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Chapter 7 - Child Status Protection Act

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A. Purpose of the Child Status Protection Act

The core purpose of the Child Status Protection Act (CSPA)^[1] is 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 alien's age for immigrant visa purposes. The resulting age is known as the alien's "CSPA age."

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

B. Child Status Protection Act Applicability

CSPA applies only to those aliens 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.



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CSPA provisions vary based on the immigrant category of the alien. Certain provisions of the CSPA apply to some categories of aliens but not others. Such provisions and details regarding eligibility are described in the following sections.^[7] CSPA only covers those aliens explicitly listed in the statute; it does not apply to an alien who is in another immigrant category or who is a nonimmigrant.

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 aliens applying for adjustment of status, 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. Aliens who are applying for adjustment of status may be considered a child for immigration purpose under CSPA 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 Workers ([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 of status 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 alien 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 alien who is applying for adjustment of status 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 alien is afforded an additional 45 days of eligibility.^[11]

C. Immediate Relatives

1. Applicability

In order to qualify for CSPA:

- The alien who is applying for adjustment of status 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 alien 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 alien 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 or widower [Form I-360](#).^[12] A child of an alien widow or widower must be under the age of 21 and unmarried at the time of the petitioner's death to be classified as a derivative beneficiary on the automatically converted Form I-360, regardless of whether the child had a separate pending or approved Form I-130 at the time of the petitioner's death.^[13]

Similarly, the alien 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 on the self-petition as a derivative beneficiary, the child must be under the age of 21 and unmarried when the Form I-360 is filed, regardless of whether the child had a separate or approved Form I-130 when the Form I-360 was filed.^[14]

2. Determining Child Status Protection Act Age

For aliens who are IRs and IR self-petitioners or derivative beneficiaries under VAWA, an alien's age is frozen on the date the [Form I-130](#) or [Form I-360](#) is filed, respectively. For derivative beneficiaries of an alien widow or widower, an alien'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's or widower's Form I-360 (in other words, the date of the petitioner's death). If the alien who is applying for adjustment was under the age of 21 at the time the petition was filed or automatically converted, the alien is considered a child for CSPA purposes and will not age out.

D. Derivative Asylees

CSPA allows aliens 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 alien who is applying for adjustment of status 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 alien 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 alien must be unmarried at the time he or she seeks adjustment of status.

2. Determining Child Status Protection Act Age

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

Generally, in order to establish eligibility, an alien who is 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 alien may overcome their parent's failure to list them on the Form I-589 by providing evidence establishing the parent-child relationship, including evidence of the child's age, and a reasonable explanation as to why the alien was not included on the principal asylum applicant's Form I-589.^[15]

E. Derivative Refugees

CSPA allows aliens 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 an alien who is 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 alien 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 alien must have been under the age of 21 and unmarried at the time the qualifying Form I-590 was filed. ^[17]

The alien must have been unmarried at the time the alien receives derivative refugee status either when USCIS approves the Form I-730 if the alien is in the United States or at the time the alien is admitted into the United States as a derivative refugee.^[18] However, the alien does not need to remain unmarried after receiving derivative refugee status in order to adjust status under [INA 209](#).^[19]

2. Determining Child Status Protection Act Age

The CSPA age for an alien who is a derivative refugee 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's interview with a USCIS officer. The alien's age is frozen on the date of the principal refugee's interview. So long as the alien 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, an alien who is a derivative refugee must be listed as a child on the principal refugee's Form I-590 prior to a final decision. However, the alien may overcome this by providing evidence establishing the parent-child relationship, including evidence of the alien's age, and a reasonable explanation as to why the alien was not included on the principal refugee's Form I-590.^[20]

F. Family-Sponsored and Employment-Based Preference and Diversity Immigrants

1. Applicability

CSPA applies differently to aliens who are applying for adjustment of status under the family-sponsored and employment-based preference and under the DV categories than it does to aliens who are applying for adjustment of status as a refugee, asylee, and IR.^[21] Instead of an alien locking in his or her age on the filing date, as is the case with IRs, CSPA provides a formula for aliens applying for adjustment of status under a preference category that calculates an alien's CSPA age using the amount of time the qualifying petition was pending.^[22] Furthermore, an alien's eligibility to be considered a child under CSPA depends not only on the CSPA age calculation but also on whether the alien sought to acquire lawful permanent residence within 1 year of visa availability.^[23]

In order for an alien applying for adjustment of status under the family-sponsored or employment-based preference or DV category to qualify as a child under CSPA, the alien must meet the following requirements:

