



All About the Child Status Protection Act

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Today's Instructors



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What We'll Be Talking About

- CSPA and Family-Based Cases
 - Immediate Relatives
 - Preference Categories and Derivatives
 - One-Year Filing Requirement and Exceptions
 - Opting Out of First Preference
- CSPA and VAWA
- CSPA and Refugee/Asylee Derivatives
- CSPA and Widow(er)s
- CSPA and Afghan SIVs

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CSPA in a Nutshell: Will Remain a Child...

- Family cases:
 - if under 21 when I-130 filed or petitioner becomes USC for IRs
 - if under 21 using adjusted age for F-2A and derivatives
- VAWA cases: if under 21 when I-360 filed for IRs; if under 21 using adjusted age for F-2As
- Refugee/asylee: if under 21 when I-589 or I-590 filed
- Widow(er)s: if under 21 when I-130 or I-360 filed
- Afghan SIV: if under 21 using adjusted age when I-360 approved

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CSPA in a Nutshell: IRs

- Child of USC remains immediate relative if under 21 when I-130 filed (once an IR always an IR)

Example: Amy, a USC, petitions for her son Ben when he is age 20 and 9 months. Since I-130 filed before Ben is 21, he remains a “child” even if the petition is approved after he turns 21 and even if he is over 21 when he immigrates.

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CSPA in a Nutshell: IRs

- Child of USC remains immediate relative if under 21 when parent naturalizes (F-2A → IR)

Example: Marco, an LPR, petitions for his daughter Maria when she is 18 years old. Marco naturalizes when Maria is 20 years old. Maria converts to immediate relative and remains a “child,” even if she immigrates after age 21.

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CSPA in a Nutshell: IRs

- Married child of USC becomes immediate relative if under 21 when child divorces (F-3 → IR)

Example: Louis, a USC, petitions for his son Philippe when he is 20 years old and married. Philippe divorces before turning 21. Philippe converts to immediate relative and remains a “child,” even if he immigrates after age 21.

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CSPA in a Nutshell: F-2As

- Child of LPR stays in F-2A category if under 21 using “adjusted age” on date priority date becomes current or date petition approved, whichever is later
- Calculate adjusted age by subtracting time petition pending
- Need to know: 1) priority date, 2) approval notice date, 3) child’s DOB, and 4) when priority date current
- Adjusting status or consular processing? Chart A or B?
- If child under 21, will remain so provided seeks LPR status within one year

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CSPA in a Nutshell: Derivatives

- Derivative child in F-1, F-2, F-3, and F-4 category remains derivative if under 21 using “adjusted age” when priority date becomes current or date petition approved, whichever is later
- Calculate adjusted age by subtracting time petition pending
- Need to know priority date, approval notice date, child’s DOB, and when priority date current
- Adjusting status or consular processing? Chart A or B?
- If derivative, will remain so provided seeks LPR status within one year

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CSPA in Action for F-2As and Derivatives if Consular Processing

- To calculate adjusted age, priority date must be current using **Chart A**
- Note: NVC uses Chart B to send immigrant visa (IV) fee bill
- Paying IV fee doesn't prevent age-out! No clock stopping!
- If F-2A ages out → converts to F-2B
- If F-2A derivative ages out → converts to principal in F-2B
- If derivative in other categories ages out → lose filing fee!

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CSPA in Action for F-2As if Consular Processing

Maria, an LPR from Colombia, filed an I-130 for her son Hector on **March 20, 2022**, and the petition was approved on **March 20, 2023**. Hector's date of birth is **July 7, 2001**. She wants her son to immigrate but is concerned because he is now 22. Hector received a fee bill from the NVC in May of this year and wonders if he should pay it. You look to see if the F-2A priority date in Chart A was current for **March 2023**. What advice do you have for Maria and Hector?

