

USCIS Eases Age-Out Restrictions

Earlier this month, the U.S. Citizenship and Immigration Services (USCIS) revised its previously-restrictive position concerning “age-out” cases. Thus, your child may be entitled to a “green card” after all.

Many 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.”

USCIS recently issued guidance that will modify its earlier interpretation of the Child Status Protection Act (CSPA) which permits applicants for certain immigration benefits to retain classification as a child, even if he or she has reached the age of twenty-one. The guidance, effective immediately, changes how USCIS interprets the applicability of the CSPA to foreigners who aged-out prior to the enactment of the CSPA on August 6, 2002.

Previously, USCIS considered a foreign beneficiary of a visa petition that was approved before August 6, 2002 to be covered by the CSPA, only if (1) the beneficiary had filed an application for permanent residence (either adjustment of status or an immigrant visa) on or before August 6, 2002, and (2) no final determination had been made on that application prior to August 6, 2002. This new policy extends CSPA coverage to foreigners who had an approved visa petition prior to the enactment of CSPA, but who did not have a pending application for permanent residence on the date of enactment of the CSPA.

The new guidance does not include a foreigner 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 a foreigner filed an application for permanent residence after the enactment of the CSPA, and the application was denied, that denial must be based solely upon a finding that the applicant was not a child because the CSPA did not apply. An application to adjust status can be denied for various reasons; if the application denial was based for a reason other than for CSPA, then this revised CSPA guidance will not apply.

Additionally, if the foreigner had an approved immigrant visa petition before August 6, 2002, and did not file an application to adjust status after the enactment of the CSPA, that foreigner could still benefit if (1) filing as an immediate relative; or (2) the visa became available on or after Aug. 7, 2001, the foreigner did not apply for permanent residence within one year of petition approval and the visa becoming available.

Today, certain foreigners who were ineligible under the prior policy and who subsequent to the enactment of the CSPA never filed an application for permanent residence may file an application for permanent residence to take advantage of this new

interpretation. Also, foreigners who filed an application for permanent residence after the enactment of the CSPA and who were denied solely because they had aged out may file motions to reopen or reconsider without a filing fee.

(Portions of this article are excerpted from official USCIS publications.)

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