

[Discussion Draft]**AMENDMENT TO RULES COMMITTEE PRINT 117–****54****OFFERED BY MS. ROSS OF NORTH CAROLINA**

Add at the end of title LVIII of division E the following:

1 **SEC. 28___ . IMMIGRATION AGE-OUT PROTECTIONS.**

2 (a) **AGE-OUT PROTECTIONS FOR IMMIGRANTS.—**

3 (1) **IN GENERAL.—**Section 101(b) of the Immi-
4 gration and Nationality Act (8 U.S.C. 1101(b)) is
5 amended by adding at the end the following:

6 “(6) A determination of whether an alien is a
7 child shall be made as follows:

8 “(A) For purposes of a petition under sec-
9 tion 204 and a subsequent application for an
10 immigrant visa or adjustment of status, such
11 determination shall be made using the age of
12 the alien on the date that is the priority date
13 for the principal beneficiary and all derivative
14 beneficiaries under section 203(h).

15 “(B) For purposes of a petition under sec-
16 tion 214(d) and a subsequent application for
17 adjustment of status under section 245(d), such

1 determination shall be made using the age of
2 the alien on the date on which the petition is
3 filed with the Secretary of Homeland Security.

4 “(C) In the case of a petition under section
5 204 filed for an alien’s classification as a mar-
6 ried son or daughter of a United States citizen
7 under section 203(a)(3), if the petition is later
8 converted, due to the legal termination of the
9 alien’s marriage, to a petition to classify the
10 alien as an immediate relative under section
11 201(b)(2)(A)(i) or as an unmarried son or
12 daughter of a United States citizen under sec-
13 tion 203(a)(1), the determination of the alien’s
14 age shall be made using the age of the alien on
15 the date of the termination of the marriage.

16 “(D) For an alien who was in status as a
17 dependent child of a nonimmigrant pursuant to
18 an approved employment-based petition under
19 section 214 or an approved application under
20 section 101(a)(15)(E) for an aggregate period
21 of eight years prior to the age of 21, notwith-
22 standing subparagraphs (A) through (C), the
23 alien’s age shall be based on the date that such
24 initial nonimmigrant employment-based petition
25 or application was filed.

1 “(E) For an alien who has not sought to
2 acquire status of an alien lawfully admitted for
3 permanent residence within two years of an im-
4 migrant visa number becoming available to such
5 alien, the alien’s age shall be their biological
6 age unless the failure to seek to acquire status
7 was due to extraordinary circumstances.

8 “(7) An alien who has reached 21 years of age
9 and has been admitted under [subsection (d)/ sec-
10 tion 203(d)?] as a lawful permanent resident on a
11 conditional basis as the child of an alien lawfully ad-
12 mitted for permanent residence under [subsection
13 (b)(5)/ section 203(b)(5)?], whose lawful permanent
14 resident status on a conditional basis is terminated
15 under [section 1186b/ section 216A?] or [sub-
16 section (b)(5)(M)/ section 203(b)(5)(M)], shall con-
17 tinue to be considered a child of the principal alien
18 for the purpose of a subsequent immigrant petition
19 by such alien [under subsection (b)(5)/ section
20 203(b)(5)] if the alien remains unmarried and the
21 subsequent petition is filed by the principal alien not
22 later than 1 year after the termination of conditional
23 lawful permanent resident status. No alien shall be
24 considered a child under this paragraph with respect

1 to more than 1 petition filed after the alien reaches
2 21 years of age.

【Instead of restating this and potentially creating confusion as a result of the duplicative nature of the language, I suggest the following. SUGGEST: A determination of whether an alien is a child of an alien investor shall be made pursuant to the criteria set forth in section 203(h)(5).】

3 (2) TECHNICAL AND CONFORMING AMEND-
4 MENT.—Section 201 of the Immigration and Nation-
5 ality Act (8 U.S.C. 1151) is amended by striking
6 subsection (f).

7 (3) EFFECTIVE DATE.—

8 (A) IN GENERAL.—The amendments made
9 by this section shall be effective as if included
10 in the Child Status Protection Act (Public Law
11 107–208).