- The alien must have had a qualifying petition ^[24] or adjustment application pending on or after the CSPA effective date; ^[25]
- The alien's calculated CSPA age must be under 21 years old;
- The alien must remain unmarried; and
- The alien must have sought to acquire lawful permanent residence within 1 year of visa availability, absent extraordinary circumstances. ^[26]

2. Child Status Protection Act Age Calculation

For family-sponsored (including VAWA)^[27] and employment-based preference and DV categories, an alien's CSPA age is calculated by subtracting the number of days the petition on which the alien seeks to adjust status was pending (pending time) from the alien's age on the date the immigrant visa becomes available to the alien (age at time of visa availability).^[28] The formula for calculating CSPA age is as follows:

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

While an alien must file an adjustment application or otherwise seek lawful permanent resident (LPR) status in order to be considered a child for CSPA purposes, the date the alien files an adjustment of status application is not relevant for the CSPA age calculation.^[29]

Example

The alien is 21 years and 4 months old when USCIS considers an immigrant visa available. The alien's underlying petition was pending for 6 months. The alien'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 alien's CSPA age is under 21.

If an alien has multiple approved petitions, the alien'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 alien's CSPA age is calculated using the approved petition that forms the new basis of the adjustment of status application.^[30]

Example

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

The alien'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 alien 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 alien's adjustment of status application.

3. Determining Length of Time Petition Was Pending

For aliens applying for adjustment of status under the family and employment-based preference categories, 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)^[31] 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 alien's mother filed a petition on the alien'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 alien'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 aliens applying for adjustment of status under the DV category, 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 aliens have been selected become available.^[32] 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 alien's pending time is 7 months.

4. Determining Age at Time of Visa Availability

In order to calculate an alien'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 based on an alien's immigrant preference category, priority date, and country of chargeability.

Therefore, the date USCIS considers the visa available for an alien who is applying for adjustment of status under a family or employment-based preference category is the later of these two dates:

- 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, priority date, and country of chargeability in the Final Action Dates chart. [\[33\]](#)

For DVs, the date USCIS considers a visa available is the first day on which the principal alien's rank number is current for visa processing. [\[34\]](#)

Determining When a Visa is Available to File an Adjustment Application

Aliens can determine when they may 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](#). [\[35\]](#)

In September 2015, DOS and USCIS announced a revision to the Visa Bulletin, which created two charts of dates. [\[36\]](#) 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 aliens each month. [\[37\]](#) Aliens 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.

Aliens 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 aliens to consult with the USCIS website for guidance on whether to use the Dates for Filing chart or Final Action Dates chart to determine when they may file an adjustment of status application.

It is important to note that while USCIS designates one of the charts for use by aliens 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 alien who filed an adjustment of status application.

Final Action Dates Chart Used for Child Status Protection Act Age Determination

An alien may choose to file an adjustment application based on the cutoff dates in the Dates for Filing chart of the DOS Visa Bulletin during a month when USCIS designates that chart for use. However, USCIS uses the Final Action Dates chart to determine the alien's age at the time of visa availability for CSPA age calculation purposes. Age at the time of visa availability is the alien's age on the first day of the month of the DOS Visa Bulletin that indicates availability according to the Final Action Dates chart.

An alien who chooses to file an adjustment application based on the Dates for Filing chart may ultimately not be considered a child for immigration purposes if his or her calculated CSPA age is 21 or older at the time his or her visa becomes available according to the Final Action Dates chart.^[38]

Determining When a Visa is Available for the CSPA Age Calculations for Adjustment Applications Filed Before August 15, 2025

On February 14, 2023, USCIS issued policy guidance to update when an immigrant visa becomes available for the purpose of calculating an alien's CSPA age for adjustment of status applications adjudicated by USCIS.^[39] Under this former policy guidance, USCIS calculated an alien's CSPA age based on his or her age on the first day of the month when USCIS considered a visa available for accepting and processing an adjustment application.

For adjustment of status applications filed before August 15, 2025, USCIS calculates an alien's CSPA age using the later of one 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, priority date, and country of chargeability.

5. Impact of Visa Unavailability on the Child Status Protection Act Age Determination

The impact of visa retrogression depends on whether:

- The adjustment of status application is filed based on the Dates for Filing or the Final Action Dates chart; and
- The visa retrogression occurs before or after a visa becomes available for the CSPA age calculation according to the Final Action Dates chart.

