Global Immigration alert

May 2026

United States

USCIS announces new policy designed to limit Adjustment of Status

Executive summary

On 22 May 2026, US Citizenship and Immigration Services (USCIS) announced the release of a new Policy Memorandum outlining the agency's intent to approve adjustment of status (AOS) applications "only in extraordinary circumstances." This change would represent a significant departure from longstanding practice as the agency currently approves several hundred thousand of these applications each fiscal year.

Background and analysis

Foreign nationals seeking permanent residence in the United States may apply for a green card through one of two methods:

- Attending an immigrant visa interview at a US consular post abroad; or
- Filing a Form I-485, Application to Register Permanent or Adjust Status, if they are physically present in the US and meet certain other eligibility requirements.

Many foreign nationals already present in the United States often prefer to file to adjust status rather than consular processing from abroad, to avoid potential disruptions caused by international travel and the uncertainty of when they may be able to return and resume employment, school, and other ongoing activities. Further, filing an I-485 allows for applying for an unrestricted work permit (Employment Authorization Document (EAD)), which applicants frequently require in order to maintain existing work authorization in the US, while the adjustment application is pending.

The new Policy Memorandum (PM-602-0199) reminds officers adjudicating AOS applications that this benefit is "a matter of discretion and administrative grace not designed to supersede the regular consular processing of immigrant visas." Consequently, the PM emphasizes that officers:

- Are required to consider "all relevant factors and information" in exercising discretion to approve or deny an I-485 application, including violations of immigration laws;
- Must determine whether the AOS applicant is suitable for permanent residence and if approval of the application is in the best interests of the United States; and
- Weigh all positive and negative factors, including, but not limited to "family ties, immigration status and history, the applicant's moral character, and any other relevant factor" that has bearing on whether a favorable grant of discretion is warranted.

The PM also emphasizes that a foreign national's failure to depart the US as expected at the end of their temporary period of parole or admission in nonimmigrant status ought to be treated as an adverse factor; the underlying reasoning being that such failure to depart contravenes congressional intent that such individuals should generally seek consular processing instead of AOS. Similarly, a foreign national's failure to maintain status, working without authorization, engaging in activities that are inconsistent with their visa status or prior representations made to governmental authorities when applying for a visa or admission, or having their status expire while an I-485 application is pending, are considered to be negative factors.

Notably, while the PM acknowledges that there are "dual intent" nonimmigrant visa categories, including H-1B, L-1,

and their derivative dependents, that allow for simultaneously holding nonimmigrant status and pursuing permanent residence, it notes that maintaining such a status is "not sufficient, on its own, to warrant a favorable exercise of discretion." It remains to be seen how this statement will be interpreted and implemented by officers; however, it does not appear that USCIS is extending a categorial exemption to this policy to this nonimmigrant population at present.

When issuing a denial based on an unfavorable exercise of discretion, USCIS officers will be required to provide an analysis of the positive and negative factors considered, along with an explanation of why the negative factors outweigh the positive.

What this means

The PM indicates that additional guidance may be forthcoming to aid officers in identifying AOS applications for certain categories or discrete populations that may or may not warrant a favorable exercise of discretion. Until USCIS provides additional clarification, applicants with pending I-485 applications ought to prepare for Requests for Evidence relating to the factors outlined in the PM and prepare documentation demonstrating that a favorable exercise of discretion is warranted. Further, given the uncertainty of how officers may apply this guidance, AOS applicants ought to exercise caution when deciding to travel on an advance parole travel document tied to the I-485. Foreign nationals in the US who are considering adjusting status but have yet to file an I-485 application should consult counsel to determine if pursuing immigrant visa processing is a viable alternative.

Employers are encouraged to review their employee populations to identify AOS applicants with pending I-485s who are no longer maintaining underlying nonimmigrant visa status, which may be considered a negative factor adverse to a favorable grant of discretion. Employees currently relying solely on an AOS-based EAD for work authorization may be subject to a change in work authorization if USCIS finds a favorable exercise of discretion is not warranted.

This issue is likely to remain fluid as additional clarifications or other developments unfold. We will continue to monitor and share future developments. For additional information, or if you wish to discuss this further, please contact your EY Law LLP professional or Mehlman Jacobs LLP professional.

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