



U.S. Citizenship
and Immigration
Services

HQOPRD 70/6.1.1

Interoffice Memorandum

To: Regional Directors
Service Center Directors
District Directors

From: William R. Yates /s/
Associate Director for Operations
U.S. Citizenship and Immigration Services

Date: August 17, 2004

Re: Age-Out Protections Afforded Battered Children Pursuant to The Child Status Protection Act and the Victims of Trafficking and Violence Protection Act

I. Background

On October 28, 2000, President Clinton signed into law the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Public Law 106-386, 114 Stat. 1464, which amends the Immigration and Nationality Act (Act) by providing some relief to battered child self-petitioners and battered spouse petitions including derivative children where the child attained the age of 21 prior to adjustment of status. On August 6, 2002, President Bush signed into law the Child Status Protection Act (CSPA), Public Law 107-208, 116 Stat. 927, which amends the Act by permitting an applicant for certain benefits to retain classification as a "child" under the Act, even if he or she has reached the age of 21. In recent months, questions have arisen concerning the interrelationship between the age-out provisions of the VTVPA and those found in the CSPA.

II. Purpose

The purpose of this memorandum is to provide guidance to U.S. Citizenship and Immigration Services (CIS) personnel concerning these two laws.

III. Guidance

The age-out protections afforded under the CSPA are markedly more generous than those found in the VTVPA. Thus, CIS officers who are adjudicating Forms I-360, Petition for Amerasian, Widow(er), or Special Immigrant, filed by battered child self-petitioners, or by battered spouses and including derivative children, should first examine whether the child will benefit under the CSPA. If the CSPA does not allow an over 21 year old alien to remain a child for immigration purposes, then the CIS officer should review the

VTVPA age-out protections to determine whether that alien can benefit under those provisions. This memorandum should be read in conjunction with the September 20, 2002, and February 14, 2003, CSPA memoranda (attached).

A. CSPA Coverage¹

1. *Immediate Relatives*

Section 2 of the CSPA addresses immediate relative children of U.S. citizens (USCs). Pursuant to section 2 of the CSPA, any child of a USC abuser who properly files a Form I-360 prior to the child's 21st birthday will remain a child for immigration purposes throughout the adjudication of the Form I-360 and Form I-485, Application to Register Permanent Resident or Adjust Status, provided the child remains unmarried. This also pertains to children who are listed as derivatives on their parent's Form I-360. Thus, if the spouse of a USC abuser properly files a Form I-360 prior to her children attaining the age of 21, and those children are included in the petition, then those children can benefit from the age-out provisions of section 2 of the CSPA, provided the children remain unmarried.

2. *Preference Categories*

Section 3 of the CSPA addresses whether certain aliens will be able to adjust as a "child" of a lawful permanent resident (LPR) even if they are no longer under the age of 21. Pursuant to section 3 of the CSPA, the beneficiary's "age" is to be calculated for CSPA purposes by first determining the age of the alien on the date that a visa number becomes available. The date that a visa number becomes available is the first day of the month of the Department of State (DOS) Visa Bulletin, which indicates availability of a visa for that preference category. Of course, if upon approval of the Form I-360, a visa number is already available according to the DOS Visa Bulletin, the date that a visa number becomes available is the approval date of the Form I-360. From that age, subtract the number of days that the Form I-360 was pending, provided the beneficiary files a Form I-485 based on the subject petition, within one year of such visa availability. The "period that a petition is pending" is the date that it is properly filed (receipt date) until the date an approval is issued on the petition.

B. VTVPA Coverage

If it is determined that the alien does not benefit from the CSPA provisions (*i.e.* can no longer be considered a "child" for immigration purposes), officers should determine whether the alien can benefit from the VTVPA age out provisions. The VTVPA date of enactment, October 28, 2000, will be the guide in making this determination.