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Visa Bulletin March 2023: Chart A, Final Action Dates

	All	China	India	Mexico	Philippines
F1	01DEC14	01DEC14	01DEC14	01APR01	01MAR12
F2A	C	C	C	C	C
F2B	22SEP15	22SEP15	22SEP15	01JUN01	22OCT11
F3	22NOV08	22NOV08	22NOV08	01NOV97	08JUN02
F4	22MAR07	22MAR07	15SEP05	01AUG00	22AUG02

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Visa Bulletin March 2023: Chart B, Filing Dates

	All	China	India	Mexico	Philippines
F1	08AUG16	08AUG16	08AUG16	01DEC02	22APR15
F2A	C	C	C	C	C
F2B	01JAN17	01JAN17	01JAN17	01JAN02	01OCT13
F3	08NOV09	08NOV09	08NOV09	15JUN01	08NOV03
F4	15DEC07	15DEC07	22FEB06	01APR01	22APR04

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Is Hector Protected in F-2A?

- Date of birth: July 7, 2001
- Date petition filed: March 20, 2022
- Date petition approved: March 20, 2023
- Time I-130 pending? 1 year
- Date priority date current in **Chart A** or petition approved (whichever is later): March 20, 2023
- Subtract 1 year from biological age on March 20, 2023, or add to DOB
- Adjusted date of birth (add one year): July 7, 2002
- Date turns 21 (adjusted): July 7, 2023, so under 21 on March 20, 2023
- Final step: seek LPR status w/in one year of March 20, 2023

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Questions

- Q: Does it matter that Chart A is no longer current?
A: No. Adjusted age is calculated when priority date current (petition approved) and locked in once pays IV fee w/in 1 year
- Q: Does visa retrogression affect ability to pay IV fee?
A: No. NVC uses Chart B. Can still pay fee if no longer current in Chart B. Retrogression may affect adjustment applicants.
- Q: Can you still age out after paying IV fee?
A: Yes. Paying the IV fee does not lock in your age.
- Q: If you age out after paying IV fee, do you get a refund?
A: Are you serious?

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CSPA in Action for F-2As if Consular Processing

Maria, an LPR from Colombia, filed an I-130 for her son Hector on **June 20, 2022**, and the petition was approved on **June 20, 2023**. Hector's date of birth is **July 7, 2001**. She wants her son to immigrate but is concerned because he is now 22. Hector received a fee bill from the NVC in August of this year and wonders if he should pay it. You look to see if the F-2A priority date in Chart A is current and discover that it hasn't been current since May 2023. What advice do you have for Maria and Hector?

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Visa Bulletin June 2023: Chart A, Final Action Dates

	All	China	India	Mexico	Philippines
F1	15DEC14	15DEC14	15DEC14	01APR01	01MAR12
F2A	08SEP20	08SEP20	08SEP20	01NOV18	08SEP20
F2B	22SEP15	22SEP15	22SEP15	01JUN01	22OCT11
F3	08DEC08	08DEC08	08DEC08	01NOV97	08JUN02
F4	08APR07	08APR07	15SEP05	01AUG00	22AUG02

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Visa Bulletin August 2023: Chart B, Filing Dates

	All	China	India	Mexico	Philippines
F1	01SEP17	01SEP17	01SEP17	01APR05	22APR15
F2A	C	C	C	C	C
F2B	01JAN17	01JAN17	01JAN17	01AUG04	01OCT13
F3	01MAR10	01MAR10	01MAR10	15JUN01	08NOV03
F4	01MAR08	01MAR08	22FEB06	15APR01	22APR04

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Is Hector Protected in F-2A?

- Date of birth: July 7, 2001
- Date petition filed: June 20, 2022
- Date petition approved: June 20, 2023
- Time I-130 pending? 1 year
- Date priority date current in **Chart A** or petition approved (whichever is later): ???
- Subtract 1 year from biological age when Chart A current, or add to DOB
- Adjusted date of birth (add one year): July 7, 2002
- Date turned 21 (adjusted): July 7, 2023, so aged out, converted to F-2B
- Pay the IV fee? Yes, to avoid petition termination

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CSPA in Action for F-2A Derivative if Consular Processing

Maria, an LPR from Colombia, filed an I-130 for her spouse on **June 20, 2022**, with her son Hector named as a derivative. The petition was approved on **June 20, 2023**. Hector's date of birth is **July 7, 2001**. She is concerned because Hector is now 22. Maria's spouse received fee bills from the NVC in August of this year but not Hector. You look to see if the F-2A priority date in Chart A was current in June and discover that it wasn't. What advice do you have for Maria and Hector?

