



## CLIENT ADVISORY

USCIS Policy Memorandum PM-602-0199

### Major Change to Adjustment of Status Processing

May 27, 2026

## Executive Summary

On May 21, 2026, U.S. Citizenship and Immigration Services (USCIS) issued Policy Memorandum PM-602-0199, titled “Adjustment of Status is a Matter of Discretion and Administrative Grace, and an Extraordinary Relief that Permits Applicants to Dispense with the Ordinary Consular Visa Process.” This memorandum represents the most significant shift in domestic green card processing in decades and affects virtually every pending and future I-485 application.

According to the memorandum, where consular processing is available to an alien based on their immigrant category, USCIS officers are instructed to treat adjustment of status (AOS) — the process by which a foreign national obtains lawful permanent residence from within the United States — as an **extraordinary discretionary relief** to the regular immigrant visa process and **an act of administrative grace**.

*Note:* The law governing adjustment of status has not changed, and USCIS cannot change the underlying law for adjustment of status through a policy memorandum. In issuing this policy memorandum, USCIS is not prohibiting adjustment of status filings. The policy memorandum states that USCIS is reaffirming that adjustment of status is a matter of discretion and administrative grace, as has been the consistent and longstanding interpretation of the law. By emphasizing that AOS is an extraordinary discretionary relief, USCIS appears to be sending the message that it will apply heightened scrutiny towards applications and a stricter application of the AOS rules.

## Background: What Is Adjustment of Status?

Adjustment of status under INA § 245 allows eligible foreign nationals who are already present in the United States to obtain lawful permanent residence (also commonly known as “green card”) without leaving the country to attend a consular interview abroad. For decades, AOS has been a widely used and relatively routine pathway for eligible applicants who meet the requirements of INA § 245.

The alternative pathway — consular processing — requires the applicant to travel to a U.S. embassy or consulate in their home country for an immigrant visa interview, which carries the risk of being refused a visa to return to the United States.

**Note:** The policy memorandum covers adjustment under INA § 245. The term “extraordinary form of relief” used by the policy memorandum to describe the nature of the grant of AOS does not appear in INA § 245. Also, there is nothing in the law that says consular visa application is the default or preferred process for obtaining lawful permanent resident status in the United States.

## What the Policy Memorandum Says

The memo instructs USCIS adjudicators as follows:

- AOS is a discretionary act of administrative grace, not a right or entitlement.
- AOS is not designed to supersede or bypass the regular consular processing of immigrant visas, and it is implicit in its guidance that where consular processing is available, AOS should not be granted unless circumstances warrant the discretionary grant of extraordinary relief.
- Officers must weigh all relevant positive and negative factors in their totality when adjudicating I-485 applications to determine whether the alien is suitable for permanent residence and if approval of the alien’s AOS application is in the best interest of the United States.
- When they deny an I-485 application based on an unfavorable exercise of discretion, the denial notice must include an analysis containing the positive and negative factors considered, along with an explanation of why the negative factors outweigh the positive factors in the decision.

## Key Factors Officers Are Directed to Consider

### **Negative factors (weighing against approval):**

- Violations of immigration laws or the conditions of status held
- Fraud or misrepresentation in dealings with USCIS or any government agency
- Whether an alien’s application for admission or parole violated the laws, regulations, and policies in place at the time
- Conduct after admission inconsistent with visa status
- Failure to depart as expected at the end of authorized stay
- Intent to circumvent the ordinary consular process

### **Positive factors (weighing in favor of approval):**

- Family ties to U.S. citizens or lawful permanent residents
- Length of lawful residence in the United States
- Good moral character
- Benefit to the United States

**Note:** USCIS Policy Manual, Volume 7, Part A, Chapter 10 provides a non-exhaustive list of factors or factual circumstances that officers should generally consider in exercising discretion with respect to an application for adjustment of status, as follows:

Issue	Positive Factors	Negative Factors
Eligibility Requirements	Meeting the eligibility requirements for adjustment of status.	Not meeting the eligibility requirements may still be considered as part of a discretionary analysis.
Family and Community Ties	<p>Family ties to the United States and the closeness of the underlying relationships.</p> <p>Hardship to the applicant or close relatives if the adjustment application is denied.</p> <p>Length of lawful residence in the United States, status held and conduct during that residence, particularly if the applicant began his or her residency at a young age.</p>	Absence of close family, community, and residence ties.
Immigration Status and History	<p>Compliance with immigration laws and the conditions of any immigration status held.</p> <p>Approved humanitarian-based immigrant or nonimmigrant petition, waiver of inadmissibility, or other form of relief and the underlying humanitarian, hardship, or other factors that resulted in the approval.</p>	<p>Violations of immigration laws and the conditions of any immigration status held.</p> <p>Current or previous instances of fraud or false testimony in dealings with USCIS or any government agency.</p> <p>Unexecuted exclusion, deportation, or removal orders.</p>
Business, Employment, and Skills	<p>Property, investment, or business ties in the United States.</p> <p>Employment history, including type, length, and stability of the employment.</p> <p>Education, specialized skills, and training obtained from an educational institution in the United States relevant to current or prospective employment and earning potential in the United States.</p>	<p>History of unemployment or underemployment.</p> <p>Unauthorized employment in the United States.</p> <p>Employment or income from illegal activity or sources, including, but not limited to, income gained illegally from drug sales, illegal gambling, prostitution, or alien smuggling.</p>
Community Standing and	Respect for law and order, and good moral character (in the United States and abroad)	Moral depravity or criminal tendencies (in the United States and abroad) reflected by

<p>Moral Character</p>	<p>demonstrated by a lack of a criminal record and evidence of good standing in the community.</p> <p>Honorable service in the U.S. armed forces or other evidence of value and service to the community.</p> <p>Compliance with tax laws. Current or past cooperation with law enforcement authorities.</p> <p>Demonstration of reformed or rehabilitated criminal conduct, where applicable.</p> <p>Community service beyond any imposed by the courts.</p>	<p>a single serious crime or an active or long criminal record, including the nature, seriousness, and recent occurrence of criminal violations.</p> <p>Lack of reformation of character or rehabilitation.</p> <p>Public safety or national security concerns. Failure to meet tax obligations. Failure to pay child support. Failure to comply with any applicable civil court orders.</p>
<p>Other</p>	<p>Absence of significant undesirable or negative factors and other indicators of good moral character in the United States and abroad.</p>	<p>Other indicators adversely reflecting the applicant's character and undesirability as an LPR of this country.</p>

The standards set forth in Policy Memorandum entitled "Restoring a Rigorous, Holistic, and Comprehensive Good Moral Character Evaluation Standard for Aliens Applying for Naturalization," issued on August 15, 2025 (PM-602-0188), may also be useful in determining what other factors might be considered by USCIS in exercising discretion. The memorandum lists the following positive factors: sustained community development and contributions in the United States; family caregiving, responsibility, and ties in the United States; educational attainment; stable and lawful employment history and achievements; length of lawful residence in the United States; and compliance with tax obligations and financial responsibility in the United States. Where applicants have engaged in wrongdoing, adjudicating officers are also directed to consider evidence of rehabilitation and reformation, including: rectifying overdue child support payments or other family obligations; compliance with probation or other conditions imposed by a court; community testimony from credible sources attesting to alien's ongoing good moral character; reformation or mentoring those with similar past; full repayment of overpayment of public benefits; and full payment of overdue taxes.

## Who Are Affected

The new policy indicates that it applies to those who can apply through consular processing and are seeking to adjust status in the United States. It does not provide a list of categories of applicants to whom consular processing is available, but it notes that certain adjustment of status provisions are non-discretionary and thus excluded from the application of the new policy. It follows that the policy memorandum applies to adjustment applications involving discretion.

