

Your Child Did Not Age-Out (Part II)

This is the second 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.”

Last week, we discussed the February 9, 2007 landmark decision in the case *In re Rodolfo Avila-Perez*, regarding the Child Status Protection Act (CSPA). This case has significantly affected U.S. immigration law for thousands of Filipinos. As a result of this case, many Filipino 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, even if they previously “aged-out” (became 21 years old). Such children, regardless of their age today, may now come to the U.S. and receive a “green card.”

Here in the New York, New Jersey and Connecticut area, there reside as many as 250,000 Filipino-Americans. But, as a result of this momentous law change, that number should dramatically increase. To determine whether your family members or friends may take advantage of this law, you need to analyze the facts surrounding their case.

There are many different situations, wherein a person may be able to acquire a “green card” based upon this law change. Below are just two illustrative examples of such situations:

A Filipina woman, with U.S. lawful permanent residency status (“green card” status), lives and works as a physical therapist in New Jersey. Her son lives in the Philippines and is only 15 years old. He is still attending high school in Manila. She frequently sends him money, clothes and gifts when she can. She is waiting to become a U.S. citizen so she can sponsor her son as an immediate relative.

Five years later, she is sworn in as a U.S. citizen and obtains a naturalization certificate. She quickly files an immediate relative petition for her son, who is now 20 years old. The petition is approved. But before her son can appear at the U.S. Consulate in Manila for his visa issuance interview he turns 21 years old and “ages-out.” The approved immediate relative petition is converted into a Family 1st Preference Category case. Visas are not available in that category. Her son cannot come to the U.S. based upon the approved petition. Moreover, he cannot visit as a tourist because he is the beneficiary of an approved immigrant visa petition. He must wait until his priority date becomes current.

Today, her son is still waiting for the Family 1st Preference Category to become current. In this category, visas are only available for those approved petitions filed on January 22, 1992 or earlier. But now – because of the *Avila-Perez* decision – he is eligible for his visa, and he and his mother will finally be reunited.

The *Avila-Perez* decision also opens up potential relief to the children of U.S. lawful permanent residents who turned 21 years old before August 6, 2002, but who did

not have an application for adjustment of status or an immigrant visa, pending on that date. If the child's adjusted age was under 21 on the date the visa became available, they might be eligible for relief. This would allow some Family 2nd Preference Category – 2B beneficiaries, who were originally in the 2A category to reclaim that 2A status. It would also help certain derivatives in the other family preference categories who “aged-out” of derivative status.

One concern is that such child beneficiaries must have “sought to acquire” U.S. lawful permanent residency status within one year of the immigrant visa category becoming current. If the child “aged-out” prior to the CSPA effective date, arguably the one-year period would have begun on August 6, 2002, since the Family 2nd Preference Category – 2A would only have become current on that date, by operation of the CSPA. But based on the U.S. government's narrow interpretation of the CSPA, relatively few child beneficiaries believed they qualified for relief.

Thus, many children did not file for an immigrant visa or adjustment of status within one year of the visa becoming current. But if the child at least requested assistance from an immigration attorney or representative within that one-year window, that might be enough to qualify them under the Board of Immigration Appeals' broad interpretation of the term “sought to acquire” U.S. lawful permanent residency status.

Every person's case is unique and different from all others. Thus, as I explained above, you should have your situation analyzed by a professional. You do not want to miss out on such a wonderful opportunity. If you think that your family or friends may benefit from this law change, we urge you to contact a qualified immigration attorney. Specific steps and applications must be taken immediately, in order to reunite a family as soon as possible.

Atty. Rio M. Guerrero is the managing partner of The Guerrero Law Firm. During his many years of legal practice, Atty. Guerrero has served as an immigration legal expert witness in the New Jersey State court system, taught complex immigration law at the City University of New York, and represented thousands of clients in a wide range of immigration and nationality matters. You may contact Atty. Guerrero directly at (212) 481-2744 or e-mail him at rio@guerrerolawfirm.com. The above information is not, nor intended to be, legal advice. Nothing within this publication creates an attorney-client relationship with the reader. Applicability of the legal principles discussed above differs upon individual facts and circumstances.