



February 15, 2023

## **New USCIS Policy re: Child Status Protection Act (CSPA)**

### **FAQs**

On February 14, 2023, USCIS issued new policy affecting children of EB-5 investors subject to age-out. The new policy reflects USCIS's new interpretation of the Child Status Protection Act (CSPA), a 2002 law that sought to protect dependent children from "aging out" of immigration benefits – or turning 21 years old before their parents obtained their U.S. residency (green card).

Generally, children who turn 21 years old will no longer qualify for dependent benefits under their parents' EB-5 petitions, unless they can be deemed under 21 years based on the CSPA calculations and steps taken to "freeze" the CSPA age.

"Visa availability" is a key concept in the CSPA, because a child will continue to age until there is "visa availability." The new USCIS policy changes how USCIS interprets when a visa is available for CSPA purposes. This change will allow more dependent children to remain under 21 years under the CSPA.

We answer some of the major questions to which clients will want answers in this FAQ.

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#### **Question 1: Does this apply to pending cases only, or does it also apply to new cases?**

##### **Answer:**

The new policy applies to both pending I-485 applications and new cases.

#### **Question 2: What does the new policy say? What was the old policy?**

##### **Answer:**

The new policy says that USCIS will determine "visa availability" at the same time USCIS will accept Form I-485, Adjustment of Status applications, whether this is under Chart A "Final Action Dates" or Chart B "Dates for Filing" under the [Visa Bulletin](#).

Under the old policy, USCIS determined “visa availability” for CSPA protection based only on Chart A “Final Action Dates,” which typically have later dates.

**Question 3: Is this a favorable development? How?**

**Answer:**

Yes, this is a favorable development because using Chart B “Dates for Filing” typically with later dates than Chart A “Final Action Dates” means that children will stop aging earlier – that is, earlier than when some children would turn 21 under Chart A.

There is an important qualification under the new policy, however: **Chart B may be used only when USCIS, itself, is using Chart B to accept Form I-485, Adjustment of Status Applications. USCIS announces month-by-month which chart it is using to accept Form I-485 applications on its [Adjustment of Status Filing Charts](#).**

**Question 4: What if a child is under 21 under Chart B, but then the Chart B dates retrogress, and the parent’s priority date is no longer current?**

**Answer:**

If the I-485 was filed while current under Chart B, the child’s age is **frozen or locked in**.

If the I-485 was not filed, it cannot be filed until Chart B is current again and USCIS accepts I-485s under Adjustment of Status Filing Charts. **The child’s age will have to be recalculated at that time.**

To freeze the child’s age at visa availability – whether under Chart A or under the new policy Chart B as long as open under USCIS’s Adjustment of Status Filing Chart – a further step must be taken.

The further step is **filing the I-485 application within 1 year of visa availability**. This step will satisfy the CSPA requirement that the child “sought to acquire” permanent residency within 1 year of visa availability. If the child does not “seek to acquire” within 1 year and the priority date is current for a full year, the child will lose CSPA protection.

**Question 5: Are the U.S. Consulates following this new policy?**

**Answer:**

No, not yet. The U.S. Consulates still determine “visa availability” based on Chart A “Final Action Dates.” But this will have to be harmonized with USCIS’s policy; otherwise, it is possible that a child is under 21 years under USCIS’s policy but would be refused an EB-5 visa because she continued to age under the Consulate’s CSPA interpretation.

**Question 6: If the child files the I-485 application, even if both Chart A and Chart B retrogress and the I-485 may not be approved for a long time, the child’s age is still locked in?**

**Answer:**

Yes, as long as the I-485 was filed within 1 year of visa availability, as newly defined to include being current under Chart B.

**Question 7: If a Form I-485 was denied under the old policy, may it be reopened?**

**Answer:**

Yes. If the CSPA age is under 21 under the new policy, a motion to reopen using Form I-290B may be filed. Typically, the I-290B must be filed within 30 days of the denial, but a late filing may be accepted in USCIS’s discretion.

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Stay tuned for further developments, especially regarding the U.S. State Department / Consulates’ position.