12 (B) MOTION TO REOPEN OR RECON-
13 sider.—

14 (i) IN GENERAL.—A motion to reopen
15 or reconsider the denial of a petition or ap-
16 plication described 【in paragraphs (6) and
17 (7) of section 101(b), as amended in para-
18 graph (1),】 may be granted if—

1 (I) such petition or application
2 would have been approved if the
3 amendments described in such para-
4 graph had been in effect at the time
5 of adjudication of the petition or ap-
6 plication;

7 (II) the individual seeking relief
8 pursuant to such motion was in the
9 United States at the time the under-
10 lying petition or application was filed;
11 and

12 (III) such motion is filed with the
13 Secretary of Homeland Security or
14 the Attorney General not later than
15 the date that is 2 years after the date
16 of the enactment of this Act.

17 (ii) NUMERICAL LIMITATIONS.—Not-
18 withstanding any other provision of law, an
19 individual granted relief pursuant to such
20 motion to reopen or reconsider shall be ex-
21 empt from numerical limitations in sec-
22 tions 201, 202, and 203 of the Immigra-
23 tion and Nationality Act (8 U.S.C. 1151,
24 1152, and 1153).

1 (b) AGE OUT PROTECTIONS FOR NONIMMIGRANT
2 DEPENDENT CHILDREN.—Section 214 of the Immigra-
3 tion and Nationality Act (8 U.S.C. 1184) is amended by
4 adding at the end the following:

5 “(s)(1) Except as described in paragraph (2), the de-
6 termination of whether an alien who is the derivative bene-
7 ficiary of a properly filed pending or approved immigrant
8 petition under section 204 is eligible to be a dependent
9 child of a nonimmigrant admitted pursuant to an ap-
10 proved employer petition under this section or approved
11 application under section 101(a)(15)(E), shall be based on
12 whether the alien is determined to be a child under section
13 101(b)(6) of the Immigration and Nationality Act.

14 “(2) If otherwise eligible, an alien who is determined
15 to be a child pursuant to section 101(b)(6)(D) may change
16 status to or extend status as a dependent child of a non-
17 immigrant with an approved employment based petition
18 under this section or an approved application under sec-
19 tion 101(a)(15)(E), notwithstanding such alien’s marital
20 status.

21 “(3) An alien who is admitted to the United States
22 as a dependent child of a nonimmigrant who is described
23 in this section is authorized to engage in employment in
24 the United States ~~incident to status/ STRIKE?~~ Does this
25 add anything? It’s not language we typically use in em-

1 ployment authorizations and it appears to only permit
2 ‘employment incident to status’ instead of general employ-
3 ment authorization】.”.

4 (c) PRIORITY DATE RETENTION.—Section 203(h) of
5 the Immigration and Nationality Act (8 U.S.C. 1153(h))
6 is amended to read as follows:

7 “(h) RETENTION OF PRIORITY DATES.—The priority
8 date for an 【individual/ alien to track the language in the
9 INA?】 shall be the date that a petition under section 204
10 is filed with the Secretary of Homeland Security (or the
11 Secretary of State, if applicable), unless such petition was
12 preceded by the filing of a labor certification with the Sec-
13 retary of Labor, in which case 【that date】 shall constitute
14 the priority date. The principal beneficiary and all deriva-
15 tive beneficiaries shall retain the priority date associated
16 with the earliest of any approved petition or labor certifi-
17 cation and such priority date shall be applicable to any
18 subsequently approved petition.

19 “(h alternate) RETENTION OF PRIORITY DATES.—

20 “(1) PRIORITY DATE.—The priority date for an
21 【individual/ alien to track the language in the
22 INA?】 shall be the date that is the earliest of—

23 “(A) the date that a petition under section
24 204 is filed with the Secretary of Homeland Se-

1 curity (or the Secretary of State, if applicable);

2 or

3 “(B) the date on which a labor certifi-
4 cation is filed with the Secretary of Labor.

5 “(2) RETENTION.—The principal beneficiary
6 and all derivative beneficiaries shall retain the pri-
7 ority date associated with the earliest of any ap-
8 proved petition or labor certification and such pri-
9 ority date shall be applicable to any subsequently ap-
10 proved petition.”.

