No. 12-930

In the Supreme Court of the United States

ALEJANDRO MAYORKAS, *et al.*,
Petitioners,

v.

ROSALINA CUELLAR DE OSORIO, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF *AMICI CURIAE* IMMIGRATION ADVOCACY ORGANIZATIONS IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICI CURIAE*[1]

Amici are nonprofit organizations and professional associations dedicated to the fair and orderly administration of the immigration laws. As prominent organizations in the immigration litigation and advocacy fields, *Amici* share a significant interest in the proper application of the Child Status Protection Act and in ensuring that the Act applies in the ameliorative fashion that Congress intended. *Amici* offer this brief to assist the Court by demonstrating the real-life effects of the government's flawed interpretation of the statute.

The American Immigration Council is a non-profit organization established to increase public understanding of immigration law and policy, advocate for the fair and just administration of our immigration laws, protect the legal rights of noncitizens, and educate the public about the enduring contributions of America's immigrants. The Council has appeared as amicus before federal courts and the Board of Immigration Appeals urging a broad interpretation of the Child Status Protection Act consistent with its ameliorative intent.

The American Immigration Lawyers Association (AILA) is a national association with more than 13,000 members throughout the United States, including lawyers and law school professors who practice and

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[1] No counsel for a party authored this brief in whole or in part; and no such counsel or any party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity, other than *Amici*, their members, and their counsel, made a monetary contribution intended to fund the preparation or submission of this brief. The parties consent to the filing of this brief.

teach in the field of immigration and nationality law. AILA seeks to advance the administration of law pertaining to immigration, nationality, and naturalization; to cultivate the jurisprudence of the immigration laws; and to facilitate the administration of justice and elevate the standard of integrity, honor, and courtesy of those appearing in a representative capacity in immigration and naturalization matters.

Asian Americans Advancing Justice (Advancing Justice) promotes a fair and equitable society for all by working for civil and human rights and empowering Asian Americans and Pacific Islanders (AAPIs) and other underserved communities. Advancing Justice comprises four independent non-profit, non-partisan affiliates: Asian Americans Advancing Justice | AAJC in Washington, D.C.; Asian Americans Advancing Justice | Asian Law Caucus in San Francisco; Asian Americans Advancing Justice | Chicago; and Asian Americans Advancing Justice | Los Angeles. Advancing Justice's collective work on a range of issues includes litigation, direct legal representation, policy advocacy, and community empowerment and mobilization in immigrant communities. Advancing Justice affiliates are among the nation's premier authorities on immigration policy as it affects AAPI families and communities.

The Mexican American Legal Defense and Educational Fund (MALDEF) is the leading Latino legal organization in the United States focusing on litigation, advocacy, and educational outreach. MALDEF's mission is to foster sound public policies, laws and programs to safeguard the civil rights of the 45 million Latinos living in the United States including those seeking family reunification. Protecting the

rights of immigrants is the focus of MALDEF's Immigrant's Rights Program. MALDEF monitors federal and state proposed legislation, submits comments on matters that affect the fair and equitable treatment of immigrants, and participates in litigation to further its mission.

The National Immigrant Justice Center (NIJC) is a non-profit organization accredited by the Board of Immigration Appeals to provide immigration assistance since 1980. NIJC provides legal education and representation to low-income immigrants, asylum seekers, and refugees, including survivors of domestic violence, victims of crimes, detained immigrant adults, detained minors, and victims of human trafficking. NIJC serves hundreds of immigrant families and other non-citizens facing removal and family separation, including through the visa petition process and applications for permanent residency based on family-based visa petitions. In 2012, NIJC provided legal services to more than 10,000 non-citizens.