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Retention of Priority Date If Derivative Ages Out

- INA § 203(h)(3): when derivative ages out, "alien's petition shall automatically be converted to the appropriate category and the alien shall retain the original priority date issued upon receipt of the original petition"
- Supreme Court interpretation → only applies to F-2As who age out, not to others
- Hector converts from derivative in F-2A to principal in F-2B
- No new I-130, same priority date

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F-2A Derivative Ages Out

Maria, an LPR, filed an I-130 for her spouse with their son, Hector, named as a derivative. When the F-2A category in Chart A, Hector was 22 and had aged out. Maria doesn't need to file a second I-130 for Hector because he automatically converted to F-2B. INA § 203(h)(3). If she does file, Hector retains the priority date from the original I-130 filed by Maria for her spouse. 8 CFR § 204.2(a)(4).

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CSPA in Action for Other Derivatives if Consular Processing

Maria, a USC, filed an I-130 for her brother on **February 20, 2008**, with her brother's son Hector named as a derivative. The petition was approved on **February 20, 2009**. Hector's date of birth is **July 7, 2001**. Maria is concerned because Hector is now 22. Maria's brother just received fee bills from the NVC and he wants to know if Hector is still a derivative. You look to see if the F-4 priority date in Chart A is current and discover that it isn't. But it is current in Chart B. What advice do you have for Maria, her brother, and Hector?

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Visa Bulletin October 2023: Chart B, Final Action Dates

	All	China	India	Mexico	Philippines
F1	01SEP17	01SEP17	01SEP17	01APR05	22APR15
F2A	01SEP23	01SEP23	01SEP23	01SEP23	01SEP23
F2B	01JAN17	01JAN17	01JAN17	01AUG04	01OCT13
F3	01MAR10	01MAR10	01MAR10	15JUN01	08NOV03
F4	01MAR08	01MAR08	22FEB06	15APR01	22APR04

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Visa Bulletin October 2023: Chart A, Final Action Dates

	All	China	India	Mexico	Philippines
F1	01JAN15	01JAN15	01JAN15	22APR01	01MAR12
F2A	08FEB19	08FEB19	08FEB19	01FEB19	08FEB19
F2B	22SEP15	22SEP15	22SEP15	01JAN02	22OCT11
F3	08JAN09	08JAN09	08JAN09	08MAR98	08JUN02
F4	22APR07	22APR07	08OCT05	01AUG00	22AUG02

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CSPA in Action for F-2As and Derivatives if Adjusting Status

- To calculate adjusted age, priority date must be current using **Chart A or Chart B depending on USCIS notice**
- Note: USCIS uses **Chart B** now for filing purposes
- If under 21 using adjusted age, remain in F-2A or derivative provided satisfy one-year filing requirement
- If F-2A ages out → converts to F-2B
- If F-2A derivative ages out → converts to principal in F-2B
- If derivative in other categories ages out → loses status

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CSPA in Action for F-2As if Adjusting Status

Maria, an LPR from Colombia, filed an I-130 for her son Hector on **June 20, 2022**, and the petition was approved on **June 20, 2023**. Hector's date of birth is **July 7, 2001**. Hector would be eligible to file for adjustment of status if his priority date is current since he recently was admitted on a tourist visa. You look and see that the F-2A priority date was current in **Chart B** in June 2023 and that the USCIS is still allowing Chart B for filing purposes. But Chart A wasn't current and still isn't. What advice do you have for Maria and Hector?

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Visa Bulletin June 2023: Chart B, Filing Dates

	All	China	India	Mexico	Philippines
F1	01JAN17	01JAN17	01JAN17	01DEC02	22APR15
F2A	C	C	C	C	C
F2B	01JAN17	01JAN17	01JAN17	01JAN02	01OCT13
F3	08FEB10	08FEB10	08FEB10	15JUN01	08NOV03
F4	01FEB08	01FEB08	22FEB06	01APR01	22APR04

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Is Hector Protected in F-2A?

