Summary of the Child Status Protection Act which President Bush Signed

President Bush signed legislation on August 6, 2002, that addresses the problem of minor children losing their eligibility for certain immigration benefits as a result of INS processing delays. Prior to this new legislation, in order for an individual to immigrate as a "child" under the immigration laws, the application for adjustment of status or for an immigrant visa must have been acted upon and immigrant status granted before the child's 21st birthday. Because of enormous backlogs and processing delays, however, many children turned 21 before the INS adjudicated the requisite petition or application. In such cases, the child "aged-out" and was ineligible to receive an immediate relative visa or was no longer considered to be a derivative "child" on his or her parent's application. The child's petition was either automatically moved to a lower preference category or the child was required to submit his or her own petition, resulting in years of delays and possible ineligibility.

Under the "Child Status Protection Act" (H.R. 1209, Pub. L. No. 107–208), the determination of whether an unmarried alien son or daughter of a U.S. citizen is considered an "immediate relative child" (under 21 years of age) will now be based on the age of the alien at the time the Petition for Alien Relative (Form I–130) is filed on his or her behalf, rather than on the date immigrant status is awarded. The legislation also provides relief in several other types of situations where aging-out has traditionally been a problem.

Age-out protection for the children of U.S. citizens. Section 2 of the new law extends benefits to the children of U.S. citizens and adds a new § 201(f) to the INA. New § 201(f)(1) provides that the determination of whether an alien is considered to be an "immediate relative child" (under 21 years of age) will be made as of the date on which the I–130, Petition for Alien Relative is filed. Section 201(f)(2) deals with family-based second preference petitions filed by permanent residents who subsequently become U.S. citizens through naturalization. In such cases, the new law provides that if the second preference petition on behalf of the alien child is converted to an immediate relative petition based upon the parent's naturalization, the child's eligibility for immediate relative status will be determined based upon the date of his or her parent's naturalization. Section 201(f)(3) covers situations in which U.S. citizen parents file petitions for married sons or daughters and such sons or daughters later divorce. In such cases, if the original third preference petition (married son or daughter of U.S. citizen) is later converted to an immediate relative petition on the basis of the son or daughter's divorce, the child's eligibility for immediate relative status will be determined based upon his or her age on the date of the divorce.

Age-out protection for the children of permanent residents. Section 3 of the new law extends age-out protection to the children of lawful permanent residents, including children who are accompanying or following to join family-sponsored, employment-based, and diversity immigrants. Under the legislation, the age of the alien child on the date on which an immigrant visa number becomes available, reduced by the number of days the petition was pending, will be determinative, but only if the individual seeks to acquire permanent resident status within one year of such availability. (For example, an individual who is 21 years and six months old on the date the visa number became available, but whose immigrant visa petition was pending for eight months, would have his or her age reduced by eight months and would continue to be considered a child.) Section 3 also provides that if the alien is determined to be 21 years of age or older at the time the visa number becomes available, notwithstanding the age-out protection extended under this section, his or her petition will automatically be converted to the appropriate category (typically the 2B son or daughter of permanent resident category), and the alien will retain the priority date associated with the original petition.

Asylum and refugee applicants. Section 4 of the legislation extends age-out protection to the children of asylum applicants, amending INA § 208(b)(3) to provide that an unmarried alien who seeks to accompany or follow to join a parent granted asylum, and who was under 21 years of age on the date the parent applied for asylum but turned 21 during the pendency of the application, will continue to be classified as a child for purposes of derivative asylum benefits. Section 5 of the new law extends this same protection to the children of aliens granted refugee status.

Petitions for sons and daughters of naturalized citizens. Section 6 of the legislation provides that the family-sponsored petition of an unmarried alien son or daughter whose permanent resident parent subsequently becomes a naturalized U.S. citizen will be converted to a petition for an unmarried son or daughter of a U.S. citizen, unless the son or daughter elects otherwise. Regardless of whether the petition is converted, the son or daughter may retain the priority date on the original petition.

Miscellaneous. Section 7 of the legislation provides that nothing in the new law may be construed to limit or deny benefits provided under INA § 204(a)(1)(D) (dealing with battered immigrant children). Finally, section 8 of the new law provides that the age-out relief extended under the legislation took effect upon enactment and applies to: (1) immigrant petitions that have been approved but where no determination has yet been made on the application for an immigrant visa or adjustment of status; (2) immigrant petitions pending before or after the enactment date; and (3) applications pending before the Department of Justice or Department of State on or after the enactment date.