

USCIS Policy Update: New Adjustment of Status Guidance Impacting Employers and Individuals

Policy Now Favors Consular Processing of Green Card Approval Process

Insights for Employers Alert | 6 min read

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Summary

On May 21, 2026, US Citizenship and Immigration Services (USCIS) issued a Policy Memorandum (**PM-602-0199**) targeting the Adjustment of Status process—the mechanism by which individuals physically present in the United States often apply for Lawful Permanent Residence from within the country.

The Administration has framed this guidance as an enforcement directive to reduce in-country filings and push applicants to pursue **Consular Processing** at US Embassies and Consulates abroad.

While initial press releases and statements suggested a near-categorical ban on filing for adjustment of status from within the United States, the text of the memorandum itself and subsequent clarifying announcements have been much less definitive, **and the actual statute and regulations allowing adjustment of status have not changed.**

Section 245 of the Immigration and Nationality Act (INA) remains intact. Instead, the government is shifting how it evaluates cases by dramatically heightening the standard for “discretionary approval.”

What Does the Memorandum Actually Change?

Historically, if an applicant met all statutory requirements for Lawful Permanent Residence (e.g., a valid marriage or an approved employment-based I-140 petition) and had no disqualifying criminal or immigration violations, approval of the Form I-485 was largely a procedural matter.

Under **PM-602-0199**, USCIS instructs its officers to treat Adjustment of Status as an “**extraordinary form of relief and administrative grace**” rather than a routine entitlement. Adjudicators must now heavily weigh positive versus negative discretionary factors to decide if an applicant “deserves” to bypass what the memorandum calls “regular consular processing of immigrant visas.”

Stricter Scrutiny for Higher-Risk Categories

The policy creates varying degrees of risk depending on the individual’s current underlying non-immigrant status:

- **High Risk (Single-Intent Visas):** Individuals holding **F-1 (Student)**, **J-1 (Exchange Visitor)**, or **B-1/B-2 (Tourist)** statuses will face intense scrutiny. Adjudicators are directed to investigate “non-immigrant intent” to determine if the applicant intended to circumvent consular processing by using a temporary visa to enter and quickly adjust status.
- **Moderate to Lower Risk (Dual-Intent Visas):** Individuals on **H-1B** and **L-1** visas are structurally safer because immigration law explicitly permits them to have “dual intent” (the intent to work temporarily while simultaneously pursuing permanent residence). However, the memo notes that maintaining employment-based status is a positive factor but is *not completely dispositive* of approval.

Conflicting Statements from the Administration

Following the memo’s release, a sequence of conflicting agency statements on May 22, 2026, created significant confusion:

- **The Morning Press Release:** A USCIS spokesperson announced that temporary visa holders *must* return to their home countries to apply for Green Cards except in “extraordinary circumstances.”
- **The Afternoon “Walkback”:** Following immediate pushback from the business and legal communities, the agency clarified via email that the policy is still being operationalized. It noted that applicants whose cases provide a clear “**economic benefit**” or are in the “**national interest**” will likely be allowed to continue adjusting status domestically, while others may be directed abroad based on individual circumstances.
- **Crucial Distinction:** Press releases and media statements do not dictate the adjudication of applications for adjustment of status. At this stage, pending Forms I-485 are **not** automatically rejected or denied.

The Pivot to “Positive Equities”

Even before the issuance of this policy memorandum, we were already seeing USCIS issue specialized Requests for Evidence (RFEs), forcing applicants to affirmatively prove why they deserve a favorable exercise of discretion to adjust status within the United States.