- Date of birth: July 7, 2001
- Date petition filed: June 20, 2022
- Date petition approved: June 20, 2023
- Time I-130 pending? 1 year
- Date priority date current in **Chart B** or petition approved (whichever is later): June 2023
- Subtract 1 year from biological age on June 20, 2023, or add to DOB
- Adjusted date of birth (add one year): July 7, 2002
- Date turns 21 (adjusted): July 7, 2023, so under 21 on June 20, 2023
- Final step: seek LPR status w/in one year of June 20, 2023

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Visa Bulletin October 2023: Chart B, Final Action Dates

	All	China	India	Mexico	Philippines
F1	01SEP17	01SEP17	01SEP17	01APR05	22APR15
F2A	01SEP23	01SEP23	01SEP23	01SEP23	01SEP23
F2B	01JAN17	01JAN17	01JAN17	01AUG04	01OCT13
F3	01MAR10	01MAR10	01MAR10	15JUN01	08NOV03
F4	01MAR08	01MAR08	22FEB06	15APR01	22APR04

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One-Year Filing Requirement

- One year from date visa becomes available must “seek to acquire LPR status”
- Narrowly defined by USCIS and DOS
- Within one year, file:
 - I-485
 - I-824
 - Pay immigrant visa filing fee or I-864 fee
 - File DS-260
- If fail to do this, no CSPA protection, biological age will control

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Matter of O. Vasquez

- 25 I&N Dec. 817 (BIA 2012)
- “sought to acquire” LPR status w/in 1 year
- BIA found USCIS/DOS interpretation is reasonable
- Promotes “consistency and predictability”
- Two exceptions to rule:
 - attempted to file on time but rejected for procedural or technical reasons
 - “extraordinary circumstances” that prevented filing

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USCIS Interpretation Extraordinary Circumstances

- Failure to file w/in one year not caused by the applicant
- Circumstances directly affected the failure
- Delay was reasonable
- Examples:
 - Serious illness or physical disability of applicant
 - Legal disability
 - Improper rejection by USCIS
 - Death or serious illness of representative

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USCIS Interpretation Extraordinary Circumstances

- Ineffective assistance of counsel
 - Declaration: informed counsel of accusation
 - Counsel given opportunity to respond
 - Bar complaint filed?
- Feb. 14, 2023 change in CSPA interpretation
 - Failure to file w/in one year using Chart B due to change
 - OK if used Chart A to file
 - Delay (starting on Aug. 24, 2023) was reasonable

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Visa Retrogression

- Current in Chart B when petition approved but retrogresses
- Doesn't affect age calculation if file for adjustment within one year
- If fail to file w/in one year because priority date no longer current, new one-year period opens up when is current
- Re-calculate adjusted age at that time
- Doesn't affect consular processing, can still pay IV fee

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CSPA if Visa Retrogression

Maria, an LPR from Colombia, filed an I-130 for her son Hector on **June 20, 2022**, and the petition was approved on **June 20, 2023**. Hector's date of birth is **July 7, 2001**. Hector would be eligible to file for adjustment of status if his priority date is current since he recently was admitted on a tourist visa. You look and see that the F-2A priority date was current in **Chart B** in June 2023 and that the USCIS was allowing Chart B for filing purposes. But (hypothetically) Chart B is no longer current for October. What advice do you have for Maria and Hector?

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Is Hector Protected in F-2A?

- Date of birth: July 7, 2001
- Date petition filed: June 20, 2022
- Date petition approved: June 20, 2023
- Time I-130 pending? 1 year
- Date priority date current in **Chart B** or petition approved (whichever is later): June 2023
- Date turns 21 (adjusted): July 7, 2023, so under 21 on June 20, 2023
- One-year filing period opened on June 20, 2023
- If didn't file before retrogression: file before one-year period closes
- Otherwise, new one-year period opens but recalculate adjusted age

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CSPA Opt Out

- F-1 category now backlogged farther than F-2B except for Philippines in Chart A
- When parent naturalizes, unmarried sons and daughters convert from F-2B to F-1 unless elect to stay in F-2B
- File opt out with USCIS
- Follow DOS instructions



