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Chapter 7 - Child Status Protection Act

Guidance

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A. Purpose of the Child Status Protection Act

The core purpose of the Child Status Protection Act (CSPA)^[1] was to address the hardships faced by certain aliens who were previously classified as children for immigrant visa purposes, but who, due to the time required to adjudicate petitions, had turned 21 years old and consequently became ineligible to receive such immigrant visas.^[2]

Section 101(b)(1) of the Immigration and Nationality Act (INA) defines a child as a person who is unmarried and under 21 years old.^[3] CSPA does not alter this definition. Instead, CSPA provides methods for calculating an applicant's age for immigrant visa purposes. The resulting age is known as the applicant's "CSPA age."

CSPA does not change the requirement that the applicant must be unmarried in order to remain eligible for classification as a child for immigration purposes.

B. Child Status Protection Act Applicability

CSPA applies only to those applicants specified in the statute:

- Immediate relatives (IRs);
- Family-sponsored preference principals and derivatives;
- Violence Against Women Act (VAWA) self-petitioners and derivatives; ^[4]
- Employment-based preference derivatives; ^[5]
- Diversity immigrant visa (DV) derivatives;
- Derivative refugees; ^[6] and

- Derivative asylees.

CSPA provisions vary based on the immigrant category of the applicant. Certain provisions of the CSPA apply to some categories of immigrants but not others. Such provisions and details regarding eligibility are described in the following subsections.^[7] CSPA only covers those immigrants explicitly listed in the statute; it does not apply to any other immigrants or nonimmigrants.

CSPA applies to both aliens abroad who are applying for an immigrant visa through the Department of State (DOS) and aliens physically present in the United States who are applying for adjustment of status through USCIS. This chapter primarily focuses on the impact of CSPA on adjustment applicants, though the same principles generally apply to aliens seeking an immigrant visa through DOS.^[8]

Effective Date

CSPA went into effect on August 6, 2002. Adjustment applicants are eligible for CSPA consideration if either the qualifying application (Application to Register Permanent Residence or Adjust Status ([Form I-485](#))) or one of the following underlying forms was filed or pending on or after the effective date:

- Petition for Alien Relative ([Form I-130](#));
- Petition for Amerasian, Widow(er), or Special Immigrant ([Form I-360](#));
- Immigrant Petition for Alien Worker ([Form I-140](#));
- Immigrant Petition by Standalone Investor ([Form I-526](#));
- Immigrant Petition by Regional Center Investor ([Form I-526E](#));
- Application for Asylum and for Withholding of Removal ([Form I-589](#));
- Registration for Classification as a Refugee (Form I-590); or
- Refugee/Asylee Relative Petition ([Form I-730](#)). ^[9]

CSPA does not apply to adjustment applications that were subject to a final determination prior to the effective date. However, if the qualifying underlying form was approved prior to the effective date, an applicant who applies for adjustment of status after the effective date may still qualify for CSPA coverage.^[10]

Impact of USA Patriot Act

Special rules apply in cases where an adjustment applicant would otherwise age out on or after August 6, 2002. Under Section 424 of the USA PATRIOT Act, if a qualifying form was filed before September 11, 2001, then the applicant is afforded an additional 45 days of eligibility.^[11]

C. Immediate Relatives

1. Applicability

In order to qualify for CSPA:

- The adjustment applicant must have had one of the following approved or pending on or after the CSPA's effective date: a qualifying Petition for Alien Relative ([Form I-130](#)), Petition for Amerasian, Widow(er), or Special Immigrant ([Form I-360](#)), or Application to Register Permanent Residence or Adjust Status ([Form I-485](#));
- The applicant must have been under the age of 21 and unmarried at the time the qualifying [Form I-130](#) or [Form I-360](#) was filed; and
- The applicant must remain unmarried.

If the petitioner of a pending or approved IR spousal petition dies, the spousal Form I-130 automatically converts to a widow(er)'s Form I-360.^[12] The widow(er)'s child(ren), if any, must be under the age of 21 and unmarried at the time of the petitioner's death to be classified as derivatives on the automatically converted Form I-360, regardless of whether the child(ren) had a separate pending or approved Form I-130 at the time of the petitioner's death.^[13]

Similarly, the beneficiary of a pending or approved spousal Form I-130 may subsequently file a VAWA-based Form I-360. In order to include his or her child(ren) on the self-petition as derivatives, the child(ren) must be under the age of 21 and unmarried when the Form I-360 is filed, regardless of whether the child(ren) had a separate or approved Form I-130 when the Form I-360 was filed.^[14]

2. Determining Child Status Protection Act Age

For IRs and IR self-petitioners or derivatives under VAWA, a child's age is frozen on the date the [Form I-130](#) or [Form I-360](#) is filed, respectively. For derivatives of widow(er)s, a child's age is frozen on the date the [Form I-360](#) is filed or the spousal [Form I-130](#) is automatically converted to a widow(er)'s [Form I-360](#) (in other words, the date of the petitioner's death). If the adjustment applicant was under the age of 21 at the time the petition was filed or automatically converted, the applicant is eligible for CSPA and will not age out.

D. Derivative Asylees

CSPA allows children who turn 21 years old after an asylum application is filed but prior to adjudication to continue to be classified as children and remain eligible for derivative asylum status and adjustment of status.

1. Applicability

In order to qualify for CSPA:

- The adjustment applicant must have had one of the following pending on or after the CSPA's effective date: a qualifying Refugee/Asylee Relative Petition ([Form I-730](#)), principal applicant's Application for Asylum and for Withholding of Removal (Form I-589), or Application to Register Permanent Residence or Adjust Status ([Form I-485](#));
- The applicant must have been under the age of 21 and unmarried at the time the principal asylum applicant's [Form I-589](#) was filed; and
- The applicant must be unmarried at the time he or she seeks adjustment of status.

2. Determining Child Status Protection Act Age

For derivative asylees, an adjustment applicant's CSPA age is his or her age on the date the principal applicant's [Form I-589](#) is filed. In other words, the applicant's age is frozen on the date the [Form I-589](#) is filed. If the applicant was under the age of 21 at the time of filing, the applicant is eligible for CSPA and will not age out.

