



Long, Chang & Associates, L.L.P.

Immigration Attorneys

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IMMIGRATION ALERT

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Featured Article

HOW TO PREVENT A CHILD FROM "AGING OUT" IN THE IMMIGRATION WORLD EVEN AFTER TURNING 21

August 31, 2007 - Turning 21 for most young people is a happy time. It is a time when they have reached a certain level of independence and freedom represented by their biological age. While most people celebrate with a party, for many immigrant children, turning 21 means something entirely different – AGING OUT!

This article will discuss (a) what it means to turn 21 years of age for immigration purposes, and (b) how a foreign national who turns 21 years of age can lock his immigration age at an age under 21 so that he will retain the benefits of being a "child". If you are about to turn 21 or have recently turned 21, or if you have a child who is about to turn 21 or recently turned 21, you need to understand how the "Child Status Protection Act" (one of the few "good" changes to U.S. immigration law in the last several years) can save you or your child from "aging out" and may save your immigration life!

What does "aging out" mean and why is it so important to avoid "aging out" if at all possible?

"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

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How to Prevent a Child from "Aging Out" (Continued from Page 1)

purposes. Why? Because the Immigration and Nationality Act typically defines a child as an unmarried son or daughter under the age of 21. Once a "child" marries or turns 21 years old, he is no longer considered a child for immigration purposes.

Why does it matter if a child "ages out" (turns 21 years of age) for immigration purposes?

The U.S. immigration laws provide various benefits to a child based on his relationship to a parent. These benefits are "derivative" in nature because the child can often derive benefits from a parent's immigration status. As a result, a child (an unmarried son or daughter under the age of 21) is often referred to as a derivative beneficiary with respect to his parent.

How "Aging Out" Affects Non-immigrant Visa Status

In the non-immigrant visa (NIV or temporary visa) context, a child is often entitled to derivative non-immigrant visa status through his parent. This means that the child will derive or obtain his NIV status through his parent. For instance, if a parent holds R-1 status as a religious worker, his child is entitled to R-2 status. If the parent obtains H-1B status, his child is entitled to H-4 status. The child of an F-1 parent is entitled to F-2 status. These are just some of the many examples. The list goes on and on. The key in each of these examples is that the parent is the principal or primary visa holder and the child is given derivative status in the same NIV classification based on his parent. The child can typically keep this status only until he turns 21. Once he turns 21, he "ages out". He is no longer considered a child and loses his derivative NIV status. He is forced to change status to another NIV status based not on his parent but on himself. If he does not do so before turning 21, he will fall out of status.

How Aging Out Affects the Immigrant Visa (Green Card) Process

The stakes are even higher when it comes to the green card process. A child can often obtain a green card through his parent since, as explained above, a child typically is considered a derivative of his parent. This means that, if the parent obtains a green card through the immigrant visa process, the parent's child can also obtain the green card as a derivative.

There are 2 common scenarios (one involving family-based immigration and one involving employment-based immigration) where "aging out" or turning 21 is typically a major concern.

The first scenario involves a 4th Preference I-130 Petition (a U.S. citizen brother or sister filing for a brother or sister who has children). Since the 4th Preference category is backlogged over 10 years for most countries, an I-130 beneficiary who has children often worries that his or her children will not be able to get their green cards along with the parents since the children may turn 21 by the time they can file under this category. Consider where the I-130 beneficiary has children aged 7 and 14 at the time his U.S. Citizen brother or sister files an I-130 Petition for him. If it takes 10 years before being eligible to file for the green card, his kids will have turned 17 and 24.

The second scenario involves a parent who is the beneficiary of a labor certification and obtains a green card based on the employer's labor certification and I-140 Petition. In filing for the green card, the parent is considered the "principal beneficiary" or "primary applicant", and his child is referred to as the "derivative beneficiary". As such, the child files his own separate I-485 green card application and can get his green card at the time his parent's green card is approved so long as he is still unmarried and is still considered under age 21 for immigration purposes.

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How to Prevent a Child from "Aging Out" (Continued from previous page)

In both of these scenarios, it is very common for the child to reach the age of 21 before he or she can file for and obtain the green card. Prior to the "Child Status Protection Act", these kids would be out of luck – they would not be entitled to green cards as derivatives of their parents. All because they reached the age of 21 too fast. With the enactment of the Child Status Protection Act, many of these same kids who, in the past, would have "aged out" by turning 21, can still be considered under age 21 for immigration purposes. Thanks to the "Child Status Protect Act" (CSPA), all hope is not lost when turning 21!

How Does the Child Status Protection Act Work?

How can this be? How can a child whose biological age is 21 still be considered a "child" when we've already discussed the general rule that a child "ages out" when he turns 21? The answer lies in the fact that U.S. immigration law essentially now recognizes a distinction between a child's "biological age" and his "immigration age". A child's "biological age" is what it says it is – how old he is based on his date of birth. A child's "immigration age" is the age that he or she is considered for immigration law purposes. Sometimes it is the same as his or her biological age, but sometimes (thanks to the Child Status Protection Act) his age can "locked in" for immigration purposes prior to turning 21.

