Dear My Sisters' Place and Legal Services NYC,

Thank you for requesting OVW training from ASISTA on aging in and aging out in VAWA and U cases. We hope that this written explanation of the VAWA "age-in" rule is a helpful companion to the aging-in and aging-out webinar.

Sincerely,

ASISTA

VAWA's "Age-In" Rule under INA § 204(a)(1)(D)(i)(III)[1]

January 2026

A unique mechanism we call the "age-in rule" creates a way for children originally included as VAWA *derivatives* to be treated as VAWA *principals* upon their twenty-first birthday. This explanation details what the age-in rule means for VAWA derivatives and key ways to harness its potential.

I. What is the "age-in" rule?

The age-in rule is a statutory provision designed to protect VAWA derivatives (who must be children when the I-360 is filed) from losing eligibility when they turn 21. The age-in rule predates the Child Status Protection Act ("CSPA") and can be used alongside or instead of the CSPA's protection.[2] It is unique in that, rather than protecting children from "aging out" of derivative eligibility, it ages them *in* to eligibility as a principal.

In whole, the age-in provision reads:

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[1] This explanation is intended for attorneys and Department of Justice accredited representatives. It was authored by Senior Staff Attorney Rebecca Eissenova and Staff Attorney Kelly Byrne, with input and editing by Legal and Policy Director Cristina Velez. It is considered current and accurate only through the date of distribution. It is not a replacement for legal advice. Practitioners should conduct their own research to verify the ongoing accuracy of the information provided.

[2] *See* INA § 204(a)(1)(D)(iii) ("Nothing in the amendments made by the Child Status Protection Act shall be construed to limit or deny any right or benefit provided under this subparagraph.").

> Any derivative child who attains 21 years of age who is included in a petition described in clause (ii)[3] that was filed or approved before the date on which the child attained 21 years of age shall be considered (if the child has not been admitted or approved for lawful permanent residence by the date the child attained 21 years of age) a VAWA self-petitioner with the same priority date as that assigned to the petitioner in any petition described in clause (ii). No new petition shall be required to be filed.

INA § 204(a)(1)(D)(i)(III).

The rule applies to any child properly included in a VAWA self-petition. The child need not file their own I-360 to take advantage of the rule. Their priority date remains the same as it was on that original I-360.

> ***Example 1****: On January 1, 2021, Demir's mother files a VAWA self-petition based on abuse by her LPR husband. Demir is included as a derivative child. Although the petition is approved after Demir turns 21, he does not lose eligibility to pursue a VAWA-based green card. Instead, under the age-in rule, he can pursue LPR status as though he had been the principal applicant on his mother's I-360. He does not need to file a new petition, and he retains the January 1, 2021, priority date from his mother's petition.*

II. When is the age-in rule useful?

Since the enactment of the CSPA, the utility of the age-in rule has diminished. However, consider the following scenarios in which the CSPA would not alone suffice, yet the age-in rule would likely be effective:[4]

- Original self-petitioner is ineligible for a VAWA-based green card.
- Original self-petitioner does not wish to pursue a green card anymore.
- Original self-petitioner has already naturalized by the time the former derivative is ready to pursue a green card.
- Original self-petitioner dies and the former derivative is not eligible for protections under INA § 204(l).

[3] Clause (ii) refers to VAWA self-petitions filed by: (a) the spouse of a U.S. citizen ("USC"), (b) the child of a USC, (c) the spouse of an LPR, or (d) the child of an LPR. INA § 204(a)(1)(D)(ii).

[4] These examples are based on the plain language of the statute, not on any statistically significant sample size or official statement by USCIS or the Department of State. Further, this list is not meant to suggest that a person needs to demonstrate one of these reasons (nor any reason at all) for proceeding under the age-in rule.