Visa Unavailable After the Filing of an Adjustment of Status Application

If an alien filed an adjustment application when a visa became available according to the Final Action Dates chart and his or her CSPA age at the time of filing the application was under 21, then the alien's CSPA age is locked in through final adjudication of the application.^[40] If the visa later becomes unavailable, USCIS holds the application until the visa next becomes available and USCIS can adjudicate the application.

However, if the alien filed based on the Dates for Filing chart, then his or her age is not immediately locked in at the time of filing the adjustment of status application.^[41] Rather, the alien's CSPA age is calculated and locked in when his or her visa becomes available according to the Final Action Dates chart.

Example: Application Filed Based on Dates for Filing Chart

The alien files an adjustment of status application in March using the Dates for Filing chart based on his or her immigrant preference category, priority date, and country of chargeability. On May 1, the Final Action Dates chart indicates that the alien's visa has become available. However, on July 1, the alien's visa retrogresses based on the Final Action Dates chart and the visa becomes unavailable.

For this case, USCIS calculates the alien's CSPA age using May 1 as the visa availability date. If the alien's calculated CSPA age is under 21, his or her CSPA age is locked in through final adjudication and USCIS holds the application until the visa next becomes available based on the Final Action Dates chart.

Example: Application Filed Based on Final Action Dates Chart

On May 1, the Final Action Dates chart indicates a visa is available for the alien's immigrant preference category, priority date, and country of chargeability. The alien files an adjustment of status application in June, and then the visa becomes unavailable on July 1, based on the Final Action Dates chart. For this case, USCIS calculates the alien's CSPA age using May 1 as the visa availability date. If the alien's calculated CSPA age is under 21, his or her CSPA age is locked in through final adjudication and USCIS holds the application until the visa next becomes available.

For both examples, if the alien's calculated CSPA age is 21 or older using the May 1 visa availability date, the alien has aged out and is not eligible to be considered a child when the visa next becomes available. In these cases, USCIS denies the adjustment of status application if the alien is not eligible to adjust status under another immigrant category.^[42]

Visa Was Available but Becomes Unavailable Before an Application is Filed

If a visa initially becomes available based on the Final Action Dates chart and then becomes unavailable^[43] before the alien files an adjustment application, his or her CSPA age is not locked in. When the visa next becomes available based on the Final Action Dates chart and the alien files an adjustment application, his or her CSPA age is calculated based on the new visa availability date. If the alien's CSPA age is over 21 at the time the visa next becomes available, the alien is no longer considered a child for immigration purposes under CSPA.

Example: Visa Becomes Unavailable Before Filing

On May 1, the Final Action Dates chart indicates a visa is available for the alien's immigrant preference category, priority date, and country of chargeability. On July 1, the visa becomes unavailable before the alien files an adjustment of status application. Because the alien has not yet filed an adjustment of status application, his or her CSPA age is not locked and will be calculated using the next visa availability date based on the Final Action Dates chart if the alien timely files an adjustment of status application.

G. Sought to Acquire Requirement

In order for an alien who is applying for adjustment of status under a family-sponsored or employment-based preference category, or the DV program, to benefit from the CSPA age calculation, they must seek to acquire

lawful permanent residence within 1 year of when a visa becomes available.^[44] This requirement does not apply to refugee derivatives, asylee derivatives, and IRs.^[45]

1. Satisfying the Sought to Acquire Requirement

An alien 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](#)); ^[46]
- Submitting a completed Immigrant Visa Electronic Application (Form DS-260), Part I to the DOS; ^[47]
- Paying the immigrant visa fee to DOS; ^[48]
- Paying the Affidavit of Support Under Section 213A of the INA ([Form I-864](#)) review fee to DOS (provided the alien is listed on the Affidavit of Support); ^[49] or
- Having a properly filed Application for Action on an Approved Application or Petition ([Form I-824](#)) filed on the alien's behalf. ^[50]

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.^[51]

Actions an alien 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 exercise discretion and consider this requirement satisfied if the alien is able to establish that the failure to seek to acquire within 1 year of visa availability was the result of extraordinary circumstances.^[52]

From the date of visa availability, and provided that the visa remains available for a continuous 1-year period, the alien has 1 year to fulfill the sought to acquire requirement. If the alien does not seek to acquire within 1 year of visa availability although the visa was available for a continuous 1-year period, the alien cannot benefit from the age-out protections of the CSPA.