## Non-Discretionary Adjustment

USCIS Policy Manual, Volume 7, Part A, Chapter 10 provides the following list:

Non-Discretionary Adjustment of Status Provisions
Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA)
Refugee adjustment
Haitian Refugee Immigration Fairness Act of 1998 (HRIFA)
Liberian Refugee Immigration Fairness (LRIF)

## Discretionary Adjustment

According to USCIS Policy Manual, Volume 7, Part A, Chapter 10, the following categories are subject to discretion:

Adjustment of Status Provisions Involving Discretion
Family-based, employment-based, and diversity visa adjustment
Special immigrant-based adjustment (EB-4)
Trafficking victim-based adjustment
Crime victim-based adjustment
Asylee adjustment
Cuban Adjustment Act
Former Soviet Union, Indochinese, or Iranian parolees (Lautenberg parolees)
Diplomats or high-ranking officials unable to return home (Section 13 of the Act of September 11, 1957)

**Note:** The K-1 fiancé(e) adjustment applicants are not mentioned on either list, but it is presumed that they are not covered by the policy memorandum. While it is a nonimmigrant category (i.e., for a temporary purpose) the K-1 visa was designed to allow beneficiaries to come to the United States for the purpose of getting married to their U.S. citizen fiancé(e) and applying for AOS after getting married. Interestingly, the list of applications subject to discretion includes asylees and adjustments under the Cuban Adjustment Act, even though consular visa processing is not available to them.

Individuals in deportation proceedings are not covered by this policy memorandum as they are outside of USCIS jurisdiction.

# Implications on Certain Nonimmigrant Categories

In general, nonimmigrants are expected to depart the United States when the purpose of their admission has been accomplished. The policy memorandum states that the contravention of this expectation and attempt to avoid the ordinary consular immigrant visa process by pursuing AOS, usually accompanied by their violation of immigration laws, are adverse factors that may need to be offset by a showing of unusual or even outstanding equities. However, the policy memorandum appears to make a distinction between dual intent and non-dual intent nonimmigrant categories, acknowledging that dual intent nonimmigrant categories are not covered by such expectations.

## Dual Intent Categories

The doctrine of dual intent allows certain nonimmigrant categories to have both a short-term intent to leave and a long-term intent to remain permanently. The mere desire to obtain permanent residence in the future does not, by itself, automatically disqualify an alien from admission as a nonimmigrant. They are also permitted by law to simultaneously hold a temporary visa and intend to apply for permanent residence. The concept of dual intent is widely recognized for H and L. This means that these categories are expected to be the least affected by this new policy.

While not categorically classified as dual intent categories, E, O, P, and R are given quasi-dual intent treatment.

## Non-Dual Intent Categories

The policy memorandum's directive that nonimmigrants should depart from the United States upon completion of the purpose of admission into the United States appears to be directed at categories considered to be non-dual intent. Thus, these categories present elevated risk of heightened scrutiny under the new policy, requiring a showing of unusual or outstanding equities. The categories B, C, D, F/M, I, J, and TN are considered non-dual intent categories.

**Note:** The Department of State's Foreign Affairs Manual (FAM) provides that an applicant for an E visa need not establish intent to proceed to the United States for a specific period, nor do they need to have a residence in a foreign country which they do not intend to abandon. However, the existence of an immigrant petition filed on behalf of an applicant will trigger a scrutiny to establish the applicant's intent to depart the United States at the end of their authorized stay and not stay in the United States to adjust status or otherwise remain in the United States. (9 FAM 402.9-4(C)).

9 FAM 402.13-5(A) provides that an alien may legitimately come to the United States for a temporary period as an O1 or O3 dependent and, at the same time, lawfully seek to become an LPR of the United States. The same dual intent provision is found at 9 FAM 402.14-11(A)(c) for P applicants.

Both USCIS and DOS recognize dual intent for R visa. USCIS policy indicates that R nonimmigrants must maintain the intent to depart, but an R petition may not be denied based solely on a filed or an approved immigrant petition or permanent labor certification application. 9 FAM 402.16-6(b) states that dual intent is permissible for R visa holders.

