

DETAILED TABLE OF CONTENTS

**AILA’S FOCUS ON
THE CHILD STATUS PROTECTION ACT**

Preface	vii
Subject-Matter Index	357
Chapter 1: The Problem of Age-Out.....	1
General Concepts.....	1
Family-Based Immigration Terms.....	1
Quota System and Priority Dates.....	4
Derivative Beneficiaries	6
Retention of Priority Dates and Conversion of Preference Category	7
General Principle	7
Marriage.....	8
Divorce	8
Naturalization	9
Death of the Petitioner	10
Age-Out	10
Pre-1977 Western Hemisphere Priority Dates.....	11
Chapter 2: Overview of the CSPA	13
What the CSPA Covers	13
What the CSPA Does Not Cover.....	16
Chapter 3: Who Can Benefit from the CSPA: Retroactivity	19
Prior USCIS Position on Retroactivity	19
Petitions filed on or after August 6, 2002, and petitions filed before but pending on that date.....	19
Petition approved before August 6, 2002, and application for adjustment of status or immigrant visa pending on that date	20
Beneficiary turned 21 on or after August 6, 2002	22
Petition filed and approved before August 6, 2002, beneficiary turned 21 before that date, and no application for adjustment of status or an immigrant visa pending on that date	22

BIA Decision Holding CSPA Applies Retroactively	26
Current USCIS Position on Retroactivity	28
Impact of USA PATRIOT Act	32
Summary of Effective Date Provisions	34
Chapter 4: The CSPA and Family-Based Visas.....	37
Children of U.S. Citizens.....	38
Immediate Relatives When I-130 Filed	38
Married Children of U.S. Citizens When I-130 Filed.....	39
Children of LPR Parents Who Naturalize While Child Is Under 21	40
One-Year Filing Requirement?.....	42
Children of LPRs and Derivatives	42
Children of LPRs	43
2A Is Current Before Child Turns 21	43
Sought to Acquire Within One Year	43
2A is Current After Child Turns 21—Calculating Adjusted Age.....	47
2A Status Preserved but then LPR Parent Naturalizes	51
USCIS Policy on Delayed Adjudication.....	52
Visa Retrogression.....	53
Multiple I-130 Petitions	55
Derivatives in the Family Preference Categories	56
Derivative Who Ages Out—Retention of Priority Date?	58
Unmarried Sons or Daughters of LPRs Who Naturalize	60
General Principle	60
Child Is Under 21 When Petition Is Filed and When Petitioner Naturalizes	63
Child Is Over 21 When Petition Is Filed and When Petitioner Naturalizes	63
Child Is Under 21 When Petition Is Filed but Over 21 When Petitioner Naturalizes	63
Chapter 5: The CSPA and Employment-Based Visas.....	67
General Principles.....	67
Application of the Child Status Protection Act	69
Preference Category Is Current Before Child Turns 21	70
Sought to Acquire Within One Year	70
Preference Category Becomes Current After Child Turns 21—Calculating Adjusted Age	71

Visa Retrogression.....	73
Chapter 6: The CSPA and the Diversity Visa Lottery	75
Overview of the Diversity Visa Lottery Program.....	75
Application of the Child Status Protection Act	76
Chapter 7: The CSPA and Asylee/Refugee Processing	79
Derivative Asylum.....	79
Included on the I-589.....	80
Not Included or Residing Abroad.....	81
Effect of the Child Status Protection Act.....	81
Derivative Refugee Status	83
Adjustment of Status.....	84
Affidavit of Relationship	85
Chapter 8: The CSPA and VAWA.....	87
VAWA Self-Petitions	88
General Principles.....	88
Impact of the CSPA.....	88
Immediate Relative Self-Petitioners and Derivatives.....	88
Second-Preference Category Self-Petitioners and Derivatives.....	92
VAWA Applicants Who Age Out	95
Adjustment of Status for VAWA Grantees	96
Basic Requirements	96
Impact of the CSPA.....	97

APPENDICES

Time Calculation: Visa Bulletins, Calendars, and Approval Notice Dates

Appendix 1: Visa Bulletin for June 2008, Family-Based Visa Categories	101
Appendix 2: Visa Bulletin for June 2008, Employment-Based Visa Categories	103
Appendix 3: Visa Bulletins for Family-Based Visa Categories, January 1997– October 2008	105
Appendix 4: Calendar for 1990–2009	131
Appendix 5: Sample I-130 Approval Notice, Form I-797, Notice of Action	143
Appendix 6: Sample I-140 Approval Notice, Form I-797, Notice of Action	145
Appendix 7: Worksheet for Calculating CSPA Age-Out	147

