

## **Alert** | Immigration & Compliance



**February 2023**

### **USCIS Updates Child Status Protection Act (CSPA) Age Calculation for Certain Adjustment of Status Applicants**

#### **Go-To Guide:**

- U.S. Citizenship and Immigration Services announced a major change in policy for determinations of eligibility for the Child Status Protection Act
- Child Status Protection Act allows children to secure permanent residence as dependents of their parents, even after turning 21
- The new policy change will allow a greater number of dependent children to qualify for protection under the CSPA

U.S. Citizenship and Immigration Services (USCIS) has issued updated guidance in its Policy Manual, which makes a key change in the interpretation of when an immigrant visa number “becomes available” for the purpose of calculating a child’s age under the Child Status Protection Act (CSPA). Under this new guidance, starting Feb. 14, 2023, USCIS will use the “Dates for Filing” chart (Chart B) to calculate children’s ages for CSPA protection purposes. This will provide children with more opportunities to secure their eligibility for permanent residence as dependents of their parents.

CSPA, enacted in 2002, sought to protect dependent children from “aging out” of being able to obtain permanent residence as dependents of their parents due to USCIS’s lengthy petition processing times. The Immigration and Nationality Act (INA) defines children as being under 21 years of age, thus many were

aging out while awaiting petition approval. CSPA offered the opportunity for dependent children in employment- and family-based petitions to obtain lawful permanent resident status in the United States. This law provides protection by allowing dependent children to retain classification as “children” under the INA, even after turning age 21. The determination of eligibility for beneficiaries of certain petitions dictates that the number of days the petition itself is pending can be deducted from the dependent child’s biological age at the time the visa becomes available. Where the resulting number is below 21, that becomes the child’s “CSPA age.” Visa availability is determined by the U.S. Department of State (DOS) and published in a monthly [Visa Bulletin](#). Once CSPA age is “locked in” for these specific petitions, dependents have one year to “seek to acquire” their permanent residence status. The [USCIS Policy Manual](#) defines “seeking to acquire” as filing of an adjustment of status or immigrant visa application, [along with other steps](#).

Previously, USCIS considered a visa available for the purposes of CSPA age calculation based only on the “Final Action Date” chart (Chart A) of the visa bulletin. This was the case even though those affected in the United States could apply for adjustment of status using the earlier date in the “Dates for Filing” chart (Chart B) and secure protection under the “seeking to acquire” component of CSPA, while those processing for permanent residence from outside the United States often were unable to do this because of visa processing delays.

While the DOS has yet to confirm that it will similarly consider Chart B Dates for Filing when determining CSPA protection eligibility, the USCIS Policy Manual [has been updated to include the following language](#): “CSPA applies to both noncitizens abroad who are applying for an immigrant visa through the Department of State (DOS) and noncitizens physically present in the United States who are applying for adjustment of status through USCIS. This chapter primarily focuses on the impact of CSPA on adjustment applicants, though the same principles generally apply to noncitizens seeking an immigrant visa through DOS.”

With this latest update, USCIS will use Chart B to determine visa availability, allowing more dependents to receive protection under the CSPA and making this advantage applicable for those both inside and outside the United States.

CSPA determinations can be complex and nuanced, with no regulatory interpretation available for this law. Those with questions regarding CSPA and its applicability to their case should consult with experienced immigration counsel.

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