



ILLOGICAL SITUATION FOR FAMILY-SPONSORED SECOND PREFERENCE SPOUSES AND CHILDREN UNDER THE JULY 2019 VISA BULLETIN

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The Department of State Visa Bulletin is eagerly anticipated each month. It tells aspiring immigrants their place in the green card queue, and whether one has moved ahead, remained static or gone backwards. There are many people stuck in the green card backlogs, some stretching to several decades, hoping each month to move ahead in the queue. The person who sets the dates each month is Mr. Charles (“Charlie”) Oppenheim, Chief of the U.S. Department of State (DOS) Visa Control and Reporting Division based on projected demand and the fixed supply of visas within each category.

The [July 2019 Visa Bulletin](#) to the pleasant surprise of many indicates that the Family-Sponsored Second Preference, F2A, will become current for all countries of the world on July 1, 2019. This category applies to spouses and minor children of lawful permanent residents. The wait in this category has been nearly three years till now. In the current June 2019 Visa Bulletin, the Final Action Date for the F2A preference is July 15, 2017. This means that those whose I-130 petitions were filed on or before June 15, 2017 by the spouse or parent are today eligible for an immigrant visa or to file an I-485 application for adjustment of status. On July 1, 2019, the Final Action Date under F2A becomes current, which means that a visa number is immediately available regardless of when the I-130 petition was filed, subject obviously to processing times for the adjudication of the I-130. Spouses and children who are in the US can potentially apply for an I-485 adjustment of status concurrently with an I-130 petition. Those who are overseas will be scheduled for an immigrant visa interview, provided that they have become documentarily qualified, and be eligible for an immigrant visa.

The Visa Bulletin has two charts – Chart A, the Final Action Date, and Chart B, the Filing Date. Although the Final Action Date for the F2A is current in the July 2019 Visa Bulletin, the Filing Date is March 8, 2019. Surprisingly, with respect to family sponsored filings, the USCIS has indicated in the [Adjustment of Status Filing Charts from the Visa Bulletin](#) that applicants in the US can only use the Filing Date and not the Final Action Date to file an I-485 application. This makes no sense as the Filing Date should always be ahead of the Final Action Date. In the case of the F2A for July 2019, it is the other way around. The Final Action Date is ahead, by virtue of being current, while the Filing Date is behind at March 8, 2019.

The DOS introduced the two charts in the monthly visa bulletin for the very first time on October 1, 2015. The Filing Date in the Visa Bulletin potentially allows for the early filing of I-485 adjustment of status applications if eligible applicants are in the United States and the filing of visa applications if they are outside the country. The Final Action Date is the date when permanent residency (the green card) can be granted. The Filing Date, if the USCIS so determines, allows for the early submission of an I-485 application prior to the date when the green card actually become available. Similarly, for those who are outside the United States and processing for an immigrant visa overseas, the Filing Date allows applicants to submit the DS-260 immigrant visa application and become documentarily qualified prior to the issuance of the immigrant visa when the Final Date becomes available. The DOS had historically issued a qualifying date prior to the visa becoming available so that applicants could begin processing their visas. This informal qualifying date system morphed into a more formal Filing Date in the Visa Bulletin from October 1, 2015 onwards. As a result, the USCIS also got involved in the administering of the Visa Bulletin with respect to the filing of I-485 adjustment applications. Even if the Filing Date becomes available, it is the USCIS that determines whether applicants can file an I-485 application or not each month.

For July 2019, the USCIS has absurdly indicated that the Filing Date of March 2019 must be used for filing I-485 adjustment applications under the F2A category rather than the Final Action Date, which is current. It is unclear whether this is intentional or a mistake. If it is a mistake, it is hoped that the USCIS will correct itself and allow the filing of an I-485 under the F2A on July 1, 2019 under the Final Action Date rather than the Filing Date.

If this is intentional, then the USCIS is plain wrong. It must allow applicants to

file I-485 applications under the Final Action Date and not the Filing Date. Alternatively, Mr. Oppenheim should move the Filing Date to Current like the Final Action Date. The Filing Date must always be equal to the Final Action Date or ahead of it. If the DOS corrects the Filing Date, it can prevent the USCIS from authorizing the filing of I-485 adjustment of status applications under the Filing Date rather than the Final Action Date.

