USCIS Policy on Adjustment of Status: Practical and Strategic Considerations

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On May 21, 2026, U.S. Citizenship and Immigration Services (USCIS) issued an instructive policy memorandum ("Policy Memo") reaffirming that adjustment of status is a discretionary benefit. Relying on federal court language, the Policy Memo describes adjustment as an "extraordinary" form of relief that allows applicants to obtain lawful permanent residence without departing the United States for consular processing. *See* USCIS Policy Memorandum 602□0199, **Adjustment of Status Is a Matter of Discretion and Administrative Grace** (May 21, 2026).

Background

U.S. immigration law has long treated consular processing — applying for an immigrant visa at a U.S. embassy or consulate abroad — as the default path to permanent residence. This framework is reflected in the Immigration and Nationality Act's (INA) visa issuance provisions and implementing regulations governing consular adjudication (e.g., INA §§ 221–222; 22 C.F.R. Part 42). By contrast, adjustment of status is a limited statutory exception under INA § 245 (8 U.S.C. § 1255) and 8 C.F.R. Part 245, allowing certain applicants already in the United States to obtain permanent residence without departing.

However, adjustment of status has long been a routine part of U.S. immigration practice. Under this new guidance, USCIS has asserted that the agency will limit adjustment of status to "extraordinary circumstances." That characterization does not appear in the memorandum itself. Rather, the Policy Memo reiterates long-standing legal principles: adjustment is discretionary, applicants bear the burden of proof, and approval depends on demonstrating that relief is warranted in meritorious cases.

USCIS statements suggesting that applicants must pursue consular processing instead of applying for an adjustment of status in the

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United States should be understood as policy messaging rather than binding adjudicative standards. The Policy Memo itself does not impose a categorical restriction on adjustment of status within the U.S., nor does it revoke or supersede the statutory right to file for adjustment of status for eligible applicants.

We read the Policy Memo less as a legal change and more as a directive regarding how adjudicators are expected to exercise discretion. USCIS emphasizes that officers must evaluate the totality of the circumstances and weigh both favorable and adverse factors, including: compliance with prior immigration status, conduct in the United States, and whether the applicant's course of action aligns with the broader statutory framework governing immigrant visa processing. This framing is consistent with prior USCIS memoranda issued in 2025 that similarly focused on reinforcing discretionary analysis across adjudications.

Shift in Adjudication Process

While the legal framework is unchanged, the realistic effect is there likely will be a shift in adjudicatory posture. We anticipate USCIS officers will apply more rigorous scrutiny to adjustment applications, particularly with respect to immigration history and status maintenance. Adjudicating officers are instructed to apply heightened scrutiny to an applicant's decision to seek adjustment of status within the United States rather than consular processing abroad. They must closely examine any prior lapses in status, unauthorized employment, untimely filings, or material inaccuracies that previously may have been disregarded.

Moreover, even beneficiaries in traditionally dual-intent classifications, such as H-1B and L-1, should anticipate more rigorous review in lieu of historically streamlined adjudications. Applicants in non-dual-intent categories, including F-1 OPT/STEM OPT, TN, O-1, E-2, and B-1 classifications, may face an increased risk profile under this framework. The Policy Memo's repeated emphasis that individuals should utilize consular processing may lead adjudicators to view certain cases, especially those involving status violations or prolonged reliance on adjustment after nonimmigrant admission, as presenting negative discretionary factors.

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In practical terms, this may result in more intensive review during the adjudication process. Applicants and petitioners should be prepared for an increase in Requests for Evidence (RFEs) and Notices of Intent to Deny (NOIDs), as well as more detailed written decisions that explicitly weigh discretionary considerations. Because these determinations are inherently fact-specific, outcomes may become somewhat less predictable, particularly in cases that include even modest adverse factors. However, we emphasize that the Policy Memo specifically states that a denial without negative factors would be "an inappropriate use of discretion."

Weighing Important Factors

Importantly, adjustment of status remains a viable and appropriate option for many applicants, including in both employment-based and family-based contexts. The Policy Memo does not eliminate or suspend this pathway. However, it does reinforce that approval is not assured and that discretionary considerations may play a more visible role in the adjudication process. Where an adjustment application is denied, applicants may need to complete the process through consular processing abroad. That process, in turn, can introduce additional time, cost, and potential admissibility issues depending on the individual's circumstances.

The Policy Memo also underscores important considerations for individuals currently relying on a pending I-485 application to remain in the United States. While a pending application generally provides a "period of authorized stay," it does not confer lawful nonimmigrant status. If the application is denied, that period of authorized stay ends upon denial. In turn, individuals who have not maintained or extended their underlying visa status may need to depart the United States promptly to avoid accruing unlawful presence. Given the potential for heightened discretionary review, this issue takes on increased importance in case strategy.

Key Considerations

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- Adjustment of status remains available, but discretion may be applied more actively in adjudications.
- Applicants may see increased scrutiny of immigration history, including status maintenance and prior violations.
- A rise in RFEs and NOIDs is likely as officers document discretionary decisions more fully.
- Denials could result in the need to pursue consular processing abroad to complete the immigrant visa process.
- For applicants with a pending Form I‑485 filed before the new directive, USCIS is expected to continue approving cases for those in H‑1B or L‑1 dual‑intent status. Others should be prepared to provide strong documentation supporting a favorable exercise of discretion.
- A pending I‑485 application provides authorized stay but not lawful status, and that protection ends if the application is denied.

Practical Recommendations

- Where possible, maintain or extend underlying nonimmigrant status, particularly in dual‑intent categories such as H‑1B or L‑1.
- Prepare filings with greater emphasis on discretionary factors, including evidence of compliance, consistency of intent, and positive equities.
- Anticipate and proactively address any potential adverse factors at the time of filing rather than waiting for follow-up requests.
- Reassess green card strategies for employees with complex immigration histories.
- Consider contingency planning for consular processing, particularly in cases where discretionary concerns may arise.

Key Takeaway

This Policy Memo is best understood as a signal that USCIS intends to apply existing discretionary standards more deliberately and transparently, rather than as a fundamental shift in eligibility for

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adjustment of status. While the pathway remains intact, applicants should expect more careful review and should plan accordingly.

We will continue to monitor how USCIS implements this Policy Memo and provide updates as adjudication trends become clearer. For questions or case-specific advice, please contact the Immigration Team at FBT Gibbons.

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