USCIS ADJUSTMENT OF STATUS MEMO

ILRC Quick Take and Tips

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This practice alert is intended to help advocates and practitioners grapple with the latest policy memo on discretion and adjustment of status. Many announcements and summaries are circulating, and we stand with all of you in condemning the administration's ongoing attack on immigrant communities. The memo is yet another plank of this administration's racist, xenophobic agenda, designed to separate families and shut down immigration. While much remains uncertain about how this guidance will be implemented, we offer our initial analysis and reports from the field to support all of you who must zealously advocate for your clients and continue to fight against this latest attack.

I. What Happened

On May 21, 2026, USCIS issued a new policy memo on adjustment of status and discretion.[1] The guidance is limited to addressing adjustment of status under section 245 of the Immigration and Nationality Act (INA), a process available to applicants who meet certain criteria to go through the green card process within the United States (instead of a visa process at a consulate or embassy abroad). The new policy is a direct attack against those who have overstayed a visa or entered on parole, inviting officers to consider any overstay of temporary status as a negative factor. The announcement accompanying the new policy memo suggests consular processing should be the default, leaving adjustment of status for only "extraordinary" circumstances.[2]

A. The announcement versus the memo

It is important to separate out the language of the announcement from the policy memo itself. The *announcement* of the policy memo contains brazen, inflammatory statements and declares: "from now on, [a noncitizen] who is in the U.S. temporarily and wants a Green Card must return to their home country to apply, except in extraordinary circumstances." The announcement claims this matches the intent of the law and mischaracterizes the adjustment

[1] USCIS, *Policy Memorandum: Adjustment of Status is a Matter of Discretion …* (May 21, 2026) [hereinafter USCIS AOS Memo], https://www.uscis.gov/sites/default/files/document/memos/PM-602-0199-AdjustmentOfStatusAndDiscretion-20260521.pdf.
[2] USCIS, "U.S. Citizenship and Immigration Services Will Grant 'Adjustment of Status' Only in Extraordinary Circumstances," (May 22, 2026) [hereinafter USCIS AOS Announcement], https://www.uscis.gov/newsroom/news-releases/us-citizenship-and-immigration-services-will-grant-adjustment-of-status-only-in-extraordinary.

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of status process as a “loophole.” USCIS falsely asserts that the guidance marks a “return” to the original intent behind adjustment of status.

The actual policy memorandum noticeably relies on cases and policy that interpret the *current* state of the law on discretion and adjustment. While the policy memo distorts the law and cherry picks quotes from those cases to form a new interpretation, the memo itself does not announce a change in law nor does it say that everyone must leave to consular process. Advocates should focus on the policy memo itself to prepare adjustment applicants for interview and advise potential adjustment applicants.

B. This memo only applies to 245(a) adjustment of status

This memo only addresses adjustment of status under INA § 245(a), the relevant legal authority cited for this memo. Adjustment of status under INA § 245(i) as well as special immigrant juvenile (SIJ), U, T, and other special adjustments under INA § 245 do not fall under the authority of this memo, and advocates must hold that line. In addition to stating 245(a) as the only authority for the memo, the guidance targets those that might have a path to consular processing; humanitarian statuses such as SIJ, T, and U do not have direct consular processing provisions. Nor should this memo affect asylee and refugee adjustments, whose statutory authority is in different sections of the INA.

In particular, this memo seems to be focusing on those who meet the threshold requirement to adjust under INA § 245(a), having been inspected and admitted or paroled, but whose visa or parole has since expired; the memo implies these adjustment-eligible applicants need to show more proof of positive factors to warrant a favorable exercise of discretion and offset these facts.

II. Breaking Down the Memo

The memo purports to “remind” officers and the public that adjustment of status under INA § 245(a) is discretionary. The memo then lays out some general principles of the discretionary assessment. The guidance confirms that discretionary determinations must be assessed case-by-case, that all factors must be weighed in a totality of circumstances test, and that officers must state specific reasons for any denial on discretion. Yet, the memo also invites officers to consider any overstay of temporary status as a significant negative factor.

