

USCIS Changes CSPA Age Calculation

By Charles Wheeler

U.S. Citizenship and Immigration Services (USCIS) has changed the way “adjusted age” is calculated for purposes of determining whether a child can take advantage of the Child Status Protection Act (CSPA). The change advances the date when the child’s age is measured and, as a result, should allow more children to qualify for the law’s protections. But it also affects when the one-year period starts, during which they must take action to immigrate. The change is spelled out in updated guidance in the [USCIS Policy Manual](#).

The CSPA helps preserve the “under 21” age of many children who would otherwise have aged out under the prior law. For example, the law allows unmarried children of U.S. citizens to remain immediate relatives if they are under 21 when the I-130 petition is filed. It provides a more limited form of relief for the unmarried children of LPRs and for derivatives in the various preference categories.

The children of LPRs must calculate their adjusted age on the date the F-2A priority date first becomes “current” according to the Visa Bulletin or on the date the petition is approved, whichever is later. Derivative children in the other preference categories follow the same formula using their priority date. The CSPA allows them to subtract the time the I-130 petition was pending before it was approved to arrive at an adjusted age. If they are under 21 using the adjusted age when the priority date is first current, then they remain in either the F-2A category or as a derivative in the other categories. However, they must do one additional thing: seek to become an LPR within one year.

Example: Miguel, an LPR, filed an I-130 petition for his 20-year-old daughter, Yolisma. The petition was pending for 18 months. On the date it was approved, the F-2A priority date was current, but Yolisma had turned 22. Yolisma’s adjusted age, however, was still 20 since all of the time the petition was pending could be subtracted from her biological age. Yolisma is still in the F-2A category, but she must seek to become an LPR within one year of the petition approval.

The F-2A preference category has been current in Chart A since July 2019. As long as that remains true, the date for measuring the adjusted age for the F-2A category is the date the petition is approved. For other preference categories, the date for calculating the adjusted age is when the priority date first becomes current since the petition will have already been approved. That means that even though the child’s age is frozen while the petition is pending, the child starts aging again when the petition is approved and will continue to age until the priority date becomes current.

The recent change in policy allows the use of Chart B, Dates for Filing (earliest date when applicants may be able to apply), to determine when the adjusted age is calculated rather than Chart A, Final Action Dates (dates when visas may finally be issued). Prior to the change, the agency required children to use Chart A. This worked a hardship for children whose priority date was current using Chart B but who had to wait several more months until Chart A became current to determine their adjusted age.

Each month the USCIS decides whether adjustment of status applicants can use Chart B for filing purposes. For the past 5½ years, the agency has allowed family-based applicants to use Chart B rather than Chart A (applicants in the F-2A category could use Chart A if that was more favorable). But that meant that a child whose adjusted age was under 21 when the priority date was current using Chart B could not be certain whether his or her adjusted age would still be under 21 when the priority date became current using Chart A. This would be true for both adjustment of status and immigrant visa applicants. If a child in the F-2 category filed the application but then aged out, he or she would convert to the F-2B category and have to wait until that priority date became current. But if the child was a derivative in one of the other preference categories and aged out after filing, he or she would lose any immigration status, in addition to the application filing fee.

The change in policy addresses this hardship and uncertainty by moving the date of age calculation forward to when the priority date becomes current using Chart B, assuming USCIS permits using Chart B for filing purposes for that month. That means that children who file for adjustment of status or an immigrant visa using Chart B because their adjusted age is under 21 are protected from aging out.

Example: Michael, a U.S. citizen, filed an I-130 petition for his brother, Carl, who is married and has a son, Daniel. The petition was pending for two years. Fourteen years later, the F-4 priority date became current using Chart B, but Daniel had turned 22. The USCIS indicated that applicants may use Chart B for adjustment filing purposes. Using his adjusted age, however, Daniel was 20 years old since the two years the petition was pending could be subtracted from his biological age. Daniel is still a derivative in the F-4 category, but he must seek to become an LPR within one year of the priority date becoming current using Chart B. Before the change in policy, Daniel could still have aged out if he turned 21 using his adjusted age before the priority date became current using Chart A.

To satisfy the “seek to become an LPR” requirement, the child or the I-130 petitioner can take any of the following steps within one year of the petition approval or the priority date becoming current, whichever is later:

- file an I-485, Application to Register Permanent Residence or Adjust Status;
- file a Form I-824, Application for Action on an Approved Application or Petition;
- pay the immigrant visa fee with the National Visa Center (NVC);
- pay the affidavit of support fee with the NVC;
- file the DS-260, Immigrant Visa Electronic Application, with the Department of State.

The change in policy also affects when the one-year filing requirement starts. Under the prior policy, applicants could wait until the priority date became current in Chart A to take action. Now they must pay attention each month to whether the USCIS is allowing applicants to use Chart B for filing purposes. If so, the one-year period begins on that month, not when the priority date becomes current using Chart A.

Example: Using the above facts in Daniel’s case, assume he was under 21 using his adjusted age when the priority date became current in the F-4 category according to Chart B. But Daniel was not aware that the USCIS allowed adjustment applicants to use Chart B rather than Chart A for

filing purposes or was not aware of the change in policy. He failed to file for adjustment before the one-year period expired. He can no longer take advantage of the CSPA and thus aged out of derivative status. He must wait for his father to immigrate and file a new I-130 petition in his behalf in the F-2B category.

The change in policy does not apply retroactively to cases where the applicant aged out after Chart B was current but before Chart A became current. It applies only to pending applications and those adjudicated on or after February 14, 2023. However, USCIS indicated that those children who were previously denied adjustment based on the prior policy may file a motion to reopen their application by using Form I-290B, Notice of Appeal or Motion. While a motion to reopen (MTR) must generally be filed within 30 days of the denial, the “USCIS may, in its discretion, excuse the untimely filing of the motion if the noncitizen demonstrates that the delay was reasonable and was beyond the noncitizen’s control.” Such a statement invites those who were denied based on the prior policy to file an MTR and overturn the denial; the USCIS Policy Manual will also be updated to include this February 14, 2023 policy change as an “extraordinary circumstance” in excusing failure to file for adjustment of status within one year.