Officers should review the comprehensive list of final action dates listed by year on the DOS [Visa Bulletin](#)[☑] website to determine whether the alien had a prior 1-year period of visa availability.^[53] Officers may use the comprehensive list to track movement of dates over time but should confirm consequential dates in the relevant monthly bulletin and Final Action Dates 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, priority date, and country of chargeability according to the Final Action Dates chart, whichever is later.^[54] From the date of visa availability, aliens in the family-sponsored or employment-based preference categories, or those applying based on the DV program, have 1 year in which to seek to acquire permanent resident status in order to qualify for CSPA coverage.^[55]

While the Final Action Dates chart determines the date of visa availability for purposes of the CSPA age calculation and the 1-year sought to acquire period, an alien may choose to file an adjustment of status application based on the Dates for Filing chart if eligible. In this case, the alien files prior to the date of visa availability according to the Final Action Dates chart.

If an alien files an adjustment application based on the Dates for Filing chart before the visa is available according to the Final Action Dates chart, the alien still meets the sought to acquire requirement. However, his or her CSPA age calculation is still dependent on visa availability according to the Final Action Dates chart.^[56] Aliens who file based on the Dates for Filing chart may ultimately not be considered a child for immigration purposes under CSPA once the visa becomes available if the CSPA age calculation is 21 or older based on the Final Action Dates chart.

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 alien has another 1-year period to seek to acquire when the visa next becomes available. The alien has 1 year from the next time the visa becomes available according to the Final Action Dates chart to seek to acquire LPR status.

A visa is continuously available for a 1-year period if, during each month of that year, the alien has a priority date for an approved petition that is earlier than the date for his or her country of chargeability and immigrant preference category on the Final Action Dates chart in the DOS Visa Bulletin.

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

Example 1

A visa initially becomes available to the alien according to the Final Action Dates chart on October 1, 2020. The visa remains available to the alien for 4 months, that is, through the end of January 2021. The alien 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 alien under the Final Action Dates chart and the alien is no longer eligible to file an adjustment of status application. A visa next becomes available on October 1, 2021, based on the Final Action Dates chart. Since the alien only had 4 months of time in which to seek to acquire during the initial period of availability, the alien has a full 1-year period beginning October 1, 2021, in which the alien may seek to acquire.

USCIS calculates the CSPA age based on the new visa availability on October 1, 2021 (not October 1, 2020), and the CSPA age is locked in as of that date provided that the visa remains available and the alien seeks to acquire during that 1-year period. If the visa does not remain continuously available and becomes unavailable again before a full 1-year period has elapsed, the period starts anew once the visa becomes available again.

Example 2

A visa initially becomes available to the alien according to the Final Action Dates chart on March 1, 2020. The visa remains available to the alien through March 2021, that is, for a continuous 1-year period of visa availability. The alien 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 alien. On June 1, 2021, the visa becomes available again to the alien.

Under these facts, the alien failed to seek to acquire permanent residence within 1 year of visa availability because the alien 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 CSPA.

H. Extraordinary Circumstances for Sought to Acquire Requirement

An alien who fails to seek to acquire within 1 year of visa availability may still be able to benefit from CSPA if he or she can establish that his or her failure to seek to acquire was the result of extraordinary circumstances. [\[57\]](#)

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

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

Examples of extraordinary circumstances [\[58\]](#) that may warrant a favorable exercise of discretion include, but are not limited to:

- Serious illness or mental or physical disability of the alien during the 1-year period;
- Legal disability, such as instances where the alien 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 alien for corrections where the deficiency was corrected and the alien re-filed within a reasonable period thereafter;
- Death or serious illness or incapacity of the alien's attorney or legal representative or a member of the alien's immediate family; and
- Ineffective assistance of counsel, when certain requirements are met.

1. Extraordinary Circumstances Due to Ineffective Assistance of Counsel

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

- The alien 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 alien regarding such actions;
- The alien must demonstrate that the alien 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 alien 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. 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 alien's control.

USCIS does not consider commonplace circumstances, such as financial difficulty, minor medical conditions, and circumstances within the alien'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 aliens seeking protection under the CSPA and does not constitute extraordinary circumstances.

When an alien 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 alien an opportunity to rebut the apparent ineligibility.

3. Age Calculation for Aliens with Extraordinary Circumstances

If an alien successfully establishes extraordinary circumstances to satisfy the sought to acquire requirement, then USCIS calculates his or her CSPA age as follows:

Aliens with Extraordinary Circumstances and No Periods of Visa Unavailability

If the visa was continuously available for 1 year without any intervening visa unavailability for an alien who demonstrated extraordinary circumstances, then USCIS calculates his or her CSPA age using the date when that visa first became available.