Statutes, Regulations, and Legislative History

Appendix 8: The Child Status Protection Act, Pub. L. No. 107-208.....	149
Appendix 9: Section 424 of the USA PATRIOT Act.....	153
Appendix 10: Legislative History of the CSPA.....	155

Agency Interpretation: USCIS and INS Memoranda and Guidance

Appendix 11: INS Memorandum, J. Langlois, “H.R. 1209—Child Status Protection Act” (Aug. 7, 2002)	193
Appendix 12: INS Memorandum, J. Williams, “The Child Status Protection Act” (Sept. 20, 2002).....	195
Appendix 13: INS Memorandum, J. Williams, “The Child Status Protection Act—Memorandum Number 2” (Feb. 14, 2003).....	199
Appendix 14: BCIS Memorandum, M. Petrucelli, “Processing Derivative Refugees and Asylees Under the Child Status Protection Act” (July 23, 2003)	205
Appendix 15: USCIS Memorandum, J. Cuddihy, “Section 6 of the Child Status Protection Act” (Mar. 3, 2004).....	211
Appendix 16: USCIS Memorandum, W. Yates, “The Child Status Protection Act—Children of Asylees and Refugees” (Aug. 17, 2004)	213
Appendix 17: USCIS Memorandum, W. Yates, “Age-Out Protections Afforded Battered Children Pursuant to the Child Status Protection Act and the Victims of Trafficking and Violence Protection Act” (Aug. 17, 2004).....	217
Appendix 18: USCIS Memorandum, J. Cuddihy, “Guidance for Adjudicating Priority 3 Derivative Child Applicants Who Have Reached the Age of 21” (Aug. 15, 2005)	221
Appendix 19: USCIS Memorandum, M. Aytes, “Clarification of Aging Out Provisions as They Affect Preference Relatives and Immediate Family Members Under the Child Status Protection Act Section 6 and Form I-539 Adjudications for V Status” (June 14, 2006)	223
Appendix 20: USCIS Memorandum, D. Neufeld, “Revised Guidance for the Child Status Protection Act (CSPA)” (May 6, 2008).....	233
Appendix 21: Fact Sheet, “USCIS Issues Revised Guidance on the Applicability of the Child Status Protection Act (CSPA)” (May 6, 2008)	243
Appendix 22: Question & Answer, USCIS National Stakeholder Meeting (May 27, 2008)	247

Agency Interpretation: DOS Cables

Appendix 23: “USA-PATRIOT Act Series No. 6—Revised Interpretation of Age-Out Provision,” State 123775 (June 2002).....	249
Appendix 24: “Child Status Protection Act of 2002: ALDAC #1,” State 163054 (Aug. 26, 2002)	253
Appendix 25: “Child Status Protection Act: ALDAC #2,” State 015049 (Jan. 17, 2003)	263
Appendix 26: “CSPA ALDAC No. 3—Procedural Instructions on Issuing Immigrant Visas to Aliens Qualifying for Age-Out Relief under the CSPA or Section 424 of the PATRIOT Act,” State 144246 (May 29, 2003).....	277
Appendix 27: “Child Status Protection Act of 2002: ALDAC #4—What Constitutes a “Final Determination” on an Application Adjudicated Prior to the Effective Date of CSPA?” State 131625 (May 17, 2003).....	281

Court and Administrative Decisions

Appendix 28: <i>Matter of Ji Young Kim</i> , A77 828 503 (BIA Dec. 20, 2004).....	283
Appendix 29: <i>Gomes v. USCIS</i> , No. CV 05-3767 SJO (JWJx) (C.D. Cal. Mar. 22, 2006)	287
Appendix 30: <i>Rodriguez v. Gonzales</i> , No. CV 04-8671 DSF (AJWx) (C.D. Cal. May 31, 2006)	301
Appendix 31: <i>Matter of Ki Na Kim</i> , A78 706 954 (BIA July 7, 2006)	335
Appendix 32: <i>Matter of Garcia</i> , A79 001 587 (BIA July 16, 2006)	337
Appendix 33: <i>Matter of Avila-Perez</i> , 24 I&N Dec. 78 (BIA 2007)	343

Sample Letters to USCIS

Appendix 34: Sample Cover Letter to USCIS for Adjustment Applicant.....	353
Appendix 35: Sample Letter Opting Out of Automatic Conversion to Family-Based 1st Preference from 2B After Petitioner Naturalizes.....	355