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Immigration Attorneys

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IMMIGRATION ALERT

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USCIS ISSUES NEW GUIDANCE ON THE CHILD STATUS PROTECTION ACT

May 28, 2008 - In an era of increased immigration enforcement and harsh immigration decisions, it is not everyday that the United States Citizenship and Immigration Services (USCIS) issues a memorandum or guidance that actually extends benefits or provides an interpretation of existing law that is more beneficial than previous interpretations of the same law. However, that is exactly what happened earlier this month when USCIS issued revised guidance on the Child Status Protection Act (CSPA). The full text of the USCIS memorandum providing this new guidance can be viewed on our website at www.longchangonline.com.

In reading this article, keep in mind that this article is general in nature and should not be relied upon with respect to the specific facts of your immigration case.

CSPA Background

As background, the Child Status Protection Act became effective August 6, 2002. The CSPA essentially provides a way to keep certain qualifying immigrants from "aging out, thus allowing them to remain classified as children for immigration purposes. "Aging Out" is a common immigration phrase used in discussing what typically happens to a foreign national when he turns 21 years of age. On the day the foreign national turns 21, he "ages out" and is no longer considered a "child" for immigration purposes. Why? Because the Immigration and Nationality Act typically defines a child as an unmarried son or daughter under the age of 21.

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USCIS ISSUES NEW GUIDANCE ON CSPA (Continued from Page 1)

Once a "child" marries or turns 21 years old, he is no longer considered a child for immigration purposes. The CSPA allows certain immigrants to reduce their biological age based on certain events or certain formulas listed in the CSPA. If an immigrant can effectively reduce his age below the age of 21 for immigration purposes, then he may be able to remain a "child" for immigration purposes.

Previous CSPA Guidance

Previously, USCIS argued that the CSPA did not apply to immigrants who aged out prior to August 6, 2002 (the enactment date of the CSPA). In a February 14, 2003 memorandum, USCIS stated:

*" . . . Pursuant to section 8 of the CSPA, the provisions of the CSPA took effect on the date of its enactment (August 6, 2002) and are **not** retroactive. For adjustment applications based upon a provision of section 204 of the Act, the amendments made by the CSPA to the Act benefit an alien who aged out on or after August 6, 2002.*

If the alien aged out prior to August 6, 2002, the only exception allowed by the CSPA is if the petition for classification under section 204 of the Act was pending on or after August 6, 2002; or the petition was approved before August 6, 2002, but no final determination had been made on the beneficiary's application for an immigrant visa or adjustment of status to lawful permanent residence pursuant to such approved petition. Thus, if an alien aged out prior to August 6, 2002, the petition must have been filed on or before August 6, 2002, and either: 1) remained pending on August 6, 2002, or 2) been approved before August 6, 2002, with an adjustment application filed on or before August 6, 2002, and no final determination made prior to August 6, 2002."

New CSPA Guidance

In its most recent CSPA guidance, USCIS reversed this prior policy and determined that certain immigrants who aged out (turned 21) before August 6, 2002 still may benefit from the CSPA. USCIS guidance now clearly provides the following:

"It does not matter whether the alien reaches the age of 21 before or after the enactment date of the CSPA [August 6, 2002], when the petition was filed (either before or after [August 6, 2002], or how long the alien took after [I-130] petition approval to apply for permanent residence provided the alien did not have a final decision prior to August 6, 2002 on an application for permanent residence based on the immigrant visa petition upon which the alien claims to be a child."

One common scenario (among many possible scenarios) to which this new guidance would apply is the following: A U.S. citizen parent files a Form I-130 Petition for his unmarried child under age 21. The I-130 petition is filed and approved prior to August 6, 2002 and the I-130 beneficiary turns 21 before August 6, 2002. Under the prior guidance, this I-130 beneficiary would have "aged out" and would not benefit from the CSPA. Under the new guidance, this same I-130 beneficiary (so long as he has remained unmarried) will benefit from the CSPA and may be able to file for adjustment of status as an "immediate relative" of a U.S. citizen parent.