Generally, in order to establish eligibility, a derivative asylee must have been listed on the principal applicant's [Form I-589](#) prior to a final decision on the principal's asylum application. However, the derivative asylee may overcome this by providing evidence establishing the parent-child relationship, including evidence of the child's age, and a reasonable explanation as to why the derivative was not included on the principal's [Form I-589](#).^[15]

E. Derivative Refugees

CSPA allows children who turn 21 years old after a refugee application is filed but prior to adjudication to continue to be classified as children and remain eligible for derivative refugee status. For purposes of adjustment of status of a derivative refugee, CSPA protection is not needed because a derivative refugee does not need to remain the child of the principal refugee in order to adjust status under INA 209.^[16]

1. Applicability

In order to qualify for CSPA:

- The applicant must have had a qualifying Registration for Classification as a Refugee (Form I-590) or Refugee/Asylee Relative Petition ([Form I-730](#)) pending on or after the CSPA effective date; and
- The applicant must have been under the age of 21 and unmarried at the time the qualifying Form I-590 was filed. ^[17]

While the child must have been unmarried in order to qualify for refugee derivative status, he or she does not need to remain unmarried in order to adjust status under INA 209.^[18]

2. Determining Child Status Protection Act Age

For derivative refugees, an adjustment applicant's CSPA age is his or her age on the date the principal applicant's Form I-590 is filed. The date a Form I-590 is considered filed is the date of the principal refugee parent's interview with a USCIS officer. The applicant's age is frozen on the date of the refugee parent's interview. So long as the child was under 21 on the date of the interview, he or she will not age out of eligibility for derivative refugee status or adjustment of status.

Generally, in order to qualify, the derivative refugee must be listed as a child on the principal applicant's Form I-590 prior to a final decision. However, the derivative refugee may overcome this by providing evidence establishing the parent-child relationship, including evidence of the child's age, and a reasonable explanation as to why the derivative was not included on the principal's Form I-590.^[19]

F. Family and Employment-Based Preference and Diversity Immigrants

1. Applicability

CSPA applies differently to family-sponsored and employment-based preference and DV adjustment applicants than it does to refugee, asylee, and IR adjustment applicants.^[20] Instead of freezing the age of the applicant on the filing date, as is the case with IRs, CSPA provides a formula by which the preference applicant's CSPA age is calculated in a manner that takes into account the amount of time the qualifying petition was pending.^[21] Furthermore, the applicant's eligibility depends not only on the CSPA age calculation but also on whether the applicant sought to acquire lawful permanent residence within 1 year of visa availability.^[22]

In order for a family-sponsored or employment-based preference or DV applicant to qualify for CSPA, the applicant must meet the following requirements:

- The applicant must have had a qualifying petition ^[23] or adjustment application pending on or after the CSPA effective date; ^[24]
- The applicant's calculated CSPA age must be under 21 years old;
- The applicant must remain unmarried; and
- The applicant must have sought to acquire lawful permanent residence within 1 year of visa availability, absent extraordinary circumstances. ^[25]

2. Child Status Protection Act Age Calculation

For family-sponsored (including VAWA)^[26] and employment-based preference and DV categories, an adjustment applicant's CSPA age is calculated by subtracting the number of days the petition on which the applicant seeks to adjust status was pending (pending time) from the applicant's age on the date the immigrant visa becomes available to the applicant (age at time of visa availability).^[27] The formula for calculating CSPA age is as follows:

$$\text{Age at time of visa availability} - \text{Pending time} = \text{CSPA Age}$$

While an applicant must file an adjustment application or otherwise seek lawful permanent resident (LPR) status in order to benefit from CSPA, the date the applicant files an adjustment application is not relevant for the CSPA age calculation.^[28]

Example

The applicant is 21 years and 4 months old when USCIS considers an immigrant visa available. The applicant's underlying petition was pending for 6 months. The applicant's CSPA age is calculated as follows:

$$21 \text{ years and } 4 \text{ months} - 6 \text{ months} = 20 \text{ years and } 10 \text{ months}$$

Therefore, the applicant's CSPA age is under 21.

If an applicant has multiple approved petitions, the applicant's CSPA age is calculated using the petition that forms the underlying basis for the adjustment of status application. This also applies to circumstances when USCIS approves a request to transfer the underlying basis of a pending adjustment of status application to a different immigrant category based on another approved petition. The applicant's CSPA age is calculated using the approved petition that forms the new basis of the adjustment of status application.^[29]

Example

An applicant is listed as a derivative on an approved [Form I-140](#) filed by their parent's employer. The employer rescinds the parent's job offer, but the parent receives a job offer from a second employer. The second employer files a new Form I-140 for the parent, and the applicant is listed as a derivative on this second approved Form I-140. The parent files an adjustment of status application based on the second Form I-140 and is approved. The applicant also files an adjustment of status application based on the second Form I-140.

The derivative applicant's CSPA age is calculated using the petition underlying the principal beneficiary's adjustment of status application, in other words, the second [Form I-140](#). The derivative may be eligible to retain the priority date from the first Form I-140, but the CSPA calculation uses the second petition, because this is the petition through which the principal beneficiary obtained adjustment of status and that forms the basis for the applicant's adjustment of status application.

3. Determining Length of Time Petition Was Pending

For family and employment-based preference adjustment applicants, the length of time a petition was pending (pending time) is the number of days between the date that it is properly filed (filing date)^[30] and the approval date. The formula for determining the length of time the petition was pending is as follows:

$$\text{Approval Date} - \text{Filing Date} = \text{Pending Time}$$

Example

The applicant's mother filed a petition on the applicant's behalf on February 1, 2016. USCIS approved the petition on August 1, 2016.

$$\text{August 1, 2016} - \text{February 1, 2016} = 6 \text{ months (or 182 days)}$$

Therefore, the applicant's petition pending time is 6 months (or 182 days).

Pending time includes administrative review, such as motions and appeals, but does not include consular returns.

For DV applicants, the number of days the petition was pending is the period of time between the first day of the DV application period for the program year in which the principal applicant qualified and the date on which notifications that entrants have been selected become available.^[31] In other words, the pending time is the period of time between the start of the DV Program registration period to the date of the DV Selection Letter.

Example

The DV Program registration period began on October 1, 2012, and the DV Selection Letter is dated May 1, 2013.

May 1, 2013 - October 1, 2012 = 7 months

Therefore, the applicant's pending time is 7 months.

4. Determining Age at Time of Visa Availability

In order to calculate an adjustment applicant's CSPA age according to the formula above, the officer must first determine the age at time of visa availability.

In order for the immigrant visa to be considered available for CSPA purposes, two conditions must be met:

- The petition must be approved; and
- The visa must be available for the immigrant preference category and priority date.

Therefore, the date the visa is considered available for family and employment-based preference applicants is the later of these two dates:

- The date of petition approval; or
- The first day of the month of when USCIS considers a visa available for accepting and processing an adjustment of status application for that immigrant preference category and priority date.

For DVs, the date a visa is considered available is the first day on which the principal applicant's rank number is current for visa processing.^[32]

Determining When an Applicant May File an Adjustment Application and When a Visa is Available for the CSPA Age Calculation

Applicants can determine when to file for adjustment of status by referring first to the USCIS [Adjustment of Status Filing Charts from the Visa Bulletin](#) webpage and then to the [DOS Visa Bulletin](#).^[33] The date USCIS considers a visa available for accepting and processing an adjustment of status application according to the USCIS website and the [Visa Bulletin](#) is also the date USCIS considers a visa available for CSPA purposes if the petition is already approved.

