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VISAS -- INFORM CONSULS

E.O. 12958: N/A  
TAGS: CVIS, CMGT  
SUBJECT: CSPA ALDAC NO. 3 -- PROCEDURAL  
INSTRUCTIONS ON  
ISSUING IMMIGRANT VISAS TO ALIENS  
QUALIFYING FOR AGE-OUT  
RELIEF UNDER THE CSPA OR SECTION 424 OF  
THE PATRIOT ACT

REF: A. 02 STATE 153974 B. 02 STATE  
123775  
C. 02 STATE 153054 D. 03 STATE 15049

1. SUMMARY. This message revises instructions on the technical procedures to be followed when issuing immigrant visas to applicants who benefit from age-out protection under either the Child Status Protection Act (CSPA) or the extra 45-day provision of Section 424 of the USA Patriot Act. IV systems have been reprogrammed to allow for automated issuance of visas to over-age

applicants who benefit from CSPA or the Patriot Act. Therefore, posts should cease manual issuance of such visas. In cases qualifying for CSPA protection, post should issue automated visas valid for the full six months. For Patriot Act cases, posts should issue automated visas for the extra 45 days in all cases that qualify. These instructions supersede the processing-related instructions in refs A and C. END SUMMARY

2. Under Section 424 of the Patriot Act, an alien whose 21st birthday occurred after September 2001, and who is the beneficiary of a petition or application filed on or before September 11, 2001, will be considered a "child" for 45 days after the alien's 21st birthday. Thus, IV applicants who would otherwise lose status upon attaining 21 but who meet the conditions of section 424 may be issued visas up to 45 days after their 21st birthday.

(NOTE: The 45-day age-out extension does not apply to DV 2003 or later DV programs, because in such cases the DV lottery entries (which are considered "petitions" under 9 FAM 42.33) would necessarily all have

been filed after  
September 11, 2001.)

3. The CSPA provides for even broader age-out protection than Section 424 of the Patriot Act. The rules for CSPA eligibility are set forth in Refs C and D. If an alien qualifies for CSPA benefits, the alien's age is frozen at the age calculation provided for in the CSPA. As such, an alien whose CSPA age comes out to be under 21 will remain under 21, for immigration purposes, throughout the processing of the case and therefore such alien may be issued a full validity six-month IV, regardless of the alien's actual, chronological age.

4. Ref C advised that if an alien benefits from both the 45-day provision of the Patriot Act and the age-out protection in the CSPA, posts should accord the alien whichever benefit is most advantageous to the alien. In most, if not all, cases, that would be the CSPA.

5. Refs A and C advised posts to apply the extra 45 days of the Patriot Act and to issue full validity six-month visas in CSPA cases only if the applicant had already

reached his or her 21st birthday or was likely to turn 21 before traveling to the U.S. The reason for these procedural instructions was to avoid having posts unnecessarily issue visas manually when a more secure automated visa expiring at age 21 would serve the alien just as well.

6. IV release 03.01.00 now allows posts to override the age 21 cutoff date. As such, the special processing instructions in Refs A and C are no longer necessary. Now that posts have the capability to produce an over-age CSPA or Patriot Act visa on the automated system, posts must cease issuance of manual visas in CSPA and Patriot Act Sec. 424 cases, and posts no longer need to follow the special procedures associated with manual issuances, such as notifying the Help Desk of issuance.

7. In addition, there is no longer any operational reason to limit a CSPA or Patriot Act visa to the alien's 21st birthday for the sole purpose of being able to print an automated visa. Instead, posts should issue visas for the maximum validity possible under the law. For cases

benefiting from CSPA protection, posts should issue full validity six-month visas. For those IV cases that qualify for Patriot Act age-out protection but do not qualify for CSPA benefits, posts should issue either a full validity six months visa or a visa that expires 45 days after the alien's 21st birthday, whichever is shorter. (Note that these instructions are subject to any special restrictions on validity that may apply in a particular case, such as the rules requiring that IV visa validity not extend beyond the expiration of the one-year validity of the medical exam and that IV validity not extend beyond sixty days prior to the expiration of the passport.)

8. To override the age 21 cutoff date, an FSO with IV system rights should log in to the IV system and call up the relevant case. With the case on the screen, the FSO should depress the Age Out button. When the Age Out Selection box appears, the FSO should click on the relevant Act type (Patriot Act or Child Status Protection Act), and then click OK. Once these steps have been completed, the FSO can close the case and

an FSN will be able to make appropriate changes to the case, including scheduling the applicant for an interview. For more detailed instructions, please refer to the Age Out Options section in the Immigrant Visa Systems User Manual. Any post using IV 03.01.00 that is not able to process a CSPA or Patriot Act case to conclusion using the IV system should request assistance from the CA Support Desk at 202 663-1177 or by e-mail at "Supportdesk, CA."

9. Visas printed under this new procedure will contain an annotation indicating that the visa was issued pursuant to the Child Status Protection Act or Patriot Act. As such, manual annotation of the visa is no longer required.

10. In accordance with the above instructions, a procedural note is added at 9 FAM 42.42 PN5 to read:

"In all cases in which an applicant qualifies under section 424 of the USA Patriot Act for visa validity for 45 days beyond the applicant's 21st birthday, the visa should be issued for the additional 45 days (or up to the six month maximum, whichever is less).

Posts must  
override the age 21 cutoff date in the IV  
software in  
order to apply the extra days." A similar  
FAM note  
providing for issuance of a six-month  
validity visa for  
CSPA cases will be included in the CSPA  
FAM notes, once  
they are completed.

POWELL