Child Status Protection Act: Is My Client Eligible?

On August 6, 2002, immigrant parents from all over the world would have been relieved to hear that their adult children over 21 who were previously ineligible to enter the United States as an immediate relative could immigrate to the United States under the Child Protection Status Act (CSPA).

Prior to CSPA, the children of U.S. citizens would lose their immediate relative status when they turned 21 because they were no longer considered "a child," a situation described as aging-out for immigration purposes. The aged-out children had to convert to first preference, if their petitioning parent was a USC, or 2B, if their petitioning parent was a lawful permanent resident (LPR). That caused a longer waiting period to reunite with family members. Worse yet, the derivative beneficiaries of LPR parents were disqualified of being "a child" of their parents and lost eligibility to immigrate when they turned 21. The 2002 Child Status Protection Act somewhat fixes this problem by allowing certain children in particular visa categories to entertain the benefits of preserving their immediate relative status. Thus, many parents are able to have their adult children immigrate with them after the implementation of this act.

Who Is Covered under the CSPA?
CSPA covers the children of U.S. citizens, children or derivatives of Lawful Permanent Residents in family -and employment -based categories, children or derivatives of asylees and refugees, children of DV lottery applicants and children of the Violence against Women Act applicants. Unfortunately, CSPA does not cover fiancée visas and it does not protect children who marry before the application for an immigrant visa is approved.

Children of U.S. Citizens: These children will preserve their immediate relative status even after turning 21, if they are under 21 at the time of the filing of Form I-130. In addition, the children under 21 of LPR who later become immediate relatives due to their parents becoming U.S. citizens while they are still under 21 will preserve their immediate relative status as of the date of their parents' naturalization

Example 1: P is 16 years old when her USC father files the I-130 for her. Her age is locked for the purpose of CSPA, and she will be an immediate relative even after turning 21 years of age.

Example 2: P is 16 when her LPR father files the I-130 petition for her. When P is 18, her father becomes a United States Citizen. P's age is locked for the purpose of CSPA, and she will be an immediate relative even after turning 21 years of age.

Children of Lawful Permanent Residents: The children of LPR will preserve the "child" status if their CSPA age is under 21 when their priority date becomes current.

How to Calculate the CSPA Age:
The CSPA age is determined by deducting the period the I-130 petition is pending from the child's biological age at the time her priority date becomes current.

Example 3: P is 19 years old when her LPR father files the I-130 immigrant visa petition for her. The petition has been pending for 2 years before it is approved. Her priority date becomes current when she is 22.5(22 years and 6 months).

P's CSPA age = P's biological age at the time of priority date becomes current – the period 1-130 petition has been pending
= 22.5- 2
= 20.5

Therefore, P is considered under 21 at the time her priority date becomes current. Although her biological age is over 21, CSPA allows her to preserve her status as a child. However, preference category beneficiaries and derivatives will have to apply to adjust their status or consular process within one year of the priority date becoming current, or they will lose their eligibility under CSPA.

This article is for informational purposes only. *By Disna Weerasinghe*