In September 2015, DOS and USCIS announced a revision to the Visa Bulletin, which created two charts of dates.^[34] DOS publishes a new Visa Bulletin on a monthly basis. Since October 2015, the Visa Bulletin has featured two charts per immigrant preference category:

- Dates for Filing chart; and
- Final Action Dates chart.

USCIS designates one of the two charts for use by applicants each month.^[35] Applicants must check the USCIS [Adjustment of Status Filing Charts from the Visa Bulletin](#) webpage to see which chart to use in determining when they may file adjustment of status applications. Applicants cannot rely on the DOS Visa Bulletin alone because the Visa Bulletin merely publishes both charts; it does not state which chart can be used to determine when to file an adjustment of status application. The DOS Visa Bulletin contains a clear warning to applicants to consult with the USCIS website for guidance on whether to use the Dates for Filing chart or Final Action Dates chart.

It is important to note that while USCIS designates one of the charts for use by applicants each month for accepting and processing adjustment of status applications, the Final Action Dates chart always governs when a visa is authorized for issuance to an applicant.

5. Impact of When a Visa is Authorized for Issuance on the Child Status Protection Act Age Determination

If an eligible applicant filed an adjustment of status application but later a visa is not available for issuance based on the DOS Visa Bulletin Final Action Dates chart for the applicant's priority date, country of chargeability, and visa category, USCIS holds the application until the visa becomes available for issuance and the application can be adjudicated.^[36]

The applicant's CSPA age is determined based on how long the applicant's underlying petition was pending and the applicant's age when a visa became available to the applicant or the petition is approved, whichever is later. The CSPA age associated with the petition does not change after the filing of the adjustment of status application and is frozen through the final adjudication, regardless of when a visa is authorized for issuance based on the Final Action Dates chart.^[37]

6. Visa Was Available but Becomes Unavailable Before an Application is Filed

If a visa initially becomes available and then becomes unavailable^[38] for accepting and processing an adjustment of status application before the potential adjustment applicant has filed an application, the applicant's CSPA age is not locked in. When the visa becomes available again, the applicant's CSPA age is calculated based on the new visa availability date. If the applicant's CSPA age is over 21 at the time of subsequent visa availability, the applicant is no longer eligible for CSPA coverage. Therefore, it is always in the applicant's best interest to apply for adjustment of status as soon as possible when a visa first becomes available according to the chart designated by USCIS so as to lock in the applicant's CSPA age.

Example: Visa Becomes Unavailable Before Filing

In October 2020, USCIS designates the Dates for Filing chart of the DOS Visa Bulletin for use to apply for adjustment of status in the employment-based preference categories. Even though visas are available to a principal applicant and derivative child based on their priority date and country of chargeability in both October and November, the derivative child does not apply for adjustment of status in October or November (while the principal does apply).

However, in December 2020, USCIS designates the Final Action Dates chart for use by prospective applicants in the employment-based preference categories. The derivative child does not have an available visa based on the Final Action Dates chart in December 2020, and cannot apply during that month. One year later, in December 2021, a visa once again becomes available to the derivative child based on the Dates for Filing chart, which USCIS has designated for use in that month, and the derivative child files an application for adjustment of status. At that point, USCIS would calculate CSPA age based on the derivative's age on December 1, 2021 (not October 1, 2020).

G. Sought to Acquire Requirement

In order for family-sponsored and employment-based preference and DV adjustment applicants to benefit from the CSPA age calculation, they must seek to acquire lawful permanent residence within 1 year of when a visa becomes available for accepting and processing a potential adjustment of status application.^[39] This requirement does not apply to refugee derivatives, asylee derivatives, and IRs.^[40]

1. Satisfying the Sought to Acquire Requirement

An adjustment applicant may satisfy the sought to acquire requirement by any one of the following:

- Properly filing an Application to Register Permanent Residence or Adjust Status ([Form I-485](#)); ^[41]
- Submitting a completed Immigrant Visa Electronic Application (Form DS-260), Part I to the DOS; ^[42]
- Paying the immigrant visa fee to DOS; ^[43]
- Paying the Affidavit of Support Under Section 213A of the INA ([Form I-864](#)) review fee to DOS (provided the applicant is listed on the Affidavit of Support); ^[44] or
- Having a properly filed Application for Action on an Approved Application or Petition ([Form I-824](#)) filed on the applicant's behalf. ^[45]

USCIS also considers a written request to transfer the underlying basis of the adjustment of status application to satisfy the “sought to acquire” requirement if the request is received within 1 year of an immigrant visa becoming available in the new preference category.^[46]

Actions an applicant might take prior to filing an adjustment application, such as contacting an attorney or organization about initiating the process for obtaining a visa that has become available or applying for permanent residence, are not equivalent to filing an application and do not fulfill the sought to acquire requirement. However, USCIS may excuse the applicant from the requirement as an exercise of discretion if the applicant is able to establish that the failure to satisfy the sought to acquire requirement within 1 year was the result of “extraordinary circumstances.”^[47]

From the date of visa availability, and provided that the visa remains available for a continuous 1-year period, the applicant has 1 year to fulfill the sought to acquire requirement. If the applicant does not seek to acquire within 1 year of visa availability although the visa was available for a continuous 1-year period, the applicant cannot benefit from the age-out protections of the CSPA. Officers should review the USCIS [Adjustment of Status Filing Charts from the Visa Bulletin](#) webpage to determine whether the applicant had a prior 1-year period of visa availability to file for adjustment of status. Officers may use the USCIS webpage to track movement of dates over time but should confirm consequential dates in the relevant monthly bulletin and chart.

2. Visa Availability and the Sought to Acquire 1-Year Period

The date of visa availability is the date of petition approval or the first day of the month of the DOS Visa Bulletin that indicates availability for that immigrant preference category and priority date according to the chart USCIS designated that month for accepting and processing the adjustment of status application, whichever is later.^[48] From the date of visa availability, family-sponsored and employment-based preference

and DV adjustment applicants have 1 year in which to seek to acquire permanent resident status in order to qualify for CSPA coverage.^[49]

Impact of Visa Unavailability on the 1-Year Sought to Acquire Requirement

When a visa becomes unavailable to the alien before a continuous 1-year period has elapsed, the applicant has another 1-year period to seek to acquire when the visa once again becomes available for accepting and processing an adjustment of status application.

A visa is continuously available for accepting and processing an application for adjustment of status for a 1-year period if, during each month of that year, the applicant has a priority date that is earlier than the date for their country and category on the chart in the DOS Visa Bulletin designated by USCIS for such month.

If a continuous 1-year period of visa availability elapsed and the applicant did not seek to acquire during the 1-year period, the applicant cannot benefit from the age-out protections of the CSPA. The applicant already had a continuous 1-year period in which to seek to acquire.

