



# GMS Flash Alert

## Immigration Edition

2023-040 | February 17, 2023



# United States – USCIS Updates Child Status Protection Act (CSPA) Age Calculation

On February 14, 2023, the United States Citizenship and Immigration Services (USCIS) updated policy guidance on when immigrant visas are “available” for the purposes of calculating a noncitizen’s age in certain situations under the Child Status Protection Act (CSPA).<sup>1</sup>

## WHY THIS MATTERS

The update to the USCIS CSPA guidance is effective immediately and will serve beneficial to dependent children of principal green card applicants facing potentially “aging out as a result of turning 21 while awaiting their green card application to be approved. When a child “ages out,” the child generally is no longer eligible to immigrate with the parent based on the parent’s green card application. The new rule will permit certain dependent children who reach the age of 21 to still receive their green cards along with their parents, offering additional protection and security.

## Legal Background

In response to lengthy backlogs, issues concerning children aging out, and maintaining familial unification, Congress enacted the CSPA to protect certain children<sup>2</sup> from aging out. The CSPA went into effect on August 6, 2002, and aimed to protect children who applied for lawful permanent resident (LPR) status but who could no longer be considered a “child” for immigration purposes. The Department of State’s Visa Bulletin is used to determine when a visa number becomes available. The Visa Bulletin has two charts – the Dates for Filing chart and the Final Action Date chart. For related coverage, see [GMS Flash Alert 2022-207](#), November 18, 2022.

Under the previous CSPA guidance, USCIS considered a visa available for purposes of the CSPA age calculation<sup>3</sup> based only on the Final Action Date chart, even if a noncitizen could apply for adjustment of status using the earlier date in the Dates for Filing chart.<sup>4</sup> This meant that an applicant applying for adjustment of status could have a visa “immediately

available” for the purposes of filing the application, but not have a visa “become available” for the purposes of the CSPA calculation and thus not receive protection from aging out if the child turned 21 awaiting their green card application to be approved. The updated CSPA guidance rescinds this policy.

## Resolutions Under the Policy

Under the new policy, USCIS now considers a visa available for CSPA calculation at the same time USCIS considers a visa immediately available for accepting an adjustment of status application.<sup>5</sup> This update seeks to resolve contradictions between different dates in the Visa Bulletin’s Final Action Date and Dates for Filing charts regarding when a visa is “available.”

- When USCIS determines there are more immigrant visas available for a fiscal year than there are known applicants for such visas, and USCIS announces that prospective applicants may use the Dates for Filing chart when filing adjustment of status applications, then USCIS also uses the Dates for Filing chart when calculating the applicant’s CSPA age.
- When USCIS announces that a prospective applicant must use the Final Action Dates chart when filing the adjustment of status application, then USCIS uses the Final Action Dates chart when calculating the applicant’s CSPA age.

Under the new USCIS rule, the agency will apply the more favorable Dates for Filing chart to calculate noncitizens’ ages for CSPA purposes. This will allow a greater number of children who have filed for adjustment of status with their parents’ applications to receive protection from aging out and ultimately obtain their green card.

## Applicability and Eligibility

CSPA applies differently to family-sponsored and employment-based preference and diversity visa (DV) adjustment applicants than it does to refugee, asylee, and immediate relative (IR) adjustment applicants.

To qualify based as a family-sponsored, employment-based or DV applicant:

1. The applicant must have had a qualifying petition or adjustment application pending on or after the CSPA effective date;
2. The applicant’s calculated CSPA age must be under 21 years old;
3. The applicant must remain unmarried; and
4. The applicant must have sought to acquire lawful permanent residence within 1 year of visa availability, absent extraordinary circumstances.<sup>6</sup>

If noncitizens are eligible to adjust status because of the change in this policy and they have filed for adjustment of status, they will also be eligible to apply for employment and travel authorization based on their pending adjustment of status application, and generally will not lose previously issued employment or travel authorization.<sup>7</sup>

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## KPMG INSIGHTS

Certain adjustment applicants who would benefit from the updated CSPA policy may be eligible to file a motion to reopen their previously denied application with USCIS by using Form I-290B, *Notice of Appeal or Motion*, within the eligible period as provided in the denial notice.

This Policy Manual update will not prevent all children from aging out before an immigrant visa is available to them, nor will it prevent children from losing nonimmigrant status derived from their parents upon reaching the actual age of 21.<sup>8</sup> USCIS states that it continues to explore all options available under the law to aid this population.

KPMG Law LLP in Canada is tracking this matter closely. We will endeavor to keep readers of *GMS Flash Alert* posted on any important developments as and when they occur.

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## FOOTNOTES:

1 See United States Citizenship and Immigration Services, “[USCIS Updates Child Status Protection Act \(CSPA\) Age Calculation for Certain Adjustment of Status Applicants](#)” (February 14, 2023).

2 See § 101(b)(1) of the Immigration and Nationality Act (INA), where a child is “...a person who is unmarried and under 21 years old.” CSPA does not alter this definition – it provides methods for calculating an applicant’s age for immigrant visa purposes. The resulting age is known as the applicant’s “CSPA age.” See INA §101(b)(1).

3 For the purposes of CSPA calculation, USCIS utilizes the following formula: Age at time of visa availability - Pending time = CSPA Age. See United States Citizenship and Immigration Services, “[Chapter 7 - Child Status Protection Act](#).”

4 See footnote 1.

5 See footnote 1.

6 See USCIS [Chapter 7 - Child Status Protection Act](#) at 23-25.

7 See footnote 1.

8 *Id.*

## Contact us

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