While acknowledging that the statute makes adjustment available to certain eligible immigrants that overstay status, the memo asserts their “attempt to avoid the ordinary consular immigrant visa process, usually accompanied by their violation of our immigration laws, are adverse factors that the [noncitizens] may need ‘to offset … by a showing of unusual or even outstanding equities.’”[3] In reaching this conclusion, the memo misquotes precedential case law and contravenes congressional intent. Yet the concern remains that this will result in unwarranted denials of adjustment of status.

[3] USCIS AOS Memo at 4–5.

A. Is this new law?

USCIS can't have it both ways. The memo attempts to cast the new guidance as a "reminder" of the extraordinary nature of adjustment and discretionary standards, yet should the policy result in denying statutorily eligible applicants based on overstay, it would mark a drastic departure from congressional intent and current legal standards on adjustment and discretion. The announcement accompanying the guidance clearly marks this as a departure from the current standard, stating "from now on, [a noncitizen] who is in the U.S. temporarily and wants a Green Card must return to their home country to apply, except in extraordinary circumstances."[4]

This leaves us with two options: 1) the guidance is noise—officers must continue to apply current standards on adjustment or 2) should the agency attempt to enforce this as a new, heightened standard, it would be illegal. Such an interpretation contravenes congressional intent, ignores the plain language of the statute, goes against the holdings in the very case law cited in the memo, would mark an arbitrary change in standard without proper notice, and would be impermissibly retroactive should they attempt to apply it to those who already applied and have pending cases. According to the New York Times, the agency has walked back from their initial stance.[5] On May 29, a DHS spokesperson indicated it was not a major change in policy and that they were just "reminding" officers to exercise their discretion,[6] likely trying to minimize in face of widespread incredulity and uproar over this policy announcement.

B. Discretion standards from case law

The memo depicts adjustment as an extraordinary relief and cites to cases that describe a grant of adjustment of status "as a matter of grace." These phrases exist throughout current case law as a description of any relief that includes a discretionary component. The case law on adjustment further holds that in most cases for adjustment, a favorable exercise of discretion is warranted. This principle comes from *Matter of Blas,* 15 I&N Dec. 626 (1974), which is cited extensively in the memo.

- The new guidance quotes *Blas* as saying "where adverse factors are present in a given application, it may be necessary for the applicant to offset these by a showing of unusual or even outstanding equities." Yet the very next sentence in *Blas* is:

  Generally, favorable factors such as family ties, hardship, length of residence in the United States, etc., will be considered as countervailing factors meriting favorable exercise of administrative discretion. In the absence of adverse factors, adjustment will ordinarily be granted, still as a matter of discretion.

  15 I&N Dec. at 628-629 (quoting *Matter of Arai*, 13 I&N Dec. 494 (BIA 1970)).

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[4] USCIS AOS Announcement.

[5] Aleaziz, Hamed, Madeleine Ngo & Lydia DePillis, Actually, Most Immigrants Won't Need to Leave U.S. to Get Green Cards, D.H.S. Says, THE NEW YORK TIMES (May 29, 2026), https://www.nytimes.com/2026/05/29/us/politics/green-cards-dhs.html.

[6] *Id.*

To the extent the memo considers overstaying a visa or failure to pursue consular processing as a factor weighing against a grant of adjustment of status, it is inconsistent with congressional intent and the current standard.

