



U.S. Citizenship
and Immigration
Services

HQOPRD 70/6.1

Interoffice Memorandum

To: Regional Directors
Service Center Directors
District Directors

From: William R. Yates /s/
Associate Director for Operations
U.S. Citizenship and Immigration Services

Date: August 17, 2004

Re: The Child Status Protection Act – Children of Asylees and Refugees

Purpose

On August 6, 2002, the President signed into law the Child Status Protection Act (CSPA), Public Law 107-208, 116 Stat. 927. The CSPA amends the Immigration and Nationality Act (Act) by permitting certain aliens to retain classification as a “child” under the Act, even if he or she has reached the age of 21. On August 7, 2002, and July 23, 2003, U.S. Citizenship and Immigration Services (CIS) issued guidance on the effect of the CSPA on asylum and refugee applications (attached). The purpose of this memorandum is to provide further guidance to CIS personnel concerning the effect of Sections 4 and 5 of the CSPA on petitions for children following to join an asylee or refugee and for purposes of adjustment of status under Section 209 of the Act. This memorandum should be read in conjunction with the previously issued memoranda.

Applicability

The CSPA amends sections 207 and 208(b)(3) of the Act to permit continued classification as a child for certain derivatives who were under the age of 21 at the time the principal applicant applied for asylum or refugee status. Pursuant to section 8 (3) of the CSPA, these amendments became effective August 6, 2002 for applications pending on or after that date and are **not** retroactive. In order to give full effect to the statutory provisions, CIS has determined that a derivative applicant eligible for continued classification as a child under the CSPA will be considered a child for all related eligibility determinations. Thus, for asylum applications under section 208 of the Act, adjustment applications under section 209 of the Act, admission to the United States as a refugee, and following to join applications, the amendments made by the CSPA to the Act benefit an alien who aged out on or after August 6, 2002. In the case of an alien who aged out prior to August 6, 2002, the CSPA permits continued classification as a child only if an application for a covered benefit was pending on August 6, 2002. These exceptions will be discussed later in this memorandum. In all cases, in order to be considered eligible for CSPA age-out protection, the derivative child must remain unmarried.

Initial Eligibility

The Asylum and Refugee Divisions of the Office of Refugee, Asylum and International Operations, have established the criteria for assessing initial eligibility under sections 4 and 5 of the CSPA. For asylum and refugee applications pending on or after August 6, 2002, continued eligibility for derivative status is determined based on the child's age at the time the parent filed the Form I-589, Application for Asylum and Withholding of Removal, or Form I-590, Registration for Classification as Refugee.

For asylees, a child who is under 21 on the date the Form I-589 is received by CIS will continue to be classified as a child for purposes of determining asylum eligibility and related benefits. In order to be eligible for continued classification as a child, the derivative must be listed on the Form I-589 prior to a final CIS decision on the asylum application.

For refugees, a child who is under 21 on the date the principal alien files the Form I-590, i.e., is first interviewed by CIS, will continue to be classified as a child for purposes of determining refugee eligibility and related benefits. In order to be eligible for continued classification as a child, the principal alien must have listed the child on the Form I-590 prior to adjudication of the application.

Thus, for any asylum or refugee application filed on or after August 6, 2002, a derivative child will retain classification as a child for purposes of the initial asylum or refugee determination, for any subsequent Form I-730 Refugee/Asylee Relative Petition¹, and/or for the section 209 adjustment.

Forms I-730 and 209 Adjustment Applications Pending on August 6, 2002

In determining eligibility for continued classification as a child for purposes of a Form I-730 or 209 adjustment application pending on August 6, 2002, the adjudicator should determine the derivative applicant's age at the time the principal filed the refugee or asylum application and at the time the related benefit application was filed. As long as the Form I-730 beneficiary or the 209 adjustment applicant was eligible for the related benefit at the time of filing the Form I-730 or Form I-485 (that is, was still a child under the age of 21), he or she is eligible for continued classification as a child.

Individuals ineligible for Continued Classification as a Child

An individual who aged out prior to August 6, 2002 is not eligible for continued classification as a child UNLESS an application for one of the covered benefits was pending on that date. For purposes of the CSPA, if all of the necessary steps for issuing travel documents to the derivative child or following to join child (such as approval of the Form I-730, the overseas interview, or completion of all security checks) were not completed on or before August 6, 2002, the case is considered to be "pending."