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Naturalization of Petitioner

- Child under 21 (using biological age) converts to IR
- Derivative child in F-2A loses derivative status; needs new I-130
- Child over 21 (using adjusted age) converts from F-2B to F-1 and can opt out if F-2B preferable
- Child under 21 using adjusted age but over 21 using biological age converts from F-2A to F-1 and can't opt out, *Matter of Zamora-Molina*, 25 I&N Dec. 606 (BIA 2011)
- Child under 21 using adjusted age but over 21 using biological age converts from F-2A to IR in 9th and 2nd circuits

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Example

Carlos, an LPR, filed an I-130 for his daughter, Juana, when she was 20 years old. The petition was pending for one year. Juana was 21 when the petition was approved but only 20 using her adjusted age. The priority date did not become current in Chart A for two more years, and Juana aged out into the F-2B category. Before she immigrated, Carlos naturalized. Juana converted to the F-1 category.

- What if the F-2B category is current now but the F-1 is not?

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Example

Carlos, an LPR, filed an I-130 for his daughter, Juana, when she was 20 years old. The petition was pending for two years. Juana was 22 when the petition was approved but only 20 using her adjusted age. The priority date was current in Chart B. Before she filed for adjustment of status, Carlos naturalized. What is Juana's immigration category if:

- Carlos resides in California?
- Carlos resides in Texas?

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CSPA and Refugee Derivatives

- Child under 21 on date I-590 filed and named on I-590 remains child
- Date filed is date of interview with USCIS
- Can be granted derivative refugee status if unmarried
- For adjustment of status, derivative refugee doesn't need to remain the child
 - Can be over 21
 - Can be married
 - Principal can have naturalized or died

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CSPA and Asylee Derivatives

- Child under 21 on date I-589 filed and named on I-589 remains child
- Date filed is when received by USCIS or EOIR
- Can be granted derivative asylee status if unmarried
- For adjustment of status, derivative asylee needs to be:
 - Unmarried
 - Principal still alive
 - Principal hasn't naturalized

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CSPA and Widow(er)s

- Deceased spouse of parent was USC
- Child becomes derivative and immediate relative if:
 - Child unmarried, under 21 on date I-360 filed
 - Child unmarried, under 21 on date petitioner died and I-130 converted to I-360
- Child needn't have separate I-130 filed or be named on I-130
- Child needn't be classified as stepchild of deceased

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CSPA and VAWA

- Derivative child remains child if under 21 when I-360 filed and abusive spouse is USC (immediate relative)
- Child remains child if under 21 when I-360 filed and abusive parent is USC (immediate relative)
- Derivative child remains child if adjusted age under 21 and abusive spouse is LPR (F-2A)
- Adjusted age = biological age minus time I-360 pending
- Calculate age when petition approved or priority date current
- One-year filing requirement

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CSPA and Afghan SIV

- Applicants for SIV considered employment-based
- Derivative children included on I-360
- Adjusted age = biological age minus time I-360 pending
- Calculate when petition approved or priority date in EB-4 current, whichever is later
- One year to file for adjustment or pay immigrant visa fee
- Principal can also file I-824 with I-485

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Example

Azeem, an Afghan interpreter, filed an I-360 petition seeking SIV status on July 3, 2021. He listed his spouse and his daughter on the petition, since his daughter was unmarried and under 21. The petition was approved 20 months later on April 3, 2023, and the priority date was current at that time. Azeem was paroled into the United States with SQ/SI status. He recently applied for adjustment of status. His wife and daughter stayed behind and are still in hiding in Kabul. The daughter was born on February 1, 2001. Using her biological age, she had already turned 21 on the date the I-360 petition was approved. However, she can add 20 months to her date of birth. She would then turn 21 on October 1, 2023 and was under 21 when the petition was approved. Azeem filed an I-824 with the I-485 to satisfy the daughter's one-year filing requirement.

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Questions?

- Book: *AILA's Focus on the Child Status Protection Act*
- CLINIC website: www.cliniclegal.org
- Email Charles Wheeler: cwheeler@cliniclegal.org

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