



Introduction to Family- Based Immigration

Week Two

Week 2 - We'll Be Talking About:

- Derivative Beneficiaries
- Changes in Family Relationships and Status – Impact on Pending Case
- Child Status Protection Act



Derivative Beneficiary – Coming Along for the Ride

- Concept: one petition, multiple beneficiaries
- Derivatives are: spouses and unmarried children of principal beneficiaries
- Preference categories only, so no derivatives for immediate relatives
- INA § 203(d)
- 22 CFR § 42.31(b)



Derivatives In Action

USC Mark filed a fourth preference petition for his sister Hannah. Hannah is married to Frank and has three children: Nina, age 3; Carl, age 5; and Lorna, age 8. How many derivative beneficiaries can benefit from this petition?

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Derivatives In Action

Mark also wants to immigrate his parents. What category of family-based petition is that? How many petitions does Mark need to file?

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Pop Quiz: T or F

- Several years ago USC Lola petitioned for her adult son, Sam, and the priority date is now current. Sam wasn't married when the petition was filed and he didn't have kids. Now he is married and has 2 children under age 10. They can't immigrate with him because the relationships didn't exist when Lola filed the petition.
- If they did exist but weren't named on the petition when originally filed, they can't immigrate.

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Pop Quiz: T or F

- LPR Jaime filed a petition for his 23-year-old daughter Cora. Cora's new husband can be a derivative beneficiary when the priority date is current.
- USC Amelia filed a petition for her unmarried son, Pierre, who has a 12-year-old daughter, Nina. The priority date is current, but Pierre's lawyer said he can't immigrate because he has a conviction for selling cocaine. This means Nina can't immigrate either.

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What Happens When Life Happens to Your Clients?

Such as:

- Beneficiary marries
- Petitioner and beneficiary divorce
- Petitioner naturalizes
- Beneficiary or petitioner dies
- Beneficiary turns 21

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AUTOMATIC CONVERSION OF VISA CATEGORIES

- Child of USC **marries** (IR→F-3)
- Son/daughter of USC **marries** (F-1→F-3)
- Child/son/daughter of USC **divorces** (F-3→IR, F-3→F-1)
- Petitioner **naturalizes**, child under 21 (F-2A→IR)
- Petitioner **naturalizes**, child over 21 (F-2B→F-1)
- Petitioner **naturalizes**, spouse (F-2A→IR)
- No separate petition required, retention of priority date
- Contact agency and inform of change,



Where's the Law? Retention of Priority Date, Conversion, Revocation

- 8 CFR § 204.2(h)(2)(i): automatic conversion
- 8 CFR § 204.2(h)(2): general rule on retention
- 8 CFR § 204.2(a)(4): derivatives, F-2A age out
- 8 CFR § 205.1(a)(3): automatic revocation

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“Life Goes On” in Action

- LPR Esmeralda files a petition for her husband. What category is that? What if Esmeralda naturalizes while the petition is pending? What happens if Esmeralda and her husband divorce?
- USC Louis files a petition for his 25-year-old daughter Gina. What category is that? What happens if Gina gets married? What happens if she later divorces?
- LPR Vanessa files a petition for her 25-year-old unmarried son, Lino. What category is that? What happens if Lino marries? What if Vanessa naturalizes before Lino marries?

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Pop Quiz #2: What happened?

- **What happened here?**
IR → 3rd, 1st → 3rd
- **What happened here?**
3rd → IR, 3rd → 1st
- **What happened here?**
2A → 2B
- **What happened here?**
2A → IR, 2B → 1st

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Life and Age: What Happens When a Child Beneficiary Turns 21

CHILD STATUS PROTECTION ACT (CSPA)

Core concepts:

- Turning 21 doesn't always mean you stop being a "child" under immigration law
- Once an immediate relative, always an immediate relative
- F-2A children may also retain "child" status after turning 21
- Derivatives may retain derivative status after turning 21

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CSPA in a Nutshell: IRs

- Child of USC remains immediate relative if under 21 when I-130 filed
- *Example:* Amy, a USC, petitions for her son Ben when he is age 20 and 9 months. Since I-130 filed before Ben is 21, he remains a "child" even if the petition is approved after he turns 21.

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CSPA in a Nutshell: IRs

- Child of USC remains immediate relative if under 21 when parent naturalizes (2A → IR)
- *Example:* Marco, an LPR, petitions for his daughter Maria when she is 17 years old. Marco naturalizes when Maria is 20 years old. Maria remains a "child," even if she immigrates after age 21.

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CSPA in a Nutshell: F-2As and Derivatives

- Child of LPR stays in F-2A category if under 21, according to “adjusted age” on date visa becomes current in F-2A
- Calculate adjusted age by subtracting the time the petition was pending
- Need to know priority date, approval notice date, child’s DOB, and date visa current
- If child under 21, will remain so, provided seek LPR status within one year

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CSPA in Action for F-2As

Maria, an LPR from Mexico, filed an I-130 for her daughter Rose on December 10, 2011. She received an approval notice dated June 10, 2012. Rose was born on December 15, 1992. She wants her daughter to become a permanent resident but is concerned because she is now over 21. You find out that the F-2A family preference category became current in May 2014. What advice do you give them?

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Rose Protected in F-2A?