III. Nuances of the age-in rule

The age-in rule is straightforward in many cases, but practitioners should be aware of its nuances.

i. Using the age-in rule alongside the CSPA[5]

Some former derivatives can use the age-in rule alongside the CSPA.[6] If the age-in rule is used alongside the CSPA, in an immediate relative case where the derivative is also the child of the U.S. citizen abuser of the original self-petitioner, the CSPA will treat the former derivative's age as locked-in at the sub-21 age they were when the I-360 was filed.[7] The former derivative will be able to use this sub-21 age to classify themselves as an immediate relative when they become a self-petitioner in their own right under the age-in rule.

A similarly advantageous visa category may result for individuals who were children of the LPR abuser of the original self-petitioner, too. The CSPA may lock in an under-21 age for them, as well. This way they can remain in the F2A category when using the age-in rule. Of course, if you intend to use the CSPA protections when your client is in a preference category, to lock in their age you generally must be sure they properly seek to acquire LPR status within one year of visa availability.[8] You must also be sure they are unmarried—a requirement for using the CSPA at the USCIS level, regardless of visa category.[9]

ii. Interaction of the "Age-In" Rule and CSPA's "sought to acquire" requirement

Noncitizens in preference categories must satisfy the "sought to acquire" requirement to lock in a sub-21 CSPA age.[10] This requirement can be satisfied by, among other things,

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[5] In August 2025, USCIS changed its interpretation of the visa availability date for CSPA purposes. This change is are beyond the scope of this explanation, but it is important to be aware of it. For more information about this change, please see the CSPA section of the USCIS Policy Manual, here.

[6] *See* INA § 204(a)(1)(D)(iii), *supra* note 2.

[7] *See* INA § 201(f)(1) ("Except as provided in paragraphs (2) and (3), for purposes of subsection (b)(2)(A)(i), a determination of whether an [noncitizen] satisfies the age requirement in the matter preceding subparagraph (A) of section 1101(b)(1) of this title shall be made using the age of the [noncitizen] on the date on which the petition is filed with the Attorney General under section 1154 of this title to classify the [noncitizen] as an immediate relative under subsection (b)(2)(A)(i).") and (f)(4) (stating that the CSPA applies to VAWA self-petitioners and derivatives).

[8] *See* INA § 203(h)(1)(A) (setting forth the "sought to acquire" requirement).

[9] 7 USCIS-PM A.7(A) ("CSPA does not change the requirement that the [noncitizen] must be unmarried in order to remain classified as a child for immigration purposes.").

[10] INA § 203(h) (containing a "sought to acquire" requirement).

"properly filing" Form I-485.[11] All former derivatives in preference categories who want to invoke both the age-in rule *and* CSPA protections should seek to acquire as soon as possible after they turn 21.

A noncitizen who did not act timely may still satisfy the "sought to acquire" requirement if they can show "extraordinary circumstances."[12] USCIS and the Department of State ("DOS") require that the extraordinary circumstances were "not created by the applicant[ ]" and "directly affected the [noncitizen]'s failure to seek to acquire within the 1-year period," and that "[t]he delay was reasonable under the circumstances."[13]

Former VAWA derivatives using the age-in rule because of the (original) principal's inability to adjust may be able to invoke "extraordinary circumstances" to meet the "sought to acquire" requirement if their sole reason for not filing within one year of visa availability was their inability to file for adjustment or an immigrant visa until age 21. The former derivative can argue that the (original) principal's inability to adjust was "not created by [the former derivative's] action or inaction."[14] *ASISTA cautions practitioners that there is no published decision endorsing this view*. Practitioners should advise clients that it is uncertain whether USCIS or DOS would agree with this argument and that denial of the I-485 will lead to a Notice to Appear for a client who is not lawfully present.[15]

> ***Example 3:*** *Luz is 21. She was a derivative on her mother Elena's VAWA self-petition based on abuse by Elena's LPR spouse. The petition was approved when Luz was 16. Elena did not file Form I-485 because she is not eligible to adjust under VAWA. While Luz was an under-21 derivative, Elena's inability to adjust prevented Luz from filing her own I-485 because VAWA derivatives cannot*

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[11] *See* 7 USCIS-PM A.7(G)(1).