INTRODUCTION AND SUMMARY OF ARGUMENT

In 2002, Congress enacted the Child Status Protection Act (CSPA) to ameliorate a problem that immigrant families face when, after waiting years or even decades for visas, one or more of their children has reached 21 years of age and thus is no longer eligible to immigrate together with the family as a derivative beneficiary. Among other remedies, the CSPA permits such "aged-out" children to retain their original priority dates, rather than being forced to begin the long wait for a visa all over again as adults. The government contends, however, that the CSPA's priority date retention remedy applies only to one

narrow category of family-preference visa beneficiaries. *Amici* submit this brief to illustrate the ways in which the government's unduly narrow interpretation of the statute is inconsistent with current agency practice and imposes significant hardship on families, in direct contravention of the CSPA's purpose of keeping families together.

ARGUMENT

U.S. immigration law permits U.S. citizens and lawful permanent residents (LPRs) to file visa petitions on behalf of certain qualifying noncitizen family members. The Immigration and Nationality Act (INA) specifies preference categories based on the relationship between the citizen or LPR and his or her alien family member. There are several preference categories under which U.S. citizens and LPRs may petition for visas for their relatives: F1 (unmarried adult sons or daughters of U.S. citizens), F2A (spouses and minor children of LPRs), F2B (unmarried adult sons or daughters of LPRs), F3 (married sons or daughters of U.S. citizens), F4 (brothers and sisters of U.S. citizens). 8 U.S.C. § 1153(a)(1)-(4). There are similar preference categories for employment-based visa petitions for skilled professionals and other specified workers and investors. *See id.* § 1153(b).

The INA limits the total number of immigrant visas issued each year, the number of visas that can be issued to family members of a single foreign state, and the number of visas that can be granted to individuals in each preference category. *See id.* §§ 1151(c), 1152(a)(2), 1153(a). Beneficiaries receive visas based on "the order in which a petition on behalf of each such immigrant is filed," and the petition filing date is referred to as the "priority date." *Id.* §1153(e)(1).

Lengthy backlogs for family-preference visa petitions often force immigrants to wait years and sometimes decades before a visa becomes available.[2]

The immigration system allows parents who are beneficiaries of family- and employer-sponsored immigration petitions (the "principal beneficiaries") to list their children as "derivative beneficiaries." For example, if a U.S. citizen petitions for his noncitizen sister, the sister's minor, unmarried children can be included on the petition as derivative beneficiaries. So long as they are no older than 21 years of age and unmarried when the parent becomes eligible for a visa, child derivative beneficiaries are "entitled to the same status, and the same order of consideration" as their parents. 8 U.S.C. § 1153(d). However, if a child turns 21 before a visa becomes available, the child is no longer eligible to join his or her parent as a derivative beneficiary, a problem known as "aging out."

In 2002, Congress enacted the CSPA in order to ameliorate the harsh effect of this aging out problem, which is caused by administrative delays in the processing of visa petitions and long immigration backlogs. *See* 147 Cong. Rec. S3275 (daily ed. Apr. 2, 2001) (proposing the CSPA in part to address the

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[2] In the F3 category, for example, the current priority date for nationals of most countries is February 8, 2003, meaning those individuals have been waiting more than ten years for a visa. *See* Bureau of Consular Affairs, U.S. Department of State, *Visa Bulletin* at 2 (Nov. 2013), *available at* http://travel.state.gov/pdf/visabulletin/visabulletin_november2013.pdf. For nationals of Mexico or the Philippines, the backlog is even worse. In the F3 category, the government is currently processing visas for individuals from those countries who were the beneficiaries of petitions filed back in 1993. *Id.*

problem in which "growing immigration backlogs in the immigration visa category caused the visa to be unavailable before the child reached his 21st birthday"). Rather than forcing principal beneficiaries to choose whether to immigrate and join their relatives in the United States, leaving their now-adult children behind, or instead to stay with their children in their home countries, separated from their U.S. family members, the CSPA provides two remedies. First, for purposes of determining eligibility to remain a derivative beneficiary, a child's age is reduced by the amount of time the government took to approve the petition. 8 U.S.C. § 1153(h)(1). Second, if the child's age is calculated to be over 21 after applying this formula, the child's petition "shall automatically be converted to the appropriate category and the [child] alien shall retain the original priority date issued upon receipt of the original petition." *Id.* § 1153(h)(3). Section 1153(h)(3) thus provides the aged-out child credit for the years she waited in line with her family as a child, rather than making her begin the wait all over again in the F2B category as an adult.

