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Child Status Protection Act (CSPA)

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Submitted by admin on Apr 1st 2009

Overview

The Child *Status* Protection Act (CSPA) changes who can be considered a "child" for the purpose of visa issuance by the Department of State and for purposes of *adjustment of status* of aliens by USCIS.

The CSPA provides *that* if a US Citizen files a Petition for Alien Relative (Form I-130) on behalf of a child before he or she turns 21, the child will continue to be considered a child for immigration purposes even if USCIS does not act on the petition before the child turns 21. Children of lawful permanent residents also benefit if a Form I-130 is filed on behalf of their children.

On April 30, 2008, USCIS issued new guidance that allows aliens who had approved immigrant visa petitions prior to the enactment of the CSPA, but had not yet applied for permanent residence (either an application for adjustment of status or an immigrant visa) on the date of enactment to benefit from the CSPA. The new guidance includes many aliens who, subsequent to the enactment of the CSPA, never filed an application for permanent residence and aliens who filed an application for permanent residence but such application was denied solely based on the applicant's age.

Supporting Documents and Information

Donald Neufeld releases Memo with Revised Guidance for the Child Status Protection Act (CSPA). 04/30/2008

This guidance significantly modifies a prior interpretation of certain provisions of the CSPA. In particular, it changes how the agency interprets the statute to apply to aliens who aged out prior to the enactment date of the CSPA. It also permits those individuals who were ineligible under the prior policy to file a new application for permanent residence. Under certain circumstances, this guidance also permits those individuals who were previously denied for CSPA to file motions to reopen or reconsider without filing fee. It also explains what steps certain aliens who do not automatically benefit from the CSPA can take to protect their status as a child.

This guidance contained in the AFM update below replaces the following two memoranda:

- The Child Status Protection Act, issued September 20, 2002; and
- The Child Status Protection Act ? Memorandum Number 2, issued February 14, 2003

This guidance does NOT affect:

- Form I-539 adjudications for V status; or
- The memorandum, Clarification of Aging Out Provisions as They Affect Preference Relatives and Immediate Family Members Under the Child Status Protection Act Section 6 and Form I-539 Adjudications for V Status, issued June 14, 2006

Additional documents supporting the Neufeld Memo:

- [Donald Neufeld Memo with Revised Guidance for CSPA 04/30/2008](#) [2]
- [USCIS Update: USCIS issues revised guidance on CSPA 05/06/2008](#) [3]
- [Fact Sheet with Q&A 05-06-08](#) [4]
- [Q&A from USCIS National Stakeholder Meeting 05-27-08](#) [5]

USCIS Clarification of Aging Out Provisions as They Affect Preference Relatives and Immediate Family Members Under the CSPA Section 6 and Form I-539 Adjudication for V Status 06/14/2006

This memo from Michael Aytes includes revisions to Adjudicator?s Field Manual (AFM) Chapters 21.2(e)(4)(C) and 37.4 (AFM Update AD06-21). Section I clarifies when an alien beneficiary is eligible to exercise the ?opt-out? provisions under section 6 of the CSPA. Section II address adjudication of Form I-539 requests for extension of V-2 and V-3 status when the petitioner has naturalized.

- [USCIS Memo - Clarification of Aging Out Provisions 06-14-2006](#) [6]

USCIS Guidance on Child Status Protection Act (CSPA) for Asylee and Refugee Children 08/17/2004

USCIS issued additional guidance on the Child Status Protection Act ? Children of Asylees and Refugees. This memo relates to following to join or adjusting (under section 209) children of asylees and refugees. Specifically, the memo addresses the applicability of the CSPA,

eligibility, and provides examples of ineligibility.

- [CPSA - Children of Asylees and Refugees 08-17-2004](#) [7]

Section 6 of the Child Status Protection Act 03/24/2004

USCIS releases a memo regarding Child Status Protection Act. The purposes of the memo is to provide additional guidance on adjudicating requests tendered pursuant to section 6 of the CSPA.

NOTE: This memo was amended by June 14, 2006 Memo.

- [Section 6 of the CSPA 03-23-2004](#) [8]

Department of State Cable on IV Issuance to Aliens Qualifying for Age-Out Protection Under the CSPA or the PATRIOT Act (ALDAC #3) 05/29/2003

- [DOS Cable ALDAC #3 05-29-2003](#) [9]

Department of State Cable on What Constitutes a ?Final Determination? on an Application Adjudicated Prior to the Effective Date of CSPA? (ALDAC # 4)

- [DOS Cable ALDAC #4 05-17-2003](#) [10]

2nd Memo with USCIS (earlier known as INS) Guidance on Child Status Protection Act 02/14/2003

Johnny Williams, USCIS (earlier known as INS) EAC for Field Operations (before it became part of DHS), issued a second guidance memo regarding the application of the age-out provisions of the CSPA to various categories of beneficiaries.

