



USCIS' CHANGE IN CSPA POLICY CAN HELP AGED OUT CHILDREN WHO MISSED OUT DURING THE OCTOBER 2020 VISA BULLETIN EB-3 ADVANCE FOR INDIA

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On September 25, 2024, USCIS [announced](#) that it had updated guidance in the USCIS Policy Manual Child Status Protection Act (CSPA) age for noncitizens who demonstrate extraordinary circumstances. The new [guidance](#):

"Clarifies that the CSPA age calculation of an applicant who established extraordinary circumstances and is excused from the 'sought to acquire' requirement uses the date that the immigrant visa first became available when the immigrant visa is continuously available for a 1-year period without any intervening visa unavailability; and

Clarifies that under circumstances where the immigrant visa became available and then unavailable, the CSPA age calculation may use the date an immigrant visa first became available if the applicant demonstrates extraordinary circumstances for not applying for adjustment of status before the immigrant visa became unavailable."

USCIS' latest guidance builds on [policy guidance](#) it previously issued on February 14, 2023, clarifying that it "considers a visa available to calculate CSPA age at the same time USCIS considers a visa immediately available for accepting and processing the adjustment of status application". In August 2023, USCIS issued further [policy guidance](#) which:

"Explains that USCIS considers the February 14 policy change to be an extraordinary circumstance that may excuse an applicant's failure to meet the 'sought to acquire' requirement;

Clarifies that the agency may excuse an applicant's failure to meet the requirement

if they did not apply to adjust status because they could not calculate their CSPA age under the prior policy or their CSPA age would have been calculated as over 21, but they are now eligible for CSPA age-out protection under the new policy; and

Clarifies that the agency considers applicants to have met the requirement if their application to adjust their status was pending on February 14 and they applied to adjust status within one year of a visa becoming available based on the Final Action Dates chart under the policy guidance that was in effect when they applied."

In a [previous blog](#), we discussed USCIS' 2023 guidance at length. Due to USCIS' pre- February 14, 2023 guidance, some noncitizen children may not have applied to adjust status because a visa was not available to calculate their CSPA age under the prior policy or their CSPA age would have been calculated to be over 21 years old. If these noncitizens applied to adjust their status under the February 14, 2023 guidance, they could claim an exception to the one-year "sought to acquire" requirement if the delay in filing was the result extraordinary circumstances.

USCIS' 2023 guidance left unclear what it would consider to be the date an immigrant visa first became available in the case of retrogression. In the October 2020 visa bulletin, for example, priority dates (which were the Dates for Filing) for many India-born beneficiaries with approved EB-3 I-140 petitions became current, only to retrogress a few months later. In its latest guidance, USCIS addresses this scenario, clarifying that October 1 would be considered the date the visa first became available for CSPA age calculation purposes. The USCIS Policy Manual provides the following hypothetical:

A visa first becomes available to the prospective applicant for accepting and processing their application on October 1, 2020, and the visa remains available to the prospective applicant until December 31, 2020. The visa was only available for 3 months and was therefore not available for a continuous 1-year period. As of January 1, 2021, the prospective applicant cannot apply for adjustment of status because a visa is no longer available.

A visa becomes available again to the prospective applicant on July 1, 2021. The prospective applicant applies for adjustment of status within 1 year, on June 15, 2022. Although USCIS provides the applicant with another 1-year period to seek to acquire because the visa was first available for less than a year, the applicant includes an explanation and evidence demonstrating extraordinary circumstances for not applying for adjustment of status during the first visa availability period

between October 1 and December 31, 2020. USCIS determines, as a matter of discretion, that the applicant established extraordinary circumstances and calculates the applicant's CSPA age using the date the visa first became available, which was October 1, 2020.

On October 1, 2020 when the India EB-3 Dates for Filing advanced to January 1, 2015, thousands of India born beneficiaries in the EB-2 and EB-3 filed I-485 applications along with their derivative family members (those in EB-2 downgraded to EB-3 first). By January 1, 2020 the beneficiaries under the India EB-2 and EB-3 could no longer take advantage of India EB-3 Dates for Filing. Then, on July 1, 2021 the India EB-3 Final Action Dates advanced again, but only until January 1, 2013. In October 2020, applicants for adjustment of status would have had no idea that the Dates for Filing would be used to calculate a child's CSPA age. Thus, some noncitizen children may have missed out on applying for adjustment of status along with their family members in October 2020 because a visa was not available to calculate their CSPA age under USCIS' prior policy or their CSPA age would have been calculated to be over 21 years old. The advance of the Final Action Dates on July 1, 2021 may not have helped the children if the earlier, more advantageous Dates for Filing on October 1, 2020 were not recognized for protecting the age of the child until the USCIS policy change on February 14, 2023. Even when the USCIS allowed the filing of I-485 adjustment of status applications on February 1, 2023 under Dates for Filing, the Dates for Filing from February 1, 2023 till September 1, 2024 were not as advanced as the Dates for Filing established under the October 2020 Visa Bulletin.

But on October 2024, the EB-3 India Dates for Filing has advanced to June 8, 2013, affording some noncitizens who have not been eligible to submit their adjustment of status applications since October 2020 another opportunity to do so. Noncitizen children who missed out on applying in October 2020 can do so now, asserting that the change in USCIS' policy is an extraordinary circumstance excusing their failure to file when a visa first became available.

The latest update will thus help many previously ineligible individuals qualify under the previous 2023 CSPA update. As the EB-3 India Date for Filing continues to advance until it reaches January 1, 2015, which is what it was under the October and November 2020 Visa Bulletins, all children who missed out under those visa bulletins in 2020 may be able to benefit from this salutary policy change today and beyond.

(This blog is purely for informational purposes and should not be considered as a substitute for legal advice)

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