

An Update from April 13, 2015 Guidance Regarding the Child Status Protection Act (CSPA)— Steps Required to 'Seek to Acquire' Status in the EB-5 Context

Presented by Charles Oppenheim, Chief, Immigrant Visa Control, U.S. Department of State at the AILA EB-5 Summit in Las Vegas, Friday, August 28, 2015.

The below information updates the [April 13, 2015 guidance](#) and explains procedures to satisfy the requirement to “seek to acquire lawful permanent residence status within one year” for derivative EB-5 applicants whose cutoff date retrogresses (*AILA Doc No. 15041466*). This information is posted online:

- [Visa Office Attendance at IIUSA 2015 EB-5 Regional Economic Advocacy Conference](#) (April 13, 2015)
- [USCIS Interim Memo Supplementing Previous Guidance on Child Status Protection Act \(CSPA\)](#) (June 6, 2014)(*AILA Doc No. 14063040*)
- [Updated USCIS Guidance on Child Status Protection Act \(CSPA\)](#) (April 15, 2015) (*AILA Doc No. 15073010*)

With respect to the implementation of a visa cutoff date for the EB-5 visa category, how may a visa applicant whose employment-based immigrant visa petition or whose parent’s employment-based immigrant visa petition is approved on or before a visa cutoff date established by the U.S. Department of State satisfy the “seek to acquire lawful permanent residence status within one year of visa availability” requirement under Immigration and Nationality Act (INA) §203(h) to secure the protection of the CSPA?

As outlined in final U.S. Citizenship and Immigration Services (USCIS) guidance from April 15, 2015, the “sought to acquire” lawful permanent residence (LPR) standard may be satisfied with payment of the visa application fee rather than submission of the DS-260. That is, payment of the IV fee bill alone could satisfy the requirement.

Submission of a DS-230 to NVC within the 12 month window would also satisfy the “sought to acquire” requirement. See 9 FAM 42.42 N12.6, Sought to Acquire LPR Status Provision.

If a retrogression or setting of a cutoff date occurs within the 12 month window, the applicant can still satisfy the “sought to acquire” requirement until the 12 month period expires. In addition, if the applicant did not lock in CSPA’s age-out protection during the first 12 month period in which a retrogression occurred, an applicant would have a second 12 month window to satisfy the “sought to acquire” requirement once the petition becomes current again, although the CSPA age would be calculated using the new availability date (when the date the visa first came available). If the applicant seeks to acquire LPR status within 12 months of the

visa coming available, the applicant will lock in his CSPA age-out protection. See *The USCIS Adjudicator's Field Manual*, ch. 21.2(e)(1)(ii)(E).

For a derivative beneficiary applicant, the visa becomes available to him or her on the date that it becomes available to the principal applicant. She or he must seek to acquire LPR status within that year of visa availability to the principal applicant.

For example, if a petition were approved by USCIS on April 30, 2015, and a cutoff date had been established effective on May 1, 2015, NVC will send a fee bill to those applicants whose petitions were approved prior to May 1, 2015, to allow the applicant to pay the IV application fee within the 12-month period. The applicant's CSPA age would be calculated using April 30, 2015—the date at which a visa first became available—and the applicant could lock in that CSPA age-out protection by seeking to acquire LPR status by April 30, 2016.

If USCIS were to approve a petition before May 1, 2015, and NVC received the petition for clerical processing on or after May 1, 2015, then NVC would still send a fee bill to each applicant listed on the petition. Applicants would still have one year from the date the visa first became available to the principal applicant to pay their fee, thereby meeting the sought-to-acquire requirement. In this specific retrogression scenario, the date the visa first became available is the petition approval date because the priority date was current for this visa category until May 1, 2015.

If a principal applicant needs to add derivatives to a petition that was approved by USCIS prior to May 1, 2015, then the applicant must send a request to NVC to add those derivatives to the case. If the derivatives' fee bills are paid within the principal applicant's initial 12-month period as noted above, the CSPA age for those derivatives would be calculated based upon the date the visa first became available to the principal applicant. Requests to add derivatives to a case should include scanned images of the derivative's birth and marriage certificates, as applicable, and sent via e-mail to nvcattorney@state.gov.

Should the derivative fail to seek to acquire LPR status within one year of the visa first coming available (by April 30, 2016, in this example) and the petition becomes current again on (for example) December 1, 2017, NVC would send a new fee bill and the applicant would again have a 12-month period, or until December 1, 2018, in which to satisfy the requirement—assuming that using the visa availability date of December 1, 2017, resulted in a CSPA age under 21.

Here is an example of a potential case (this scenario is only applicable to a Chinese applicant who is subject to the EB-5 cutoff date which was established effective May 1, 2015).

- John's EB-5 petition was approved on April 10, 2015. The initial visa availability date would also be April 10, 2015, because that date was current for the entire EB-5 visa category for the month of April 2015.
- NVC receives John's approved petition on May 5, 2015. NVC sends John a fee bill. John has until April 10, 2016, to pay this fee bill to meet the sought-to-acquire requirement.

John and Julie Example (cont.)

- On October 1, 2015, John tells NVC that he has a derivative child named Julie. NVC sends Julie a fee bill. John and Julie have until April 10, 2016, to pay Julie's fee bill to lock in a CSPA calculation based on April 10, 2015, as the date the visa came available.
- If they do not pay Julie's fee bill before April 10, 2016, NVC will send Julie a new fee bill when John's case once again becomes available for processing based on the forward movement of the China EB-5 cutoff date. Julie's new CSPA calculation would be based on this new future date.

Source: Bureau of Consular Affairs