To withstand this heightened review, filings must now proactively feature “**Positive Equities.**” The following table outlines what USCIS has stated they are looking for under this new totality-of-the-circumstances standard:

Issue	Positive Factors	Negative Factors
<i>Eligibility Requirements</i>	<ul style="list-style-type: none"> • Meeting the eligibility requirements for adjustment of status. 	<ul style="list-style-type: none"> • Not meeting the eligibility requirements may still be considered as part of a discretionary analysis.
<i>Family and Community Ties</i>	<ul style="list-style-type: none"> • Family ties to the United States and the closeness of the underlying relationships. • Hardship to the applicant or close relatives if the adjustment application is denied. • 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. 	<ul style="list-style-type: none"> • Absence of close family, community, and residence ties.
<i>Immigration Status and History</i>	<ul style="list-style-type: none"> • Compliance with immigration laws and the conditions of any immigration status held. • 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. 	<ul style="list-style-type: none"> • Violations of immigration laws and the conditions of any immigration status held. • Current or previous instances of fraud or false testimony in dealings with USCIS or any government agency.
<i>Business, Employment, and Skills</i>	<ul style="list-style-type: none"> • Property, investment, or business ties in the United States. • Employment history, including type, length, and stability of the employment. • Education, specialized skills, and training obtained from an educational institution in the United States are relevant to current or prospective employment and 	<ul style="list-style-type: none"> • History of unemployment or underemployment. • Unauthorized employment in the United States. • 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.

	earning potential in the United States.	
<i>Community Standing and Moral Character</i>	<ul style="list-style-type: none"> • Respect for law and order, and good moral character (in the United States and abroad), demonstrated by a lack of a criminal record and evidence of good standing in the community. • Honorable service in the U.S. armed forces or other evidence of value and service to the community. • Compliance with tax laws. • Current or past cooperation with law enforcement authorities. • Demonstration of reformed or rehabilitated criminal conduct, where applicable. • Community service beyond any imposed by the courts. 	<ul style="list-style-type: none"> • Moral depravity or criminal tendencies (in the United States and abroad) are reflected by a single serious crime or an active or long criminal record, including the nature, seriousness, and recent occurrence of criminal violations. • Lack of reformation of character or rehabilitation. • 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.
<i>Other</i>	<ul style="list-style-type: none"> • Absence of significant undesirable or negative factors and other indicators of good moral character in the United States and abroad. 	<ul style="list-style-type: none"> • Other indicators adversely reflect the applicant's character and undesirability as an LPR of this country.

Strategic Guidance and Next Steps

1. Individuals Should NOT Automatically Withdraw Pending I-485 Applications

Withdrawing a pending Adjustment of Status application out of panic can lead to severe operational and legal vulnerabilities. A pending I-485 grants individuals a “period of authorized stay.”

If withdrawn, individuals will not lose their valid nonimmigrant status, but if they do not have an underlying status, they would no longer be in a “period of stay authorized by (DHS)” and would be abandoning any Employment Authorization Documents (EAD) and Advance Parole travel authorizations.

2. Consular Processing Carries Substantial Structural Risks

While the Administration is encouraging applicants to utilize US Consulates abroad, that does not mean applicants must immediately depart from the United States.

An individual seeking an immigrant visa can remain in the United States in a valid non-immigrant status until an appointment is scheduled at a US Consulate, and then depart the United States to complete the permanent residence process. However, this can introduce the following risks:

- **The Consular Non-Reviewability Doctrine:** Decisions made by consular officers overseas are largely immune from judicial review. If a consular officer denies a request for an immigrant visa, an individual may have virtually no legal recourse or right to appeal in a US court.
- **Involuntary Stranding:** If an individual leaves the US and a new travel ban, executive order, or administrative delay pauses consular operations, they may be blocked from returning to their job, business, and family for months or years.
- **Unlawful Presence Bars:** If an individual has ever had an undocumented gap or status violation in the United States, departing the country could automatically trigger a statutory three-year or 10-year bar to re-entry.

3. Maintain Dual-Intent Status Continuously

For employment-based applicants, it is now more important than ever to **maintain their underlying H-1B, L-1, or other nonimmigrant status even *after* receiving an EAD and/or Advance Parole.**

If USCIS denies an I-485 under this new discretionary standard, having a valid, active nonimmigrant status functions as a safety net, preventing individuals from falling out of status and facing removal proceedings.

What the Future Holds

Hinshaw's Immigration group is actively auditing all pending and upcoming filings to build robust "discretionary equity portfolios" for our clients. If your case is currently pending or you are preparing for a forthcoming filing window, we will contact you directly to discuss tailored evidentiary additions.

Questions?

If you would like to speak with an experienced immigration professional about this new policy, we are here to help.

[Contact our Immigration Team](#)

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