



September 25, 2024

PA-2024-23

Policy Alert

SUBJECT: Age Calculation Under the Child Status Protection Act

Purpose

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the [USCIS Policy Manual](#) to clarify how to calculate the Child Status Protection Act (CSPA) age for a noncitizen who demonstrates extraordinary circumstances that may excuse the sought to acquire requirement under the CSPA.¹

Background

The CSPA protects certain beneficiaries from losing eligibility for immigrant visas and adjustment of status due to their aging during the immigration process, which can lead to the beneficiary no longer qualifying as a child for immigration purposes.² For the family or employment-based preference or diversity immigrant categories, the CSPA provides a method to calculate the noncitizen's age based on the date an immigrant visa becomes available.³ To benefit from the calculation, the noncitizen must seek to acquire lawful permanent resident (LPR) status within 1 year of immigrant visa availability.⁴

Extraordinary circumstances may warrant the exercise of discretion to excuse an applicant who failed to seek to acquire LPR status within 1 year of immigrant visa availability.⁵ To establish extraordinary circumstances, the applicant must demonstrate that the circumstances were not created through the noncitizen's own actions or inactions; the circumstances directly affected the applicant's failure to seek to acquire LPR status within the 1-year period; and the delay was reasonable under the circumstances.⁶ If an applicant successfully establishes extraordinary circumstances, USCIS calculates their CSPA age using the date when the visa became available.

However, in some cases, a visa may not have been continuously available to the applicant. The U.S. Department of State (DOS) is authorized to make reasonable estimates of the number of available

¹ See [Pub. L. 107-208](#) (August 6, 2002).

² See [INA 101\(b\)\(1\)](#) (defines child as an unmarried person under 21 years of age).

³ See [INA 203\(h\)](#).

⁴ See [INA 203\(h\)](#).

⁵ See [Matter of O. Vazquez](#), 25 I&N Dec. 817 (BIA 2012).

⁶ See Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 7, Child Status Protection Act, Section H, Extraordinary Circumstances for Sought to Acquire Requirement [[7 USCIS-PM 7.H](#)].

visas and publishes those estimates in the monthly Visa Bulletin charts.⁷ On occasion, the estimates in the Visa Bulletin for an applicant's country of chargeability and preference category may "retrogress" or move backwards to ensure that more visas are not issued than the statutory limits allow. A visa may become unavailable to the applicant due to this visa retrogression or also due to USCIS designating a different chart of the DOS Visa Bulletin for filing an adjustment application in a particular category.

While the CSPA statute contemplates that the applicant has a continuous 1-year period to seek to acquire LPR status, it does not account for these periods of visa unavailability despite such unavailability being a long-standing result of the statutory scheme.⁸ In general, when a visa becomes unavailable to the noncitizen before a continuous 1-year period has elapsed, USCIS policy provides that the applicant has another 1-year period to seek to acquire when the visa once again becomes available. When the visa becomes available again, the applicant's CSPA age is calculated based on the new visa availability date rather than the date when the visa initially became available.⁹

The CSPA, DHS regulations, and precedent decisions do not address the effect on the age calculation for a noncitizen who establishes extraordinary circumstances for failing to seek to acquire LPR status when the visa became unavailable before a continuous 1-year period elapsed. Furthermore, USCIS has not previously issued policy guidance on which immigrant visa availability date officers should use to calculate the CSPA age for noncitizens who demonstrate extraordinary circumstances to excuse their failure to meet the sought to acquire requirement. USCIS is therefore issuing guidance to ensure efficient and consistent adjudication in such cases.¹⁰

This guidance, contained in Volume 7 of the Policy Manual, is effective immediately and applies to applications pending on or after September 25, 2024. The guidance contained in the Policy Manual is controlling and supersedes any related prior guidance on the topic.

Policy Highlights

- Clarifies that USCIS calculates the CSPA age of an applicant who established extraordinary circumstances and is excused from the sought to acquire requirement using the date that the immigrant visa first became available when that immigrant visa is continuously available for a 1-year period without any intervening visa unavailability.
- Clarifies that under circumstances where the immigrant visa became available and then unavailable, USCIS may calculate an applicant's CSPA age using the date an immigrant visa

⁷ See [INA 203\(e\)](#) and [INA 203\(g\)](#). See [22 CFR 42.51\(a\)](#). See [9 FAM 503.4](#), Allocation of Immigrant Visa Numbers.

⁸ See Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section C, Verify Visa Availability, Subsection 5, Visa Retrogression [[7 USCIS-PM A.6\(C\)\(5\)](#)].

⁹ See Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 7, Child Status Protection Act, Section F, Family and Employment-Based Preference and Diversity Immigrants, Subsection 6, Visa Was Available but Becomes Unavailable Before an Application is Filed [[7 USCIS-PM A.7\(F\)\(6\)](#)], and Section G, Sought to Acquire Requirement, Subsection 2, Visa Availability and the Sought to Acquire 1-year Period [[7 USCIS-PM A.7\(G\)\(2\)](#)].

¹⁰ For a discussion on [Matter of O. Vazquez](#), 25 I&N Dec. 817, 820 (BIA 2012) and extraordinary circumstances where the visa is available for less than 1 year, see Appendix: Update on Interpretation of Sought to Acquire [[7 USCIS-PM A.7, Appendices Tab](#)].

first became available if the applicant demonstrates extraordinary circumstances for not applying for adjustment of status before the immigrant visa became unavailable.

Summary of Changes

Affected Section: Volume 7 > Part A > Chapter 7, Child Status Protection Act

- Retitles and redesignates Subsection 3 (Extraordinary Circumstances) in Section G (Sought to Acquire) as Section H (Extraordinary Circumstances for Sought to Acquire Requirement).
- Within new Section H, redesignates the italicized subheadings as subsections 1, 2, and 3; adds new Subsection 4 (Age Calculation for Applicants with Extraordinary Circumstances); redesignates and renames Subsection 4 (Remedies for Certain Adjustment Applicants Who Failed to Seek to Acquire) to Subsection 5 (Other Remedies for Certain Adjustment Applications Who Failed to Seek to Acquire); and redesignates the following section.

USCIS may also make other minor technical, stylistic, and conforming changes consistent with this update.

Citation

Volume 7: Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 7, Child Status Protection Act [[7 USCIS-PM A.7](#)].