Section 3 of the Child Status Protection Act provides a complicated formula for determining the "immigration age" of a child who is the derivative of his parent in either a family-based or employment-based case. By applying this formula, a child's immigration age may be reduced to an age below 21 even if his biological age is over 21. If a child can do this, then he or she may still be a derivative of his parent and may still be eligible for a green card based on his parent's case.

In family-based or employment-based green card cases (based on an approved I-130, I-140, I-360, I-526 or diversity visa) involving derivative children, the CSPA formula is as follows:

- (1) Determine the biological age of the derivative child on the date that an immigrant visa becomes available to the child.** For an immigrant visa number to be available, the underlying petition (for example, either the I-130 for family-based cases or the I-140 for most employment-based cases) must be approved and the priority date of the approved petition (as shown on the approved I-130 or I-140) must become current according to the Visa Bulletin.

- (2) Subtract from the biological age of the child (as determined in Step #1) the number of days that the immigrant visa petition (I-130, I-140, I-360 or I-526) was pending with U.S. Citizenship & Immigration Services.** The longer the underlying immigrant visa petition is pending, the better it is if you are trying to make the child younger than 21 for CSPA purposes. Keep this in mind if your I-140 Petition is being filed using Premium Processing (which usually results in a case being decided in 15 days or less). For example, if the I-130 Petition is pending for 4 years, then you may be able to reduce the child's biological age by 4 years. The key is to determine the number of days between the date the immigrant visa petition was received by USCIS and the date that it was approved. The result is the amount of time that can be subtracted from the biological age of the child determined in Step #1 above. For purposes of this article, the resulting age of the child (after subtracting the number of days the petition was pending) is what I call the child's "immigration age".

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(3) **If the resulting "immigration age" of the child is determined to be under 21, then the child is "locked in" and the child is still considered a "child" for immigration purposes but only if he files for the green card within 1 year of becoming eligible.** If the CSPA reduces the child's biological age to an age that is under 21 for immigration purposes, then he or she is still considered a "child" for immigration purposes so long as he or she remains unmarried AND files for the green card within one year of the date that the immigrant visa number became available.

Consider the situation where an I-130 Petition is filed by a U.S. citizen on behalf of his brother. If that brother has a child who is over the age of 21 when the immigrant visa becomes available according to the Visa Bulletin (usually at least 10 years after the I-130 was originally filed with USCIS), the child needs to apply the above CSPA formula to determine if he can still be considered a "child" (under age 21) for immigration purposes. For example, if he is 23 years old when the immigrant visa becomes available, and the I-130 was pending for 4 years, then his "immigration age" would be locked in at age 19 (after reducing his biological age by 4 years – the number of years the I-130 Petition was pending). However, in order to preserve this CSPA protection, the child must seek to acquire the green card (i.e., file for the green card) within 1 year of when he is eligible for the immigrant visa. In the above example, the fact that the I-130 Petition was pending for so long was actually extremely beneficial to the child since it allowed him to reduce his age by 4 years! The CSPA formula is applied in much the same way in employment-based immigration where the underlying petition is an I-140 or an I-360 (as opposed to an I-130 Petition).

Conclusion

The preceding example is just one of many examples in which the Child Status Protection Act can solve a family's potential nightmare where parents fear that they may get the green card after a long wait but their children may lose the chance as a result of turning 21. If you are facing this situation, you should consider whether the Child Status Protection Act can benefit you!

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Update on Department of State Visa Bulletin Cut-Off Dates

The September Visa Bulletin showed very limited immigrant visa (green card) availability in the employment-based preference categories. Cut-off dates were established in the EB-1 and EB-2 categories for all countries. Cut-off dates were established for EB-3 skilled worker and professional categories for all countries except India and China.

A cut-off date means that no green card can be filed or approved in the particular category unless the case has a priority date earlier than the cut-off date listed in the Visa Bulletin.

The EB-3 Other Worker category remains "unavailable" meaning no visas are available during September 2007 for that category.

To view the September 2007 Visa Bulletin, [click here](#).

It has been predicted that the cut-off dates listed in the October 2007 Visa Bulletin will be similar to the cut-off dates listed in the January 2007 Visa Bulletin. To view the January 2007 Visa Bulletin, [click here](#).

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**Visa Bulletin Cut-Off Dates Update
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This means that even though a green card case has been filed before the August 17 deadline, it will likely take a very long time before the green card can be approved since there a backlog or unavailability of visa numbers is expected for the foreseeable future.

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Update on U.S. Citizenship & Immigration Services Receipt Notices

The recent surge in the filing of applications at the USCIS at the end of July and the first half of August 2007 (caused by applicants seeking to filing before the USCIS fee increase went into effect and by applicant who were filing before the August 17 employment-based adjustment deadline) has caused a huge delay in obtaining Receipt Notices for most cases filed during this time. In some cases it is taking up to 2 months to receive Receipt Notices as proof of the filing. In fact, many of our green card applicants have received ASC Appointment Notices for fingerprints before actually receiving their Receipt Notices.

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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.

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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.

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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 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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