Example 1

A visa initially becomes available to the prospective applicant according to the Dates for Filing chart on October 1, 2020, which USCIS has designated for use in that month. The visa remains available to the prospective applicant for accepting and processing their application according to the Dates for Filing chart (designated by USCIS) for 4 months, that is, through the end of January 2021. The prospective applicant decides not to apply for adjustment of status between October 1, 2020, and the end of January 2021.

On February 1, 2021, a visa is no longer available to the prospective applicant under either chart and therefore, the prospective applicant is no longer eligible to file an adjustment of status application. A visa subsequently becomes available again on October 1, 2021, based on the Dates for Filing chart, which USCIS has designated for use in that month. Since the prospective applicant only had 4 months of time in which to seek to acquire during the initial period of availability, the prospective applicant has a full 1-year period beginning October 1, 2021, in which the prospective applicant may seek to acquire.

The CSPA age is calculated based on the new visa availability date of October 1, 2021 (not October 1, 2020), and locked in as of that date provided that the visa remains available and the applicant seeks to acquire during that 1-year period. If the visa does not remain continuously available for accepting and processing the application, and becomes unavailable again, the period starts anew once the visa becomes available again.

Example 2

A visa initially becomes available to the prospective applicant according to the Final Action Dates chart on March 1, 2020, which USCIS designated for use in that month. The visa remains available to the prospective applicant through March 2021, that is, for a continuous 1-year period of visa availability. The prospective applicant decides not to file for adjustment of status between March 1, 2020, and March 31, 2021. On April 1, 2021, a visa is no longer available to the prospective applicant. On June 1, 2021, the visa becomes available again to the prospective applicant.

Under these facts, the prospective applicant failed to seek to acquire permanent residence within 1 year of visa availability because the prospective applicant failed to apply for adjustment of status during the 1-year period between March 1, 2020, and March 1, 2021, when a visa was continuously available to file an adjustment of status application. The alien cannot benefit from the age-out protections of the CSPA.

H. Extraordinary Circumstances for Sought to Acquire Requirement

Adjustment applicants who fail to fulfill the sought to acquire requirement within 1 year of visa availability may still be able to benefit from CSPA if they can establish that their failure to meet the requirement was the result of extraordinary circumstances.^{[\[50\]](#)}

In order to establish extraordinary circumstances, the applicant must demonstrate that:

- The circumstances were not created by the applicant's action or inaction;
- The circumstances directly affected the applicant's failure to seek to acquire within the 1-year period; and
- The delay was reasonable under the circumstances.

Examples of extraordinary circumstances that may warrant a favorable exercise of discretion include, but are not limited to:

- Serious illness or mental or physical disability of the applicant during the 1-year period;
- Legal disability, such as instances where the adjustment applicant suffered from a mental impairment, during the 1-year period;
- Instances where a timely adjustment application was rejected by USCIS as improperly filed and was returned to the applicant for corrections where the deficiency was corrected and the application re-filed within a reasonable period thereafter;
- Death or serious illness or incapacity of the applicant's attorney or legal representative or a member of the applicant's immediate family; and
- Ineffective assistance of counsel, when certain requirements are met.

1. Extraordinary Circumstances Due to Ineffective Assistance of Counsel

An applicant may only establish extraordinary circumstances due to ineffective assistance of counsel (the applicant's legal representative or attorney) if the applicant completes the following:

- The applicant must submit an affidavit explaining in detail the agreement that was entered into with counsel regarding the actions to be taken and what information, if any, counsel provided to the applicant regarding such actions;
- The applicant must demonstrate that the applicant has made a good faith effort to inform counsel whose integrity or competence is being questioned of the allegations brought against counsel and that counsel has been given an opportunity to respond; and
- The applicant must indicate whether a complaint has been filed with the appropriate disciplinary authorities about any violations of counsel's legal or ethical responsibilities, or explain why a complaint has not been filed.

2. Extraordinary Circumstances Due to CSPA Age Calculation Policy Change

On February 14, 2023, USCIS issued policy guidance to update when an immigrant visa becomes available for the purpose of calculating an applicant's CSPA age for adjustment of status applications adjudicated by USCIS.^[51] Under the new policy guidance, an applicant's CSPA age is calculated based on their age on the first day of the month when USCIS considers a visa available for accepting and processing an adjustment application.^[52]

Before February 14, 2023, the Final Action Dates chart in the [DOS Visa Bulletin](#) determined the date of visa availability for the CSPA age calculation, as well as whether an applicant satisfied the 1-year sought to acquire requirement.^[53] Under the prior policy, some aliens who were permitted to file an adjustment application based on the Dates for Filing Chart may not have filed because either USCIS:

- Could not yet calculate the alien's CSPA age since an immigrant visa had not become available based on the Final Action Dates chart; or
- Would have calculated the alien's CSPA age to be over 21 years old.

Some of these aliens, who have since filed or may now file an adjustment application because the applicant's CSPA age calculation is under 21 years old under the new policy, may be unable to meet the 1-year sought to acquire requirement if a continuous 1-year period of visa availability elapsed before the alien filed an adjustment application.^[54]

USCIS considers the February 14, 2023, policy change to be an extraordinary circumstance not created by the applicant, and may excuse the applicant's failure to satisfy the sought to acquire requirement for the above scenarios^[55] provided that the delay in filing the adjustment application was reasonable under the circumstances.^[56]

Further, an applicant may have sought to acquire lawful permanent residence within 1 year of a visa becoming available under the Final Action Dates chart under the prior policy guidance, but may now be considered to have applied for adjustment of status outside of the 1-year period under the new policy. USCIS also considers applicants who had adjustment applications pending on February 14, 2023, to have satisfied the sought to acquire requirement if the applicant applied for adjustment of status within 1 year of visa availability based on the Final Action Dates chart under the prior policy guidance.

3. Evaluating Extraordinary Circumstances

When considering a claim of extraordinary circumstances, the officer should weigh the totality of the circumstances and the connection between the circumstances presented and the failure to meet the sought to acquire requirement within the 1-year period, as well as the reasonableness of the delay. In order to warrant a favorable exercise of discretion, the circumstances must truly be extraordinary and beyond the adjustment applicant's control.

USCIS does not consider commonplace circumstances, such as financial difficulty, minor medical conditions, and circumstances within the applicant's control (such as when to seek counsel or begin preparing the application package), to be extraordinary. Furthermore, the fact of being or having been a child is common to all applicants seeking protection under the CSPA and does not constitute extraordinary circumstances.

When an applicant seeks to acquire after the 1-year period of visa availability has elapsed and does not provide an explanation or evidence of extraordinary circumstances, the officer issues a Notice of Intent to Deny (NOID) to give the applicant an opportunity to rebut the apparent ineligibility.