The government contends that section 1153(h)(3) provides this ameliorative remedy to only one narrow class of child beneficiaries: those listed on petitions in the family-preference F2A category. *Amici* submit this brief to demonstrate that the government's restrictive interpretation of the CSPA is inconsistent with current agency practice and imposes significant hardship on families, in direct contravention of

Congress's intent.[3]

I. THE GOVERNMENT'S INTERPRETATION OF THE CSPA TEARS FAMILIES APART, IN CONTRAVENTION OF THE CSPA'S PURPOSE

The government's interpretation of the CSPA undermines Congress's very purpose in enacting the CSPA—keeping families together. *Amici*'s clients and constituents have experienced firsthand the harsh effects of the government's unduly narrow construction of the statute. These families continue to suffer the consequences of the age-out problem that Congress intended to alleviate when it enacted the CSPA.

A. Congress Enacted The CSPA To Promote Family Unity

From its inception, a central goal of the INA was to preserve family unity. The Act was "intended to provide for a liberal treatment of children and was concerned with the problem of keeping families of United States citizens and immigrants united." H.R. Rep. No. 85-1199, at 7 (1957), *reprinted in* 1957 U.S.C.C.A.N. 2016, 2020. Family unity has remained a "cornerstone of U.S. immigration policy," in recognition of the fact that "'[t]he reunification of families serves the national interest not only through the humaneness of the policy itself, but also through the promotion of the public order and well-being of the nation.'" H.R. Rep. No. 101-723, at 38 (1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 6717 (citation omitted). As the

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[3] The government's interpretation is also inconsistent with the plain language of the statute for all of the reasons stated in Respondents' brief.

Court has recognized, "Congress has accorded a special 'preference status' to certain aliens who share relationships with citizens or permanent resident aliens" in order to further that goal. *Fiallo v. Bell*, 430 U.S. 787, 795 n.6 (1977). The importance of family unity to U.S. immigration law is nowhere clearer than in the INA's derivative beneficiary provision, which provides that a minor child "shall . . . be entitled to the same status, and the same order of consideration" as her parent. 8 U.S.C. § 1153(d).

Congress enacted the CSPA to remedy the unfair and difficult situation families face when a child beneficiary ages out during the family's long wait for a visa. The CSPA sought to remedy that aging out problem to "facilitate[] and hasten[] the reuniting of legal immigrants' families." 148 Cong. Rec. H4991 (daily ed. July 22, 2002) (Rep. Sensenbrenner); *see also id.* (Rep. Jackson-Lee) ("[W]here we can correct situations to bring families together, this is extremely important . . . . [T]his is an important bill that helps those who are aging out and brings families together."). In particular, section 1153(h)(3)'s priority date retention provision provides the aged-out child credit for the years she waited in line with her family as a child, rather than have to begin the wait all over again in the F2B category as an adult.

B. The Government's Interpretation Of The CSPA Undermines Its Purpose

The government now denies that the CSPA was intended to have this ameliorative effect for a large majority of visa beneficiaries seeking to keep their families together through the INA's family-preference and employment provisions. Instead, the government contends, Congress intended "to work only a limited

change—one that modestly expanded the scope of an existing regulatory provision." Pet. Br. 18. In particular, the government contends that section 1153(h)(3) applies to only one narrow set of child beneficiaries: those who are listed as beneficiaries of F2A petitions filed by LPR parents. *Id.* at 24. The government's interpretation denies the CSPA's ameliorative remedy to the thousands of children who are derivative beneficiaries of any other type of petition, including petitions filed by U.S.-citizen relatives.

