USCIS CHILD STATUS PROTECTION ACT POLICY UPDATE

By Ariel Brown

On August 8, 2025, USCIS announced that it was reversing a 2023 policy relating to the Child Status Protection Act (CSPA),[1] essentially returning to pre-2023 guidance.

The guidance concerns when a visa "becomes available" for purposes of the CSPA. This interpretation affects noncitizens hoping to immigrate through adjustment of status as the "child" of a lawful permanent resident, or other derivative "child" beneficiary, who might rely upon the CSPA to remain classified as a "child" even if their biological age is 21 or older.

The policy change does not impact using the CSPA to assist children of U.S. citizens—different CSPA rules apply to the children of U.S. citizens, including children whose LPR petitioning parents later naturalize to become U.S. citizens.[2] This change also only impacts cases decided by USCIS; Department of State handles consular processing cases, and its policy on this issue did not change in 2023 and thus remains the same, then and now.

The current guidance applies to adjustment of status applications filed with USCIS on or after August 15, 2025. In recognition that some individuals may have currently pending adjustment of status applications submitted in reliance on the 2023 guidance, USCIS will apply the 2023 guidance to any applications pending before August 15, 2025.[3]

I. Brief Overview of the CSPA Provisions Impacted by This Change

The Child Status Protection Act (CSPA) is meant to mitigate the harms of "aging out" when a person who was hoping to immigrate as a "child"—defined in immigration law as someone who

[1] USCIS, *Policy Alert: Revising Age Calculation Under the Child Status Protection Act* (Aug. 8, 2025), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20250808-CSPAAgeCalculation.pdf. The revised guidance has been incorporated into the U.S. Citizenship and Immigration Services Policy Manual (USCIS-PM) at 7 USCIS-PM A.7(F)–(H).

[2] For information on how CSPA applies to children of U.S. citizens, see ILRC, *Application of the Child Status Protection Act to the Children of U.S. Citizen Petitioners* (Dec. 21, 2018), https://www.ilrc.org/resources/application-child-status-protection-act-children-us-citizen-petitioners.

[3] USCIS, *Policy Alert: Revising Age Calculation Under the Child Status Protection Act*, at 2 (Aug. 8, 2025), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20250808-CSPAAgeCalculation.pdf. Additionally, USCIS may also apply the 2023 guidance to those who are able to establish extraordinary circumstances for not applying during a now-lapsed seek to acquire window under the 2023 policy. *See id.*

is unmarried and under age 21[4]—turns 21. In certain circumstances, CSPA allows a person who no longer qualifies as a child based on their biological age to continue to immigrate as a "child." The CSPA is an imperfect fix, however, especially for children of LPRs and other derivative child beneficiaries; in some cases, even with CSPA protections, the individual will be too old to immigrate as a child. When CSPA fails to preserve someone's ability to immigrate as a child, they may lose their ability to immigrate, or they may move into a different category with longer wait times. Family-based second preference beneficiaries move to a new category (2A to 2B); other derivative beneficiaries lose their ability to immigrate altogether.

For children of LPRs and other derivative child beneficiaries, the CSPA provides that the child can deduct the amount of time the I-130 petition was pending from their age on the date a visa "becomes available," thereby artificially reducing their age.[5] Since the calculation is specific to the time it took to adjudicate in the individual case, some cases may benefit from a deduction of many years, while others may only deduct months, depending how long the petition was pending.

> **Example:** Samar is a beneficiary of a petition filed by his LPR father when he was 10 years old. The petition was pending for roughly 6 years before it was approved when he was 16 years old. He's now 25 years old—biologically too old to qualify as a "child" anymore—but if he deducts the 6 years the petition was pending, his CSPA-adjusted age is 19 years old, enabling him to potentially still immigrate as an under-21 "child" as long as he is still single and meets other requirements detailed below.