4. Age Calculation for Applicants with Extraordinary Circumstances

If an applicant successfully establishes extraordinary circumstances that excuses their failure to fulfill the sought to acquire requirement within 1 year of the visa becoming available, then USCIS calculates an applicant's CSPA age as follows:

Applicants with Extraordinary Circumstances and No Periods of Visa Unavailability

If the visa was continuously available for 1 year without any intervening visa unavailability, then USCIS calculates an applicant's CSPA age using the date when that visa first became available.

The date the visa is considered available is the later of these two dates:

- The date of petition approval; or
- The first day of the month of when USCIS considers a visa available for accepting and processing an adjustment of status application for that immigrant preference category and priority date. [\[57\]](#)

Applicants with Extraordinary Circumstances and Periods of Visa Unavailability

When a visa is available for accepting and processing the adjustment of status application for a continuous 1-year period and then becomes unavailable before the potential applicant files their adjustment application, then the applicant generally is not eligible for CSPA benefits. However, if the applicant files for adjustment of status when the visa next becomes available, the applicant may establish that their failure to seek to acquire LPR status within the initial 1-year period was based on extraordinary circumstances.[\[58\]](#) If the applicant establishes extraordinary circumstances, USCIS calculates the applicant's CSPA age using the date when that visa first became available.

By contrast, when a visa became unavailable before a continuous 1-year period elapsed and the potential applicant did not file for adjustment of status or otherwise seek to acquire LPR status while the visa was available,[\[59\]](#) USCIS provides the alien another 1-year period to seek to acquire LPR status starting when the visa next becomes available. If the applicant timely files for adjustment of status when the visa next becomes available,[\[60\]](#) USCIS typically calculates the applicant's CSPA age based on the date the visa became available again.[\[61\]](#) However, USCIS may calculate the applicant's CSPA age using the date a visa first became available if the applicant demonstrates extraordinary circumstances for not seeking to acquire LPR status before the visa first became unavailable.

In some cases, when a visa became unavailable before a continuous 1-year period elapsed, the applicant may not have sought to acquire LPR status before the visa first became unavailable and may not have sought to acquire LPR status within the 1-year period when a visa next became available. If the applicant establishes extraordinary circumstances dating back to the period that the visa first became available, then USCIS may use the date that a visa first became available to calculate their CSPA age.[\[62\]](#)

If an applicant only establishes extraordinary circumstances to excuse the applicant's failure to seek to acquire within the 1-year period that the visa was next available, USCIS calculates the applicant's CSPA age using the date the visa became available the next time. If an applicant cannot establish extraordinary circumstances to excuse the failure to seek to acquire within the 1-year period the visa was next available, the applicant is not eligible for CSPA benefits, regardless if the applicant established extraordinary circumstances for the initial period of visa availability of less than a year.

Example: Extraordinary Circumstances When the First Visa Available is Less Than 1 Year and the Applicant Seeks to Acquire LPR Status Within 1 Year of Visa's Next Availability

A visa first becomes available to the prospective applicant for accepting and processing their application on October 1, 2020, and the visa remains available to the prospective applicant until December 31, 2020. The visa was only available for 3 months and was therefore not available for a continuous 1-year period. As of January 1, 2021, the prospective applicant cannot apply for adjustment of status because a visa is no longer available.

A visa becomes available again to the prospective applicant on July 1, 2021. The prospective applicant applies for adjustment of status within 1 year, on June 15, 2022. Although USCIS provides the applicant with another 1-year period to seek to acquire because the visa was first available for less than a year, the applicant includes an explanation and evidence demonstrating extraordinary circumstances for not applying for adjustment of status during the first visa availability period between October 1 and December 31, 2020. USCIS determines, as a matter of discretion, that the applicant established extraordinary circumstances and calculates the applicant's CSPA age using the date the visa first became available, which was October 1, 2020.

Example: Extraordinary Circumstances When the First Visa Available is Less Than 1 Year and the Applicant Seeks to Acquire LPR Status After 1 Year of Visa's Next Availability

A visa first becomes available to the prospective applicant on October 1, 2020. The visa becomes unavailable to the prospective applicant on January 1, 2021.

A visa becomes available again to the prospective applicant on July 1, 2021, and remains available through July 1, 2022, for a continuous 1-year period. The prospective applicant does not apply for adjustment of status within the 1-year period of visa availability between July 1, 2021, and July 1, 2022. As a result, the applicant failed to meet the sought to acquire requirement.

The applicant applies for adjustment of status on February 14, 2023, and demonstrates extraordinary circumstances for not applying for adjustment of status both the first time the immigrant visa was available (October 1, 2020 to December 31, 2020) and the second time the visa became available (July 1, 2021 to July 1, 2022). USCIS calculates the applicant's CSPA age using the applicant's age on October 1, 2020, the date when the visa first became available.

Example: First Visa Available for Less Than 1 Year and Extraordinary Circumstances When the Applicant Seeks to Acquire LPR Status After 1 Year of Visa's Next Availability

A visa first becomes available to the prospective applicant on October 1, 2020. The visa becomes unavailable to the prospective applicant on January 1, 2021.

A visa becomes available again to the prospective applicant on July 1, 2021, and remains available through July 1, 2022, for a continuous 1-year period. The prospective applicant does not apply for adjustment of status within the 1-year period of visa availability between July 1, 2021, and July 1, 2022. The visa becomes unavailable from October 1, 2022 to January 31, 2023 and becomes available again on February 1, 2023.

The applicant applies for adjustment of status on February 14, 2023, and includes an explanation and evidence demonstrating extraordinary circumstances for failing to meet the sought to acquire requirement during the second visa availability period (July 1, 2021 to July 1, 2022). The applicant does not provide any evidence demonstrating extraordinary circumstances for failing to seek to acquire when the visa first became available, between October 1, 2020, and December 31, 2020.

USCIS excuses the sought to acquire requirement in its discretion and calculates the applicant's CSPA age using the applicant's age on July 1, 2021, the date when the visa became available the second time. USCIS does not calculate the applicant's CSPA age based on the first date of visa availability (October 1, 2020) because the applicant did not demonstrate extraordinary circumstances for not applying for adjustment of status within the period the visa was available for less than 1 year (the period covered between October 1, 2020 and December 31, 2020).

