



August 24, 2023

PA-2023-24

Policy Alert

SUBJECT: Sought to Acquire Requirement Under the Child Status Protection Act

Purpose

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the [USCIS Policy Manual](#) to clarify that USCIS considers the recent February 14, 2023, policy change to be an extraordinary circumstance that may excuse the “sought to acquire” requirement under the Child Status Protection Act (CSPA) in particular situations.¹

Background

The CSPA protects certain beneficiaries from losing eligibility for immigrant visas and adjustment of status due to their aging during the immigration process, which can lead to them no longer qualifying as a child for immigration purposes.² For the family or employment-based preference or diversity immigrant categories, the CSPA provides a method to calculate the noncitizen’s age based on the date an immigrant visa becomes available. To benefit from the calculation, the noncitizen also must seek to acquire lawful permanent resident (LPR) status within 1 year of immigrant visa availability.

However, a noncitizen who does not satisfy this “sought to acquire” requirement may still benefit from the CSPA if they can establish that their failure to meet the requirement was the result of extraordinary circumstances.³ In order to establish extraordinary circumstances, the applicant must generally demonstrate that the circumstances were not created by the applicant through their own action or inaction, the circumstances directly affected the applicant’s failure to seek to acquire within the 1-year period, and the delay was reasonable under the circumstances.⁴

On February 14, 2023, USCIS issued policy guidance to update when an immigrant visa “becomes available” for the purpose of calculating an applicant’s CSPA age.⁵ USCIS now considers a visa

¹ See [INA 203\(h\)\(1\)\(A\)](#). See [Age Calculation under Child Status Protection Act](#), PA-2023-02, issued February 14, 2023.

² See [INA 101\(b\)\(1\)](#) (defines “child” as “an unmarried person under twenty-one years of age”).

³ See [Matter of O. Vazquez](#), 25 I&N Dec. 817, 823 (BIA 2012) (holding that “...the alien may meet the requirement by establishing . . . that there were other extraordinary circumstances, particularly those where the failure to timely file was due to circumstances beyond the alien’s control”).

⁴ See Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 7, Child Status Protection Act, Section G, Sought to Acquire Requirement, Subsection 3, Extraordinary Circumstances [[7 USCIS-PM 7.G\(3\)](#)]

⁵ See [Age Calculation under Child Status Protection Act](#), PA-2023-02, issued February 14, 2023.

available to calculate CSPA age for these applicants at the same time USCIS considers a visa immediately available for accepting and processing the adjustment of status application.⁶

Under policy guidance in effect before February 14, 2023, an immigrant visa was not always available to calculate CSPA age at the same time a visa was available to file an adjustment of status application. As a result, USCIS could not yet calculate the noncitizen's CSPA age because a visa had not yet become available under the prior policy or USCIS would have calculated the noncitizen's CSPA age to be over 21 years old. Some noncitizens may not have filed an adjustment of status application as a result of these circumstances. Therefore, some of these same applicants, who have since filed or may now file an adjustment of status application under the new policy, may be unable to meet the 1-year sought to acquire requirement, unless the applicant establishes that their failure to meet the requirement was the result of extraordinary circumstances.

Furthermore, some applicants, who met the "sought to acquire" requirement when they filed their adjustment applications under the policy guidance in effect before February 14, 2023, may no longer meet the requirement under the new policy.

To address these issues, USCIS is updating policy guidance to clarify that USCIS considers the February 14, 2023, policy change to be an extraordinary circumstance that may excuse an applicant's failure to meet the "sought to acquire" requirement provided that the delay in filing the adjustment of status application is reasonable under the circumstances. The reasonableness of the delay is determined from August 24, 2023, the date USCIS is publishing this policy considering the February 14, 2023, policy change to be an extraordinary circumstance.

This guidance, contained in Volume 7 of the Policy Manual, is effective immediately and applies to adjustment of status applications adjudicated by USCIS on or after August 24, 2023. The guidance contained in the Policy Manual is controlling and supersedes any related prior guidance on the topic.

Policy Highlights

- Clarifies that USCIS may excuse an applicant's failure to satisfy the "sought to acquire" requirement in cases where the applicant did not file their adjustment application because USCIS could not calculate their CSPA age or would have calculated their CSPA age to be over 21 years old under the prior policy, but they are now eligible for CSPA age-out protection under the new policy.⁷
- Clarifies that USCIS considers applicants whose adjustment of status applications were pending on February 14, 2023, to have satisfied the "sought to acquire" requirement if the applicant had applied for adjustment of status within 1 year of visa availability under the policy guidance in effect at the time of filing.

Summary of Changes

⁶ See Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 7, Child Status Protection Act, Section F, Family and Employment-Based Preference and Diversity Immigrants, Subsection 4, Determining Age at Time of Visa Availability [[7 USCIS-PM A.7\(F\)\(4\)](#)].

⁷ See [Age Calculation under Child Status Protection Act](#), PA-2023-02, issued February 14, 2023.

Affected Section: Volume 7 > Part A > Chapter 7 > Section G > Subsection 3, Extraordinary Circumstances

- Adds a new italicized subheading “Extraordinary Circumstances Due to Ineffective Assistance of Counsel” after the second bulleted list.
- Adds a new italicized subheading “Extraordinary Circumstances Due to CSPA Age Calculation Policy Change” and new content after the third bulleted list.
- Adds a new italicized subheading “Evaluating Extraordinary Circumstances” after the new content.

USCIS may also make other minor technical, stylistic, and conforming changes consistent with this update.

Citation

Volume 7: Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 7, Child Status Protection Act [[7 USCIS-PM A.7](#)].