NOTE: This memo was replaced by USCIS Guidance from Donald Neufeld 05/06/2008.

- [Second Williams Memo with Guidance on CSPA 02-14-2003](#) [11]

Department of State Issues Revised Cable on Child Status Protection Act (ALDAC #2)_01/17/2003

This cable reiterates/clarifies the main points of the Child Status Protection Act of 2000 ("CSPA"), limits the mandatory advisory opinion requirement to a narrow class of cases, and announces revisions to certain important aspects of the preliminary guidance set forth in reftel. This memo includes a Sample Worksheet for Calculating Age in Section 3 Cases (for principals in F2A cases, and for derivatives in all family-based and employment-based preference cases).

- [DOS Cable ALDAC #2 01-17-2003](#) [12]

Department Of State Cable on Child Status Protection Act (ALDAC #1) 08/26/2002

The State Dept. Visa Office advises posts regarding its interpretation of certain provisions of the Child Status Protection Act. It defines visa availability as requiring both a current priority date and an approved petition, and defines 'seeks to acquire the status of an LPR' as applying for an immigrant visa.

- [DOS Cable ALDAC #1 08-26-2002](#) [13]

Guidance on Child Status Protection Act from USCIS (earlier known as INS) 9/20/2002

This 9/20/02 USCIS (earlier known as INS) memo from Johnny N. Williams, Executive Associate Commissioner, provides preliminary guidance to Service officers concerning the amendments made to the Immigration and Nationality Act by the Child Status Protection Act.

NOTE: This memo was replaced by USCIS Guidance from Donald Neufeld 05/06/2008.

- [Williams Memo with Guidance on CSPA 09-20-2002](#) ^[14]

USCIS (earlier known as INS) Instruction on Child Status Protection Act in Context of Asylum Applications 08/07/2002

In an 8/7/02 memo, USCIS (earlier known as INS) Asylum Division Director Joseph Langlois discusses the effects of the Child Status Protection Act (PL 107-208) on derivative asylum applicants.

- [CSPA in Context of Asylum Applications 08-07-2002](#) ^[15]

President Signs Two Immigration Bills Into Law 08/06/2002

The President signed into law H.R. 1209, the "Child Status Protection Act", allows aliens who have filed applications or petitions as children under the Immigration and Nationality Act to remain eligible as children after turning 21 years of age under a number of circumstances; and S.J.Res. 13, which confers honorary citizenship of the United States posthumously on Marie Joseph Paul Yves Roche Gilbert du Motier, the Marquis de Lafayette.

- [CSPA Act signed into Law](#) ^[16]

Summary of the Child Status Protection Act (CSPA) which President Bush Signed 08/06/2002

A summary of the legislation that President Bush signed on August 6, 2002, addressing the problem of minor children losing their eligibility for certain immigration benefits as a result of USCIS (earlier known as INS) processing delays.

- [Summary of the Child Status Protection Act which President Bush Signed](#) ^[17]

USA-Patriot Act Series No. 6 - Revised Interpretation of Age-Out Provisions 06/26/2002

- [USA-Patriot Act Series No. 6 - Revised Interpretation of Age-Out Provisions 06-26-2002](#) ^[18]

Key Cases and Decisions regarding CSPA

Padash v. INS - U.S. Court of Appeals, 9th Circuit Rules on Meaning of "Final Determination" under CSPA ? 02/19/2004

In *Padash*, the Ninth Circuit held that the Child Status Protection Act, which prevents individuals from "aging out" of a visa category as a result of administrative delays, applies to individuals who had appeals challenging the denial of their adjustment of status applications

pending on the date of enactment, August 6, 2002. The Court held that "final determination" meant a final decision from which no appeal can be taken and rejected the government's assertion that "final determination" meant the final agency decision.

- [Padash v. INS 02-19-04.pdf](#) [19]

Matter of Avila-Perez ? Effective Date of CSPA 02/09/2007

An Immigration Judge found Mr. Avila-Perez ineligible for adjustment of status, because he did not have a visa immediately available to him at the time his adjudication was filed, having lost his status as the child of a U.S. citizen, and therefore as an immediate relative, when he turned 21 years of age. An appeal was filed to overturn this decision, contending that he was eligible for the benefits of the CSPA and that he retained his child status even after turning 21. BIA determined that the benefits of CSPA did apply to Mr. Avila-Perez and that he was still a "child" pursuant to the provisions of CSPA, therefore he was statutorily eligible for adjustment of status.