Examples of CSPA Calculation with Periods of Visa Unavailability

The following situations are examples of how to calculate CSPA age of an applicant with periods of visa unavailability:

The visa was first available for...	And the alien files for adjustment of status...	Then the date used to calculate CSPA age is...
Less than 1 year before becoming unavailable	Within 1 year of when the visa next became available	<ul style="list-style-type: none"> The day when the visa next became available; or The day when the visa first became available if the applicant demonstrates extraordinary circumstances for not seeking to acquire LPR status within the period the visa was first available.
Less than 1 year before becoming unavailable	After the visa was next continuously available for 1 year	<ul style="list-style-type: none"> The day when the visa next became continuously available for 1 year if the applicant demonstrates extraordinary circumstances for not seeking to acquire LPR status within the 1-year period the visa was next available. The applicant who does not establish extraordinary circumstances, as described above, is not eligible for CSPA benefits if the applicant seeks to acquire LPR status after the visa was next continuously available for 1 year; or The day when the visa first became available if the applicant: <ul style="list-style-type: none"> Demonstrates extraordinary circumstances for not seeking to acquire LPR status within the 1-year period the visa was next continuously available; and Demonstrates extraordinary circumstances for not seeking to acquire LPR status within the period the visa was first available.
More than 1 year before becoming unavailable	After the visa next becomes available	<ul style="list-style-type: none"> The day when the visa first became available if the applicant demonstrates extraordinary circumstances for not seeking to acquire LPR status within the 1-year period the visa was first available. Otherwise, the applicant who does not establish extraordinary circumstances for not seeking to acquire LPR status within the 1-year period the visa was first available is not eligible for CSPA benefits.

5. Other Remedies for Certain Adjustment Applicants Who Failed to Seek to Acquire

Motions to Reopen Following Matter of O. Vazquez

Denials that were based on the failure to seek to acquire and issued prior to the decision in *Matter of O. Vazquez*^[63] were proper based on the law in effect at the time of the decision. However, USCIS considers untimely motions to reopen for denials issued after the *Matter of O. Vazquez* precedent (June 8, 2012), but only if the denial was based solely on the adjustment applicant’s failure to seek to acquire within 1 year.

Applicants must file the Notice of Appeal or Motion ([Form I-290B](#)) with the proper fee and should present their claim that the finding in *Matter of O. Vazquez* constitutes changed circumstances justifying the reopening of the adjustment application. Officers consider new evidence of extraordinary circumstances submitted with the motion to reopen, consistent with the guidance in this section.

Certain Preference Applicants Who Did Not Have an Adjustment Application Pending on the Effective Date

CSPA may still apply for a preference applicant who did not have an adjustment application pending on August 6, 2002, and who did not timely seek to acquire. A preference applicant whose visa became available on or after August 7, 2001 who did not seek to acquire within 1 year of such visa availability but who would have qualified for CSPA coverage had he or she applied, but for prior policy guidance concerning the CSPA effective date, may still apply for adjustment of status.

I. Summary of Child Status Protection Act Applicability

The following table outlines immigrant categories covered by CSPA, methods by which CSPA age is calculated, whether the sought to acquire requirement applies, and references to legal authorities and additional guidance.

Summary of CSPA Applicability

Immigrant Category	CSPA Age Determination	Does Sought to Acquire Requirement Apply?	Legal Authorities and Additional Guidance
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Immigrant Category	CSPA Age Determination	Does Sought to Acquire Requirement Apply?	Legal Authorities and Additional Guidance
Derivative Refugees ^[64]	CSPA age is frozen on the date the principal refugee parent's Form I-590 is filed (the date of the parent's interview with USCIS)	No	See INA 207(c)(2)(B) and INA 209(a)(1) . See Part L, Refugee Adjustment, Chapter 2, Eligibility Requirements, Section F, Special Considerations for Refugee Adjustment of Status Applicants, Subsection 2, Child Status Protection Act Provisions [7 USCIS-PM L.2(F)(2)].
Derivative Asylees	CSPA age is frozen on the date the principal asylee parent's Form I-589 is filed.	No	See INA 208(b)(3)(B) . See Part M, Asylee Adjustment, Chapter 2, Eligibility Requirements, Section C, Derivative Asylee Continues to be the Spouse of Child of the Principal Asylee, Subsection 2, Derivative Asylees Ineligible for Adjustment of Status [7 USCIS-PM M.2 (C)(2)].
Immediate Relatives (including VAWA) ^[65]	CSPA age is frozen on the date the Form I-130 is filed (or the Form I-360 is filed for VAWA self-petitioners and derivatives).	No	See INA 201(f) . See AFM 21.2(e) , The Child Status Protection Act of 2002.

Immigrant Category	CSPA Age Determination	Does Sought to Acquire Requirement Apply?	Legal Authorities and Additional Guidance
Derivatives of Widow(er)s	CSPA age is frozen on the date the Form I-360 is filed or the date the Form I-130 is automatically converted to a widow(er)'s Form I-360.	No	See INA 201(f) .
Family-Sponsored Preference Principals and Derivatives (including VAWA) ^[66]	CSPA age is calculated by subtracting the number of days the Form I-130 (or Form I-360 for VAWA self-petitioners and derivatives) was pending from the applicant's age on the date an immigrant visa becomes available to the applicant.	Yes. To benefit from the CSPA age determination, applicant must seek to acquire lawful permanent residence within 1 year of the visa becoming available.	See INA 203(h) . See AFM 21.2(e) , The Child Status Protection Act of 2002.
Employment-Based Preference Derivatives	CSPA age is calculated by subtracting the number of days the petition was pending from the applicant's age on the date an immigrant visa becomes available to the applicant.	Yes. To benefit from the CSPA age determination, applicant must seek to acquire lawful permanent residence within 1 year of the visa becoming available.	See INA 203(h) .
Diversity Immigrant Visa Derivatives	CSPA age is calculated by subtracting the number of days the petition was pending from the applicant's age on the date an immigrant visa becomes available to the applicant.	Yes. To benefit from the CSPA age determination, applicant must seek to acquire lawful permanent residence within 1 year of the visa becoming available.	See INA 203(h) .

Footnotes

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

[^2] The situation in which USCIS can no longer classify aliens as children for immigrant visa purposes due to turning 21 is commonly referred to as aging out.

[^3] See [INA 101\(b\)\(1\)](#).

[^4] In addition to CSPA protections, VAWA self-petitioners and derivatives who turn 21 prior to adjusting status may be eligible for age-out protections provided in the Victims of Trafficking and Violence Protection Act (VTPVA) of 2000, [Pub. L. 106-386](#) (October 28, 2000). VAWA self-petitioners and derivatives who do not qualify for CSPA may qualify for age-out relief under VTPVA. See [INA 204\(a\)\(1\)\(D\)\(i\)\(I\)](#) and [INA 204\(a\)\(1\)\(D\)\(i\)\(III\)](#). Officers should follow guidance in [Age-Out Protections Afforded Battered Children Pursuant to The Child Status Protection Act and the Victims of Trafficking and Violence Protection Act](#), issued August 17, 2004.

[^5] Eligible derivatives of special immigrants are covered by CSPA as their immigrant visas fall under the employment-based fourth preference visa category. For more information, see Part F, Special Immigrant-Based Adjustment [[7 USCIS-PM F](#)].