If the resulting CSPA-adjusted age is under 21 after doing the CSPA age calculation (deducting the amount of time the petition was pending from the person's age on the date the visa becomes available), then the noncitizen can continue to immigrate as a "child" as long as they also "seek to acquire" within one year of the visa first becoming available.[6] In general, for someone hoping to adjust, filing the I-485 adjustment application satisfies the "seek to acquire" requirement.[7] If someone fails to fulfill the sought to acquire requirement within one year of visa availability, but can show that the reason was due to extraordinary circumstances, they may still be able to benefit from the CSPA even though they failed to seek to acquire within the one year.[8]

For a fuller description of how to use the CSPA, see ILRC, *The CSPA and Children of Permanent Residents* (June 29, 2018)[9] and ILRC, *Application of the Child Status Protection Act to the Children of U.S. Citizen Petitioners* (Dec. 21, 2018).[10]

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[4] INA § 101(b)(1).
[5] *See* INA § 203(h). While people are often afraid of the math involved in a CSPA age calculation, the formula is simple: take their age on the date a visa becomes available (e.g., 24 years old) and subtract the amount of time the petition was pending (e.g., 3.5 years) and the result (24 minus 3.5 equals 20.5 years old) is their CSPA-adjusted age.
[6] INA § 203(h).
[7] This is the safest way to satisfy the seek to acquire requirement in an adjustment case, although other actions may also qualify. *See* 7 USCIS-PM A.7(G)(1).
[8] *See* 7 USCIS-PM A.7(H).
[9] *See* https://www.ilrc.org/resources/cspa-and-children-permanent-residents.
[10] *See* https://www.ilrc.org/resources/application-child-status-protection-act-children-us-citizen-petitioners.

II. The Issue: USCIS's Interpretation of When a Visa "Becomes Available" for CSPA

The new USCIS policy changes what date controls for determining when a visa "becomes available" for CSPA purposes. The date when a visa "becomes available" affects (1) a person's age when you perform the CSPA calculation and (2) the start of the one-year timeframe within which the individual must seek to acquire to lock in their CSPA-adjusted age (if the resulting CSPA-adjusted age is under 21).

> **Example:** Natalia hopes to adjust status to lawful permanent resident based on a petition in which she is classified as a child, but while waiting for her turn to immigrate she turned 21. Now, she will only be able to immigrate if the CSPA helps her. In the September 2025 Visa Bulletin, Natalia's priority date first became current, meaning a visa "became available" for Natalia. To determine if she is still eligible to immigrate as a child, we perform the CSPA age calculation to subtract the number of years, months, and days her petition was pending from her biological age on September 1, 2025. If the result is under 21, she can move forward with the immigration process, so long as she seeks to acquire status (usually by filing an adjustment application) by September 1, 2026.

Traditionally, USCIS interpreted the date a visa "becomes available" as the date the priority date is current according to the Visa Bulletin published by the Department of State (i.e., when the priority date listed on the approved visa petition is earlier than the date listed in the Visa Bulletin for the corresponding category and country). This practice was complicated in 2015, when DOS began listing two separate dates, "Final Action Dates" and "Dates for Filing," as part of two different visa availability charts. In some months, USCIS will indicate that they are accepting applications according to the "Dates for Filing" chart (these dates are slightly earlier than the final action dates). This was intended to more efficiently queue up cases ready for adjudication by allowing individuals to begin the process, filing applications for permanent resident status, ahead of the date a visa number was available for final adjudication, the "final action date." Nonetheless, it created confusion around whether a person should calculate their CSPA age on the date they were eligible to *file* their application or whether they should calculate their CSPA age according to the *final action* date.

From 2015 until 2023, USCIS looked to the final action dates as the date a visa "becomes available." This is the date the visa is available for final processing, and an officer can make a decision to grant the case. Under new guidance effective August 15, 2025, USCIS will again look to the final action dates (Chart A in the Visa Bulletin).