In *Amici*'s experience, this unduly narrow interpretation of the CSPA has dramatic consequences for families attempting to immigrate to the United States together. The examples provided here illustrate vividly the heartbreak caused to thousands of families by the government's interpretation. Each of the children discussed here was a derivative beneficiary of a visa petition filed on his or her parent's behalf. Unfortunately, due to the world-wide demand for a limited number of visas in family- and employment-based preference categories, each of these children aged out before a visa became available to his or her parents, even after application of the age-preservation formula found in section (h)(1) of the CSPA.[4]

H.L., for example, is a native of Cambodia who must live apart from her widowed mother and her three younger brothers, who were able to immigrate to the United States through a family-preference visa. In 1992 H.L.'s uncle, a U.S. citizen, filed an F4 petition listing H.L.'s father as a principal beneficiary. DOS

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[4] The case files for the examples in this brief are on file with counsel for *Amici* and will be provided to the Court upon request.

No. PHP2006573001.[5] H.L., her mother, and her three younger siblings were derivative beneficiaries of that petition. Twelve years later, the family's priority date became current and H.L.'s mother and siblings were able to immigrate to the United States. H.L., however, had turned 21 during the twelve-year wait, and thus had aged out of eligibility as a derivative beneficiary and was not able to immigrate with her family.

One year after the family immigrated to the United States, H.L.'s father was killed in Massachusetts when he was struck by a car while he was crossing the street. H.L. could do nothing to help, and could not even attend her father's funeral. As a result, her mother must work full time and raise her three younger children on her own, without the help of her eldest daughter. Although H.L.'s mother filed an F2B petition on H.L.'s behalf, H.L. had to begin the wait for a visa all over again in the F2B category, with no credit for the twelve years that she properly and patiently waited in line. And as soon as H.L. married (although she later divorced), her mother's F2B petition became void because those visas are available only to unmarried adult children of LPRs. H.L.'s mother could file a new petition for H.L. as an unmarried adult child, but that would require H.L. to wait years more for a visa and to remain unmarried while she waited. If H.L. had been able to retain her priority date after aging out, as the CSPA provides, she would have been able to immigrate close in time to her family and would long ago have been reunited with them in the United States.

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[5] The "DOS" number is the case number assigned by the U.S. Department of State when a noncitizen applies for a visa through a U.S. consulate abroad.

Consider the similar situation faced by K.M.K., an Iranian youth who was left alone in his home country after his family immigrated to the United States. K.M.K. was a derivative beneficiary of an F4 petition filed on behalf of his father. No. A062648903.[6] The petition had a priority date of November 13, 2000, which became current almost twelve years later, in May 2012. By this time, however, K.M.K. had aged out, having turned 21 in 2002. K.M.K.'s parents and their youngest child entered the United States on September 15, 2012. After entering the United States, K.M.K.'s parents filed a new F2B petition for their adult son. Although they requested that K.M.K.'s new petition retain his priority date from the original petition, the government denied the request. Had K.M.K. been permitted to retain the original priority date, a visa would already be available for him, as that priority date is current in the F2B category. Because it was denied, however, he remains in Iran, isolated from the rest of his family.

The harsh results that flow from the government's restrictive interpretation are most evident in cases involving children who have aged out by only a matter of weeks or months. Myung Hye You, for example, is a Korean national who was a derivative beneficiary of an employment-based third preference (EB3) visa petition with a priority date of December 2, 2007. *See* No. A088587071. That priority date became current five and a half years later, on May 2, 2013. Ms. You turned

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[6] The "A" numbers cited here are alien registration numbers that the Department of Homeland Security assigns to an individual when he applies an I-485 application to adjust to LPR status or, for individuals living outside the United States, when a visa is issued.

