

IMMIGRATION TIDBITS



Derivative Children Can Benefit Under CSPA

By Atty. Crispin Caday Lozano

Question #1: Who are derivative children?

Answer:1 Derivatives are those unmarried children under 21 of the principal beneficiary in the preference categories where no separate petition is required. This include the children of first, second, third and fourth preference beneficiaries.

Example #1: Maria is a U.S. citizen who filed for her daughter Dona. Dona is married to Marco and they have a child Cyrus. In this example, Dona is the principal beneficiary of a 3rd preference petition. Marco and Cyrus are derivatives. Cyrus is unmarried and below 21.

Question #2 How can the derivatives avail of Child State Protection Act?

Answer: 2 Derivatives should look at the date that the principal beneficiary's priority date becomes current. If the derivative beneficiary is under 21 using his or her biological or adjusted age, he or she retains derivative status, even if he or she subsequently turns 21.

Example #2: In the example in Question #1, Cyrus will look at the priority date of his mother Dona to see if it is current. If it is current and Cyrus is still below 21 and unmarried at that time, he can adjust status and his age is locked in as a child even if during the processing time he is already 21.

Question #3: How is the age of the derivative determined for CSPA purposes?

Answer :3 The age of the derivative child is determined by deducting from the biological age the time the I-130 is pending. This means the period from the date of filing to the date of approval of the I-130. When the priority date of the principal beneficiary becomes current and the derivative age is below 21 after deducting the period of time the I-130 is pending, then he or she can benefit from CSPA by applying for an immigrant visa even if his or her biological age is over 21.

Question #4: Can derivative children of a petition under the fourth preference benefit from CSPA?

Answer:4 Yes. There is a Board of Immigration Appeals decision that allows this if the following conditions are met.

1 The petition must be pending before August 6, 2002.

2. The derivative beneficiary must apply for an immigrant visa within one year from the time the visa for the principal beneficiary becomes current.

3. The derivative child must be below 21 at the time the visa becomes current. If he or she is already 21 or over, it will be automatically converted as F-2B.

Question #5: What are the three major developments in Child Status Protection Act that could benefit thousands of beneficiaries?

Answer #5: The three major developments are:

1. The first major development is a USCIS memo on June 14, 2006, allowing F-2A beneficiaries who became 21 and whose petitioner naturalize to opt out of F-1 and be classified as F-2B. This will make the beneficiaries move faster to get a green card.

Example: Sam was petitioned by his Lawful Permanent Resident mother when he was 9 years old as F-2A. While waiting for the priority date, Sam age out. Upon aging out the petition was automatically converted to F-2B. Later on her mother naturalize. The petition was automatically converted from F-2B to F-1. Under this scenario, Sam can opt out of the automatic conversion to F-1 and retain his F-2B classification.

Significance: The beneficiary can move faster to green card under F-2B than under F-1.

2. The second major development is an unpublished Board of Immigration Appeals decision finding that the petition for a derivative beneficiary who has aged out automatically converts to the "appropriate category" in relation to the principal beneficiary. When the beneficiary is moved to appropriate category, which is F-2B and the parent filed a petition for the son or daughter, they should retain the priority date of the original petition for the parent

.Example: Maria is a derivative beneficiary of her mother who was petitioned by her aunt. At the time the visa becomes available, Maria is already 22 years. When her mother became a Lawful Permanent Resident, she petitioned Maria as F-2B. The BIA ruled that Maria's petition by her mother should retain the priority date she originally had when she was a derivative beneficiary of her mother.

Significance: Allowing the retention of the priority date of original petition will make the new petition current or very near the processing date. This would benefit thousands of derivative beneficiaries who age out.

3. The third major development is anothe unpublished decision of the Board of Immigration Appeals finding that a Respondent was covered by CSPA when she renewed the adjustment of status application after the CSPA'S effective date that was previously denied before the Immigration Judge

.Example: Kat was a derivative beneficiary of her mother's Form I-140 petition with a priority date of October 1, 1999.

At the time the visa becomes available Kat is 19 years of age. Due to processing delay, Kat was 21 when she applied for adjustment of status. The Immigration Judge denied the adjustment of status application on the ground that she is over 21 years at the time she applied for adjustment of status before the effective date of CSPA. After August 6, 2002, the effective date of CSPA, she renewed her application for adjustment of status. The BIA reversed the decision of the Immigration Judge and allowed her to apply for adjustment of status because she is below 21 when the visa becomes available and because the petition was pending after the effective date of CSPA when she renewed her adjustment application before the Immigration Judge.

Significance: Renewal of an adjustment of status application in Immigration Court qualified the respondent under CSPA. Without the renewal of the adjustment of status after the enactment date of CSPA, she would not have qualified under the law.

Question #6: What should I do if I believe my child or son or daughter has the potential of benefiting from these new developments in CSPA?

Answer #6: You should consult with an immigration attorney to determine if these developments are applicable to your child or son or daughter case. Please remember that each case has its own set of facts and you need to consult with a counsel of your choice.

Note: This is not a legal advice and you may need to talk to an experienced immigration attorney about your case. Our office offers free initial consultation on all immigration matters.

Crispin Caday Lozano is an active member of the State Bar of California and he specializes in immigration law. His offices are located in Los Angeles, San Jose and Hayward, California . You can contact him at telephone number (510) 375-3040 or (510) 538-7188.

(For updated Visa Priority Dates visit our website www.alphacargo.com)

VISA PRIORITY DATES BEING PROCESSED AS OF OCTOBER 2006

	ALIEN RELATIVE PETITION'S PRIORITY DATES
Unmarried Sons & Daughters of US Citizen 1ST	NOV 01, 1991
Spouse & minor children of Green Card Holders 2A	APR. 22, 2001
Unmarried Sons & Daughter s over 21 yrs of Green Card Holders 2B	JULY 22, 1996
Married Sons& Daughters of US Citizen 3RD	AUG. 01, 1990
Brothera & Sisters of US Citizen 4TH	APR 01, 1984