



U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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*425 I Street NW
Washington, DC 20536*

July 23, 2003

MEMORANDUM FOR OVERSEAS DISTRICT DIRECTORS

FROM: Michael J. Petrucelli /S/
Deputy Director and Chief of Staff
Bureau of Citizenship and Immigration Services

SUBJECT: Processing Derivative Refugees and Asylees under
the Child Status Protection Act

This memorandum provides guidance for the implementation of the Child Status Protection Act overseas. It addresses the processing of both derivative refugees and asylees.

I. BACKGROUND

On August 6, 2002, President Bush signed into law the Child Status Protection Act (CSPA), Pub. L. 107-208, 116 Stat 927 (HR 1209), which amends the Immigration and Nationality Act (INA) to allow certain aliens to continue to be classified as children even though they reach the age of 21 years. Included among those affected by the CSPA are the children of refugees and asylees who, under certain circumstances, can maintain eligibility for derivative status after reaching the age of 21.¹ The CSPA became effective August 6, 2002 and applies to certain applications pending on or after that date.²

¹ Section 4 of the CSPA amends section 208(b)(3) of the INA, designating existing paragraph (3) as (3)(A) and adding the following language under a new paragraph 3(B): "(B) CONTINUED CLASSIFICATION OF CERTAIN ALIENS AS CHILDREN—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." For your information, guidance regarding Section 4 is attached to this memorandum.

Section 5 of the CSPA amends section 207(c)(2) of the INA, designating existing paragraph (2) as (2)(A) and adding the following additional language under a new paragraph 2(B): (2)(B) An unmarried alien who seeks to

II. COVERAGE OF THE CSPA

Section 5 of the CSPA applies to individuals who turn 21 years of age while a parent's Form I-590, Registration for Classification as a Refugee, or a Form I-730, Refugee/Asylee Relative Petition, is pending. Similarly, Section 4 of the CSPA applies to individuals who turn 21 while the parent's Form I-589, Application for Asylum and for Withholding of Removal, or Form I-730 is pending.³

In general, a derivative is eligible for **continued classification as a child** if one of the following conditions is met:

- The parent's application for refugee/asylum status was *pending on or filed after* August 6, 2002, and the derivative was *under the age of 21 at the time of filing*; **or**
- The Form I-730 from which the derivative is benefiting was *pending on* August 6, 2002, and the derivative was *under the age of 21 at the time the I-730 was filed*; **or**
- The parent's application for refugee/asylum status or the I-730 was *filed prior* to August 6, 2002, and the derivative *turned 21 years of age on or after* August 6.

Children who turned 21 years of age prior to August 6, 2002, are not covered by the CSPA unless the Forms I-589, I-590 or I-730 from which they hope to benefit were pending on that date. For purposes of implementing the CSPA overseas, Forms I-590 and I-730 are to be considered pending as of August 6, 2002, if they were approved as of that date, but the beneficiaries had not yet been issued documentation to travel to the United States. Derivatives who turned 21 years of age prior to August 6, 2002, who were documented for travel prior to August 6 but who after receiving notification failed to pick up that documentation prior to August 6, 2002, do not have pending cases under the CSPA. See attached table of Events and Continued Classification as a Child for a diagram of the above discussion.

accompany, or follow to join, a parent granted admission as a refugee under this subsection, and who was under 21 years of age on the date on which such parent applied for refugee status under this section, shall continue to be classified as a child for purposes of this paragraph, if the alien attained 21 years of age after such application was filed but while it was pending.

² In determining whether an alien aged out before or after August 6, 2002, officers should keep in mind the special 45-day Patriot Act rules discussed in section 424 of the USA PATRIOT Act. Under this rule, if the alien is the beneficiary of a petition filed before September 11, 2001, the alien remains eligible for classification as a child for 45 days after turning 21.

³ Section 4 also applies to asylees who turn 21 while an application for adjustment of status under Section 209 of the INA is pending.