[^6] The CSPA protects a derivative refugee from aging out prior to his or her refugee admission, but such protection is not needed at the adjustment stage because a derivative refugee does not need to remain the spouse or child of the principal refugee in order to adjust status under INA 209. See [INA 209\(a\)\(1\)](#).

[^7] See Section I, Summary of Child Status Protection Act Applicability [[7 USCIS-PM A.7\(I\)](#)] for a condensed guide to basic provisions for each category of CSPA-eligible immigrants.

[^8] For information about the impact of CSPA on applicants for an immigrant visa, see [9 FAM 502.1-1\(D\)](#), Child Status Protection Act.

[^9] Pending time may also include administrative review, such as motions and appeals, but does not include consular returns.

[^10] See [Matter of Avila-Perez \(PDF\)](#), 24 I&N Dec. 78 (BIA 2007).

[^11] See Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), [Pub. L. 107-56 \(PDF\)](#), 115 Stat. 272, 362 (October 26, 2001).

[^12] See [8 CFR 204.2\(i\)\(1\)\(iv\)](#).

[^13] A child of a widow(er) who is ineligible to be included as a derivative may be eligible for consideration under [INA 204\(I\)](#) or humanitarian reinstatement under [8 CFR 205.1\(a\)\(3\)\(i\)\(C\)\(2\)](#). See Chapter 9, Death of Petitioner or Principal Beneficiary [[7 USCIS-PM A.9](#)] for more information.

[^14] See [8 CFR 204.2\(c\)\(4\)](#).

[^15] See Part M, Asylee Adjustment, Chapter 2, Eligibility Requirements, Section C, Derivative Asylee Continues to be the Spouse or Child of the Principal Asylee [[7 USCIS-PM M.2\(C\)](#)].

[^16] See [INA 209\(a\)\(1\)](#).

[^ 17] The date a Form I-590 is considered filed is the date of the principal refugee parent's interview with a USCIS officer.

[^ 18] See [INA 209\(a\)\(1\)](#).

[^ 19] See Part L, Refugee Adjustment, Chapter 2, Eligibility Requirements, Section F, Special Considerations for Refugee Adjustment of Status Applicants, Subsection 2, Child Status Protection Act Provisions [[7 USCIS-PM L.2\(F\)\(2\)](#)].

[^ 20] See Section C, Immediate Relatives [[7 USCIS-PM A.7\(C\)](#)], Section D, Derivative Asylees [[7 USCIS-PM A.7\(D\)](#)], and Section E, Derivative Refugees [[7 USCIS-PM A.7\(E\)](#)].

[^ 21] See [INA 203\(h\)\(1\)](#).

[^ 22] See [INA 203\(h\)\(1\)\(A\)](#). See Section G, Sought to Acquire Requirement [[7 USCIS-PM A.7\(G\)](#)] for detailed information.

[^ 23] Qualifying underlying forms include Petition for Alien Relative ([Form I-130](#)); Petition for Amerasian, Widow(er), or Special Immigrant ([Form I-360](#)); Immigrant Petition for Alien Workers ([Form I-140](#)); Immigrant Petition by Standalone Investor ([Form I-526](#)); and Immigrant Petition by Regional Center Investor ([Form I-526E](#)). For DVs, the qualifying petition is the DV Program electronic entry form. See [9 FAM 502.6-4](#), Diversity Visa Processing.

[^ 24] See Section B, Child Status Protection Act Applicability [[7 USCIS-PM A.7\(B\)](#)] for more information on effective date.

[^ 25] See [INA 203\(h\)](#) and [INA 204\(k\)](#).

[^ 26] In addition to CSPA protections, VAWA self-petitioners and derivatives who turn 21 prior to adjusting status may be eligible for age-out protections provided in the Victims of Trafficking and Violence Protection Act (VTPVA) of 2000, [Pub. L. 106-386 \(PDF\)](#) (October 28, 2000). VAWA self-petitioners and derivatives who do not qualify for CSPA may qualify for age-out relief under VTPVA. See [INA 204\(a\)\(1\)\(D\)\(i\)\(I\)](#) and [INA 204\(a\)\(1\)\(D\)\(i\)\(III\)](#). Officers should follow guidance in [Age-Out Protections Afforded Battered Children Pursuant to The Child Status Protection Act and the Victims of Trafficking and Violence Protection Act](#), issued August 17, 2004.

[^ 27] For CSPA purposes, the age at time of visa availability is the applicant's age when USCIS considers the applicant's visa available. See Subsection 4, Determining Age at Time of Visa Availability [[7 USCIS-PM A.7\(F\)\(4\)](#)]. VAWA self-petitioners and derivatives who age out before adjusting status are considered self-petitioners for preference status, and derivatives retain the priority date of their parent's Petition for Amerasian, Widow(er), or Special Immigrant ([Form I-360](#)) VAWA self-petition. See [INA 204\(a\)\(1\)\(D\)\(i\)\(III\)](#). If a VAWA self-petitioner was the beneficiary of a previously filed Petition for Alien Relative ([Form I-130](#)), the VAWA self-petitioner and the VAWA self-petitioner's derivatives' CSPA age is calculated using the date the Form I-360 was filed because this is the petition through which they are seeking adjustment of status.

[^ 28] See Section G, Sought to Acquire Requirement [[7 USCIS-PM A.7\(G\)](#)] for detailed information.

[^ 29] A transfer request potentially affects the CSPA age calculation for the derivative beneficiaries. Transferring to a new basis will result in a new calculated CSPA age, as the amount of time the petition was pending will change as will the derivative beneficiary's age at the time of visa availability. Depending on the facts of the particular case, a derivative beneficiary may become ineligible to adjust status as a derivative as a result of a transfer request because their new calculated CSPA age is no longer under 21 years of age.

However, a transfer of underlying basis request can also result in potential derivative beneficiaries become eligible to adjust status as a derivative because their calculated CSPA age based on the petition is under 21 years of age.

[^ 30] While the priority date is often the same as the filing date (also referred to as the receipt date), there are instances in which the priority date is not the same, such as in employment-based cases based on the filing of a labor certification. The priority date should not be used for purposes of determining CSPA eligibility. Instead, the filing date (receipt date) is the appropriate date.

[^ 31] For DVs, the qualifying petition is the DV Program electronic entry form. See [9 FAM 502.6-4](#), Diversity Visa Processing.

[^ 32] The rank number is the number following the two-letter region code and should correspond with cut-off numbers available in the [DOS Visa Bulletin](#).

[^ 33] For more information, see Chapter 3, Filing Instructions, Section B, Definition of Properly Filed, Subsection 4, Visa Availability Requirement [[7 USCIS-PM A.3\(B\)\(4\)](#)] and Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [[7 USCIS-PM A.6\(C\)](#)]. DV applicants also use the DOS Visa Bulletin to determine visa availability.

[^ 34] See [USCIS.gov news release](#).

[^ 35] USCIS typically designates one of the two charts within 1 week of the publication of the DOS Visa Bulletin.