21 on January 28, 2012, but applying the CSPA's age-preservation formula, Ms. You aged out on November 2, 2012, only months before her family's priority date would become current. By that turn of bad luck, Ms. You was left behind in her home country, away from her family, and will have to begin the five- to ten-year wait for a visa all over again before she can join her family in the United States.

Many immigrants are forced to endure separation from immediate family for years, and sometimes decades, often without any reasonable prospect of reunification on the horizon. Consider the family of U.S. citizen Duong Van Turong. On December 15, 1998, Mr. Turong filed an F3 petition on behalf of his daughter, her husband, and their three children. No. A057200535. That petition was approved on August 1, 1999. The family's priority date became current on January 1, 2006, and Mr. Turong's daughter, her husband, and their youngest child became LPRs on April 3, 2007. By that date, however, her two older children had aged out. On June 4, 2007, Ms. Turong filed F2B petitions for her two aged-out children, and asked to have them assigned the family's original priority date of December 15, 1998. That request was denied.

The three siblings continue to live apart. The youngest sibling has since become a U.S. citizen and filed an F4 petition on behalf of his sister, Hanh Ho, who married after her family left for the United States. That category's current priority date is August 8, 2001; in other words, those who had petitions filed more than twelve years ago are just receiving their visas today. Their brother, Hieu Ho, is currently single and so he remains in the F2B line, for which the current priority

date is October 1, 2006. Should Hieu Ho choose to marry, however, he will be ineligible in that category and will have to begin the wait all over again for the third time in yet another new category.

As these examples illustrate, despite waiting patiently for years or even decades for a visa to become available, and for no reason other than the fact that one of their children reached the age of 21 before that visa came available, families are being faced with the impossible decision of fulfilling their long-awaited dream of immigrating lawfully to the United States or instead staying in their country of origin in order to keep their families together. These families, whose children frequently age out mere months shy of a current priority date, must choose between creating a better life for themselves and their younger children, while facing years of separation from their older children, or giving up their dream of immigration in favor of family unity. If they choose separation, the consequences for both the family members in the United States and the children left behind can be devastating.

These stories underscore the extent to which the government's interpretation of the CSPA has veered far off the rails from Congress's intent. These children do not seek to "vault ahead of other aliens already waiting in the F2B line." Pet. Br. at 40. Rather, they seek to retain the priority dates their families secured them, without having to start the wait all over just because they had the bad fortune of turning 21 before their family's priority date became current—a circumstance obviously beyond their control.

II. THE GOVERNMENT'S INTERPRETATION OF THE CSPA IS INCONSISTENT WITH CURRENT AGENCY PRACTICE

The government's interpretation of the CSPA not only denies the statute the ameliorative effect Congress intended it to provide for the vast majority of individuals waiting in line for visas, but that interpretation is fundamentally inconsistent with current agency practice. The government contends that 8 U.S.C. § 1153(h)(3) cannot apply to aged-out beneficiaries like respondents' children, who were derivative beneficiaries of F3 or F4 petitions. The government argues that section 1153(h)(3) applies only to a "more limited group of aliens"—those who are a principal or derivative beneficiary of an F2A petition. Pet. Br. at 19-20; *id.* at 23-24. According to the government, only those petitions can "automatically be converted" (from F2A petitions to F2B petitions) because "the identity of the petitioner does not change, and the conversion can take place seamlessly." *Id.* at 24-25; 8 U.S.C. § 1153(h)(3). According to the government, permitting an F3 or F4 petition to "automatically be converted" to the F2B category once the parent becomes an LPR is "a change in the fundamental character of the petition" that "would be at odds with a basic premise of the immigrant-visa system." Pet. Br. at 27.

