CHILD STATUS PROTECTION ACT (CSPA) – FREQUENTLY ASKED QUESTIONS

1. How does the CSPA change the law?

Before the CSPA was passed, immigration law was very inflexible in its treatment of children who turned 21 years old or who married. Turning 21 ("aging out") or marrying was not cause to celebrate for immigration purposes, as it caused the applicant to be reclassified from "child" to "son or daughter". As a result, the applicant would either lose eligibility to apply for permanent residency, or the application for permanent residency would be reclassified to a lower preference category, causing of up to several years before a visa number would become available under the quota system. (For a description of the preference categories and their current "priority dates," please refer to our website under "Current Visa Bulletin"). In many circumstances, CSPA allows applicants to maintain their "child" status even after "aging out".

2. What kinds of applications does the CSPA apply to?

CSPA applies to how dependents are treated in the context of their parents' family and employment-based petitions, diversity visa (lottery) applications, applications for asylum and refugee status, and naturalization applications.

3. When did the CSPA become effective?

CSPA became law on August 6, 2002, and applies to all petitions which were pending on the day it became effective. Importantly, it can also have retroactive effect in some cases. It can still benefit an applicant "if a final determination has not been made on the beneficiary's application for an immigrant visa or adjustment of status to lawful permanent residence pursuant to such approved petition".

4. How does CSPA apply to change how a child is classified in family-based cases?

It depends on the type of family-based case. A few hypothetical situations will help to clarify:

H1. I am a U.S. citizen and I have filed a family-based petition for my 20-year-old child, who will turn 21 in one week. What happens when my child turns 21?

Because CSPA freezes your child's age as his/her age at the date your I-130 immigrant visa petition is filed, your child is categorized as an "immediate relative" even after s/he turns 21. There is no immigrant visa quota applied to immediate relatives and, thus, your child will be able to immigrate without regard to his/her age.

Under prior law, your child would no longer be classified as an "immediate relative" once s/he turns 21 because s/he is no longer a "child" but rather becomes your "son/daughter". Your petition would be converted to the less preferable "first preference" family category and would be subject to a waiting period of years before the application's "priority date" would become current. Under CSPA, your child remains an "immediate relative".

H2. I am a permanent resident who has filed for naturalization. My oath ceremony is scheduled for next week. I filed an immigrant visa petition years ago for my child, who is turning 21 next month. What happens when I naturalize? What happens when my child turns 21?

Because CSPA freezes your child's age as what his/her age is on the day that you naturalize, your I-130 immigrant visa petition is converted from the family based "2A (i.e., unmarried child under age 21), to an "immediate relative" petition. Once you naturalize, your child becomes immediately eligible to apply for permanent residency. Also, your child is allowed to keep the "child" classification no matter how long the application takes to be processed and approved.

Under prior law, your child's application for permanent residency must have been approved before s/he turned 21.

H3. I am a U.S. citizen and have filed a family based petition for my child, who is 19 years old but married. My child is planning a divorce in the next few months. Does this affect my family based petition?

Because CSPA freezes your child's age as what his/her age is on the day that s/he divorces, the divorce would convert your family based petition from the 3rd preference category to the "immediate relative" category. Your child will become immediately eligible to apply for permanent residency. Your child is allowed to keep the "child" categorization no matter how long the application takes. (As background: your child's marriage caused him/her to lose eligibility as a "child" and reclassified him/her as a "son or daughter." Therefore your I-130 immigrant visa petition was classified under the family based 3rd preference for "married sons and daughters" which has a long quota backlog.)

Under prior law, your child's application for permanent residency must have been approved before s/he turned 21.

H4. I am a permanent resident from the Philippines and I filed an immigrant visa petition years ago for my child, who turned 22 last year. I have filed for U.S. citizenship and passed my examination, and my naturalization ceremony is next month. How does this affect my family based petition?

When you naturalize, your immigrant visa petition is converted from family preference "2B (i.e., "unmarried sons/daughter" of a permanent resident) to family 1st preference (i.e., "unmarried son/daughter" of a US citizen.) This may be a good thing for most nationalities, but the priority date backlog for the Philippines 1st preference is worse than for the 2B preference category. CSPA also allows your child to file a written statement electing to not have the petition converted. Regardless of whether the petition is converted, your child can keep your original priority date.

Under prior law, the conversion would have occurred automatically and it was not possible to elect against conversion.

5. How does CSPA apply to change how a child is categorized in employment-based cases?

It depends on the circumstances and timing of the employment based case. A couple of hypothetical situations will help to clarify:

H5. I am in non-immigrant status. My employer filed an outstanding researcher immigrant visa petition on my behalf and it took INS five months approve the petition. I have a child who is now 21 years and 3 months old. Will my child still be eligible to apply for permanent residency with me as my dependent?

Under CSPA, the critical dates are:

- when an "immigrant visa number becomes available" and
- how long the immigrant visa petition is pending.

Currently, an "immigrant visa number is available" when the I-140 immigrant visa petition is approved in all employment based categories because there are no priority date backlogs for any nationalities. Under CSPA, whether your child can still be classified as your dependent is calculated as follows:

- Child's age on date immigrant visa number becomes available (I-140 approval), minus
- number of days the immigrant visa petition is pending
- your child's age under CSPA

In your case, your child was 21 years and 3 months old when the I-140 immigrant visa petition was approved, but the INS took 5 months to process the I-140. Under CSPA, your child's age is frozen at 21 years and 3 months minus 5 months = 20 years and 10 months. Your child can file for permanent residency with you as your dependent child.

Note however, that your child must apply for permanent residence within one year of availability of the visa number (I-140 approval).

Under prior law, once your child turned age 21, regardless of when the I-140 was filed or approved, s/he "ages out" and would no longer qualify as your dependent child and could not apply for permanent residency with you. After you became a lawful permanent resident, you would have to submit a family preference 2B petition for your child, resulting in delays of several years due to the quota backlog.

H6. I am in non-immigrant status. My employer filed a labor certification for me two years ago, which was approved; my employer then filed an immigrant visa petition for me, which took four months to be approved. I have a child who turned 21 one month before we filed the immigrant visa petition and who is now 21 years and 5 months old. Will my child still be eligible to apply for permanent residency with me as my dependent?

Under CSPA, your child's age is 21 years and 5 months, minus 4 months = 21 years and one month. In this situation, your child still "ages out". If you file an immigrant visa petition for your child once you become a permanent resident, s/he would be classified under the family based 2B preference category as an "unmarried son or daughter" of a permanent resident. However, the "priority date" for this application would be your priority date; in this case the date that your employer filed your labor certification.

6. How does the CSPA affect dependents whose parents have filed asylum applications or who have applied for admission as refugees?

CSPA freezes the child's age as of the date when the parent files for asylum, or applies for refugee status.