

12-930 SCIALABBA V. DE OSORIO

DECISION BELOW: 695 F.3d 1003

LOWER COURT CASE NUMBER: 09-56786, 09-56846

QUESTION PRESENTED:

The Immigration and Nationality Act (INA) permits United States citizens and lawful permanent resident aliens to petition for certain family members to obtain visas to immigrate to the United States or to adjust their status in the United States to that of a lawful permanent resident alien. The family member sponsored by the petitioner is known as the primary beneficiary. The primary beneficiary's "spouse or child" may be a derivative beneficiary of the petition, "entitled to the same status[] and the same order of consideration" as the primary beneficiary. 8 U.S.C. 1153(d). Section 203(h)(3) of the INA, 8 U.S.C. 1153(h)(3), grants relief to certain persons who reach age 21 ("age out"), and therefore lose "child" status, after the filing of visa petitions as to which they are beneficiaries.

The questions presented are:

1. Whether Section 1153(h)(3) unambiguously grants relief to all aliens who qualify as "child" derivative beneficiaries at the time a visa petition is filed but age out of qualification by the time the visa becomes available to the primary beneficiary.
2. Whether the Board of Immigration Appeals reasonably interpreted Section 1153(h)(3).

CERT. GRANTED 6/24/2013