



HQIAO 120/12.9

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MEMORANDUM FOR Asylum Office Directors  
Supervisory Asylum Officers  
Quality Assurance and Training Coordinators  
Asylum Officers

FROM: Joseph E. Langlois,  
Director, Asylum Division

SUBJECT: H.R. 1209 - Child Status Protection Act

H.R. 1209, the Child Status Protection Act (the CSPA) was signed into law by President Bush on August 6, 2002. The CSPA is effective immediately for asylum applications pending on or after August 6, 2002.

The CSPA amends the Immigration and Nationality Act (INA) with respect to the definition of "child." Specifically, section 4 of the CSPA amends section 208(b)(3) of the INA to read as follows:

(3) Treatment of Spouse and Children -

(A) IN GENERAL - A spouse or child (as defined in section 101(b)(1)(A), (B), (C), (D), or (E)) of an alien who is granted asylum under this subsection may, if not otherwise eligible for asylum under this section, be granted the same status as the alien if accompanying, or following to join, such alien.

(B) CONTINUED CLASSIFICATION OF CERTAIN ALIENS AS

An unmarried alien who seeks to accompany, or follow to join, a parent granted asylum under this subsection, and who was under 21 years of age on the date on which such parent applied for asylum under this section, shall continue to be classified as a child for purposes of this paragraph and section 209(b)(3), if the alien attained 21 years of age after such application was filed but while it was pending.

As a result of this amendment to the INA, children who turn 21 years of age **after** an asylum application was **filed** but prior to adjudication are still considered to be eligible for derivative asylum status. The relevant date to consider in determining whether a dependent who has turned 21 still qualifies as a “child” for purposes of eligibility for derivative status is the date the Principal Applicant (PA) filed the Form I-589, Application for Asylum and for Withholding of Removal. The child must be under 21 years of age on the date that his or her parent, the PA, filed the Form I-589. There is no requirement that the child have been included as a dependent on the PA’s asylum application at the time of filing, only that the child be included prior to the adjudication. This means that the PA may add to his or her asylum application an unmarried son or daughter who is 21 years of age, but who was 20 at the time the PA filed the asylum application.

The “filing date” is defined as the date that the Immigration and Naturalization Service (INS) receives an application. 8 CFR 103.2(a)(7). The filing date is reflected in RAPS in the “FILED” field of the CSTA screen. This should be the same date as the receipt date stamped on the Form I-589, upon receipt by a Service Center. However, in the event that there is a conflict between the filing date in RAPS and the receipt date stamped on the Form I-589, the earliest date should be used as the filing date for purposes of determining whether a dependent was under 21 years of age at the time the PA filed for asylum.

Effective immediately, asylum applications must be adjudicated taking into account this new provision. Asylum Office Directors must provide training on this memo as soon as possible.

Additional procedural guidance will be forthcoming shortly regarding the impact of this new legislation on the procedures for granting asylum Nunc Pro Tunc for individuals who turn 21 years of age after adjudication of the asylum application but before applying for adjustment of status.

Enclosure: Child Status Protection Act