¹ Form I-730 beneficiaries continue to be subject to other filing requirements, as appropriate. For instance, petitioners must continue to file the Form I-730 within 2 years of the principal alien's admission as a refugee or grant of asylum status, unless a humanitarian exception is granted.

Examples

- A Form I-589 was filed on February 7, 2000, listing an 18-year-old derivative son. On July 19, 2002, the principal alien was granted asylum. On October 10, 2002, the derivative son turned 21 and a Form I-730 was filed on his behalf on November 13, 2002. In this case, the derivative child is protected by the CSPA because he was listed on his parent's Form I-589 prior to his 21st birthday and he turned 21 after August 6, 2002.
- A Form I-730 was filed on behalf of a 20-year-old son on August 23, 2001. On September 23, 2001, the Form I-730 was approved by the Nebraska Service Center (NSC) and forwarded overseas for processing. On March 31, 2002, the following to join beneficiary turned 21 years old. On April 22, 2002, the following to join beneficiary was called for an interview, but because he had aged-out, the Form I-730 was returned to the NSC, and the approval revoked on May 31, 2002. This alien is not covered by the provisions of the CSPA as he had nothing pending before CIS on August 6, 2002.
- A Form I-730 was filed on behalf of a 20-year-old son on August 23, 2001. On September 23, 2001, the Form I-730 was approved by the NSC and forwarded overseas for processing. The beneficiary appeared for his interview on January 31, 2002, but the case was continued for completion of all required security checks. On March 31, 2002, the following to join beneficiary turned 21 years old. The security checks were not completed until August 24, 2002. Unlike the example above, this alien is covered by the provisions of the CSPA as his Form I-730 was still pending before CIS on August 6, 2002, and he can still be considered a "child."
- A Form I-589 was filed in January 2002 listing a 20-year-old son outside of the United States. The Form I-589 was approved on July 31, 2002. The son turned 21 on August 1, 2002. The Form I-730 for the derivative son is filed August 15, 2002. The beneficiary turned 21 prior to passage of the CSPA and did not have a Form I-730 pending on August 6, 2002, so he is not entitled to continued classification as a child.
- A Form I-589 was filed in May 2002 listing a 20-year-old derivative daughter in the United States. The Form I-589 was approved on July 1, 2002. The daughter turned 21 on August 15, 2002. The Form I-485 was filed on July 2, 2003. The daughter remains eligible for adjustment of status as a derivative under section 209 of the Act because she was under 21 at the time of filing the asylum application, she was granted asylum prior to August 6, 2002, and she filed an application for adjustment of status after August 6, 2002, in which she retains classification as a child because she was a child at the time of the grant of asylum. (Note that the eligibility criteria for derivative petitions is slightly different from that of 209 applications).²

² When adjudicating the Form I-730, the officer is determining whether the derivative is entitled to classification as a child. Consequently, if the applicant aged out prior to August 6, 2002, he or she is only eligible to be classified as a child under the CSPA if the Form I-730 was pending on August 6, 2002. In the case of the adjustment example, however, the applicant is already an asylee based on classification as a child. Under the CSPA, the applicant remains eligible to retain that classification for applications filed on or **after** August 6, 2002.

- A 19-year-old child is granted derivative asylum status on June 1, 2001, and files for adjustment of status on June 1, 2002. On August 20, 2002, she turns 21. The CSPA covers her adjustment application because she turned 21 after August 6, 2002.
- Same scenario, but the adjustment application is filed on August 31, 2002. She continues to be classified as a child because she aged out after August 6, 2002.
- An 18-year-old child is granted derivative asylum status on March 15, 1999, and applied for adjustment of status on March 15, 2000. She turns 21 on April 15, 2002. Because of the annual 10,000 limitation on asylum adjustments, she will not be eligible for adjustment of status until approximately March 2009. Although she will be older than 21 on that date, she was under 21 at the time she was granted asylum and at the time of filing her adjustment application which was pending on August 6, 2002. Even though she aged out prior to August 6, 2002, the pending application makes her eligible for continued classification as a child pursuant to the CSPA.

Please note that the examples provided above are not exclusive of other possible scenarios that may appear as CIS officers adjudicate cases that are affected by the CSPA.

Further Information

For additional information on refugee and asylee eligibility, including refugee travel, consult the specific guidance issued by the refugee and asylum divisions. CIS personnel with questions regarding this memorandum should go through appropriate supervisory channels and contact Helen deThomas via electronic mail.

Attachment