The new CSPA guidance also provides that certain individuals whose adjustment of status (I-485 application) was denied based on the prior CSPA interpretation to file a motion to reopen without filing fee in order to reopen the denied I-485 and have it adjudicated based on this new CSPA guidance.

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Example

After reading this new CSPA guidance earlier this month, the attorneys at Long, Chang & Associates, L.L.P. began reviewing cases of existing clients who might benefit. One of the earliest cases we reviewed was for a client whose mother (a lawful permanent resident) filed an I-130 Petition for him in June 1995, when he was only 15 years old. As such, the case was classified under the Family 2A Preference Category. The I-130 Petition was approved in year 2000. The mother became a naturalized citizen later in year 2000, just 3 months before her son reached the age of 21. The son never filed an adjustment application since he turned 21 shortly after his mother got her U.S. citizenship. Since the CSPA did not exist at that time, the son's I-130 Petition was converted to the Family 1st Preference Category (as an unmarried son over age 21 of a U.S. citizen). The son has been waiting for several years for his priority date to become current. However, due to the new CSPA guidance, we have determined and advised him that even though he is now almost 27 years of age, he can still qualify as an "immediate relative" as the child of a U.S. citizen parent. Needless to say, this unexpected news made this client's day!

Summary

If you are the beneficiary of an immigrant visa petition filed and approved before August 6, 2002, you should consider how the USCIS's new guidance on the Child Status Protection Act may benefit you.

* * * * *

EMPLOYER'S SANCTIONS FOR EMPLOYMENT VIOLATIONS INCREASE

As of March 27, 2008, employers sanctioned for violating employment eligibility requirements are subject to stiffer fines. Under the new rule, civil fines will increase by as much as \$5,000. Under the Immigration and Nationality Act, employers who violate employment eligibility requirements are subject to civil monetary penalties.

Employers may be fined for knowingly employing unauthorized aliens or for other violations, including but not limited to failure to comply with the requirements relating to Form I-9 (employment eligibility verification form), and immigration-related document fraud. Penalties are assessed on a per-alien basis, so if an employer knowingly employed, or continued to employ, five unauthorized workers, it could potentially result in five separate fines.

The following chart lists the fines prior to March 27, 2008, and the current, increased fines for certain employer violations:

<u>Violation</u>	<u>Old Penalty (Minimum – Maximum)</u>	<u>Current Penalty (Minimum – Maximum)</u>
Knowingly hire or continue to employ an unauthorized alien for employment in the United States	First Order: \$275 - \$2,200 Second Order: \$2,200 - \$5,500 Subsequent Ords.: \$3,300 - \$11,000	First Order: \$375 - \$3,200 Second Order: \$3,200 - 6,500 Subsequent Ord.: \$4,300 - \$16,000

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EMPLOYER'S SANCTIONS INCREASE
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<u>Violation</u>	<u>Old Penalty (Minimum – Maximum)</u>	<u>Current Penalty (Minimum – Maximum)</u>
I-9 Paperwork Violations (failure to comply with the employment verification requirements)	\$110 - \$1,100	\$110 - \$1,100
Violation relating to participating employer's failure to notify DHS of final nonconfirmation of employee's eligibility	\$500 - \$1,000	\$550 - \$1,100
Unlawful employment of aliens, per person	First Order: \$275 - \$2,200 Second Order: \$2,200 - \$5,500 Subsequent Ords.: \$3,300 - \$11,000	First Order: \$375 - \$3,200 Second Order: \$3,200 - \$6,500 Subsequent Ords.: \$3,300 - \$11,000
Violation/prohibition of indemnity bonds	\$1,100	\$1,100
Document fraud (including but not limited to forging, counterfeiting, altering or falsely making any document to satisfy a requirement of or obtain a benefit through the INA)	First Order: \$275 - \$2,200 Subsequent Orders: \$2,200 - \$5,500	First Order: \$375 - \$3,200 Subsequent Orders: \$3,200 - \$6,500
Document fraud (including but not limited to preparing or filing for yourself or someone else applications or documents with disregard to the fact that the application or document was falsely made)	First Order: \$250 - \$2,000 Subsequent Orders: \$2,000 - \$5,000	First Order: \$275 - \$2,200 Subsequent Orders: \$2,200 - \$5,500
Unfair immigration-related employment practices, per person affected	First Order: \$275 - \$2,200 Second Order: \$2,200 - \$5,500 Subsequent Ords.: \$3,300 - \$11,000	First Order: \$375 - \$3,200 Second Order: \$3,200 - \$6,500 Subsequent Ords.: \$4,300 - \$16,000
Unfair immigration-related employment practices by document abuse including but not limited to requesting more or different documents than required	\$110 - \$1,100	\$110 - \$1,100

