

## USCIS Policy Memo on Adjudication of Adjustment of Status Applications

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On May 21, 2026, the U.S. Citizenship and Immigration Services (USCIS) issued [Policy Memorandum PM-602-0199](#) (Memorandum), reinforcing their stance that the statutory scheme of INA §245 provides that adjustment of status – the process by which foreign nationals can obtain a green card while inside the United States – is a matter of discretion. The Memorandum states that adjustment of status is only meant to be used as an extraordinary form of relief that allows applicants to “bypass the ordinary immigrant visa process” at a U.S. Embassy or Consulate abroad.

While the Memorandum does not announce a new legal standard and does not eliminate the availability of adjustment of status applications, it signals a clear shift in policy, directing officers to apply heightened scrutiny when adjudicating adjustment of status applications.

Key takeaways include:

1. Officers retain broad discretion to deny adjustment of status applications even when an applicant is otherwise eligible.
2. Consular processing of immigrant visas should be the norm. When consular processing is available to an applicant, adjustment of status should only be granted as an extraordinary form of relief in meritorious cases.
3. Officers should consider all relevant positive and negative factors, taking into account the totality of the circumstances, to determine whether approval of the applicant’s adjustment of status application is in the best interest of the United States.
4. Negative factors that are “highly relevant” to the discretionary analysis include:
  - Prior immigration violations
  - Instances of fraud or false testimony in dealings with USCIS or any government agency
  - Whether an application for admission or parole violated the laws, regulations, and policies at the time

- Conduct after admission as a nonimmigrant or parolee that is inconsistent with the applicant's nonimmigrant status or parole
  - Applicant's failure to maintain lawful nonimmigrant or parole status
  - Applicant's failure to comply with all conditions of their nonimmigrant status, including the failure to depart
5. Positive factors that support favorable exercise of discretion include:
- Holding dual intent immigration status such as H or L which allows for an intent to permanently remain in the United States;
  - Steady employment history, payment of taxes, and positive economic contributions to the United States;
  - S. employer's reliance on the special skills, education, and experience of the foreign national;
  - Evidence of good moral character;
  - Community involvement; and
  - Long term residence and familial ties to U.S. citizens or permanent residents.
6. When denying an application to adjust status based on an unfavorable exercise of discretion, the denial notice must include an analysis containing the positive and negative factors considered, including an explanation of why the negative factors outweigh the positive.

How stringently the Memorandum will be enforced by USCIS is unknown. Additional clarification and/or guidance from USCIS regarding implementation is anticipated, as is litigation challenging the Memorandum. As the parameters and enforcement of the Memorandum are ironed out, applicants with pending or prospective adjustment of status applications or interviews should:

- Evaluate your immigration history carefully and identify any lapses in status, unauthorized employment, or misrepresentations so that counsel can strategize on how best to address any potential "negative factors" prior to filing.
- Be prepared to affirmatively demonstrate positive factors to argue that a favorable exercise of discretion is warranted.
- Consider consular processing as an alternative.

Vorys attorneys will continue to monitor the developments surrounding implementation of the Memorandum and will provide updates as new information becomes available.