The government relies on its construction of section 1153(h)(3)'s automatic conversion provision to argue that it is impossible for non-F2A beneficiaries to retain their families' original priority dates under the statute, and thus that Congress could not have meant that provision to apply to such beneficiaries. *See* Pet. Br. at 34-37. Rather than conferring an actual benefit, the

government construes the priority date retention provision as "provid[ing] the needed clarification" as to "*when* the conversion takes place." *Id.* at 35. According to the government, permitting non-F2A beneficiaries to retain their families' priority dates without the precise form of automatic conversion the government identifies "would introduce considerable uncertainty into the workings of the immigrant-visa system," demonstrating that "Congress presumably would have provided for it much more directly had it been intended." *Id.* at 36.

The government's limited interpretation of priority date retention is curious in light of the U.S. Citizenship and Immigration Services' (USCIS) actual practice under the CSPA. The agency's practice has not been consistent, but in the experience of *Amici* and their clients and constituents, it differs from the government's current interpretation of the statute in several respects. The government's assertion here that "[t]here are serious problems .... with any attempt to extend [section 1153(h)(3)] eligibility to an F3 or F4 petition" (*id.* at 25) is simply not borne out in the agency's practice. Rather, USCIS often (although inconsistently) has "seamlessly" permitted aged-out children in all family-preference categories to retain their original priority dates when they move to the F2B category—and not simply those who move from the F2A category to the F2B category.

First, the agency sometimes permits aged-out children to retain their priority dates without the type of automatic conversion the government now deems necessary to facilitate that retention. Take, for example, the case of M.P., a national of Haiti. No. A089486875. M.P. was a derivative beneficiary on an

F4 petition filed on behalf of her father on April 14, 1994. M.P. had aged out by the time her father's priority date became current. On April 24, 2007, M.P.'s father filed an F2B petition on her behalf, and she sought adjustment of status using the original April 14, 1994, priority date.[7] On October 4, 2007, without any apparent concern about whether or how the petition could automatically be converted, USCIS approved M.P.'s application, permitting her to retain the April 14, 1994, priority date and join her father in the United States. The agency apparently did not agree with the United States' position here that priority date retention is simply "needed clarification" as to "*when* the conversion takes place." Pet. Br. at 35.

Indeed, the agency in some cases permits non-F2A beneficiaries to retain their original priority dates even though there may be a delay between the time when the parent attains LPR status and the time when the parent files a new F2B petition. Consider, for example, the case of Trisha Anne Motong and her sister Abigail Anne Casas, nationals of the Philippines. Nos. A86925640 (Trisha), A89620887 (Abigail). On October 19, 1988, Trisha and Abigail's U.S. citizen grandmother filed an F3 petition on behalf of their mother, Leticia. Leticia's husband, Trisha, Abigail, and two other children were derivative beneficiaries of that petition. Decades later, Leticia's priority date became current and she immigrated to the United States. She became an LPR on April 12, 2006. By then Trisha and Abigail had aged out and could not join their family as derivative beneficiaries. On September 26, 2006,

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[7] Adjustment of status is the process by which a noncitizen who is within the United States gains LPR status. *See* 8 U.S.C. § 1255.

Leticia filed an F2B petition listing Trisha as the principal beneficiary. After coming to the United States on a non-immigrant visa, Trisha filed an application for adjustment of status on July 11, 2007, which the agency denied.

In April 2006, Abigail entered the United States on a temporary non-immigrant visa. She also filed an application for adjustment of status, arguing that the CSPA entitled her to automatic conversion to an F2B petition and the retention of her family's October 19, 1988, priority date. On October 3, 2008, an immigration judge (IJ) issued an opinion finding Abigail eligible for adjustment of status in the F2B category under section 1153(h)(3) of the CSPA. Despite the fact that the identity of the petitioner changed (from Abigail's grandmother to her mother) and that there was a delay of at least several months between the time when Abigail's mother became an LPR and the time that Abigail sought to convert her petition, the IJ permitted the conversion. Then, in light of the decision in Abigail's case, USCIS reopened Trisha's case. The agency found that its previous denial was due to "administrative error," and permitted Trisha to retain her original 1988 priority date. USCIS, U.S. Department of Homeland Security, Service of Motion to Reopen, *In the Matter of No. A86925640* (June 15, 2009). It does not appear that either the IJ or USCIS considered this relief to be "a change in the fundamental character of the petition" that "would be at odds with a basic premise of the immigrant-visa system." Pet. Br. at 27.

