THE LAW OFFICES OF MARY LYN T. SANGA, A PROFESSIONAL CORPORATION

Mary Lyn T. Sanga*
Ilyich Huecas*
Of Counsel:
Napoleon C. Reyes*
*Admitted in California and the Philippines

3600 Wilshire Boulevard, Suite 920
Los Angeles, CA 90010
Tel.: (213) 232-3154 | Fax: (213) 380-9300
Email: info@mtsangalaw.com
Web: www.mtsangalaw.com

FREQUENTLY ASKED QUESTIONS

USCIS Policy Memorandum PM-602-0199

May 28, 2026

This Q&A is intended to help clients understand the practical implications of USCIS Policy Memorandum PM-602-0199, issued on May 21, 2026. It is for general informational purposes only and does not constitute legal advice. Please contact our office to discuss the specific circumstances of your case.

General Overview

Q: What is Policy Memorandum PM-602-0199?

A:

PM-602-0199 is a policy memorandum issued by USCIS on May 21, 2026, 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."

The memo instructs USCIS adjudicating officers to treat adjustment of status (AOS) — the process of obtaining a green card from within the United States — as a discretionary, extraordinary benefit rather than a routine entitlement. 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.

Q: What is "adjustment of status" and how has it traditionally worked?

A:

Adjustment of status (AOS) is the process under INA § 245 that allows an eligible foreign national who is already present in the United States to apply for lawful permanent residence (a green card) without leaving the country. The AOS application is filed on Form I-485 with USCIS.

Traditionally, eligible applicants who maintained valid nonimmigrant status could file Form I-485 and, if they met the statutory and regulatory requirements, expect approval as a matter of course. The new memo changes that expectation by emphasizing officer discretion and application of a higher standard in the exercise of discretion.

Q: What changed?

A:

The memo introduced the following major changes:

1. Consular visa application is now considered the preferred or default process for obtaining a green card. The memo directs officers to view consular processing as the standard path and AOS to be granted only in extraordinary circumstances.
2. AOS is now considered an extraordinary relief, and not a right or entitlement, even if the applicant meets the threshold eligibility requirements. Officers are reminded that even eligible applicants may be denied on discretion.
3. Discretion becomes the central factor in the AOS adjudication. Previously, discretion was a routine final step. Now, discretion becomes the primary question, requiring the adjudicating officers to weigh all relevant factors to determine whether the applicant is suitable for permanent residence and if approval of the AOS application is in the best interest of the United States.
4. The memo imposes a higher bar for approval even when the statutory eligibility is met. The applicant's statutory eligibility is no longer the primary consideration, but it has been reduced to merely one of the positive factors weighing in favor of approval in the officer's exercise of discretion.

Thus, the memo tightens the adjudication process of AOS applications significantly.

Impact on Applicants

Q: Can I still file a new I-485 application?

A:

Yes. The memo does not prohibit AOS filings. The right to file Form I-485 is grounded in statute (INA § 245 (8 USC § 1255)) and regulation (8 CFR Part 245), which a policy memo cannot override.

In issuing this memo, USCIS is directing how USCIS officers adjudicate (approve or deny) I-485 applications. Under the new policy, the filing of an I-485 no longer carries the same expectation of approval that it did before. Applicants should consult with counsel before filing to assess whether AOS remains a viable strategy given their specific circumstances.

Q: Does this policy affect my already-pending I-485 application?

A:

It may affect your pending I-485 application. The memo does not include a grandfathering provision or a prospective-only effective date. Unlike some prior USCIS policy changes that explicitly applied only to applications filed after a certain date, PM-602-0199 contains no such carve-out.

As of this writing, it is believed that USCIS has not issued any guidance on the actual implementation of the heightened discretionary standard. However, USCIS officers are reportedly now 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 still have any family in your home country?
5. How do you contribute to the good order and well-being of the United States?
6. How would consular processing create hardship for you?
7. How are you involved in your community?