For the full version of the rule posted in the Federal Register, please see http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?position=all&page=10130&dbname=2008_register.

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FORM I-9: A BRIEF OVERVIEW

As an employer, pursuant to Section 274A of the Immigration and Nationality Act, your company must verify the identity and employment eligibility of each person you hire after November 6, 1986 by completing and retaining a Form I-9. The purpose of this form is to document that each new employee (both citizen and non-citizen) hired after November 6, 1986 is authorized to work in the United States. The law requires you, as an employer, to ensure that your employees fill out Section 1 of the Form I-9 when they start to work, review the document(s) establishing each employee's identity and eligibility to work, and properly complete Section 2 of the Form I-9. You must retain the Form I-9 for 3 years after the date the person begins work or 1 year after the person's employment is terminated, whichever is later.

In 2007, the Department of Homeland Security revised the Form I-9 and the attached list of documents that are acceptable to prove the identity and employment eligibility of a new hire. As of December 2007, the revised Form I-9 must be used.

The finalized List of Acceptable Documents is as follows:

LIST A Documents that Establish Both Identity & Employment Eligibility	O R	LIST B Documents that Establish Identity	A N D	LIST C Documents that Establish Employment Eligibility
1. U.S. Passport (unexpired or expired)		1. Driver's license or ID card issued by a state or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address		1. U.S. Social Security card issued by the Social Security Administration (other than a card stating that it is not valid for employment)
2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)		2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address		2. Certification of Birth Abroad issued by the Department of State (Form FS-545 or Form DS-13150)
3. An unexpired foreign passport with a temporary I-551 stamp		3. School ID card with photograph		3. Original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal.
		4. Voter's registration card		
		5. U.S. Military card or draft record		
6. Military dependent's ID card				

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FORM I-9: A BRIEF OVERVIEW
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4. An unexpired Employment Authorization document that contains a photograph (Forms I-766, I-688, I-688A, I-688B)	7. U.S. Coast Guard Merchant Mariner Card	4. Native American Tribal Document
	8. Native American Tribal Document	5. U.S. Citizen ID card (Form I-197)
5. An unexpired foreign passport with an unexpired Arrival-Departure Record, Form I-94, bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, if that status authorizes the alien to work for the employer.	9. Driver's license issued by a Canadian government authority	6. ID Card for use of Resident Citizen in the United States (Form I-179)
	For persons under age 18 who are unable to present a document listed above:	
	10. School record / report card	7. Unexpired employment authorization document issued by DHS (other than those listed under List A)
	11. Clinic, doctor or hospital record	
	12. Day-care nursery school record	

For more information on your responsibilities as an employer, please refer to the Department of Homeland Security's Handbook for Employers at <http://www.uscis.gov/files/nativedocuments/m-274.pdf>.