1. *Self-petitioning children*

Section 1503(d) of the VTVPA amended section 204(a)(1)(D) of the Act to allow any Form I-360 filed by an alien as a child of a USC abusive parent to automatically be considered a petition for preference

¹ In all cases, the provisions of the CSPA took effect on the date of its enactment (August 6, 2002) and they are not retroactive. With few exceptions, the CSPA benefits only those aliens who aged out on or after August 6, 2002. For a complete discussion of determining whether an alien's situation is covered by the CSPA refer to the February 14, 2003 memorandum.

status if the child turns 21 years of age before adjusting status as long as the Form I-360 was filed or approved before the child turned 21. See INA 204(a)(1)(D)(i)(I). In such a case, the child would not need to file a new petition; he/she will be put into the preference category appropriate to his/her situation and he/she will keep the same priority date. He/she will remain eligible for deferred action and work authorization pursuant to INA 204(a)(1)(D)(i)(II). Thus, if the child of a USC abuser properly filed a Form I-360 prior to his/her 21st birthday after October 28, 2000, but before August 6, 2002, and turned 21 before the Form I-485 was approved, that alien will move from immediate relative status to the appropriate preference category, keeping the same priority date.² This provision differs from the CSPA provisions in that the alien in this situation does not get the benefit of remaining an immediate relative “child” for immigration purposes as someone eligible to benefit under the CSPA would.

For example, if the 20-year-old child alien of a USC filed a Form I-360 on January 1, 2002, the Form I-360 was approved on June 1, 2002, the child turned 21 on July 1, 2002, and the alien did not file a Form I-485 prior to aging out, then that alien would now be considered to be a first preference immigrant retaining the priority date of the Form I-360 filed on January 1, 2002. If, however, this same child alien had filed a Form I-485 prior to turning 21, and that Form I-485 was still pending on August 6, 2002, then that alien could continue to be classified as a child pursuant to the CSPA.

Officers should note that this protection is available only to children of USC abusive parents; it does not apply to a self-petitioning child who is the child of an LPR abusive parent. Furthermore, it applies only to those self-petitioning children who aged out on or after October 28, 2000, the date of enactment of the VTVPA.

2. Derivative children

Section 1503(d) of the VTVPA also amended section 204(a)(1)(D) so that any child included as a derivative on a Form I-360 filed by his or her parent where the Form I-360 was filed or approved before the child turned 21 will automatically be considered a self-petitioner for preference status if he/she turns 21 before adjusting status. See INA section 204(a)(1)(D)(i)(III). In such a case, the petition will have the priority date of the parent’s self-petition on which they were included as a derivative. The child does not need to file a new self-petition; he/she will be placed in the preference category appropriate to his/her situation and will be eligible for deferred action and work authorization. This provision applies to those derivative beneficiaries who had not, as of October 28, 2000, attained age 21, and who, on or after October 28, 2000, qualified or qualifies as the derivative beneficiary of a valid, approved VAWA self-petition, regardless of the date of filing and approval of the self-petition.

For example, the spouse of a USC abuser filed a Form I-360 and listed her under-21-year-old son on that petition. The Form I-360 was approved on October 1, 2001, but the son turned 21 on November 1, 2001. That son does not benefit from the CSPA (he turned 21 prior to August 6, 2002, and had neither a petition nor an application pending with the CIS on August 6, 2002), and so can no longer be considered a child for immigration purposes. The VTVPA, however, allows him to become a self-petitioner in the appropriate

² As demonstrated in the example to follow, this situation will apply only to aliens who aged out prior to August 6, 2002, and who did not have any petition or application pending with the CIS on August 6, 2002 (i.e., the Form I-360 was filed and approved prior to August 6, 2002, but the Form I-485 had not been filed on or before August 6, 2002).

preference category (in this case the first preference). He will not need to file a Form I-360, and he retains the priority date of the Form I-360 on which he was included as a derivative alien.

Similarly, the spouse of an LPR abuser filed a Form I-360 on September 1, 2002, listing her 20-year-old son on that petition. The Form I-360 was approved on October 1, 2002, the son turned 21 on May 1, 2003, and the priority date became available on September 1, 2003. In this case, the son will not be able to benefit from the CSPA. He was 21 and 4 months old on the date that the visa number became available, and his petition was only pending for 1 month (making his CSPA “age” 21 and 3 months). The VTVPA, however, allows him to become a self-petitioner in the appropriate preference category (in this case the second preference). He will not need to file a Form I-360, and he retains the priority date of the Form I-360 on which he was included as a derivative alien.

IV. Further Information

CIS personnel with questions regarding the CSPA portion of this memorandum should go through appropriate supervisory channels and contact Helen deThomas via electronic mail. CIS personnel with questions regarding the VTVPA portion of this memorandum should go through appropriate supervisory channels and contact Laura Dawkins via electronic mail.

Attachments (2)