- [Matter of Avila-Perez 02-09-2007](#) [20]

Matter of Garcia ?Status of Children who Aged-Out under CSPA 06/16/2006

- [Matter of Garcia 06-16-2006](#) [21]

Matter of Ki Na Kim ? Interpreting ?Final Determination? 06/07/2006

Ms. Kim's adjustment of status application was formally denied on 04/19/2002, before the enactment date of the CSPA on 08/06/2002, because she turned age 21 on 02/01/2002. Since she aged-out before the enactment date of the CSPA, and the final determination was made before the enactment date, DHS argued that she may not benefit from the CSPA. An appeal was filed contending the definition of "final determination" because the adjustment of status application was renewed after 08/06/2002 and that she should still be considered a child under CSPA. BIA determined that CSPA "final determination" applies where an application is pending before DOJ or DOS on or after the dated of CSPA.



























- [Matter of Ni Ka Kim 06-07-2006](#) [22]

Matter of Ji Young Kim ? Interpreting ?Sought to Acquire? 12/20/2004

BIA determines that Congress intended the term "sought to acquire" lawful permanent residence to be broadly interpreted within the context of the statute, and not limited to the filing of the application.

- [Matter of Ji Young Kim 12-20-04](#) [23]

test

Attachment	Size
 CPSA - Children of Asylees and Refugees 08-17-2004.pdf ^[24]	61.59 KB
 CSPA Act signed into Law.pdf ^[25]	47.5 KB
 CSPA in Context of Asylum Applications 08-07-2002.pdf ^[26]	32.6 KB
 Fact Sheet with Q&A 05-06-08.pdf ^[27]	47.45 KB
 Neufield Memo Revised Guidance for the CSPA 04-30-2008.pdf ^[28]	83.62 KB
 Q&A from USCIS National Stakeholder Meeting 05-27-08.pdf ^[29]	63.93 KB
 Section 6 of the CSPA 03-23-2004.pdf ^[30]	59.25 KB
 USA-Patriot Act Series No. 6 - Revised Interpretation of Age-Out Provisions 06-26-2002.pdf ^[31]	16.18 KB
 USCIS issues revised guidance on CSPA 05-06-08.pdf ^[32]	35.48 KB
 USCIS Memo - Clarification of Aging Out Provisions 06-14-2006.pdf ^[33]	98.28 KB
 Matter of Avila-Perez 02-09-2007.pdf ^[34]	67.28 KB
 Matter of Garcia 06-16-2006.pdf ^[35]	396.72 KB
 Matter of Ji Young Kim 12-20-04.pdf ^[36]	1.14 MB
 Matter of Ni Ka Kim 06-07-2006.pdf ^[37]	29.28 KB
 Padash v. INS 02-19-04.pdf ^[38]	122.89 KB
 02-24-05 Am Imm Law Foundation - Aging-Out.pdf ^[39]	60.07 KB
 03-08-2004 Am Imm Law Foundation - Practice Advisory - Updated.pdf ^[40]	69.13 KB
 09-26-06 Am Imm Law Foundation - Practice Advisory - 2006 Update.pdf ^[41]	60.38 KB
 Summary of the Child Status Protection Act.pdf ^[42]	19.77 KB
 Williams Memo with Guidance on CSPA - 09-20-2002.pdf ^[43]	37.81 KB
 DOS Cable ALDAC 08-26-2002.pdf ^[44]	1.53 MB
 DOS Cable ALDAC 05-17-2003.pdf ^[45]	20.02 KB
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 DOS Cable ALDAC 08-26-2002.pdf ^[47]	1.53 MB
 DOS Cable ALDAC 01-17-2003.pdf ^[48]	29.89 KB
 Second Williams Memo.pdf ^[49]	47.37 KB

Green Card:

[CSPA](#) ^[50]

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Links:

[1] <https://immigration.com/greencard/cspa/child-status-protection-act-cspa>

[2] <http://www.immigration.com/sites/default/files/Neufield%20Memo%20Revised%20Guidance%20for%20the%20CSPA%2030-2008.pdf>

[3] http://www.immigration.com/sites/default/files/USCIS%20issues%20revised%20guidance%20on%20CSPA%2005-06-08_0.pdf

[4] <http://www.immigration.com/sites/default/files/Fact%20Sheet%20with%20Q&A%2005-06-08.pdf>

