



Settlement Will Benefit Many Aging-Out Children In The Green Card Process

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A recent policy change resulting from litigation in *Nakka v. USCIS* will benefit many children who would otherwise be aging out of their parents' green card applications.

The Child Status Protection Act (CSPA) provides direction on whether to count a child as a derivative of a principal applicant for a green card. A derivative is somebody who is under the age of 21 for CSPA purposes – an individual who is considered 21 or older for CSPA purposes is no longer eligible to qualify for a green card concurrently with a parent, and must be independently sponsored by the parent, resulting in significant delay.

Oral arguments took place in early February in *Nakka v. USCIS* before the U.S. Court of Appeals for the Ninth Circuit. The U.S. Citizenship and Immigration Services (USCIS) implemented immediate changes in its Policy Manual on Feb. 14, 2023, and additional rulemaking on this topic wherein the public will have an opportunity for notice and comment is anticipated.

The litigation in *Nakka v. USCIS* challenged USCIS' conclusion that for purposes of CSPA analysis, a child's age was locked in when the underlying priority date was current under the second of its two Visa Bulletin charts, the "Final Action Date" chart. The plaintiffs in that lawsuit argued that the USCIS should use the "dates for filing" chart, which typically allows a green card application (known as an "Adjustment of Status" application) to be filed earlier.

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This change is particularly significant for individuals from countries such as China and India, which often experience significant retrogression wherein the availability of “green cards” moves backward. Under the old interpretation, minor applicants who filed a green card application based on the availability of a green card under the Dates for Filing chart didn’t lock in their status as a derivative until the date was current under the Final Action Date chart, resulting in an unpredictable impact from events over which they had no control. Under the new interpretation, minor applicants can rely on the Dates for Filing chart for the purposes of locking in their status as derivatives.