[12] *See Matter of O. Vazquez*, 25 I&N Dec. 817, 821 (BIA 2012).

[13] *See* 7 USCIS-PM A.7(H) (USCIS), 9 FAM 502.1-1(D)(8)(c).

[14] *Cf.* 7 USCIS-PM A.7(H) (USCIS).

[15] *See* U.S. CITIZENSHIP AND IMMIGRATION SERVS., PM-602-0187, ISSUANCE OF NOTICES TO APPEAR (NTA) IN CASES INVOLVING INADMISSIBLE AND DEPORTABLE ALIENS, at 5 (Feb. 28, 2025) (terminology in original), https://www.uscis.gov/sites/default/files/document/policy-alerts/NTA_Policy_FINAL_2.28.25_FINAL.pdf (hereinafter "NTA Memo") (requiring USCIS to issue an NTA upon denial or withdrawal of an affirmative application, if the applicant is not lawfully present). Some VAWA derivatives or former-derivatives will have deferred action, which *may* either prevent an NTA from issuing or lead an Immigration Judge to terminate or administratively close proceedings. *See* 8 CFR § 1003.18(d)(1)(ii)(C) (authorizing discretionary termination of removal proceedings for noncitizens with deferred action). They also generally will not be rendered ineligible to pursue adjustment altogether just because they were found ineligible to use the CSPA–they may have to wait to adjust if they are precluded from using their parent's visa category, but most should remain able to do so eventually. Moreover, the EOIR setting may present a positive opportunity to make arguments surrounding the CSPA age and the former derivative's preference category to a different adjudicator.

adjust before their principal. This meant Luz could not file Form I-485 within one year of visa availability, and the only reason for this was Elena's inability to adjust. As long as Luz files her I-485 as soon as possible after turning 21, she can argue that Elena's inability to adjust is an "extraordinary circumstance," such that she still satisfies the "seek to acquire" requirement to lock in a "CSPA age" of under 21.[16] *This is because Elena's inability to adjust was "not created by [Luz's] action or inaction" and "[t]he delay [in filing the I-485] was reasonable under the circumstances."*[17]

iii. Uncertainty with the age-in rule: categories and relationships, and a response

Some former derivatives can use *only* the age-in rule, rather than the age-in rule and the CSPA.[18] In these cases, it is uncertain whether USCIS allows the former derivative to remain in the same category as the principal.[19] As discussed below, maintaining the principal's category appears more consistent with the statute, yet the USCIS Policy Manual does not clearly state it is what happens.[20] If USCIS takes the position that the former derivative must instead proceed under the category describing their own relationship to the abuser, former derivatives using *only* the age-in rule would potentially have to wait several years for a green card because of long delays in the F1, F2B, and F3 categories.[21]

If USCIS tries to use the latter interpretation, practitioners can respond that the statutory text shows Congress intended former derivatives using the age-in rule to remain in the principal's category. Specifically, by indicating that former *self-petitioning children* become petitioners for preference status upon reaching age 21, Congress suggested that at least some of these individuals change categories upon turning 21.[22] In contrast,

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[16] *Matter of O. Vazquez*, 25 I&N Dec. at 821 ("Moreover, an [noncitizen] might also satisfy the "sought to acquire" provision by showing that there are other extraordinary circumstances in the case, particularly those where the failure to timely file was due to circumstances beyond the [noncitizen]'s control.")

[17] *Cf.* 7 USCIS-PM A.7(H).

[18] This includes noncitizens who were not step-children of the abuser because they were 18 or older when their legal parent married the abuser and noncitizens who aged-out of CSPA eligibility.

[19] Anecdotally, ASISTA has heard of at least one former derivative being initially assigned the preference category applicable to their own relationship to the abuser. However, it is not clear on what basis this was done, whether it reflects USCIS's broader policy, or whether the category designation was changed at or before decision.