- Almost all applications for § 245(a) adjustment involve a change in intent after entry. Adjustment of status was specifically designed to create a pathway for those that become eligible through work or family ties to remain in the United States after entry. Congress created adjustment of status to promote efficiency and family unity, allowing those that meet the requirements to remain in the United States while pursuing their green card. To hold an overstay or change in intent as an extreme negative factor would undercut the entire statutory framework for adjustment. (The guidance also agrees: "With a limited number of exceptions for specific categories of [noncitizens], most [noncitizens] who seek to adjust status under section 245 of the INA come from two distinct groups: those inspected and admitted, and those inspected and paroled under section 212(d)(5)(A) of the INA."[7])
- The statute specifically exempts immediate relatives from the requirements of maintaining lawful status prior to filing an application for adjustment of status. See INA § 245(c). To weigh an overstay as a super negative factor would negate this adjustment pathway and thwart the will of Congress.
- The new negative factors USCIS is attempting to create are not supported by case law. Indeed, the guidance highlights a failure to depart as negative where "the failure is connected to the [noncitizen]'s intention to reside permanently in the United States and the [noncitizen] could have achieved that goal through the normal immigrant visa process."[8] This is more appropriately characterized as a misrepresentation or fraud at entry, leading to a potential ground of inadmissibility. A person that falls within that ground of inadmissibility would require a waiver to adjust status or consular process, rather than have the entire process foreclosed to them. The guidance cites to case law describing waiver standards in its analysis. We should remind USCIS that a misrepresentation of intent at time of admission is properly assessed under the grounds of inadmissibility and the balance of equities described is the standard for assessing a grant of a waiver, should inadmissibility apply.

While this memo reflects this administration's larger agenda of trying to discourage immigrants from availing themselves of legal processes for which they are eligible and weaponizing discretion as we have seen in other contexts, nothing cited in this memo takes away from the legal principles under which INA § 245(a) adjustment is currently decided. The memo references its own current guidance on adjustment of status in the USCIS Policy Manual, which was not altered by this policy memo.[9]

[7] USCIS AOS Memo at 4.
[8] USCIS AOS Memo at 5.
[9] *Id.*

C. Congress intended for INA 245 adjustment of status to promote family unity, not tear families apart

The memo purports to "remind" USCIS officers and the public that adjustment of status was never intended to be anything but an "extraordinary" form of relief. In support, the memo disingenuously claims that this was Congress' intent when they added section 245 on adjustment of status to the INA.

In fact, as is recounted in the current USCIS Policy Manual, although over 100 years ago the Immigration Act of 1924 required all LPR applicants to apply for immigrant visas abroad, by 1935 "immigration authorities had developed an administrative process of 'pre-examination'" for noncitizens who were already in the United States to obtain LPR status "more quickly and easily."[10] Subsequently, "[i]n 1952, Congress made the pre-examination process unnecessary by creating INA 245 …"[11] In doing so, "Congress indicated that adjustment should be used for purposes of family unity or otherwise be in the public interest."[12] The adjustment process was created to promote administrative efficiency and keep families together.

In addition, the plain language of the statute belies the memo's assertion that adjustment of status was never intended to be widely used and in particular by those who overstayed a visa or parole grant: INA 245(a) and 245(c) create statutory bars to adjustment for most that have entered without inspection as well as those that have not maintained lawful status, while simultaneous explicitly *exempting* certain classes of immigrants from these bars. To ensure family unity, immediate relatives of U.S. citizens are explicitly exempt from the requirement to maintain lawful status since entry.[13]

III. Advising Clients

A. Advising clients who already have pending adjustment applications

There is no publicly available information on how USCIS is acting on this guidance; various field offices and officers are responding differently. Advocates are reporting that field officers are asking applicants questions at their interviews about why they remained in the United States after their visa or parole expired, when they made that decision, and why they are not consular processing instead, including requiring a sworn statement on these questions in some instances. Some have seen RFEs. For current cases:

- Frame the case law and adjustment discretion standard for the officer. Cite to USCIS' own guidance in the Policy Manual, *Matter of Blas*, *Matter of Arai*, and other case law.

[10] 7 USCIS Policy Manual (USCIS-PM) B.1(B).
[11] *Id.*
[12] *Id.*
[13] *See* INA §245(c). VAWA self-petitioners are likewise exempt from this requirement, in addition to the requirement that they were "inspected and admitted or paroled." *See* INA § 245(a). Special adjustments, such as under § 245(i), § 245(h), § 245(l), and § 245(m) should not be subject to this memo.

