

PUBLICATION

Immigration Update: "Extraordinary Circumstances" Under the Child Status Protection Act; E-Verify Listens to You; It's Time to Apply for Your H-1B Visa

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Snapshots of both big picture and meaningful small-scale developments in the world of immigration.

This month:

- "Extraordinary Circumstances" under the Child Status Protection Act
- E-Verify Listens to You
- Time to Apply for your H-1B visa

USCIS Guidance on "Extraordinary Circumstances" and "Sought to Acquire"

United States Citizenship and Immigration Services (USCIS) published an Interim Policy Memorandum (PM-602-0097) on June 6, 2014, supplementing Chapter 21.2(e) of the Adjudicator's Field Manual regarding exercising discretion in excusing certain delays in applying for specific benefits afforded by the Child Status Protection Act (CSPA). Current USCIS guidance provides that filing an application for adjustment of status, for notification about a principal applicant's adjustment, or for an immigrant visa satisfies the requirement that a beneficiary "sought to acquire" lawful permanent residence within one year of visa availability, and would enable children of the principal applicant to benefit from the age-out protection provided by the CSPA. (Once a child reaches the age of 21, he or she may no longer obtain permanent residence as the derivative dependent of a parent, but CSPA affords continued eligibility for certain benefits even after the beneficiary has aged-out.)

In the recent decision *Matter of O. Vasquez*, 25 I & N Dec. 817 (BIA 2012), the Board of Immigration Appeals (BIA) ruled that certain "extraordinary circumstances" that prevented the filing of an application may excuse compliance with the one-year deadline on the "sought to acquire" requirement, including some technical or procedural failure to meet the requirements of an application, deficient performance of counsel or other circumstances beyond the applicant's control. The Interim Policy Memorandum elaborates on the *Vasquez* decision to outline the appropriate exercise of discretion officers should use in considering a delayed application for satisfying the "sought to acquire" requirement. The USCIS policy draws on relatively generous scenarios used in the context of exceptions to the requirement of asylum applications to be filed within one year of the applicant's entry to the U.S. It remains critical for foreign nationals whose immigrant petitions are approved to immediately take the next steps toward permanent residence for themselves and their family in order to reduce chances of "age out" of children, but there may be circumstances under which a failure to take steps might be salvaged using the expanded policy.

E-Verify Continues to Improve

E-Verify has taken to heart its users' suggestions and has made certain improvements to the system. Detailed in the latest newsletter, *E-Verify Connection*, E-Verify has added a pop-up alert that notifies users when a case has the same Social Security Number as another case entered in the last 30 days, and the system no longer prepopulates the E-Verify Employer Agent Name. Additional improvements include a "dressed up" Self Check web page where job seekers can check out their own employment eligibility before the employer does;

guidance on completing Form I-9 for Haitians with automatically extended Temporary Protected Status; and a tip on handling remote hires.

Time to get an H-1B visa for October 1 Start Date

July 1 is behind us. H-1B employees with approved petitions for an October 1 start date may (and should) now be applying for their H-1B visas at a U.S. Embassy or Consulate abroad. The Foreign Affairs Manual at 9 FAM 41.53 N8.4(b) (FAM) provides that "[p]osts are authorized to accept H visa petitions and issue visas to qualified applicants up to 90 days in advance of applicants' beginning of employment status. Post must inform applicants verbally and in writing that they can only use the visa to apply for admission to the United States starting ten days prior to the beginning of the approved status period." With limited appointments in Canada for third-country nationals (see June 2014 newsletter) and the usual summer increased demand for visas, new H-1B employees eager to begin work on October 1 should be pursuing their visas now to avoid delay. Per the FAM regulation, these new H-1B visas may be issued now, but must be annotated, "Not valid until (ten days prior to the petition validity date.)."