The USCIS also contradicts itself with respect to the position it has taken on the date that freezes the age of a minor child under the Child Status Protection Act. On August 24, 2018, the [USCIS Policy Manual](#) definitively confirmed that the Final Action Date protects the age of the child rather than the Filing Date. Under INA 203(h)(1)(A), which codified Section 3 of the CSPA, the age of the child under 21 is locked on the “date on which an immigrant visa number becomes available...but only if the has sought to acquire the status of an alien lawfully admitted for permanent residency within one year of such availability.” If the child’s age is over 21 years, it can be subtracted by the amount of time the applicable petition was pending. See INA 203(h)(1)(B). While the USCIS [considers a child’s age to be frozen on the first day of the month when the Final Action Date becomes current](#) rather than the Filing Date, under the July 2019 Visa Bulletin, the USCIS is preventing a child from seeking to acquire permanent residency within one year of visa availability provided the I-130 petition was filed after March 8, 2019. Under the Final Action Date, the visa number becomes available on July 1, 2019, but the USCIS is saying that only those who are beneficiaries of I-130 petitions filed on or before March 8, 2019 can file I-485 adjustment of status application. Thus, one who has filed an I-130 petition after March 8, 2019 cannot file an I-485 application, and is prevented from seeking to acquire permanent residency by filing an I-485 application.

In the event that the F2A retrogresses in the coming months, and the USCIS sticks to its position that only the Filing Date can be used to file an I-485 application, then children who will age out, but protected under the CSPA, would be deprived of the benefit of seeking to apply for permanent residency within one year of visa availability on July 1, 2019. Although under the CSPA the child’s age is frozen only when both the visa becomes available and the I-130 petition is approved, an I-130 and I-485 filed concurrently (or an I-485 filed while an I-130 is pending), may serve to protect the age of the child even if the I-130 gets approved after the date retrogresses. This happened during the July 2017 Visa Bulletin, which suddenly became current, for EB-2 and EB-3

beneficiaries. A concurrently filed I-140 and I-485 served to protect the age of the child even upon the retrogression of cut-off dates after [August 17, 2007](#) so long as the I-140 petition got approved. Thus, if there is retrogression in the F2A after July 2019, the USCIS would have deprived the ability of children who will age out from the F2A if they could not file the I-485 application concurrently with the I-130 petition.

There may be ways to still seek CSPA protection notwithstanding USCIS's illogical position. For those who already have independently filed I-130 petitions after March 8, 2019, an attempt should be made to file an I-485 application, and even if it gets rejected, it would demonstrate that the applicant sought to acquire permanent residency within one year of visa availability. Those who already have approved I-130 petitions may file [Form I-824](#), and even though the filing of this form triggers consular action, it demonstrates that the child sought to acquire permanent residency within one year of July 1, 2019. On the other hand, a child who will age out on August 1, 2019 and is not yet the beneficiary of an I-130 petition, will not be able to file a concurrent I-130 and I-148 in July 2019 and will never be able to seek the protection of the CSPA. Such a child may wish to seek review of the USCIS's action in federal court.

Rather than agonizing about how illogical all this is, it is hoped that the USCIS will allow the filing of I-485 applications based on the Final Action Date by July 1, 2018, or that Mr. Oppenheim moves the Filing Date to current like the Final Action Date.

Update June 27, 2019: USCIS has fixed the issue. The [Adjustment of Status Filing Charts from the Visa Bulletin](#) now says:

For Family-Sponsored Filings:

In the F2A category, there is a cutoff date on the Dates for Filing chart.

However, the category is "current" on the Final Action Dates chart. This means that applicants in the F2A category may file using the Final Action Dates chart for July 2019.

For all the other family-based preference categories, you must use the Dates for Filing chart in the Department of State Visa Bulletin for [July 2019](#).

Hopefully, my blog raised awareness about the inconsistency. I thank USCIS for realizing its error and fixing its chart prior to July 1, 2019.