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

- 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, priority date, and country of chargeability in the Final Action Dates chart. [\[59\]](#)

Aliens with Extraordinary Circumstances and Periods of Visa Unavailability

When a visa is available for a continuous 1-year period and then becomes unavailable before the alien files his or her adjustment application, then the alien generally is not considered a child for CSPA purposes. However, if the alien files for adjustment of status when the visa next becomes available, he or she may establish that his or her failure to seek to acquire LPR status within the initial 1-year period was based on extraordinary circumstances. [\[60\]](#) If the alien establishes extraordinary circumstances, USCIS calculates his or her 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 alien did not file for adjustment of status or otherwise seek to acquire LPR status while the visa was available, [\[61\]](#) USCIS provides the alien another 1-year period to seek to acquire LPR status starting when the visa next becomes available. If the alien timely files for adjustment of status when the visa next becomes available, [\[62\]](#) USCIS calculates his or her CSPA age based on the date the visa became available again. [\[63\]](#) However, USCIS may calculate his or her CSPA age using the date a visa first became available if the alien demonstrates extraordinary circumstances for not seeking to acquire LPR status before the visa first became unavailable. [\[64\]](#)

In some cases, when a visa became unavailable before a continuous 1-year period elapsed, the alien 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 alien establishes extraordinary circumstances for not seeking to acquire during the next period that dates back to the period that the visa first became available, then USCIS uses the date that a visa first became available to calculate his or her CSPA age.^[65]

If an alien only establishes extraordinary circumstances to satisfy the sought to acquire requirement within the 1-year period that the visa was next available, USCIS calculates the alien's CSPA age using the date the visa became available the next time. If an alien cannot establish extraordinary circumstances to satisfy the sought to acquire requirement within the 1-year period the visa was next available, the alien is not considered a child for CSPA purposes, regardless of whether the alien established extraordinary circumstances for the initial period of visa availability of less than a year.

Example: Extraordinary Circumstances When the First Visa Availability Period is Less Than 1 Year and the Alien Seeks to Acquire LPR Status Within 1 Year of the Next Period of Visa Availability

A visa first becomes available under the Final Action Dates chart to the alien on October 1, 2020, and the visa remains available to the alien 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 alien cannot apply for adjustment of status because a visa is no longer available.

A visa becomes available again under the Final Action Dates chart to the alien on July 1, 2021. The alien applies for adjustment of status within 1 year, on June 15, 2022. Although USCIS provides the alien with another 1-year period to seek to acquire because the visa was first available for less than a year, the alien 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 alien established extraordinary circumstances and calculates the alien'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 Alien Seeks to Acquire LPR Status After 1 Year of Visa's Next Availability

A visa first becomes available under the Final Action Dates chart to the alien on October 1, 2020. The visa becomes unavailable to the alien on January 1, 2021.

A visa becomes available again under the Final Action Dates chart to the alien on July 1, 2021, and remains available through July 1, 2022, for a continuous 1-year period. The alien 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 alien failed to meet the sought to acquire requirement.

The alien applies for adjustment of status on February 14, 2023, and demonstrates extraordinary circumstances, including that the delay was reasonable, 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 his or her CSPA age using the alien'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 Alien Seeks to Acquire LPR Status After 1 Year of Visa's Next Availability

A visa first becomes available under the Final Action Dates chart to the alien on October 1, 2020. The visa becomes unavailable to the alien on January 1, 2021.

A visa becomes available again under the Final Action Dates chart to the alien on July 1, 2021, and remains available through July 1, 2022, for a continuous 1-year period. The alien 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 alien 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 alien 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 determines, in its discretion, that the alien satisfies the sought to acquire requirement, including that the delay was reasonable and calculates the alien's CSPA age using the alien's age on July 1, 2021, the date when the visa became available the second time. USCIS does not calculate the alien's CSPA age based on the first date of visa availability (October 1, 2020) because the alien 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 alien 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 alien demonstrates extraordinary circumstances for not seeking to acquire LPR status within the period the visa was first available.

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	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 alien demonstrates extraordinary circumstances for not seeking to acquire LPR status within the 1-year period the visa was next available. The alien who does not establish extraordinary circumstances, as described above, is not considered a child for CSPA purposes if the alien 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 alien: <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	The day when the visa first became available if the alien demonstrates extraordinary circumstances for not seeking to acquire LPR status within the 1-year period the visa was first available. Otherwise, the alien 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 considered a child for CSPA purposes.