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About Us

Long, Chang & Associates, L.L.P. is a full-service immigration law firm concentrating in the areas of employment-based and family-based immigration law. Our law firm has successfully represented individuals and employers through the immigration process with the Immigration and Naturalization Service (INS), Bureau of Citizenship and Immigration Services (BCIS), United States Citizenship and Immigration Service (USCIS) and at U.S. consulates and embassies in order to obtain both non-immigrant (temporary) visas and immigrant (permanent) visas on behalf of individuals or employees.

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Kristen Aekyung Chang is a founding partner of Long, Chang & Associates, L.L.P. She practices exclusively in immigration law and is a member of the American Immigration Lawyers Association (AILA) and the North Carolina State Bar.

Born in Seoul, South Korea, Ms. Chang attended the University of North Carolina at Chapel Hill where she received a Bachelor of Arts degree in Psychology. While achieving academic success at the undergraduate level, Ms. Chang devoted much of her time to volunteerism. She served as the Chairperson on the Planning Committee for the University's Bicentennial Class celebration and served as a Research Assistant in the University's Psychology Department where she performed valuable research in the area of cognitive memory. Ms. Chang also volunteered in the school's International Department as an English language assistant for international students and faculty members and at a local psychiatric hospital. In addition to her numerous public-service efforts during her undergraduate career at the University of North Carolina at Chapel Hill, Ms. Chang studied abroad at the prestigious London School of Economics where she achieved the top academic ranking in International Business Strategy and Human Resource Management.

Ms. Chang received her J.D. (law) degree from the Wake Forest University School of Law. During law school, Ms. Chang was selected as a member of the Law School's Moot Court Board based on her performance in the school's trial court competition. She was one of three members on the school's nationally-recognized and award-winning National Moot Court Evidence Team. During law school, Ms. Chang studied Labor and Employment Law at the law school's summer program in Italy.

Following law school, Ms. Chang opened her own immigration law practice in Greensboro, North Carolina, and subsequently joined Mr. Long in founding Long, Chang & Associates. As a naturalized citizen of the United States, Ms. Chang understands the immigration practice not just as an immigration lawyer but as an immigrant herself who has gone through the immigration process. Based on her personal experiences, Ms. Chang has a remarkable way of relating with her clients and perceiving their anxieties and concerns.

* * * * *



David J. Long founded Long, Chang & Associates, L.L.P. in 1998. He has been recognized by the North Carolina State Bar as a Board-Certified Specialist in Immigration Law. Mr. Long is a member of the American Immigration Lawyers Association (AILA) and the North Carolina State Bar. Mr. Long serves as a Mentor for other immigration attorneys through AILA.

Prior to founding Long, Chang & Associates, L.L.P., Mr. Long worked as an attorney with the law firm of Kilpatrick Stockton in Winston-Salem, North Carolina. Mr. Long practices in the areas of immigration law, corporate law and real estate.

Born in Philadelphia, Pennsylvania, Mr. Long attended the University of North Carolina at Chapel Hill where he studied in the Honors Program and received a Bachelor of Arts degree in Political Science. In addition, Mr. Long studied the Korean Language at Duke University for a semester while attending UNC-CH. Mr. Long graduated magna cum laude and in the top 1% of his class.

Mr. Long graduated with highest honors and received his J.D. (law) degree from the Wake Forest University School of Law. During law school, Mr. Long was selected as a member of the Law Review based on his academic standing. He was one of three members on the school's nationally-recognized Gabrielli Family Law Moot Court Team. Mr. Long also studied Labor and Employment Law at the law school's summer

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program in Italy. Following law school, Mr. Long worked as an attorney in the commercial real estate department of Kilpatrick Stockton LLP in Winston-Salem, NC, one of largest law firms in the United States. After two years of working at a large law firm, Mr. Long desired the opportunity to assist clients on a more personal basis. As a result, he joined Ms. Chang in forming Long, Chang & Associates, L.L.P. Most recently, Mr. Long served as an adjunct faculty member at Handong International Law School in Pohang, South Korea where he taught U.S. Immigration and Naturalization Law.

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