

## **Your Child Did Not Age-Out (Part I)**

*This is the first article of a two-part series discussing a landmark decision concerning the Child Status Protection Act, and how it may entitle your child to a U.S. “green card.”*

Your child may be entitled to a “green card” after all. Here in the New York, New Jersey and Connecticut area, there reside as many as 250,000 Filipino-Americans. But, soon, that number should dramatically increase. Many Filipino-Americans who have filed immigrant visa petitions for their children’s benefit, have been unable to bring those children to the U.S. because those children “aged-out” (became 21 years old), before they were able to apply for an actual immigrant visa while overseas, or apply for adjustment of status while in the U.S.

But many of those children, regardless of their age today, may now come to the U.S. and receive a “green card.”

Thanks to a February 9, 2007 decision by the U.S. Board of Immigration Appeals (BIA), adjudicating the case *In re Rodolfo Avila-Perez*, regarding the Child Status Protection Act (CSPA), children who were immediate relatives at the time a visa petition was filed, may now be eligible for an immigrant visa, or to adjust to “green card” status.

In the *Avila-Perez* case, a U.S. citizen parent filed an immigrant visa petition for the benefit of the petitioner’s child under the age of 21. The petition was later approved. But the child turned 21 years old before filing an application for adjustment of status or an immigrant visa. The child’s immigrant visa petition was, therefore, converted into a first preference category case. These events all occurred before the CSPA was enacted on August 6, 2002.

The Department of Homeland Security, the Department of Justice, and the Department of State all argued the same position, in the *Avila-Perez* case – that the beneficiary child could not take advantage of the CSPA’s age-preservation provisions. These U.S. government agencies maintained that the CSPA’s section 8(1) required the beneficiary applicant to have a pending immigrant visa or adjustment of status application on August 6, 2002. But, in the *Avila-Perez* case, the petition had converted into the first preference category – which was not current for the applicable priority date. No such application could have been filed and pending on August 6, 2002.

While analyzing the *Avila-Perez* case, the BIA determined that these government agencies’ reading of the law was too strict. The BIA noted legislative history and the congressional intent to “remedy the problem of minor children of United States citizens losing their immediate relative status and being demoted to the family first-preference category as a result of the [USCIS’s] backlog in adjudicating visa petitions and applications for adjustment of status.” Significantly, it looked at the legislative evolution of the effective date language and determined that Congress intended to include individuals who had filed an application for adjustment or an immigrant visa on or before

August 6, 2002. The BIA declared that “[h]ad Congress intended to restrict the protections of the CSPA under section 8(1) to only those individuals who had visa or adjustment applications ‘pending’ as of the date of enactment, it presumably would have expressly so stated ...”

As a result, the BIA concluded the CSPA does not require an application for adjustment of status or immigrant visa be pending on August 6, 2002. Certain children who previously aged-out, may now be entitled to a U.S. “green card.” Given the almost 15-year backlog for Filipinos in the first preference category, the *Avila-Perez* decision has the potential to help thousands of Filipino families.

If you think that this situation may apply to your family, we urge you to contact a qualified immigration attorney. Specific steps and applications must be taken immediately, in order to reunite your family as soon as possible.

Next week, I will discuss specific examples of cases that may benefit from this ground-breaking change in U.S. immigration law, enabling many Filipino families to finally reunite.

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