[20] *See* 3 USCIS-PM D.3(G)(2) (specifies which priority date to use, but does not the (former) derivative's category).

[21] *See* DEP'T OF STATE, VISA BULLETIN FOR JANUARY 2026.

[22] INA § 204(a)(1)(D)(i)(I). The statute's use of the term "preference status" at the very least calls for a self-petitioning child of a U.S. citizen to change categories upon turning 21, since self-petitioning children of U.S. citizens are immediate relatives, *see* INA § 201(b)(2)(A)(i), not petitioners for preference status.

Congress used the term "VAWA self-petitioner" to describe former derivative children and made no reference to preference categories.[23] This difference in the two statutory provisions is meaningful.[24]

Thus, if your client appears eligible for status using the age-in rule if they are assigned the category of the original self-petitioner, you may consider filing the adjustment application.[25] *At the time of publication, ASISTA is not aware of a case in which this argument has been made or succeeded*, and success may only be possible in a federal court setting.[26] However, if your client understands and accepts the odds after full explanation of the existing landscape and any potential for being issued a Notice to Appear if the application fails,[27] it may be a case worth filing.

> ***Example 4***: *Marine's mother Elisabeth has an approved VAWA self-petition based on abuse by Elisabeth's USC spouse. Marine was 19 when Elisabeth and her abusive spouse married. She was included as a derivative on the self-petition, but she is now 26 and has never filed Form I-485. Elisabeth has since naturalized, so Marine no longer qualifies as a following-to-join derivative of an LPR. Further, she cannot use the CSPA and the age-in rule because she never had an immigration-relevant relationship with the abuser. However, Marine can*

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[23] *See* INA 204(a)(1)(D)(i)(III).

[24] *Cf. Russello v. United States*, 464 U.S. 16, 23 (1983) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *United States v. Wong Kim Bo,* 472 F.2d 720, 722 (5th Cir. 1972)."). The difference in the two provisions is especially notable because when Congress wrote them in 2000, both child self-petitioners and former derivatives who turned 21 were treated as petitioners for preference status. *See* INA § 204(a)(1)(D)(i)(I), former INA § 204(a)(1)(D)(i)(III) (available through the official U.S. Code at the Office of Law Revision Counsel, https://uscode.house.gov/. At the top of the page for 8 U.S.C. § 1154, select "2000 Main Ed. (1/2/2001).").

[25] Even if your client is seeking an immigrant visa, you may still need to make this argument before USCIS first, in a brief with your Form I-824. In addition, you may make this argument before the National Visa Center ("NVC") or consulate through a brief. If the NVC asks the applicant to upload documentation of their relationship to the abuser, the applicant can upload the relationship evidence if they have it, but if they do not, they may upload a brief asserting that they do not need the relationship because the applicant is a self-petitioner in their own right and ask the NVC to transfer the case to the consulate without it. The practitioner may give a similar one- or two-page brief to the applicant to bring to the consular interview. If the consulate is not receptive to your argument, you may contact legalnet@state.gov to ask for assistance correcting the error. 9 FAM 103.4-2. Similarly, you could request assistance from a Congressional liaison. However, because the former derivative seeking assistance would not be a constituent, a Congressional liaison may not be able to help. *See* ASISTA, PRACTICE POINTER: Requesting Congressional Liaison Assistance (Sept. 2020), https://asistahelp.org/wp-content/uploads/2020/10/Congressional-liaison.pdf.

[26] In a federal court setting, claims may be considered under the Administrative Procedure Act, 5 U.S.C. §§ 551-559. We encourage practitioners to post on ASISTA's listserv about options in a federal court setting or to contact the National Immigration Litigation Alliance, National Immigrant Justice Center, or the American Immigration Lawyers Association for further information.

