



U.S. Citizenship
and Immigration
Services

HQOPRD 70/6

Interoffice Memorandum

To: Overseas District Directors

From: Joe Cuddihy /s/
Director, International Affairs
U.S. Citizenship and Immigration Services

Date: March 23, 2004

Re: Section 6 of the Child Status Protection Act

I. Purpose

On August 6, 2002, the President signed into law the Child Status Protection Act (CSPA), Public Law 107-208, 116 Stat. 927. Section 6 of the CSPA allows for unmarried sons or daughters of lawful permanent residents (LPRs) to remain classified as second preference aliens, even if the LPR parent naturalizes. The purpose of this memorandum is to provide guidance on adjudicating requests tendered pursuant to section 6 of the CSPA.

II. Background

Section 6 of the CSPA provides for the automatic transfer of preference categories when the parent of an unmarried son or daughter naturalizes, but also provides the unmarried son or daughter the ability to request that such transfer not occur. There are certain instances when the visa availability dates are more current for the unmarried sons or daughters of LPRs than for the unmarried sons or daughters of United States citizens. In such instances, it would be to the advantage of the alien beneficiary to request that the automatic conversion to the first preference category not occur because a visa would become available sooner if the alien remained in the second preference category than if he converted to the first preference category. As of this date, the Department of State Visa Bulletin shows that visa availability in the first preference category is more current than for the second preference categories, *except* for beneficiaries from the Philippines. As such, it is anticipated that only beneficiaries from the Philippines will seek to take advantage of the CSPA and this memorandum will be written using our office in Manila as an example. Should future visa availability dates adjust such that other countries have more advantageous second preference category dates than first preference category dates, the guidance provided in this memorandum should be extended to those countries.

III. Guidance

All beneficiaries in the Philippines wishing to opt out of the automatic conversion must file a request, in writing, addressed to the Officer in Charge, Manila. The Officer in Charge shall provide written

notification, on official U.S. Citizenship and Immigration Services letterhead, of a decision on the beneficiary's request to the beneficiary and to the Department of State's visa issuance unit. If the beneficiary's request is approved, then the beneficiary's eligibility for family-based immigration will be determined as if his or her parent had never naturalized and they will remain a second preference alien.

It must be noted that section 6 of the CSPA applies only to "a petition under this section initially filed for an alien unmarried son or daughter's classification as a family-sponsored immigrant under section 203(a)(2)(B)." Thus, this opt-out provision applies only to beneficiaries whose initial Form I-130, Petition for Alien Relative, was filed based on their being the unmarried son or daughter of an LPR. Therefore, if a Form I-130 was filed by an LPR on behalf of his or her child when the child was under 21 years of age, the child attained the age of 21, and then the parent naturalized, section 6 of the CSPA could not be utilized by this beneficiary.

IV. Further Information

It is expected that a more structured system for section 6 requests will be established with the publication of regulations implementing the provisions of the CSPA. Until then, the guidance provided in this memorandum shall be followed. U.S. Citizenship and Immigration Services personnel with questions regarding this memorandum should raise them through appropriate supervisory channels and contact Elizabeth N. Lee via electronic mail.