Applicants with long-pending cases should be prepared for potential Requests for Evidence (RFEs) or additional scrutiny at interview.

Q: What does "extraordinary circumstances" mean? How will I know if I qualify?

A:

The memo does not define "extraordinary circumstances" or provide a checklist of qualifying situations. Instead, it directs officers to apply a broad, totality-of-the-circumstances analysis on a case-by-case basis, weighing all positive and negative factors in an applicant's history.

This deliberate ambiguity is one of the most significant aspects of the new policy, as it creates genuine uncertainty for applicants who would previously have expected straightforward approvals. The practical meaning of "extraordinary circumstances" will be shaped over time by how officers apply the policy and, potentially, by court decisions.

Q: What factors will officers weigh in my favor?

A:

The memo identifies the following as relevant positive factors:

- Family ties to U.S. citizens or lawful permanent residents
- Length of lawful residence in the United States
- Good moral character
- Compelling humanitarian circumstances
- Community ties and contributions

These are not a definitive list. Officers retain broad discretion to consider any factor they deem relevant. USCIS Policy Manual, Volume 7, Part A, Chapter 10 provides a non-exhaustive list of factors or factual circumstances that officers are directed to consider in exercising discretion with respect to AOS. The policy memorandum PM-602-0188, issued on August 15, 2025, may also provide additional guidance on factors relevant to establishing good moral character.

Q: What factors will count against me?

A:

The memo identifies the following as significant negative factors:

- Immigration violations or prior unlawful presence in the United States
- Fraud or misrepresentation in any immigration filing
- Failure to maintain nonimmigrant status
- Failure to depart the United States as expected at the end of an authorized period of stay
- Conduct after admission that is inconsistent with the terms of the visa

The memo specifically characterizes failure to comply with the conditions of nonimmigrant admission and failure to depart as expected as “highly relevant” negative factors.

Visa-Specific Questions

Q: I am in H-1B or L-1 status. How does this policy affect me?

A:

H-1B and L-1 visa holders are the least affected category under this policy. These visa categories carry “dual intent,” meaning a holder may simultaneously maintain lawful temporary status and intend to apply for permanent residence. The memo acknowledges that adjustment of status is not inconsistent with dual-intent status.

That said, dual-intent status alone does not guarantee approval. Officers must still conduct a discretionary analysis. H-4 and L-2 dependents are similarly positioned but may face additional scrutiny in some cases. Applicants in these categories should maintain clean status records and be prepared to present positive equities.

Q: I am in F-1 student status. Am I at higher risk?

A:

Yes. F-1 is a strictly nonimmigrant, single-intent visa category. The memo’s directive that nonimmigrants “should return to their home country” to apply for a green card is most directly aimed at applicants in categories like F-1, where an intent to immigrate is legally inconsistent with the visa status.

F-1 applicants with pending or planned I-485 applications should seek counsel immediately to assess whether AOS remains viable or whether an alternative strategy is appropriate.

Q: I am on a B-1/B-2 visitor visa. Can I still adjust status?

A:

This is a high-risk situation under the new policy. Visitor visas are nonimmigrant, single-intent categories, and adjustment from B-1/B-2 status has already been viewed with some

skepticism by USCIS in recent years. Under PM-602-0199, the discretionary bar for such applicants is now significantly higher.

Each case depends on its individual facts. An applicant with very strong equities (such as marriage to a U.S. citizen with no status violations) may still be approvable, but this should be assessed with counsel before filing.

Q: What about other nonimmigrant categories?

A:

The categories C, D, I, J, M, and TN do not carry dual intent protection. While they have not been explicitly singled out in the memo, applicants in these categories should expect heightened scrutiny, similar to F-1 and B-1/B-2 applicants. Even if currently in dual intent status, prior single intent status in the applicant's history can be used as an adverse factor. The strength of positive discretionary factors — particularly length of lawful residence, family ties, and employment history — will be critical.