[5] <http://www.immigration.com/sites/default/files/Q&A%20from%20USCIS%20National%20Stakeholder%20Meeting%2027-08.pdf>

[6] <http://www.immigration.com/sites/default/files/USCIS%20Memo%20-%20Clarification%20of%20Aging%20Out%20Provisions%2006-14-2006.pdf>

[7] http://www.immigration.com/sites/default/files/CPSA%20-%20Children%20of%20Asylees%20and%20Refugees%2008-17-2004_0.pdf

[8] <http://www.immigration.com/sites/default/files/Section%206%20of%20the%20CSPA%2003-23-2004.pdf>

[9] <http://www.immigration.com/sites/default/files/DOS%20Cable%20ALDAC%2005-29-2003.pdf>

[10] <http://www.immigration.com/sites/default/files/DOS%20Cable%20ALDAC%2005-17-2003.pdf>

[11] <http://www.immigration.com/sites/default/files/Second%20Williams%20Memo.pdf>

[12] <http://www.immigration.com/sites/default/files/DOS%20Cable%20ALDAC%2001-17-2003.pdf>

[13] http://www.immigration.com/sites/default/files/DOS%20Cable%20ALDAC%2008-26-2002_0.pdf

[14] http://www.immigration.com/sites/default/files/Williams%20Memo%20with%20Guidance%20on%20CSPA%20-%2009-20-2002_0.pdf

[15] <http://www.immigration.com/sites/default/files/CSPA%20in%20Context%20of%20Asylum%20Applications%2008-07-2002.pdf>

[16] <http://www.immigration.com/sites/default/files/CSPA%20Act%20signed%20into%20Law.pdf>

[17] http://www.immigration.com/sites/default/files/Summary%20of%20the%20Child%20Status%20Protection%20Act_0.pdf

[18] <http://www.immigration.com/sites/default/files/USA-Patriot%20Act%20Series%20No.%206%20-%20Revised%20Interpretation%20of%20Age-Out%20Provisions%2006-26-2002.pdf>

[19] <http://www.immigration.com/sites/default/files/Padash%20v.%20INS%2002-19-04.pdf>

[20] http://www.immigration.com/sites/default/files/Matter%20of%20Avila-Perez%2002-09-2007_0.pdf

[21] <http://www.immigration.com/sites/default/files/Matter%20of%20Garcia%2006-16-2006.pdf>

[22] <http://www.immigration.com/sites/default/files/Matter%20of%20Ni%20Ka%20Kim%2006-07-2006.pdf>

[23] <http://www.immigration.com/sites/default/files/Matter%20of%20Ji%20Young%20Kim%2012-20-04.pdf>

[24] https://immigration.com/sites/default/files/CPSA%20-%20Children%20of%20Asylees%20and%20Refugees%2008-17-2004_0.pdf

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[28] <https://immigration.com/sites/default/files/Neufield%20Memo%20Revised%20Guidance%20for%20the%20CSPA%2030-2008.pdf>

[29] <https://immigration.com/sites/default/files/Q%26A%20from%20USCIS%20National%20Stakeholder%20Meeting%2027-08.pdf>

[30] <https://immigration.com/sites/default/files/Section%206%20of%20the%20CSPA%2003-23-2004.pdf>

- [31] <https://immigration.com/sites/default/files/USA-Patriot%20Act%20Series%20No.%206%20-%20Revised%20Interpretation%20of%20Age-Out%20Provisions%2006-26-2002.pdf>
- [32] https://immigration.com/sites/default/files/USCIS%20issues%20revised%20guidance%20on%20CSPA%2005-06-08_0.pdf
- [33] <https://immigration.com/sites/default/files/USCIS%20Memo%20-%20Clarification%20of%20Aging%20Out%20Provisions%2006-14-2006.pdf>
- [34] https://immigration.com/sites/default/files/Matter%20of%20Avila-Perez%2002-09-2007_0.pdf
- [35] <https://immigration.com/sites/default/files/Matter%20of%20Garcia%2006-16-2006.pdf>
- [36] <https://immigration.com/sites/default/files/Matter%20of%20Ji%20Young%20Kim%2012-20-04.pdf>
- [37] <https://immigration.com/sites/default/files/Matter%20of%20Ni%20Ka%20Kim%2006-07-2006.pdf>
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- [39] https://immigration.com/sites/default/files/02-24-05%20Am%20Imm%20Law%20Foundation%20-%20Aging-Out_0.pdf
- [40] <https://immigration.com/sites/default/files/03-08-2004%20Am%20Imm%20Law%20Foundation%20-%20Practice%20Advisory%20-%20Updated.pdf>
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