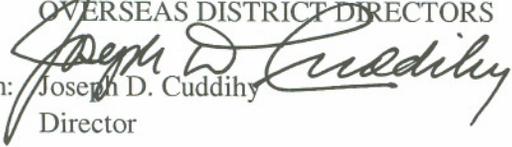




U.S. Citizenship
and Immigration
Services

120/6

Interoffice Memorandum

To: OVERSEAS DISTRICT DIRECTORS
From: 
Joseph D. Cuddihy
Director
Office of Refugee, Asylum and International Operations

Date: August 15, 2005

Re: Guidance for Adjudicating Priority 3 Derivative Child Applicants Who Have Reached the Age of 21

Purpose

In recent months, a number of questions regarding the treatment of children on a Priority 3 case who reached the age of 21 prior to adjudication of their Forms I-590 have been forwarded to the Office of Refugee Affairs. The purpose of this memorandum is to reiterate U.S. Citizenship and Immigration Services (USCIS) policy concerning derivative children who age-out on a Priority 3 case.

Guidance

When adjudicating a Priority 3 case, it is important to make the distinction between *access* to the program and *eligibility* for classification as a refugee:

Access

The age of a derivative beneficiary on the date the Affidavit of Relationship (AOR) is filed determines whether that derivative beneficiary has access to the Priority 3 program¹. Thus, any derivative child of the principal applicant (PA) who is listed on the AOR and is under the age of 21 on the date the AOR is filed can be granted access to the Priority 3 program (provided, of course, that the Refugee Access Verification Unit finds no derogatory information about that beneficiary). If only a year of birth is provided for a beneficiary, the officer should use January 1 as the actual birth date. Once access to a USCIS interview is granted, eligibility for classification as a refugee must then be examined.

¹ When determining the age of beneficiaries on the AOR, USCIS officers must not confuse the date the AOR was received at the Refugee Processing Center (usually indicated by a "RECEIVED" stamp) with the date the AOR was filed (usually typed at the upper left corner of the first page of the AOR, and made part of the Pre Case ID number).

Eligibility

The age of a derivative beneficiary on the date the PA files the Form I-590 (i.e., is interviewed by a USCIS officer) determines that beneficiary's eligibility for classification as a derivative refugee. Thus, if a derivative child on an AOR is under the age of 21 at the time the PA is interviewed by USCIS, he or she will be classified as an RE-3 derivative and may be approved based on the approval of the PA's application. If a derivative child on an AOR turned 21 since the filing of the AOR and prior to the USCIS interview, he or she can no longer derive refugee classification through the PA (they can no longer be classified as an RE-3 derivative). This individual should still be granted access to the Priority 3 program; however, he or she must establish eligibility as a PA on his or her own case. In this instance, the aged-out child's case would be cross-referenced to the original PA's case. The aged-out child would not need to meet case composition guidelines, as he or she would not be considered to be an add-on. If approved for refugee classification, he or she would be designated as an RE-1.

It is noted that any derivative beneficiary on an AOR who takes the affirmative step of marriage prior to the USCIS interview is no longer eligible for classification as a derivative refugee, no matter what their age. He or she will not be granted access to the Priority 3 program on the basis of an AOR listing him or her as a derivative beneficiary.