

USA-PATRIOT Act Series No. 6 - Revised Interpretation of Age-Out Provision

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VISAS

E.O. 12958: N/A

TAGS: CVIS

SUBJECT: USA-PATRIOT Act Series No. 6 - Revised Interpretation of Age-Out Provision

REF: STATE 201468

1. Summary: Referenced aldac emphasized limitations on the age-out savings provisions of section 424 of the Patriot Act. After further consultations and considerations, that interpretation has been reversed. Manual issuance procedures in reftel have also been revised to conform to the requirements of IV Datashare with USCIS. End Summary.

2. The initial interpretation of section 424 reflected the language of the law, i.e., it assumed "for the purposes of adjudicating such petition or application" to mean it would apply only until the petition or application that had been filed on or before 9/11/01 had been adjudicated. An alien with such a petition or application pending was to be considered a "child" for an extra 45 days beyond his or her twenty-first birthday for the purpose of adjudicating only that petition or application.

3. The first paragraph of section 424 regarding those whose birthdays were in September 2001 specifically ended by its terms in late December 2001.

4. With respect to the second paragraph of section 424, which gives age-out protection to aliens whose 21st birthdays occur after September, 2001, and effective immediately, an alien beneficiary of a petition or application filed prior to 9/11/01, whether or not such petition or application was adjudicated by that date, whose 21st birthday occurs (or has occurred) after September 2001, shall be considered to be a child for 45 days after the alien's 21st birthday for the purpose of visa issuance based upon such petition or application. There is no time limit as to when the 21st birthday may occur, so that consular officers may see such cases as much as 20 years into the future. In practical terms this means that any alien beneficiary of an immigrant visa petition that has a priority date on or before 9/11/01 must be accorded the 45 day age-out protection regardless of the date their visa application is filed. Aliens with priority dates after 9/11/01 receive no benefit whatsoever.

5. The following note will be incorporated at 9 FAM, 42.42, N3.1(d) to reflect this change in policy:

d. Under section 424(2) of the USA Patriot Act, any alien who is the beneficiary of a petition filed on or before September 11, 2001 and who's 21st birthday occurs after September 30, 2001 shall be considered to be a child for 45 days after the alien's 21st birthday.

No short-term fix for the IV system will be made to issue these IVs

6. Currently, the IV system locks cases for children who become 21 years old and reverts age-out cases to an adult son or daughter category on an applicant's twenty-first birthday. Posts will therefore manually issue by typewriter any case that might qualify under these narrow guidelines, as the system will not adjust to allow consular processing for these cases. The Department is studying changes to the IV software that will allow the system to be used to issue these visas, but no short-term fix is available.

How to manually issue an IV

7. Use NIV to do the requisite CLASS namecheck. Print out the namecheck results. Retain one copy of the namecheck at post and insert a second copy into the IV packet normally produced for IV applicants; the adjudicating consular officer should initial both copies of the namecheck results.

8. Type all the information normally required on a blank OF-155F form.

9. Add the notation: PL 107-56, USA Patriot Act, Sec 424 to IVs and NIVs issued under Section 424. Use the space on the OF-155A directly under Immigrant Visa and Alien Registration at the top center of the form.

10. To avoid problems for these applicants at POEs, posts will include a memorandum as follows and place the memo on top of the manually issued IV foil:

(begin text of memo)

To: USCIS Inspector, POE From: US Embassy/Consulate (Name)

Date: Subject: USA Patriot Act Section 424, Age-outs

This visa was issued manually due to the constraints of the USA Patriot Act, Section 424, and information will not appear in IV DataShare. If you have any questions, please contact the originating U.S. Embassy or Consulate or the USCIS Forensic Document Lab.

(end text of memo to USCIS).

Manual issuances must be reported to Department on day of issuance

11. Posts must report all manual issuances under the Patriot Act to the Department before the issued visa foil is given to the applicant. For all IVs manually issued under Section 424, post should send an e-mail to the CA Support Desk and ask that a ticket be opened to make a change in post's data base. Provide name and DOB of applicant, visa class, case number, A-number (IV foil number), date of issuance, date of expiration, foreign state chargeability, and USERID of authorizing/adjudicating officer.

12. For further information on the legal aspects of the Patriot Act, posts may contact CA/VO/L/R. For questions on processing, contact the CA Support Desk.

13. Minimize considered.

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