[27] *See* NTA Memo, *supra* note 15, at 5.

still seek adjustment under the age-in rule. If USCIS pushes back on Marine's adjustment application because she never had her own immigration-relevant relationship with the abuser, Marine's attorney can include statutory arguments as support for the notion this is not required, and that only the original principal, Elisabeth, needed to have such a relationship.[28]

iv. How does marriage impact the age-in rule and CSPA?

USCIS has stated that derivative children and child self-petitioners may marry after self-petition approval and remain eligible for an immigrant visa or adjustment "in the appropriate preference category to their situation."[29] The Policy Manual cites INA § 204(a)(1)(D)(i) as support[30], though the citation appears to support the policy to look at the category appropriate to the child's "situation" only as to child self-petitioners, not derivatives.[31] This statement could suggest USCIS believes that child self-petitioners and derivatives (including former derivatives seeking to use the age-in rule) change categories when they marry.

There is no preference category for married sons and daughters of Lawful Permanent Residents.[32] Thus, under a category-changing interpretation, a former derivative on an *LPR-based* VAWA self-petition who marries after self-petition approval could not adjust (either as a derivative or under the age-in rule), since there is no "appropriate preference category to their situation."[33] A category-changing interpretation would allow former derivatives on *U.S. citizen-based* self-petitions to adjust under the age-in rule even if they marry after self-petition approval.[34] However, they would face long waits for a visa to become available.[35]

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[28] INA § 204(a)(1)(D)(i)(III) begins with the term "any" and, as such, provides age-in capabilities to *all* former derivatives, even those who do not have an immigration-relevant relationship with the abuser. It is only possible to give effect to the statutory mandate if the aged-in former-derivatives remain in their self-petitioning parent's visa category. *Cf. United States v. Gonzales*, 520 U.S. 1, 5 (1997) ("Read naturally, the word 'any' has an expansive meaning, that is, "one or some indiscriminately of whatever kind.""") (quoting Webster's Third New International Dictionary 97 (1976)). Further, reading the word "any" out of the statute – which a category-changing interpretation does – violates the canon against surplusage. The canon is stated thus: "It is the duty of the court to give effect, if possible, to every clause and word of a statute." *Inhabitants of Montclair Tp. v. Ramsdell*, 107 U.S. 147 (1883).

[29] 3 USCIS-PM D.3(G)(2).

[30] *See id*., fn 60.

[31] *See* 3 USCIS-PM D.3(G)(2) and INA § 204(a)(1)(D)(i)(I) (child self-petitioners move to a preference category upon turning 21).

[32] *See generally* INA § 203 (preference categories).

[33] *Cf*. 3 USCIS-PM D.3(G)(2).

[34] *Cf*. INA § 203(a)(3) (there is a preference category for married sons and daughters of U.S. Citizens).

[35] *See* VISA BULLETIN, *supra* note 21.

Under USCIS's interpretation, which has some support in the statutory language, the CSPA does not eliminate the requirement that a person must be unmarried to be a "child" for immigration purposes.[36] As such, former derivatives hoping to use *both* the CSPA and the age-in rule will generally only be successful at the USCIS level if they are unmarried. Thus, it is a best practice to advise VAWA derivatives (including those adjusting under the age-in rule) not to marry until their LPR application is approved or after they are admitted to the United States with their immigrant visa.

v. Best practices for using the age-in rule before USCIS and the Department of State

There is no special form needed to use the age-in rule. Instead, the former derivative is entitled by statute to file their adjustment of status or immigrant visa application as though they were a self-petitioner, submitting the I-360 approval notice on which they were originally a derivative. That said, because the age-in rule is used far less frequently than derivative-based VAWA applications, it is a best practice to include an explanation of legal eligibility with the adjustment of status or immigrant visa application materials, or with the Form I-824 if one is required.[37] Many practitioners report confusion on the part of USCIS or consulates, and providing this clarification and legal reasoning up front may reduce the probability of improper rejections or denials. If you do this and still receive an erroneous denial, you may be able to request technical assistance from ASISTA.[38]