- Date of birth? December 15, 1992
- Time I-130 pending? six months
- Date visa current? May 1, 2014
- Subtract six months from bio. age on May 1, 2014 (21 yrs. 4 mos. 16 days minus 6 mos. = less than 21)
- *Adjusted date of birth?* June 15, 1993
- *Date turn 21(adjusted)?* June 15, 2014
- **Final step: seek LPR status w/in one year?**
- Tip: www.timeanddate.com

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One-Year Filing Requirement

- One year from date become current or petition approval to file:
 - I-485
 - I-824
 - DS-260 (DS-230 Part 1)
- “Seek to acquire” LPR status – narrowly defined by CIS and DOS
- If fail to do this, no CSPA protection and biological age will control

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Matter of O. Vasquez

- 25 I&N Dec. 817 (BIA 2012)
- “sought to acquire” LPR status w/in 1 year
- BIA found CIS/DOS interpretation to be reasonable
- Promotes “consistency and predictability”
- Two exceptions to rule:
 - Attempted to file but rejected for procedural or technical reasons
 - “extraordinary circumstances” that prevented filing

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CSPA and Derivatives

- Derivatives in 1st, 2nd, 3rd, 4th preference categories, apply same formula as F-2As
- Subtract time petition was pending from child’s age (or add to date of birth)
- Compare to when priority date current
- If under 21, still a derivative and one year to seek LPR status

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Retention of Priority Date If Derivative Ages Out

- Section 203(h)(3): when derivatives age out, “the alien’s petition shall automatically be converted to the appropriate category and the alien shall retain the original priority date issued upon receipt of the original petition”
- USCS interpretation → only applies to F-2A’s who age out, not to others
- Opposing view → applies to all derivatives

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Matter Of Wang 25 I&N Dec 28(BIA 2009)

- Retention of priority date limited to same petitioner filing for same beneficiary in same preference category
- Only applies to F-2A derivatives
- No automatic conversion for other derivatives
- No Congressional intent to expand

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Supreme Court

- *Mayorkas v. Cuellar de Osorio*, 134 S. Ct. 2191 (2014)
- Held that former derivative beneficiaries of 1st, 3rd and 4th family preference petitions do not retain their original priority date for a 2nd I-130
- Found that INA § 203(h)(3) ambiguous
- *Matter of Wang* reasonable interpretation

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Example

Sam filed a 3rd preference petition for his married son, Juan. On the date Juan and his wife immigrated, their eldest daughter, Maria, was 24 and couldn't immigrate as a derivative. Juan filed a new I-130 for his daughter in the F-2B category. According to the CIS, Maria cannot retain the earlier priority date. Maria will be in the F-2B category with a recent priority date.

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F-2A Derivative Ages Out

Enrique, an LPR, filed an I-130 for his wife with their daughter, Louisa, named as a derivative. When the F-2A category became current, Louisa was 24 and had aged out. Enrique does not need to file a second I-130 for Louisa as she automatically converted to F-2B. If he does file, Louisa retains the priority date from the original I-130 filed by Enrique for his wife.

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CSPA Opt Out

- 1st preference category backlogged farther than F-2B for Filipinos and sometimes Mexicans
- When parent naturalizes, unmarried sons and daughters over 21 convert from F-2B to F-1 unless elect to stay in F-2B (opt out of converting to F-1)
- File election with local district office if adjusting status or CIS in Manila

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Example

Virgie is the 35-year-old daughter of a Filipino man who just naturalized. He filed an I-130 petition for his daughter on June 3, 2003. Virgie just found out that the F-2B category is current. However, Virgie's father naturalized last month, moving her into the first preference category, which is backlogged at least another two years. Is there any relief for Virgie?

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CSPA Review

Martha, a U.S. citizen, filed an I-130 petition for her unmarried 20-year-old son on May 20, 2014. She received a receipt notice from the Service Center but the petition is not approved yet. Her son will turn 21 tomorrow. What advice do you give her?

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CSPA Review

Two years ago Mark, a U.S. citizen, filed an I-130 for his married son, Paul. At the time, Paul was 19. A year later, Paul divorced his wife. Will the divorce allow Paul to immigrate faster? What if Paul turned 21 last month?

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CSPA Review

Lynn filed a fourth preference petition for her sister eleven years ago, and it is just now current. Unfortunately, her sister's child, Elizabeth, turned 21 last month. Is there any additional information you would want to know before advising them?

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What's up with the Villegas Family?

1. What happens if Louisa files for Jaime and then Jaime gets married?
2. What happens if Louisa files only one petition and then she naturalizes?
3. What happens if Louisa files only one petition and then she and Jorge divorce?
4. What happens if Louisa files for Jaime and he turns 21 before immigrating?

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Overachievers Exercise

Louisa filed a petition for Jorge. Nina (DOB 11/2/1994) and Jamie (DOB 12/15/1995) are named as derivatives. The petition was filed on September 11, 2014 and approved on December 13, 2014. The priority date becomes current in March 2016. Calculate Nina and Jaime's age to determine if still derivatives.

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Next Steps for You: Week Three

- Reading: *Immigrating Through Marriage*
- Activities:
 - **Marriage Exercise
 - ** Mendoza/Villegas family exercise
 - ** Quiz
- Question Board:
 - **Post questions

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E-Learning: Week 3

HAVE FUN!
SEE YOU NEXT WEEK!



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Questions?



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