4. Other Remedies for Certain Aliens 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*^[66] 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 alien's failure to seek to acquire LPR status within 1 year.

Aliens must file the Notice of Appeal or Motion ([Form I-290B](#)) with the proper fee and should present his or her 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.

CSPA may still apply to aliens who did not have an adjustment application pending under a preference category on August 6, 2002, and who did not timely seek to acquire. If these aliens had a visa available on or after August 7, 2001, did not seek to acquire within 1 year of such visa availability, and would have qualified for CSPA coverage had he or she applied, but did not apply for adjustment of status because of 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
Derivative Refugees ^[67]	CSPA age is frozen on the date the Form I-590 of the alien who is the principal applicant is filed (the date of the principal refugee’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)].

Immigrant Category	CSPA Age Determination	Does Sought to Acquire Requirement Apply?	Legal Authorities and Additional Guidance
Derivative Asylees	CSPA age is frozen on the date the Form I-589 of the alien who is the principal applicant 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) [68]	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 derivative beneficiaries).	No	See INA 201(f) .
Derivative Beneficiaries of Widows or Widowers	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's or widower's Form I-360.	No	See INA 201(f) .
Family-Sponsored Preference Principals and Derivative Beneficiaries (including VAWA) [69]	CSPA age is calculated by subtracting the number of days the Form I-130 (or Form I-360 for aliens who are VAWA self-petitioners and derivative beneficiaries) was pending from the alien's age on the date an immigrant visa becomes available to the alien.	Yes. To benefit from the CSPA age determination, the alien must seek to acquire lawful permanent residence within 1 year of the visa becoming available.	See INA 203(h) .

Immigrant Category	CSPA Age Determination	Does Sought to Acquire Requirement Apply?	Legal Authorities and Additional Guidance
Employment-Based Preference Derivative Beneficiaries	CSPA age is calculated by subtracting the number of days the petition was pending from the alien's age on the date an immigrant visa becomes available to the alien.	Yes. To benefit from the CSPA age determination, the alien must seek to acquire lawful permanent residence within 1 year of the visa becoming available.	See INA 203(h) .
Diversity Immigrant Visa Derivative Beneficiaries	CSPA age is calculated by subtracting the number of days the petition was pending from the alien's age on the date an immigrant visa becomes available to the alien.	Yes. To benefit from the CSPA age determination, the alien 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, aliens who are VAWA self-petitioners and derivative beneficiaries 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). These aliens who are not considered a child under for CSPA purposes 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 \(PDF, 104.96 KB\)](#), issued August 17, 2004.

[⁵] Eligible derivative beneficiaries of aliens who are 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 aliens applying 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 an alien widow or widower who is ineligible to be included as a derivative beneficiary may be eligible for consideration under [INA 204\(l\)](#) 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's interview with a USCIS officer.

[^18] See [INA 101\(b\)\(1\)\(D\)](#). See [8 CFR 207.7\(c\)](#).

[^19] See [INA 209\(a\)\(1\)](#).

[^20] 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\(F\)\(2\)](#)].

[^21] 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\(E\)](#)].

[^22] See [INA 203\(h\)\(1\)](#).

[^23] See [INA 203\(h\)\(1\)\(A\)](#). See Section G, Sought to Acquire Requirement [[7 USCIS-PM A.7\(G\)](#)] for detailed information.

[^24] 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.

[^ 25] See Section B, Child Status Protection Act Applicability [[7 USCIS-PM A.7\(B\)](#)] for more information on effective date.

[^ 26] See [INA 203\(h\)](#) and [INA 204\(k\)](#).

[^ 27] In addition to CSPA protections, aliens who are VAWA self-petitioners and derivative beneficiaries 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). These aliens who are not considered a child for CSPA purposes 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 \(PDF, 104.96 KB\)](#), issued August 17, 2004.

[^ 28] For CSPA purposes, the age at time of visa availability is the alien's age when USCIS considers the alien's visa available. See Subsection 4, Determining Age at Time of Visa Availability [[7 USCIS-PM A.7\(F\)\(4\)](#)]. Aliens who are VAWA self-petitioners and derivative beneficiaries are considered self-petitioners for preference status, and derivative beneficiaries who age out before adjusting status retain the priority date of the principal beneficiary's Petition for Amerasian, Widow(er), or Special Immigrant ([Form I-360](#)) VAWA self-petition. See [INA 204\(a\)\(1\)\(D\)\(i\)\(III\)](#). If an alien who is a VAWA self-petitioner was the principal beneficiary of a previously filed Petition for Alien Relative ([Form I-130](#)), the CSPA age is calculated using the date the Form I-360 was filed because this is the petition through which the alien is seeking adjustment of status.