## Impact on Pending I-485 Applications

The policy memorandum does not include a grandfathering provision or prospective-only effective date. This is a critical distinction: unlike some prior USCIS policy changes (such as the August 2025 CSPA update), it is not clear whether PM-602-0199 applies retroactively to all I-485 applications not yet finally adjudicated, regardless of when they were filed.

Practical consequences for pending applicants include:

- Increased risk of Requests for Evidence (RFEs) asking applicants to justify why AOS, rather than consular processing, is appropriate.
- Potential for denial of long-pending applications that would previously have been approved.
- Heightened interview scrutiny for applicants called for I-485 interviews.

The policy memorandum reiterates that findings made by USCIS in the AOS process constitute an unreviewable decision or action. There is no appeal for a denied adjustment application. However, a motion to reopen or reconsider under the regulations remains available. If placed in removal proceedings because of the denial of the application, the applicant may also renew the AOS application before an Immigration Judge.

If an AOS application is denied and the applicant is eligible and opts to pursue consular processing, a Form I-824 will be required to be filed with USCIS to request the transfer of the petition to National Visa Center to enable the applicant to apply for a visa abroad.

The denial of an AOS application can result in the applicant being placed in removal proceedings.

**Note:** USCIS is reportedly asking the following questions during adjustment interviews at district offices:

- (1) Why did you apply for adjustment of status instead of pursuing consular visa application?
- (2) What reasons would prevent you from applying for a visa abroad?
- (3) Why did you not leave the United States when your immigrant status and purpose expired?
- (4) Do you have any family still living in your home country?

As of this writing, it is believed that officers have not received further guidance on the implementation of this policy memorandum.

## Consular Processing: Key Considerations

For individuals who may be directed toward consular processing, it is important to understand the risks:

- **Travel and potential visa refusal:** Consular processing requires leaving the United States and attending an interview abroad. If the consular officer denies the immigrant visa, the applicant may be unable to return. Visa refusals are not reviewable – hence, there is no administrative appeals process. Unlike in the case of a denied AOS, I-290B motion to reopen or reconsider does not apply in visa refusals.
- **Bars to reentry:** Individuals who have accrued unlawful presence in the United States may trigger the 3- or 10-year bar upon departure. If there are no other inadmissibility issues, an I-601A waiver may be pursued to eliminate the 3- or 10-year bar. If the applicant is inadmissible based on other grounds, they may need to file I-601 and/or I-212 waivers.
- **Longer processing times:** Consular processing timelines can be significantly longer than domestic AOS processing, particularly in high-demand posts.
- **Country-specific bans/restrictions:** President Trump has released ban orders suspending visa processing for nationals of certain countries. If someone is a national of one of these countries, they may not be able to return for as long as the ban is in place.
- **Aging out derivative children:** If the AOS application is denied, any child relying on the Child Status Protection Act (CSPA) may lose the protection and no longer be eligible to apply for an immigrant visa with their parent.

## Recommended Action Steps for Clients

Step	Action
1	Contact our office immediately if you have a pending I-485 or are planning to file one in the near future.
2	Do not travel internationally on advance parole without first consulting counsel. Travel could complicate your case.
3	Gather evidence of positive discretionary factors: family ties, community involvement, length of lawful residence, and employment history.
4	Ensure your nonimmigrant status remains current and valid. Any status violations will be weighted heavily under the new policy.
5	If you are an employee sponsored by a U.S. employer or you are an employer sponsoring foreign nationals, it is important to maintain a thorough documentation of lawful status maintenance and employment authorization history should USCIS issues a request for evidence (RFE) or notice of intent to deny (NOID).
6	If consular processing is being considered, do not depart the United States without a full inadmissibility and unlawful presence analysis.

## **About This Advisory**

This advisory is intended for general informational purposes only and does not constitute legal advice. The law in this area is rapidly evolving, and the information contained herein reflects developments as of May 27, 2026. Clients should not take or refrain from taking any action based on this advisory without first consulting with counsel about the specific facts of their case.

We are actively monitoring developments related to PM-602-0199 and will issue updates as warranted. Please do not hesitate to contact our office with any questions.