

# COMMUNITY

JOURNAL

## YOUR IMMIGRATION SOLUTION



ATTY. ROBERT REEVES & JEREMIAH JOHNSON

### Court certifies nationwide CSPA class action lawsuit

grant visas. Under the better-known section of CSPA, the child may use a complex formula that allows for the amount of time an immigrant visa was processing to be subtracted from the child's age on the date the green card application was filed. However, many children still aged-out despite the formula and families suffered as a result of separation from loved ones.

Although under Section 203(a)(2)(B) of the Immigration and Nationality Act (INA), a permanent resident parent has the right to petition his or her unmarried adult children, the child's priority date would then be the date the immigrant visa petition was filed. Because of the limited number of visas and the backlog, the child would have to give up his or her place in line and wait several more years to be reunited with his or her family. Fortunately, Congress provided relief for these families. Under the Section 3 of CSPA, codified at INA § 203(h)(3), children who age-out - even after applying the formula - can convert to the appropriate immigrant category and retain the priority date under which the parent immigrated. Specifically, INA § 203(h)(3) states that "the alien's petition shall automatically be converted to the appropriate category and the alien shall retain the original priority date upon receipt of the original petition." So under this provision of the law, a child who aged-out retains the original priority date and in most cases can reunite with his or her family. Moreover, if the child who aged-out is in the United States, he or she should be able to apply for a green card, if otherwise eligible. In short, an aged-out child, who is a derivative beneficiary of the visa petition of his or her parent, will be able to keep his or her place in the immigration line and reunite with his or her family much faster by utilizing the parent's earlier priority date.

Unfortunately, USCIS has failed to comply with INA § 203(h)(3). Moreover, USCIS has also failed to promulgate federal regulations or issue policy memorandum regarding this provision of law leaving adjudicators with little guidance. This failure resulted in decisions that were arbitrary and inconsistent. For example, the Board of Immigration Appeals has issued one case permitting the retention of the original priority date (Matter of Garcia) and another denying the retention (Matter of Wang). Similarly, USCIS has recognized the retention in some cases and refused to recognize it in others. In some cases, these inconsistencies affected children in the same family, as is the case with Teresita Costello. One of her daughters was allowed to keep the original priority date and her other daughter was not. In other cases, USCIS simply ignored the request to retain the original priority date. Before the Court, USCIS took the position that these children should give up their established place in line, go to the back of the line and wait another ten years to be reunited with their families. The Government's position was simply unacceptable and waiting for USCIS to correctly interpret the law can sometimes prove to be a waste of time. As such, Reeves and Associates filed a motion to certify the lawsuit as a class action on behalf of all affected immigrants and their families.

The lawsuit seeks to compel USCIS to properly adjudicate all cases filed under Section 3 of CSPA and comply with the requirements of retaining the parent's original priority date in subsequent petitions filed by the parent as required under INA § 203(h)(3).

Reeves and Associates is not only committed to protect the rights of their clients, but also to fight for all immigrants who

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ATTY. RAY BULAON

## "5 Facts You Should Know About Bankruptcy"

### 1. Bankruptcy is not always your fault.

If you are overwhelmed with debt problems, you may feel alone, depressed, guilty or all of the above. In most cases, bankruptcy is caused by events beyond your control- job loss, sickness, disability, divorce, to name a few. In others, it is simply due to poor financial planning. Don't be too hard on yourself. Life is not perfect- and neither are you.

### 2. There is life after bankruptcy.

Some people have the mistaken belief that once they file, life will never be "normal" again and that their credit is ruined forever. The truth is that most people who file bankruptcy are able to rebuild credit very quickly only after a few years and buy a home like everyone else.

### 3. Bankruptcy provides immediate debt relief.

The day you file bankruptcy, creditors have no choice but to leave you alone. That means no more harassment from creditors, lawsuits, judgments or wage garnishments. The relief is immediate. Suddenly you can breathe better and feel like a human being again.

### 4. Most people who file bankruptcy keep everything and lose nothing.

Some people are worried that once they file, they will automatically lose everything that they have worked so hard for. The truth is that in most cases, you get to protect your home, car, bank account and all other assets. You lose nothing but your debts.

### 5. Choosing the right bankruptcy attorney to help you is essential.

Choose a lawyer who not only has the knowledge and experience to handle your case (the "legal side") but also one who has your best interests at heart- someone who will take time to listen, answer your questions, and someone who understands the "human side" of bankruptcy.

(Important: None of the information herein is intended to give legal advice for any specific situation. Bankruptcy laws are often complex and situations vary. For a FREE LEGAL ANALYSIS of your situation, please call for an appointment.)

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