrant petition filed by a U.S. citizen and a Lawful Permanent Resident.
A: Immigrant Petition as a child filed by a U.S. citizen:

- If the child is under the age of 21 on the date of the filed immigrant petition, he/she will not 'age out'. He or she will be eligible for permanent residence as an immediate relative, provided that no final decision was reached prior to Aug. 6, 2002 on an application for permanent residence based on the immigrant visa petition upon which the applicant claimed to be a child.

Immigrant Petition as a child filed by a Lawful Permanent Resident:

- If the immigrant petition was approved and the priority date becomes current before the applicant's 'CSPA age' reaches 21, the child will not 'age out', provided that no final decision was reached prior to Aug. 6, 2002 on an application for permanent residence based on the immigrant visa petition upon which the applicant claimed to be a child. In order for CSPA coverage to continue, the child must apply for permanent residence within a one-year of the date the priority date became current.

Q: How do I calculate my 'CSPA age'?
A: For preference category and derivative petitions, your 'CSPA age' is determined on the date that your visa, or in the case of derivative beneficiaries, the principal alien's visa, becomes available. Your CSPA age is the result of subtracting the number of days that your immigrant visa petition was pending from your actual age on the date that your visa becomes available. If your 'CSPA age' is under 21 after that calculation, you will remain a child for purposes of the permanent residence application.

Q: **If my child is a derivative of a petition filed on my behalf, can my child benefit under CSPA?**
A: Yes, so long as the child also meets CSPA eligibility requirements previously discussed and applies for permanent residence within one year of the priority date being current.

Q: If I was previously denied because of 'aging out', can I file a motion to reopen or have my I-485 reconsidered? If so, is there a filing fee incurred?
A: Under the new policy, USCIS will accept, without a filing fee, a motion to reopen or reconsider a denied I-485 application if the following criteria are met:

- A visa petition was approved prior to Aug. 6, 2002 and the I-485 was filed after Aug. 6, 2002;
- The applicant would have been considered under the age of 21 under applicable CSPA rules;
- The applicant applied for permanent residence within one year of visa availability; and
- The applicant received a denial **solely** because he or she aged out.

Q: Is there a deadline for filing a motion to reconsider my I-485 if the original was denied solely for 'aging out'? Where should I file the motion?
A: No deadline. Applicants should apply at their local USCIS field office.

Q: I did not have an application for permanent residence pending on Aug. 6, 2002 and did not subsequently apply for permanent residence? Am I still eligible for CSPA coverage?

A: Yes, provided the applicant meets the following criteria:

- The applicant is applying for permanent residence as an immediate relative; or
- The applicant's visa became available on or after Aug. 7, 2001; and

The applicant did not apply for permanent residence within one year of the petition approval and visa availability, but would have qualified for CSPA coverage.