[^ 29] See Section G, Sought to Acquire Requirement [[7 USCIS-PM A.7\(G\)](#)] for detailed information.

[^ 30] 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 alien's age at the time of visa availability. Depending on the facts of the particular case, an alien may become ineligible to adjust status as a derivative beneficiary as a result of a transfer request because his or her new calculated CSPA age is no longer under 21 years of age. However, a transfer of underlying basis request can also result in the alien becoming eligible to adjust status as a derivative beneficiary because his or her calculated CSPA age based on the petition is under 21 years of age.

[^ 31] 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.

[^ 32] For DVs, the qualifying petition is the DV Program electronic entry form. See [9 FAM 502.6-4](#), Diversity Visa Processing.

[^ 33] In addition to providing the individual monthly visa bulletins, the DOS [Visa Bulletin](#) website also provides a comprehensive list of final action dates broken out by fiscal year. Officers may use the comprehensive list to track movement of dates over time but should confirm consequential dates in the relevant monthly bulletin.

[^ 34] 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](#).

[^ 35] For more information, see Chapter 3, Filing Instructions, Section B, Definition of Properly Filed, Subsection 3, Visa Availability Requirement [[7 USCIS-PM A.3\(B\)\(3\)](#)] and Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [[7 USCIS-PM A.6\(C\)](#)]. Aliens who apply for adjustment of status under the DV category also use the DOS Visa Bulletin to determine visa availability.

[^ 36] See USCIS News Release, [USCIS Announces Revised Procedures for Determining Visa Availability for Applicants Waiting to File for Adjustment of Status](#), issued September 9, 2015.

[^ 37] USCIS typically designates one of the two charts within 1 week of the publication of the DOS Visa Bulletin.

[^ 38] An alien in the F2A preference category who is ineligible for CSPA according to the Final Action Dates chart may continue to pursue his or her adjustment of status applications based on the immigrant petition automatically converting to the F2B or F1 preference category. See [INA 203\(h\)\(3\)](#).

[^ 39] See [Age Calculation under Child Status Protection Act \(PDF, 345 KB\)](#), PA-2023-02, issued February 14, 2023.

[^ 40] In order to qualify under CSPA, the alien must also remain unmarried through final adjudication and must seek to acquire lawful permanent residence within 1 year of availability. See Section G, Sought to Acquire Requirement [[7 USCIS-PM A.7\(G\)](#)].

[^ 41] For aliens who filed for adjustment of status before August 15, 2025, USCIS considers a visa to be available for purposes of CSPA age calculations based on the Dates for Filing chart in accordance with the former policy guidance, and the CSPA age established at filing is locked in through the final adjudication, regardless of when a visa is authorized for issuance based on the Final Action Dates chart. The child 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\(G\)](#)].

[^ 42] For example, an alien in the F2A preference category whose calculated CSPA age is 21 years or older according to the Final Action Dates chart may continue to pursue his or her adjustment of status application based on the immigrant petition automatically converting to the F2B or F1 preference category. See [INA 203\(h\)\(3\)](#). See [8 CFR 204.2\(i\)](#). If an alien has multiple underlying bases to adjust status, the alien may request to transfer his or her underlying basis to another immigrant category if eligible. For more information, see Chapter 8, Transfer of Underlying Basis [[7 USCIS-PM A.8](#)].

[^ 43] A visa becomes unavailable when the date in the DOS Visa Bulletin based on the Final Action Dates chart for the alien's country of chargeability and preference category "retrogresses," or moves backwards.

[^ 44] See [INA 203\(h\)\(1\)\(A\)](#). Seek or sought to acquire is used as shorthand in this chapter to refer to this requirement.

[^ 45] VAWA preference cases are subject to the sought to acquire requirement, but VAWA IRs are not.

[^ 46] See Chapter 3, Filing Instructions, Section B, Definition of Properly Filed [[7 USCIS-PM A.3\(B\)](#)].

[^ 47] Submitting a Form DS-260 that covers only the alien who is the principal beneficiary does not meet the sought to acquire requirement for an alien who is the derivative beneficiary.