While not categorically classified as dual intent categories, E, O, P, and R categories are given quasi-dual intent treatment and occupy a middle ground. USCIS and the Department of State have long acknowledged, through policy and adjudication practice, that holders of these visa categories may pursue adjustment of status without it automatically invalidating their nonimmigrant status or constituting misrepresentation. Because they lack explicit statutory protection like H and L under INA § 214(b), there is no assurance that their pursuit of AOS will not be treated as evidence of preconceived immigrant intent given the broader discretion granted to the adjudicating officers under the memo.

Procedural Questions

Q: Will my EAD (work permit) be affected?

A:

The policy memo does not automatically revoke approved EADs. If your I-485 remains pending, your EAD remains valid for its authorized period. New EAD applications based on a pending I-485 may still be filed.

However, if the underlying I-485 application is denied, your EAD will be considered revoked at the same time. The memo makes the stakes of an I-485 denial significantly higher than in the past, and it underscores the importance of proactive case preparation.

Q: Can I still travel on Advance Parole?

A:

The memo does not ban advance parole travel or the adjudication of I-131 Advance Parole applications. However, international travel on advance parole carries elevated risk under this policy.

If your I-485 is denied while you are traveling abroad, your advance parole may be revoked, potentially stranding you outside the United States. Applicants who are not in dual-intent visa categories should be especially cautious. Do not travel internationally on advance parole without first consulting counsel.

Q: Should I expect a Request for Evidence (RFE) on my pending case?

A:

It is likely that USCIS will issue RFEs in cases where the officer cannot readily identify extraordinary circumstances warranting in-country adjustment. Applicants should be prepared to submit evidence addressing:

- Why adjustment of status, rather than consular processing, is appropriate in their case
- The strength of their positive equities (family ties, employment, community ties, length of residence)
- Their complete immigration history and status compliance record

Q: What is my recourse if my AOS application is denied?

A:

The memo 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 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. If placed in removal proceedings because of the denial of the application, the applicant may renew the AOS application before an Immigration Judge. The memo does not apply to AOS in immigration court.

Q: What are the risks of consular processing if my AOS case is denied?

A:

Consular processing requires leaving the United States, which carries the following risks:

- Applicants who have accrued unlawful presence in the United States may trigger the 3-year or 10-year bar to reentry upon departure.
- A consular officer may deny the immigrant visa, and the applicant may have no right of appeal.
- Processing times at some consular posts can be significantly longer than domestic AOS timelines.

- Applicants outside the United States cannot obtain advance parole for interim travel.

A full inadmissibility and unlawful presence analysis is essential before any decision to depart the United States.

Legal Challenges and Next Steps

Q: Is this policy likely to be challenged in court?

A:

Legal challenges are widely anticipated. Potential grounds include:

- Retroactivity: Applying a heightened standard to already-filed applications may raise due process and reliance-interest concerns for applicants who filed in good faith under prior policy.
- APA notice-and-comment: A policy change of this scope and consequence may require formal rulemaking under the Administrative Procedure Act, rather than implementation by internal memo.
- Statutory interpretation: INA § 245 grants a filing right to eligible applicants; courts may scrutinize whether a policy memo can effectively curtail that right.

We are closely monitoring litigation developments and will advise clients promptly of any court orders staying or enjoining implementation of this policy.

Q: What should I do right now?

A:

We recommend the following immediate steps:

- Contact our office to discuss the specific impact of this policy on your pending or planned I-485 application.
- Do not travel internationally on advance parole without first consulting counsel.
- Ensure your nonimmigrant status is current and valid. Any lapse in status will be weighted heavily against you.
- Begin gathering documentation of positive equities: family ties, employment history, community involvement, and length of lawful residence.
- If you are considering consular processing as an alternative, do not depart the United States without a full inadmissibility and unlawful presence analysis.