> ***Example 5:*** *Demir files Form I-485 in the F2A category based on the age-in rule and CSPA. His mother has never pursued a green card. USCIS issues a "Notice*

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[36] *See* 7 USCIS-PM A.7(A) ("CSPA does not change the requirement that the applicant must be unmarried in order to remain eligible for classification as a child for immigration purposes."). The CSPA's statutory language provides some support for this interpretation because the "CSPA age" is only expressly relevant to determining whether the noncitizen meets the *age* portion of the "child" definition. *See* INA §§ 201(f) ("Except as provided in paragraphs (2) and (3), for purposes of subsection (b)(2)(A)(i), a determination of whether an [noncitizen] satisfies *the age requirement* in the matter preceding subparagraph (A) of section 1101(b)(1) of this title…"), 203(h) ("For purposes of subsections (a)(2)(A) and (d), a determination of whether an [noncitizen] satisfies *the age requirement* in the matter preceding subparagraph (A) of section 1101(b)(1) of this title …") (emphasis added for both).

[37] For information on VAWA consular processing, see Esther Limb, Her Justice, *Immigrant Visa Consular Processing for VAWA Derivative.*

[38] OVW LAV, ELSI, and STOP grantees and subgrantees may request free technical assistance ("TA") from ASISTA for immigration cases based on, related to, or arising from domestic violence, dating violence, sexual assault, or stalking. ASISTA members may also request technical assistance from ASISTA regarding immigrant survivor cases. OVW grantees/subgrantees and ASISTA members may request ASISTA TA by logging into their account on ASISTA's TA portal.

of Intent to Deny," noting the "follow[ ] to join" language in INA § 203(d).[39] *With this citation as support, USCIS says that they intend to deny Demir's I-485 because Demir's mother has not adjusted, and since Demir is following to join his mother, he cannot adjust either. This statement fails to recognize that Demir is no longer a derivative who is following to join – he is now a self-petitioner in his own right.*[40] *Because Demir is a self-petitioner in his own right, it is irrelevant whether the (original) principal adjusts status. You can make this argument in your response to the NOID, in a motion to reconsider (if the I-485 is denied),*[41] *or before the Immigration Judge if Demir receives an NTA, as long as he is not charged as an arriving [noncitizen].*[42]

Conclusion

The VAWA "age-in" rule is a unique mechanism for former VAWA derivatives 21 or older to obtain permanent status in the United States and reunify with a self-petitioner who may not be able to adjust status through VAWA. By increasing opportunities for family reunification, the VAWA age-in rule promotes the safety and healing of immigrant survivors and their families.

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[39] That provision reads, "A spouse or child as defined in subparagraph (A), (B), (C), (D), or (E) of section 1101(b)(1) of this title shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under subsection (a), (b), or (c), be entitled to the same status, and the same order of consideration provided in the respective subsection, if accompanying or following to join, the spouse or parent." ASISTA has seen some USCIS local offices refuse to approve an age-in-based I-485 because of this aspect of the INA, while others regularly approve them.

[40] *See* INA § 204(a)(1)(D)(i)(III).

[41] Demir cannot appeal a VAWA-based I-485 denial because adjustment of status applications based on INA § 245(a) are not appealable to the Administrative Appeals Office ("AAO"). *See* 8 CFR § 245.2(a)(5)(ii) ("No appeal lies from the denial of an application by the director, but the applicant, if not an arriving [noncitizen], retains the right to renew his or her application in proceedings under 8 CFR part 240.").

[42] *Cf.* 8 CFR § 1245.2(a)(1)(i) ("In the case of any [noncitizen] who has been placed in deportation proceedings or in removal proceedings (other than as an arriving [noncitizen]), the immigration judge hearing the proceeding has exclusive jurisdiction to adjudicate any application for adjustment of status the [noncitizen] may file.").