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Eligibility Is No Longer Enough: USCIS Issues Sweeping New Adjustment of Status Policy

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On May 21, 2026, U.S. Citizenship and Immigration Services (USCIS) published Policy Memorandum PM-602-0199, 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" (Memorandum) effective immediately. The practical effect is a fundamental shift in how adjustment of status applications will be evaluated — one of the most significant changes to the I-485 process in recent memory.

Although framed as a reminder of "consistent and longstanding" agency policy, the Memorandum carries significant practical implications for employers, foreign nationals, and practitioners navigating the I-485 adjustment of status process. The Memorandum instructs officers that adjustment under INA § 245 constitutes "extraordinary" relief, and that applicants bear the burden of persuading USCIS to exercise discretion in their favor.

Key Takeaways

1. **Eligibility is no longer enough**. Meeting all legal requirements does not guarantee approval. USCIS officers must now independently determine whether an applicant *deserves* a green card — a second, separate hurdle.
2. **Your immigration history will be scrutinized**. Status violations, unauthorized employment, gaps in authorized stay, and failures to depart are now explicit adverse factors that can result in denial.
3. **H-1B and L-1 holders are not protected**. Dual-intent status does not shield applicants from heightened discretionary review.
4. **Denials may be hard to challenge**. USCIS is asserting these decisions are largely insulated from judicial review.
5. **Act now**. Consult counsel before filing. Employers should audit sponsored populations for compliance vulnerabilities immediately.

What Changed and Why It Matters

1. Heightened Discretionary Standard. Meeting all statutory eligibility requirements does not guarantee approval. Officers are required independently to assess whether the applicant warrants a "favorable exercise of discretion," a second gate, separate from threshold eligibility, that every applicant must clear.

2. Consular Processing Framed as the Expected Norm. Where consular processing is available, officers must weigh both the applicant's decision to seek adjustment, rather than depart, and consular process as part of the totality-of-circumstances discretionary analysis. The clear implication is that merely being eligible to adjust status domestically will not, by itself, support a favorable determination.

3. Status Violations and Failures to Depart as Adverse Factors. The Memorandum identifies the following as "highly relevant" negative factors:

- Failure to comply with the conditions of nonimmigrant admission or parole.
- Failure to depart the United States when expected, particularly where the applicant could have achieved permanent residence through consular processing.
- Unauthorized employment or other violations of immigration law.
- Fraud or false testimony in dealings with USCIS or any government agency.
- Post-admission conduct inconsistent with the purpose of the applicant's nonimmigrant status or with representations made to consular or DHS officers.

Notably, the Memorandum states that the absence of adverse factors alone does not demonstrate the "unusual or even outstanding equities" required to offset negatives. And yet, for many years, under INA § 245(k) and other provisions, applicants were granted at least some flexibility for prior violations.

4. Dual-Intent Categories: Not Penalized, but Not Sufficient. The Memorandum acknowledges that applying for adjustment while maintaining dual-intent nonimmigrant status (e.g., H-1B or L-1) is not treated as inconsistent conduct. It explicitly states that "maintaining lawful status in a dual intent nonimmigrant category is not sufficient, on its own, to warrant a favorable exercise of discretion."

This is a significant distinction—H-1B and L-1 holders are not shielded from the heightened discretionary analysis merely by virtue of their dual-intent classification. Like everyone else, they will have to produce substantial evidence to support their eligibility under the totality of the circumstances.

5. Judicial Review Limitations. The Memorandum asserts that USCIS discretionary findings in the adjustment process constitute unreviewable decisions under INA § 242(a)(2)(B), citing *Patel v. Garland*, 596 U.S. 328 (2022). We predict the Memorandum will be subject to judicial challenge, but in the meantime employers and foreign nationals must follow all new processes.

6. Forthcoming Category-Specific Guidance. USCIS states it will "carefully review the various pathways to discretionary adjustment of status as well as discrete populations of aliens" and may issue additional guidance targeting specific adjustment categories. We anticipate additional

restrictive guidance will be issued by USCIS.

Practical Implications

Employers and foreign national employees should:

- **Document equities affirmatively.** I-485 filings should include robust evidence of positive factors (family ties, property ownership, tax compliance, community engagement, and employment history) rather than relying on eligibility alone.
- **Maintain status rigorously.** Any gap in status, unauthorized employment, or failure to comply with admission conditions will be treated as an adverse factor. Employers should audit sponsored populations for compliance vulnerabilities.
- **Evaluate consular processing.** Where an applicant has status-related vulnerabilities, consular processing may reduce exposure to a discretionary denial under this framework.
- **Anticipate longer timelines.** Heightened scrutiny will likely produce more Requests for Evidence and Notices of Intent to Deny.

This Memorandum represents a clear policy signal that USCIS intends to exercise its discretionary authority over adjustment of status more aggressively. The practical effect will be an increase in discretionary denials and heightened evidentiary expectations. Employers and individuals with pending or anticipated I-485 applications should consult with counsel to evaluate their circumstances and strengthen their filings.
