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TRUMP ADMINISTRATION ERRONEOUSLY FREEZES CHILD'S AGE UNDER THE CHILD STATUS PROTECTION ACT UPON APPROVAL OF VISA PETITION RENDERING IT VIRTUALLY INEFFECTIVE

*Posted on March 10, 2026 by Cyrus Mehta & Kaitlyn Box**

By Cyrus D. Mehta and Kaitlyn Box*

In early 2023, under the Biden administration, USCIS had reversed its longstanding policy of recognizing only the Final Action Dates (FAD) in the State Department Visa bulletin as protecting a child's age under the Child Status Protection Act (CSPA), and agreed to use the Dates for Filing (DFF) to protect the age of the child. In 2025, however, under the Trump administration USCIS again changed course and reverted to its prior policy, stating in an August 8, 2025 Policy Alert that:

… "a visa becomes available for the purposes of Child Status Protection Act age calculation based on the Final Action Dates chart of the Department of State Visa Bulletin. The new guidance applies to requests filed on or after August 15, 2025. We will apply the Feb. 14, 2023, policy of CSPA age calculation to adjustment of status applications pending with USCIS before August 15, 2025, as these aliens may have relied on that policy when they filed.□□

We discussed this policy change at length in a prior blog post.

Now, USCIS seems to have made another CSPA-related policy change in the August 8, 2025 update to the USCIS Policy Manual without any public notice. Immigration lawyers are increasingly seeing denials of I-485 applications for derivative children that were filed concurrently with an I-140 petition under the Dates for Filing in the Visa Bulletin if the child was over 21 by the time that the I-140 petition was later approved. USCIS' current policy is that a visa becomes

available on the later of:

- The date the petition was approved; or
- The first day of the month of the Department of State Visa Bulletin that indicates that a visa is available in the Final Action Dates chart.

Nothing in the plain text of INA 203(h)(1)(A), however, states that the I-140 petition must be approved in order for a child's age to freeze for CSPA purposes. The same logic also applies to I-130 petitions filed concurrently with I-485 applications. This provision states only that a child's age is protected for CSPA purposes when:

"the age of the alien on the date on which an immigrant visa number becomes available for such alien (or, in the case of subsection (d), the date on which an immigrant visa number became available for the alien's parent), but only if the alien has sought to acquire the status of an alien lawfully admitted for permanent residence within one year of such availability…".

Additionally, INA 203(h)(1)(B) clarifies that a child's CSPA age should be reduced by "the number of days in the period during which the applicable petition described in paragraph (2) was pending".

Because INA 245(a)(3) provides that an applicant is eligible for adjustment of status if "… an immigrant visa is immediately available to him at the time his application is filed", a visa number should be available at the time that USCIS accepts an I-485 application for processing, even if it is based on a concurrently filed I-130 or I-140 petition and or the Dates for Filing in the Visa Bulletin prior to August 15, 2025. After August 15, 2025, a visa number should be available if it is based on a concurrently filed I-130 or I-140 and I-485 application based on the Final Action Dates. This interpretation is consistent with the purpose of the CSPA, which is to adjust an applicant's age in circumstances where they are not able to file an I-485 until after reaching the biological age of 21. Invoking CSPA is unnecessary when a derivative applicant has been able to file her I-485 before turning 21.

Similarly, he plain language of INA 203(h)(1)(A) requires only that immigrant visa number is available without making reference to the approval status of the underlying I-140 petition. The USCIS has historically recognized that the child's age freezes when there is a concurrently filed visa petition and adjustment of status application. The visa is available at the time of the concurrent filing and

so it made sense to freeze the age of the child consistent with INA 203(h)(1)(A). We saw the CSPA being applied to concurrent filings during the July 2007 visa bulletin period even though there was retrogression from August 2007 onwards. Another good example was the April 2012 Visa Bulletin, when the EB-2 cut-off dates for India and China were May 1, 2010. In the very next May 2012 Visa Bulletin a month later, the EB-2 cut-off dates for India and China retrogressed to August 15, 2007. Still, the USCIS considered the child's age frozen even though there was retrogression after April 2012.

USCIS' new interpretation will have devastating impacts for children whose ages are no longer protected under the CSPA, and for their families. Under the new interpretation, a concurrently filed I-140 petition and I-485 application on October 20, 2020 under the India employment based third preference (EB-3) with a priority date of July 1, 2013 might only freeze the age of the child on October 1, 2025 even if the I-140 petition got approved on January 10, 2022. If the child was 20 years and six months on October 20, 2020, the child's age ought to have frozen on that date before it reached 21 years rather than on October 2025 when the child would be well past 21 years of age.

In the current climate, erroneous denials of I-485 applications stemming from this interpretation could result in derivative children being placed into removal proceedings. It bears consideration, however, that USCIS' interpretation can potentially be challenged under the Administrative Procedure Act, arguing that the policy change was arbitrary and capricious because USCIS provide no notice or explanation for its reinterpretation of the statute. Pursuant to *Reyes v. USCIS*, a federal court has jurisdiction to hear a statutory interpretation challenge under the APA, such as the issue of visa availability under the CSPA, at least in the Fourth Circuit. Moreover, the Supreme Court in *Loper Bright Enters. v. Raimondo*, has made clear that courts must interpret statutes independently and need not defer to an agency's interpretation, providing further basis for contesting USCIS' new policy.

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