- Set out the statutory provisions of adjustment, creating a pathway for those that have been "inspect and admitted or paroled," and specifically exempting certain classes of applicants from needing to maintain status prior to application. INA §§ 245(a) and (c).
- Be prepared to argue that using overstay alone as a heightened negative factor is ultra vires and impermissibly retroactive, even if they assert it is a new policy.
- Consider evidence of equities that you might present. Confirm the application clearly demonstrates strong family ties and other positive factors.
- Prepare clients to answer questions about their intent at entry:
    - Identify what prompted the temporary trip, i.e., their initial reason for visiting the United States.
    - Identify when the change in intent to stay permanently occurred.
    - If there was a misrepresentation at entry, analyze whether it meets the requirements of the statute: Was it willful? Material? Affirmatively made?
        - Consider a waiver as needed.
- Prepare clients to address why consular processing is not a viable option:
    - Visa bans which are in place indefinitely, making visa processing abroad not a viable option.
    - Hardship of being away from family, employment, community.
    - Remind officers adjustment was created to support family unity.
    - Any special hardship/health issues making it difficult to travel.
    - Safety risks in country of origin.
    - Need for a waiver for grounds already triggered—if consular processing abroad, would have to remain outside the United States during lengthy waiver adjudication, currently over three years.
    - Need for a waiver for grounds that would only be triggered by departure.
        - Additionally, lack of a qualifying relative, if applicable, such that they would be ineligible for a waiver if they left and needed one.
    - Inadmissibility that would only be triggered by departure for which there is *no waiver*—e.g., inadmissibility under 212(a)(6)(B) (failure to appear at immigration court hearing/in absentia order).
- In removal proceedings, if you are seeking termination to pursue adjustment of status before USCIS and OPLA raises this memo to support their objection to termination, explain all of the above and remind OPLA and the court that the USCIS memo is not binding on EOIR.

B. Advising clients eligible to apply

Those eligible for adjustment of status may want to wait to apply but should NOT leave the country without checking in with a trusted legal representative first.

- We do not yet know how this guidance will be used. Thus, those thinking of applying may want to wait a few weeks before checking back in to see what more comes out, and how officers implement this guidance.

At the same time, those who are in status now or who have other pressing reasons to apply as soon as possible may choose not to wait.

- Some applicants will have reasons to move forward with their strong adjustment. They might be worried about aging out of eligibility or maintaining CSPA protection. They might need relief immediately or need an application on file.
- If a prospective adjustment applicant decides to apply now, they should be prepared to provide proof of equities, even in cases with no serious negative factors. Applicants should be screened for intent at entry. They should also be prepared to answer questions about why they overstayed their visa or parole (if applicable) and why they are adjusting instead of consular processing.

Individuals should NOT depart the country to pursue consular processing without first consulting with an attorney or accredited representative. There are additional challenges and pitfalls that come into play with consular processing. These include current pauses on visa issuance from over 80 countries based on visa bans related to purported security or public charge risk. Additionally, certain grounds of inadmissibility are only triggered by a departure from the United States—including the three- and ten-year unlawful presence bars at INA § 212(a)(9)(B). Other grounds that are also only triggered by a departure include INA § 212(a)(9)(A) for those with a prior order and § 212(a)(6)(B) for those specifically who have an *in absentia* order. Some individuals will not qualify for a waiver to return or might only qualify after many years have elapsed. Note there is no waiver for the five-year bar imposed under 212(a)(6)(B).

IV. Conclusion

The legal issues addressed in this practice alert are rapidly evolving. It is important to check in with trusted sources regularly and stay up to date on new published cases. Nonetheless, given the clear goal behind this memo—the illegal shutting down of legal processes such as adjustment of status by weaponizing the discretionary element of this form of relief—advocates must be prepared to argue on behalf of their clients and give applicants guidance about risk and the unknowns.

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