Under this policy, a person might become eligible to file before knowing whether they will ultimately qualify to adjust with a CSPA age. In months USCIS is accepting applications under the earlier, "Dates for Filing" chart, a person over 21 or close to 21 will not yet know their CSPA age calculation, which will be based on the later, "Final Action Dates." If a person files during that filing window but ultimately ages out under the CSPA before the final action date becomes current, they will no longer be eligible to adjust when USCIS adjudicates the application. Thus, for those needing a CSPA-calculated age because they are already 21 or older, or who are close to turning 21, it might be safest to wait for the final action date to

become current before filing. Advocates will need to assess all the risk factors to determine the best timing for filing.

> **Example:** Anders turns 21 soon and is the beneficiary on a petition that is not yet current under the Final Action Dates. However, his priority date *is* current under Dates for Filing, which USCIS is allowing applicants to use to submit adjustment applications this month. If Anders will be applying for adjustment of status, he could submit his application now, while he's still under 21, but this does not guarantee he will be under 21, even applying the CSPA age reduction, when his priority date becomes current according to the Final Action Dates, the date that ultimately controls. He must decide whether he is willing to risk filing now without knowing whether he will ultimately be able to adjust. He should consult with a trusted immigration legal services provider who can advise him about the estimated length of time before his case will be current under the Final Action Dates chart, how much time the CSPA will allow him to deduct based on how long the petition was pending, and any other considerations.
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> If Anders were consular processing, he would also have to wait until his priority date was current according to the Final Action Dates before he could do the calculation to see if the CSPA will protect him from aging out. However, DOS does not use Dates for Filing to permit applicants to apply early so he would be in less of a conundrum than if he hopes to adjust status, although he might be faced with having to decide whether to pay the visa fee bills or wait until he is confident he will ultimately be able to immigrate as a child on this petition.

See below for more information on the 2023 policy.

III. USCIS's 2023 Guidance

Given the confusion created by the two separate dates, on February 14, 2023, USCIS changed its interpretation of when a visa "becomes available" to correspond with whichever chart in the Visa Bulletin USCIS was allowing applicants to use for filing their adjustment applications in a given month.[11] In some months, USCIS uses the "Final Action Dates" chart for determining when applicants can file for adjustment. In other months, USCIS allows applicants to use the "Dates for Filing" chart. The dates on the "Dates for Filing" chart are slightly earlier than the dates in the "Final Action Dates" chart. Thus, in months where USCIS allowed filing using this chart, more people could benefit from a CSPA-calculated age because the calculation was performed at an earlier point in time under the 2023 policy. However, it also meant that the "seek to acquire" clock started ticking sooner, something that not all applicants or practitioners may have been aware of.

By using the earliest date for the CSPA calculation, the 2023 policy created certainty for those needing a CSPA-calculated age and filing an adjustment when eligible under the "dates for filing" chart, but before their final action date was current. Before 2023—and now again under current policy—a person could file for adjustment under the "Dates for Filing" chart without knowing if they would benefit from CSPA until their priority date was current under the "Final Action Dates" chart.

[11] USCIS indicates which chart is being used each month here: www.uscis.gov/visabulletininfo.

In recognition that the 2023 change was a big departure from previous policy, six months after announcing the change USCIS issued a second memo stating that the 2023 change could be considered an "extraordinary circumstance" excusing a person's failure to "seek to acquire" within one year of visa availability.[12] In effect, this created a grace period as people transitioned from pre-2023 policy to the 2023 policy change.

IV. Current USCIS Guidance

On August 8, 2025, USCIS announced that it is reversing the 2023 policy and returning to pre-2023 guidance.[13]

Under the current guidance, effective August 15, 2025, USCIS interprets the date a visa becomes available for purposes of CSPA as the date the priority date becomes current according to the Visa Bulletin Final Action Dates Chart A or when the petition is approved, whichever is later.[14] This is the same guidance that DOS follows.[15]

In months when USCIS permits early filing using the Dates for Filing Chart B, applicants again face the quandary whether to file early and run the risk that when the CSPA age calculation is ultimately made according to Final Action Dates Chart A, they will be too old to immigrate as a child. If this happens, they will lose their application filing fees and could also be placed in removal proceedings.[16]

For applicants whose biological age is close to 21, or over 21, when they become eligible to file ahead of a current final action date, advocates will have to assess whether it is best to wait for the final action date to become current before filing. Waiting for the final action date to become current will ensure the applicant maintains eligibility to adjust with a CSPA age calculation. Yet, for some, having an application on file and work authorization (which they can get as soon as they have a pending adjustment) might outweigh the risk.

