



IMMIGRATION ALERT!

Age-Out Law: Child Status Protection Act

Recent legislation called the *Child Status Protection Act* eases the potential difficulties faced by foreign nationals and U.S. citizens who are trying to get certain immigration benefits for their children, where the children will reach 21 years of age before processing is completed. Prior to the passage of this law, a child had to be under 21 years old at the time that the paperwork (called *Petition for Alien Relative*) was approved, not at the earlier time of filing. In view of significant case processing backlogs and delays, many children turned 21 before the INS could approve the paperwork, with the result that in such case the child "ages out" and is thus ineligible for the green card on the basis of the parent's original filing.

The Child Status Protection Act provides that the determination of whether an unmarried alien son or daughter of a U.S. citizen is considered an "immediate relative child" (under 21 years of age) will be based on the age of the child at the time the Petition for Alien Relative (Form I-130) is filed, rather than on the date the petition is approved. There is a similar provision in the new law for permanent resident parents who then naturalize after having filed petitions for their sons or daughters (in which case the child's age is determined at the time of the parents' naturalization) and for citizen parents who file petitions for married sons or daughters where such sons or daughters later divorce (in which case the child's age is determined as of the date of the divorce).

Children of green card holders will be eligible for derivative green card status if they are under 21 on the date that a visa becomes available to them, but they must take action to file paperwork to obtain their status within 1 year of such visa availability. In cases where visas are not currently available, the child's age determination is based on the date that visas do become available, but the child is permitted to subtract the number of days that it took INS to approve the parent's paperwork. Further, under the new law the family-sponsored petition of an unmarried alien son or daughter whose permanent resident parent subsequently becomes a naturalized U.S. citizen automatically converts to a petition for an unmarried son or daughter of a U.S. citizen, unless the son or daughter elects otherwise.

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