III. FILING DATE UNDER THE CSPA FOR REFUGEE APPLICATIONS

The date of filing referenced in Section 5, i.e., “the date on which such parent applied for refugee status,” will be the date of the refugee parent’s interview with a Department of Homeland Security (DHS) officer (INS officer if the interview occurred prior to March 1, 2003). In cases where refugee denials are overturned, either as a result of a file review or re-interview, the date of filing will be the date of the refugee parent’s initial DHS interview. The definition of filing for asylum applications is discussed in the attached memorandum, entitled “H.R. 1209 – Child Status Protection Act”.

IV. REFUGEES (RE-3s) ACCOMPANYING A PARENT

To benefit from the CSPA and “accompany” a refugee parent to the United States as a derivative, an individual must meet the following requirements:

- Be listed as a child in Section 11 of a Form I-590 pending on or filed after August 6, 2002;
- Be classifiable as a child at the time of the refugee parent’s interview;
- Be admissible to the United States; and
- Travel to the United States with the refugee parent or within 4 months of the refugee parent’s admission to the United States.

Individuals who meet the preceding requirements will be processed and admitted to the United States as accompanying derivative refugees and assigned the admission code of RE-3.

V. REFUGEES (RE-3s) FOLLOWING-TO-JOIN A PARENT IN THE UNITED STATES

To benefit from the CSPA and “follow-to-join” a refugee parent in the United States as a derivative, an individual must:

- Establish he or she is the beneficiary of an approved Form I-730 pending on or filed after August 6, 2002; and
- Be admissible to the United States

For individuals following-to-join refugee parents, the admission code is RE-3. Currently, there is no time period within which these following-to-join derivatives must arrive in the United States and derivative classification is lost only if they marry.

VI. ASYLEES (AS-3s) FOLLOWING-TO-JOIN A PARENT IN THE UNITED STATES

To benefit from the CSPA and “follow-to-join” an asylee parent in the United States as a derivative, an individual must:

- Establish he or she is the beneficiary of an approved Form I-730 pending on or filed after August 6, 2002.

For individuals following-to-join asylee parents, the admission code is AS-3. Currently, there is no time period within which these following-to-join derivatives must arrive in the United States and derivative classification is lost only if they marry. Asylee following-to-join derivatives must meet the statutory eligibility requirements of INA section 208(b)(3) and 8 CFR 208.21(a).

VII. QUESTIONS AND CONCERNS

We are aware that questions regarding CSPA coverage will continue to arise in relation to individual circumstances. We ask that you bring these situations to the attention of the Office of Refugee and Asylum Affairs so that they may be discussed with the DHS Counsel and appropriate guidance issued. Should you have any questions regarding the above discussion, please send them through appropriate channels.

Attachment

cc: Terry Rusch, Department of State, Bureau of Population, Refugees and Migration

If the following events occur, does the derivative child continue to be classified as a child on or after August 6, 2002?

<u>Events:</u>	<u>Classification as a Child:</u>
• I-589, I-590 or I-730 applications <i>pending on or filed after</i> August 6, 2002, and derivative child <i>under 21 at time of filing</i> :	YES
• I-589, I-590 or I-730 filed and approved <i>prior to</i> August 6, 2002, while derivative child under 21 and derivative turns 21 <i>on or after</i> August 6, 2002. No pending applications:	YES
• I-589 filed and approved <i>prior to</i> August 6, 2002, includes derivative child who <i>turned 21 prior to</i> August 6, 2002:	NO
• I-590 and I-730 approved and child turns 21 <i>prior to</i> August 6, 2002, but <i>documentation to travel not issued as of</i> August 6, 2002:	YES
• I-590 or I-730 derivatives who turned 21 and were documented for travel <i>before</i> August 6, 2002, and who after receiving notification failed to pick up their travel documentation until <i>after</i> August 6, 2002:	NO. Case is no longer pending