[^ 36] See Chapter 6, Adjudicative Review, Section C, Verify Visa Availability, Subsection 5, Visa Retrogression [[7 USCIS-PM A.6\(C\)\(5\)](#)].

[^ 37] In order to qualify under CSPA, the applicant must also remain unmarried through final adjudication and must have sought to acquire lawful permanent residence within 1 year of visa availability. See Section G, Sought to Acquire Requirement [[7 USCIS-PM A.7\(G\)](#)].

[^ 38] There are two ways in which a visa may become unavailable for accepting and processing an adjustment of status application. First, the date in the DOS Visa Bulletin for the prospective applicant's country of chargeability and preference category may "retrogress" or move backwards. Such retrogression can affect either chart in the Visa Bulletin and may result in a visa becoming unavailable to the prospective applicant for accepting and processing their application. Second, while the dates in the Visa Bulletin for the prospective applicant's country of chargeability and preference category may not retrogress, USCIS may designate the Final Action Dates chart for use during a given month after having designated the Dates for Filing chart for use during the preceding month. If the prospective applicant has a priority date in their country of chargeability and preference category that is later than the Final Action Date, then a visa is no longer available to them for accepting and processing their application during the given month.

[^ 39] See [INA 203\(h\)\(1\)\(A\)](#). Seek or sought to acquire is used as shorthand in this chapter to refer to this requirement.

[^ 40] VAWA preference cases are subject to the sought to acquire requirement, but VAWA IRs are not.

[^ 41] See Chapter 3, Filing Instructions, Section B, Definition of Properly Filed [[7 USCIS-PM A.3\(B\)](#)].

[^42] Submitting a Form DS-260 that covers only the principal applicant does not meet the sought to acquire requirement for a derivative child.

[^43] See [9 FAM 502.1-1\(D\)\(6\)\(a\)\(3\)](#), Sought to Acquire LPR Status Provision.

[^44] See [9 FAM 502.1-1\(D\)\(6\)\(a\)\(3\)](#), Sought to Acquire LPR Status Provision.

[^45] Applicants may file the Form I-824 concurrently with the adjustment application. A previously filed Form I-824 that was denied because the principal applicant's adjustment application had not yet been approved may serve as evidence of having "sought to acquire." See [9 FAM 502.1-1\(D\)\(6\)](#), Sought to Acquire LPR Status Provision, for more information regarding how overseas applicants may satisfy the sought to acquire requirement in the consular processing context.

[^46] If a derivative child has a pending adjustment application and USCIS approves the principal applicant's request to transfer the underlying basis of their adjustment application to a different immigrant category based on another approved petition, then the date that the transfer request is received by USCIS is the date used to determine whether the derivative child met the sought to acquire requirement.

[^47] For more information, see Section H, Extraordinary Circumstances for Sought to Acquire Requirement [[7 USCIS-PM A.7\(H\)](#)].

[^48] For DVs, the date a visa is considered available is the first day on which the principal applicant's rank number is current for visa processing.

[^49] Though the CSPA technically requires DV derivatives to seek to acquire within 1 year, this requirement does not generally affect DV derivatives, as they are only eligible to receive a visa through the end of the specific fiscal year in which the principal applicant was selected under [INA 203\(c\)](#). See [INA 204\(a\)\(1\)\(I\)](#).

[^50] In *Matter of O. Vazquez*, the Board of Immigration Appeals (BIA) ruled that extraordinary circumstances could warrant the exercise of discretion to excuse an applicant who failed to meet the sought to acquire requirement during the 1-year period. See [Matter of O. Vazquez \(PDF\)](#), 25 I&N Dec. 817 (BIA 2012).

[^51] See [Age Calculation under Child Status Protection Act](#), PA-2023-02, issued February 14, 2023.

[^52] See Section F, Family and Employment-Based Preference and Diversity Immigrants, Subsection 4, Determining Age at Time of Visa Availability [[7 USCIS-PM A.7\(F\)\(4\)](#)].

[^53] See [Age Calculation under Child Status Protection Act](#), PA-2023-02, issued February 14, 2023.

[^54] For example, if USCIS consistently designated the Dates for Filing chart during a 1-year period before the policy change, an applicant who files an adjustment application after the policy change may not meet the 1-year sought to acquire requirement if they waited until a visa became available for the CSPA age calculation.

[^55] An applicant is unable to establish extraordinary circumstances due to the CSPA age calculation policy change if, under the prior policy, an immigrant visa remained continuously available for a 1-year period to the applicant and the applicant's CSPA age would have been under 21 years old based on the Final Action Dates chart.

[^56] The reasonableness of the delay is determined from August 24, 2023, the date USCIS published the policy considering the February 14, 2023, policy change to be an extraordinary circumstance.

[^57] See Section F, Family and Employment-Based Preference and Diversity Immigrants, Subsection 4, Determining Age at Time of Visa Availability [[7 USCIS-PM A.7\(F\)\(4\)](#)].

[^58] For a discussion on [Matter of O. Vazquez \(PDF\)](#), 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](#)].

[^59] An immigrant visa may become unavailable after being available for a period of less than 1 year due to visa retrogression or due to USCIS designating a chart of the DOS Visa Bulletin for filing an adjustment of status application in a particular category. See USCIS' [Visa Availability and Priority Dates](#) webpage.

[^60] The applicant files for adjustment of status within the 1-year period of when the visa next becomes available.

[^61] See Section G, Sought to Acquire Requirement, Subsection 2, Visa Availability and the Sought to Acquire 1-Year Period [[7 USCIS-PM A.7\(G\)\(2\)](#)].

[^62] Applicants who claim that the same extraordinary circumstances prevented them from filing an adjustment of status application during all periods a visa was first and later available must present evidence to show that the extraordinary circumstances occurred during the first period when the visa was available and continued into the second period when the visa was continuously available for 1 year.

[^63] In *Matter of O. Vazquez*, the BIA ruled that extraordinary circumstances could warrant the exercise of discretion to excuse an applicant who failed to meet the sought to acquire requirement during the 1-year period. See [Matter of O. Vazquez \(PDF\)](#), 25 I&N Dec. 817 (BIA 2012).

[^64] This includes Form I-730 beneficiaries.

[^65] For more detailed guidance on CSPA applicability and VAWA, see [INA 204\(a\)\(1\)\(D\)\(i\)](#) and [Age-Out Protections Afforded Battered Children Pursuant to The Child Status Protection Act and the Victims of Trafficking and Violence Protection Act](#), issued August 17, 2004.

[^66] For more detailed guidance on CSPA applicability and VAWA, see [INA 204\(a\)\(1\)\(D\)\(i\)](#) and [Age-Out Protections Afforded Battered Children Pursuant to The Child Status Protection Act and the Victims of Trafficking and Violence Protection Act](#), issued August 17, 2004.