



U.S. Department of Justice
Immigration and Naturalization Service

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Washington, DC 20536

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MEMORANDUM FOR Asylum Office Directors
Supervisory Asylum Officers
Quality Assurance and Training Coordinators
Asylum Officers

FROM: Joseph E. Langlois,
Director, Asylum Division

SUBJECT: H.R. 1209 - Child Status Protection Act

H.R. 1209, the Child Status Protection Act (the CSPA) was signed into law by President Bush on August 6, 2002. The CSPA is effective immediately for asylum applications pending on or after August 6, 2002.

The CSPA amends the Immigration and Nationality Act (INA) with respect to the definition of "child." Specifically, section 4 of the CSPA amends section 208(b)(3) of the INA to read as follows:

(3) Treatment of Spouse and Children -

(A) IN GENERAL - A spouse or child (as defined in section 101(b)(1)(A), (B), (C), (D), or (E)) of an alien who is granted asylum under this subsection may, if not otherwise eligible for asylum under this section, be granted the same status as the alien if accompanying, or following to join, such alien.

(B) CONTINUED CLASSIFICATION OF CERTAIN ALIENS AS

An unmarried alien who seeks to accompany, or follow to join, a parent granted asylum under this subsection, and who was under 21 years of age on the date on which such parent applied for asylum under this section, shall continue to be classified as a child for purposes of this paragraph and section 209(b)(3), if the alien attained 21 years of age after such application was filed but while it was pending.

As a result of this amendment to the INA, children who turn 21 years of age **after** an asylum application was **filed** but prior to adjudication are still considered to be eligible for derivative asylum status. The relevant date to consider in determining whether a dependent who has turned 21 still qualifies as a “child” for purposes of eligibility for derivative status is the date the Principal Applicant (PA) filed the Form I-589, Application for Asylum and for Withholding of Removal. The child must be under 21 years of age on the date that his or her parent, the PA, filed the Form I-589. There is no requirement that the child have been included as a dependent on the PA’s asylum application at the time of filing, only that the child be included prior to the adjudication. This means that the PA may add to his or her asylum application an unmarried son or daughter who is 21 years of age, but who was 20 at the time the PA filed the asylum application.

The “filing date” is defined as the date that the Immigration and Naturalization Service (INS) receives an application. 8 CFR 103.2(a)(7). The filing date is reflected in RAPS in the “FILED” field of the CSTA screen. This should be the same date as the receipt date stamped on the Form I-589, upon receipt by a Service Center. However, in the event that there is a conflict between the filing date in RAPS and the receipt date stamped on the Form I-589, the earliest date should be used as the filing date for purposes of determining whether a dependent was under 21 years of age at the time the PA filed for asylum.

Effective immediately, asylum applications must be adjudicated taking into account this new provision. Asylum Office Directors must provide training on this memo as soon as possible.

Additional procedural guidance will be forthcoming shortly regarding the impact of this new legislation on the procedures for granting asylum Nunc Pro Tunc for individuals who turn 21 years of age after adjudication of the asylum application but before applying for adjustment of status.

Enclosure: [Child Status Protection Act](#)

H.R.1209

One Hundred Seventh Congress

of the

United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Wednesday, the twenty-third day of January, two thousand and two

An Act

To amend the Immigration and Nationality Act to determine whether an alien is a child, for purposes of classification as an immediate relative, based on the age of the alien on the date the classification petition with respect to the alien is filed, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Child Status Protection Act'.

SEC. 2. USE OF AGE ON PETITION FILING DATE, PARENT'S NATURALIZATION DATE, OR MARRIAGE TERMINATION DATE, IN DETERMINING STATUS AS IMMEDIATE RELATIVE.

Section 201 of the Immigration and Nationality Act (8 U.S.C. 1151) is amended by adding at the end the following:

`(f) RULES FOR DETERMINING WHETHER CERTAIN ALIENS ARE IMMEDIATE RELATIVES-

`(1) AGE ON PETITION FILING DATE- Except as provided in paragraphs (2) and (3), for purposes of subsection (b)(2)(A)(i), a determination of whether an alien satisfies the age requirement in the matter preceding subparagraph (A) of section 101(b)(1) shall be made using the age of the alien on the date on which the petition is filed with the Attorney General under section 204 to classify the alien as an immediate relative under subsection (b)(2)(A)(i).

`(2) AGE ON PARENT'S NATURALIZATION DATE- In the case of a petition under section 204 initially filed for an alien child's classification as a family-sponsored immigrant under section 203(a)(2)(A), based on the child's parent being lawfully admitted for permanent residence, if the petition is later converted, due to the naturalization of the parent, to a petition to

classify the alien as an immediate relative under subsection (b)(2)(A)(i), the determination described in paragraph (1) shall be made using the age of the alien on the date of the parent's naturalization.

`(3) AGE ON MARRIAGE TERMINATION DATE- In the case of a petition under section 204 initially filed for an alien's classification as a family-sponsored immigrant under section 203(a)(3), based on the alien's being a married son or daughter of a citizen, if the petition is later converted, due to the legal termination of the alien's marriage, to a petition to classify the alien as an immediate relative under subsection (b)(2)(A)(i) or as an unmarried son or daughter of a citizen under section 203(a)(1), the determination described in paragraph (1) shall be made using the age of the alien on the date of the termination of the marriage.'