So too did the agency "seamlessly" convert the petition of Hetal Vithalani, a national of India. *See* USCIS, Homeland Security, Notice of Action, *In the*

Matter of Vithalani, No. A089365136 (Sept. 9, 2008). Ms. Vithalani was a derivative beneficiary of an F4 petition filed on a parent's behalf, but aged out before her original priority date became current. When her parent became an LPR, the agency approved an F2B petition for Ms. Vithalani, permitting her to retain the priority date from the original F4 petition. Likewise, M.K. was a derivative beneficiary of an F4 petition that his U.S. citizen uncle filed for M.K.'s father with a priority date of November 1, 1989. The priority date became current in 2001, but by that point, M.K. had aged out, having turned 21 on March 8, 1997. M.K.'s father, mother and younger sibling adjusted status on April 5, 2003. M.K.'s father then filed an F2B petition on his behalf and sought to apply the priority date from the earlier F4 petition. Applying the automatic conversion language of 8 U.S.C. § 1153(h)(3), the immigration judge applied the earlier priority date from the F4 petition. *See* Hearing before the Immigration Judge, *In the Matter of M.K.*, No. A96196186 (June 18, 2007). M.K. was thus able to adjust his status and legally remain with his family in the United States. As these cases demonstrate, the agency does not appear to be struggling with the "serious problems" the government's argument suggests it would face in these circumstances. Pet. Br. at 25.

Second, the agency is requiring the parents of F2A beneficiaries—the one category to which the government concedes the CSPA applies—to file *new* petitions in the F2B category in order to retain their priority dates, a practice which the government now contends is anathema to "automatic" conversion. The government takes the position that section 1153(h)(3)

"largely serves to codify a regulation that existed prior to its enactment"—8 C.F.R. § 204.2(a)(4). Pet. Br. at 45. The agency has not since the CSPA's enactment in 2002 promulgated any new regulations to implement the automatic conversion provision that the government deems so integral for section 1153(h)(3) to have effect. Rather, the agency continues to operate under the terms of 8 C.F.R. § 204.2(a)(4). Most notably, the agency continues to require aged-out *F2A beneficiaries* to file new petitions in the F2B category, rather than "seamlessly" converting the petitions as the government contends the CSPA requires. *See, e.g.*, USCIS, U.S. Department of Homeland Security, *Adjudicator's Field Manual* § 21.2(c)(5) (requiring "a separate petition" where "the derivative child of a second preference beneficiary reaches the age of 21 years prior to the issuance of a visa to the principal alien parent"), *available at* http://www.uscis.gov/laws/afm (last updated June 22, 2012); USCIS Office of Communications, *Question & Answer: USCIS National Stakeholder Meeting* at 1-2 (May 2, 2008) ("In regards to F2A preference cases, current Service policy follows 8 CFR 204.2(a)(4). Essentially, when the child reaches the age of twenty-one prior to the issuance of a visa to the principal alien parent, a separate petition will be required."), *available at* http://www.uscis.gov/sites/default/files/files/nativedocuments/may_qa_060408.pdf.

This practice is fundamentally at odds with the government's representation here that any kind of "editing" of the petition (by, for example, filing a new petition) "would be at odds with a basic premise of the immigrant-visa system." Pet. Br. at 27. Rather, the agency permits such "editing," and in fact in some

cases *requires* it, just as it did before the CSPA, at least with respect to F2A beneficiaries. In short, there is simply no basis for the government's disingenuous contention that doing so for all derivative beneficiaries would cause disruption to the United States visa system.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

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