

**Visa Office Attendance at IIUSA 2015 EB-5
Regional Economic Advocacy Conference**

April 13, 2015

- **With respect to the implementation of a visa cutoff date for the EB5 visa category, how may a visa applicant whose employment based immigrant visa petition or whose parent’s employment based immigrant visa petition is approved on or before a visa cutoff date established by the Department of State satisfy the “seek to acquire lawful permanent residence status within one year of visa availability” requirement under Immigration and Nationality Act (INA) section 203(h) to secure the protection of the Child Status Protection Act (CPSA)?**
 - As outlined in interim U.S. Citizenship and Immigration Services (USCIS) guidance from June 2014, the “sought to acquire” lawful permanent residence (LPR) standard may be satisfied with payment of the visa application fee rather than submission of the DS-260. That is, payment of the IV fee bill alone could satisfy the requirement.
http://www.uscis.gov/sites/default/files/USCIS/Outreach/Interim%20Guidance%20for%20Comment/PM-602-0097_Extraordinary_Circumstances.pdf
 - Submission of a DS-230 to the National Visa Center (NVC) within the 12 month window would also satisfy the “sought to acquire” requirement. See 9 FAM 42.42 N12.6 Sought to Acquire LPR Status Provision.
 - If a retrogression or setting of a cutoff date occurs within the 12 month window, the applicant can still satisfy the “sought to acquire” requirement until the 12 month period expires. In addition, if the applicant did not lock in CPSA’s age-out protection during the first 12 month period in which a retrogression occurred, an applicant would have a second 12 month window to satisfy the sought to acquire

requirement once the petition becomes current again, although the CSPA age would be calculated using the new availability date (vice the date the visa first came available). If the applicant seeks to acquire LPR status within 12 months of the visa coming available, the applicant will lock in his CSPA age-out protection. See USCIS's Adjudicator's Field Manual, section 21.2(e)(1)(ii)(E).

- For a derivative beneficiary applicant, the visa becomes available to him or her on the date that it becomes available to the principal applicant. She or he must seek to acquire LPR status within that year of visa availability to the principal applicant.

- **Do you have an example?**

- Yes. For example, if a petition were approved by USCIS on April 3, 2015, and a cut-off date had been established effective on May 1, 2015, the National Visa Center (NVC) will send a fee bill to those whose petitions were approved prior to May 1, 2015 to allow the applicant to pay the IV application fee within the 12 month period. The applicant's CSPA age would be calculated using April 3, 2015 – the date at which a visa first became available—and the applicant could lock in that CSPA age-out protection by seeking to acquire LPR status by April 3, 2016.
- Should the applicant fail to seek to acquire LPR status within that year and the petition becomes current again on December 1, 2017, the applicant would again have a 12 month period, or until December 1, 2018, in which to satisfy the requirement—assuming that using the visa availability date of December 1, 2017, resulted in a CSPA age under 21. If the sought to acquire requirement had not been met during the first 12 month period that began August 3, 2015, the NVC would send a fee bill once the petition became current again on December 1, 2017, affording the applicant the opportunity to satisfy the requirement within the second one year window of opportunity.