SEC. 3. TREATMENT OF CERTAIN UNMARRIED SONS AND DAUGHTERS SEEKING STATUS AS FAMILY-SPONSORED, EMPLOYMENT-BASED, AND DIVERSITY IMMIGRANTS.

Section 203 of the Immigration and Nationality Act (8 U.S.C. 1153) is amended by adding at the end the following:

`(h) RULES FOR DETERMINING WHETHER CERTAIN ALIENS ARE CHILDREN-

`(1) IN GENERAL- For purposes of subsections (a)(2)(A) and (d), a determination of whether an alien satisfies the age requirement in the matter preceding subparagraph (A) of section 101(b)(1) shall be made using--

`(A) the age of the alien on the date on which an immigrant visa number becomes available for such alien (or, in the case of subsection (d), the date on which an immigrant visa number became available for the alien's parent), but only if the alien has sought to acquire the status of an alien lawfully admitted for permanent residence within one year of such availability; reduced by

`(B) the number of days in the period during which the applicable petition described in paragraph (2) was pending.

`(2) PETITIONS DESCRIBED- The petition described in this paragraph is--

`(A) with respect to a relationship described in subsection (a)(2)(A), a petition filed under section 204 for classification of an alien child under subsection (a)(2)(A); or

`(B) with respect to an alien child who is a derivative beneficiary under subsection (d), a petition filed under section 204 for classification of the alien's parent under subsection (a), (b), or (c).

`(3) RETENTION OF PRIORITY DATE- If the age of an alien is determined under paragraph (1) to be 21 years of age or older for the purposes of subsections (a)(2)(A) and (d), the

alien's petition shall automatically be converted to the appropriate category and the alien shall retain the original priority date issued upon receipt of the original petition.'

SEC. 4. USE OF AGE ON PARENT'S APPLICATION FILING DATE IN DETERMINING ELIGIBILITY FOR ASYLUM.

Section 208(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1158(b)(3)) is amended to read as follows:

`(3) TREATMENT OF SPOUSE AND CHILDREN-

`(A) IN GENERAL- A spouse or child (as defined in section 101(b)(1) (A), (B), (C), (D), or (E)) of an alien who is granted asylum under this subsection may, if not otherwise eligible for asylum under this section, be granted the same status as the alien if accompanying, or following to join, such alien.

`(B) CONTINUED CLASSIFICATION OF CERTAIN ALIENS AS CHILDREN- An unmarried alien who seeks to accompany, or follow to join, a parent granted asylum under this subsection, and who was under 21 years of age on the date on which such parent applied for asylum under this section, shall continue to be classified as a child for purposes of this paragraph and section 209(b)(3), if the alien attained 21 years of age after such application was filed but while it was pending.'

SEC. 5. USE OF AGE ON PARENT'S APPLICATION FILING DATE IN DETERMINING ELIGIBILITY FOR ADMISSION AS REFUGEE.

Section 207(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1157(c)(2)) is amended--

(1) by striking `(2)' and inserting `(2)(A)'; and

(2) by adding at the end the following:

`(B) An unmarried alien who seeks to accompany, or follow to join, a parent granted admission as a refugee under this subsection, and who was under 21 years of age on the date on which such parent applied for refugee status under this section, shall continue to be classified as a child for purposes of this paragraph, if the alien attained 21 years of age after such application was filed but while it was pending.'

SEC. 6. TREATMENT OF CLASSIFICATION PETITIONS FOR UNMARRIED SONS AND DAUGHTERS OF NATURALIZED CITIZENS.

Section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) is amended by adding at the end the following:

`(k) PROCEDURES FOR UNMARRIED SONS AND DAUGHTERS OF CITIZENS-

`(1) IN GENERAL- Except as provided in paragraph (2), in the case of 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), based on a parent of the son or daughter being an alien lawfully admitted for permanent residence, if such parent subsequently becomes a naturalized citizen of the United States, such petition shall be converted to a petition to classify the unmarried son or daughter as a family-sponsored immigrant under section 203(a)(1).

`(2) EXCEPTION- Paragraph (1) does not apply if the son or daughter files with the Attorney General a written statement that he or she elects not to have such conversion occur (or if it has occurred, to have such conversion revoked). Where such an election has been made, any determination with respect to the son or daughter's eligibility for admission as a family-sponsored immigrant shall be made as if such naturalization had not taken place.

`(3) PRIORITY DATE- Regardless of whether a petition is converted under this subsection or not, if an unmarried son or daughter described in this subsection was assigned a priority date with respect to such petition before such naturalization, he or she may maintain that priority date.

`(4) CLARIFICATION- This subsection shall apply to a petition if it is properly filed, regardless of whether it was approved or not before such naturalization.'

SEC. 7. IMMIGRATION BENEFITS FOR CERTAIN ALIEN CHILDREN NOT AFFECTED.

Section 204(a)(1)(D) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(D)) is amended by adding at the end the following new clause:

`(iii) Nothing in the amendments made by the Child Status Protection Act shall be construed to limit or deny any right or benefit provided under this subparagraph.'

SEC. 8. EFFECTIVE DATE.

The amendments made by this Act shall take effect on the date of the enactment of this Act and shall apply to any alien who is a derivative beneficiary or any other beneficiary of--

(1) a petition for classification under section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) approved before such date but only if a final determination has not been made on the beneficiary's application for an immigrant visa or adjustment of status to lawful permanent residence pursuant to such approved petition;

(2) a petition for classification under section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) pending on or after such date; or

(3) an application pending before the Department of Justice or the Department of State on or after such date.

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.