> **Example:** Matt is 22 when his priority date is eligible for filing under the "Dates for Filing" chart. His petition was pending for 6 years before it was approved. Because he will benefit from a 6-year deduction to his age once the CSPA calculation can occur on the date his case is ready for final processing (once current according to the "Final Action Dates" chart), his advocate might decide it is good to file the adjustment now. As it will be years before he ages out under the CSPA, he will likely still qualify when his priority date becomes current under the "Final Action Dates" chart. By filing now, Matt will be able to apply for a work permit and will know his application is on file, awaiting adjudication. He also will be considered registered pursuant to INA § 262. His advocate

[12] USCIS, *Sought to Acquire Requirement Under the Child Status Protection Act*, (Aug. 24, 2023), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20230824-CSPA.pdf.
[13] USCIS, *Policy Alert: Revising Age Calculation Under the Child Status Protection Act* (Aug. 8, 2025), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20250808-CSPAAgeCalculation.pdf.
[14] 7 USCIS-PM A.7(F).
[15] *See* 9 FAM § 502.1-1(D)(5)(b).
[16] *See* USCIS, *Policy Memorandum: Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens* (Feb. 28, 2025), https://www.uscis.gov/sites/default/files/document/policy-alerts/NTA_Policy_FINAL_2.28.25_FINAL.pdf.

will consider other enforcement risks at time of filing and will explain all the risks and benefits before proceeding.

Example: Luna is 22 when her priority date is eligible for filing under the "Dates for Filing" chart, but the visa petition filed for her was only pending about 1 and a half years. Her advocate worries that if they file now, she will no longer be "under 21" according to a CSPA age calculation at the time her visa becomes current under the "Final Action Dates" chart. Since she is already 22, if her case is not ready for final processing in the next few months, she might no longer qualify with a CSPA-calculated age when her case becomes eligible for final processing. Her attorney advises that it is best to watch the Visa Bulletin closely. If her CSPA-adjusted age is under 21 when the final action date is current, they will file the adjustment application then. While Luna will not get the benefit of early filing, such as filing for her work permit and reduced processing time, waiting avoids the possibility that her application is denied for aging out in the future.

In the above example, if Luna was the derivative of her parent as the beneficiary of U.S. citizen petition for a sibling (category F4), she risks aging out and losing the ability to immigrate on the petition altogether. A denial might result in referral to immigration court and no immediate avenue for relief. By contrast for those who are awaiting processing as the child of a lawful permanent resident (category F2), it might just mean waiting longer since in this context "aging out" under the CSPA could mean sliding from category F2A, for spouses and children of LPRs, to F2B, for adult children of LPR parents. Yet a parent's naturalization can offer greater security. A child's age "freezes" on the date the petitioning parent naturalizes.[17] Thus, a child who remains under 21 when the parent naturalizes will move from the F2A category to eligibility for immediate processing as an immediate relative of a U.S. citizen. Advocates should always confirm whether or not the petitioning parent from a prior petition has naturalized and screen the parent for naturalization eligibility if not. In some circuits, a CSPA-calculated age of under 21 (as opposed to biological age) on the date of the parent's naturalization is sufficient.[18]

[17] *See* ILRC, *Application of the Child Status Protection Act to the Children of U.S. Citizen Petitioners* (Dec. 21, 2018), https://www.ilrc.org/resources/application-child-status-protection-act-children-us-citizen-petitioners.

[18] *See Tovar v. Sessions*, 882 F.3d 895 (9th Cir. 2018); *Cuthill v. Blinken*, 990 F.3d 272 (2d Cir. 2021). For more explanation see also ILRC, *The CSPA and Children of Permanent Residents* (June 29, 2018), https://www.ilrc.org/resources/cspa-and-children-permanent-residents

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