[^ 48] For more information on the Sought to Acquire LPR Status provision, see [9 FAM 502.1-1](#).

[^49] For more information on the Sought to Acquire LPR Status provision, see [9 FAM 502.1-1](#).

[^50] Aliens 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.” For more information regarding how overseas aliens may satisfy the sought to acquire requirement in the consular processing context, see [9 FAM 502.1-1](#).

[^51] If the alien is a derivative applicant with a pending adjustment application and USCIS approves the principal applicant's request to transfer the underlying basis of his or her adjustment application to a different immigrant category based on another approved petition, then the date that USCIS receives the transfer request is the date USCIS uses to determine whether the alien met the sought to acquire requirement.

[^52] For more information, see Section H, Extraordinary Circumstances for Sought to Acquire Requirement [[7 USCIS-PM A.7\(H\)](#)].

[^53] If the alien files an adjustment of status application before August 15, 2025, officers should apply the guidance in effect at the time and review the USCIS [Adjustment of Status Filing Charts from the Visa Bulletin](#) webpage to determine whether the alien had a prior 1-year period of visa availability to file for adjustment of status. For more information on applying the guidance in effect before August 15, 2025, 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\(F\)\(4\)](#)].

[^54] For DVs, the date USCIS considers a visa available is the first day on which the principal applicant's rank number is current for visa processing.

[^55] Though the CSPA technically requires DV derivatives to seek to acquire within 1 year, this requirement does not generally affect aliens who are DV derivative beneficiaries, 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\(a\)\(1\)\(I\)](#).

[^56] For more information, 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\(F\)\(4\)](#)].

[^57] In [Matter of O. Vazquez \(PDF\)](#), the Board of Immigration Appeals (BIA) ruled that extraordinary circumstances could warrant the exercise of discretion for an alien to satisfy the sought to acquire requirement. See [Matter of O. Vazquez \(PDF\)](#), 25 I&N Dec. 817 (BIA 2012).

[^58] Following the February 14, 2023 policy guidance, USCIS later clarified that USCIS considered the February 14, 2023, policy change to be an extraordinary circumstance that may excuse an alien's failure to meet the “sought to acquire” requirement provided that the delay in filing the adjustment of status application is reasonable under the circumstances. See [Sought to Acquire Requirement Under the Child Status Protection Act \(PDF, 331.87 KB\)](#), PA-2023-24, issued on August 24, 2023. If USCIS determines that an alien demonstrates extraordinary circumstances due to the February 14, 2023 policy change during a period before August 15, 2025, including that the delay is reasonable under the circumstances, USCIS considers the alien to have satisfied the sought to acquire requirement.

[^59] 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\(F\)\(4\)](#)].

[^60] 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 [\[7 USCIS-PM A.7, Appendices Tab\]](#).

[\[^ 61\]](#) An immigrant visa may become unavailable after being available for a period of less than 1 year due to visa retrogression of the Final Action Dates chart. See the DOS [Visa Bulletin](#) webpage.

[\[^ 62\]](#) The alien files for adjustment of status within the 1-year period of when the visa next becomes available.

[\[^ 63\]](#) See Section G, Sought to Acquire Requirement, Subsection 2, Visa Availability and the Sought to Acquire 1-Year Period [\[7 USCIS-PM A.7\(G\)\(2\)\]](#).

[\[^ 64\]](#) USCIS may calculate an alien's CSPA age based on the Dates for Filing chart under the former policy guidance if the alien demonstrates extraordinary circumstances during a period before August 15, 2025, and USCIS considered a visa available for accepting and processing an adjustment of status application based on the Dates for Filing chart. 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\(F\)\(4\)\]](#).

[\[^ 65\]](#) Aliens 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. Similarly, if an alien has different extraordinary circumstances for each period of visa availability, he or she must present evidence to show the extraordinary circumstance for each period of when the visa was available.

[\[^ 66\]](#) In *Matter of O. Vazquez*, the BIA ruled that extraordinary circumstances could warrant the exercise of discretion for an alien to satisfy the sought to acquire requirement during the 1-year period. See [Matter of O. Vazquez \(PDF\)](#), 25 I&N Dec. 817 (BIA 2012).

[\[^ 67\]](#) This includes Form I-730 beneficiaries.

[\[^ 68\]](#) 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 \(PDF, 104.96 KB\)](#), issued August 17, 2004.

[\[^ 69\]](#) 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 \(PDF, 104.96 KB\)](#), issued August 17, 2004.

Current as of August 08, 2025
