



The William Wilberforce Center

WILBERFORCE CENTER UPDATE ON USCIS POLICY MEMORANDUM PM-602-0199

PM-602-0199: 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

PURPOSE OF THE MEMORANDUM (AS STATED BY USCIS)

“This memorandum reminds officers and the public that adjustment of status under section 245 of the Immigration and Nationality Act (INA) is a matter of discretion and administrative grace not designed to supersede the regular consular processing of immigrant visas. U.S. Citizenship and Immigration Services (USCIS) reaffirms this consistent and longstanding approach and declares as a matter of general policy its intention to faithfully apply the statutes consistently with this understanding.”

WHAT DOES THE POLICY MEMORANDUM SAY?

On May 21, 2026, USCIS issued this policy memorandum emphasizing the discretionary nature of adjustment of status under INA §245. The memorandum characterizes adjustment of status as an “extraordinary” form of discretionary relief and instructs officers to conduct a totality-of-the-circumstances review when evaluating applications.

USCIS indicates that officers may consider a broad range of factors, including immigration history, maintenance of lawful status, prior violations or unauthorized employment, intent at entry, family and humanitarian equities, credibility concerns, and other favorable or adverse discretionary considerations. The memorandum also notes that USCIS may issue additional guidance in the future directed at specific adjustment categories or applicant populations.

WHAT DOES THE POLICY MEMORANDUM DO?

The memorandum does not change the statutory eligibility requirements for adjustment of status. However, it signals a more restrictive discretionary approach in adjustment adjudications and reflects USCIS’s stated preference for consular processing as the ordinary pathway to permanent residence.

As a result, cases involving adjustment of status from within the United States — particularly following entry on a temporary visa or parole — may receive heightened scrutiny during the discretionary review process.

In directing officers to apply a “totality of the circumstances” analysis, the memorandum explains that adjustment of status is viewed as an exceptional form of relief rather than an automatic benefit. Officers are instructed to evaluate the complete picture of each applicant’s case by weighing both favorable and unfavorable factors together.

The memorandum further suggests that applicants may, in some circumstances, need to demonstrate particularly strong positive equities to overcome concerns identified during the discretionary analysis, and that the absence of negative factors alone may not necessarily be sufficient to warrant approval.

HOW WILL THE POM BE APPLIED?

Because the memorandum was issued only recently, information regarding how it will be applied in practice by officers and field offices across the country is still developing. The staff and leadership of The Wilberforce Center regularly monitor developments from some of the leading immigration organizations and professional associations in the country. This overview is intended to provide an initial general discussion of the memorandum based on the limited information currently available. As additional information becomes available through real-world adjudications and agency practice, interpretations and practical considerations may continue to evolve.

THE RECENT NATURE OF THE POLICY MEMORANDUM

It is helpful to remember that this policy memorandum was issued only recently on **May 21, 2026**. Part of evaluating any new policy guidance involves understanding not only the language of the memorandum itself, but also how it is implemented in practice by officers and adjudication units across the country.

The Wilberforce Center remains connected with immigration practitioners nationwide through organizations such as the American Immigration Lawyers Association (AILA) and other respected immigration advocacy and legal organizations. We are actively monitoring reports from real adjudications as this guidance begins to be applied in practice. That ongoing feedback allows us to better evaluate trends, identify areas receiving heightened scrutiny, and ensure that cases are prepared in the strongest and most responsive manner possible under the current environment.

THE AUTHORITY OF A POLICY MEMORANDUM

It is important to understand what this actual is. It is not a new law—it is a policy memorandum issued by USCIS. A policy memorandum is agency guidance explaining how USCIS interprets and applies existing immigration law and how officers should evaluate cases in practice. It is not a change in the law itself, and it does not alter the underlying eligibility requirements established by Congress or existing federal regulations.

While the memorandum may influence the level of scrutiny applied in certain cases and further emphasize the discretionary nature of immigration benefits, it does not change the legal eligibility requirements for adjustment of status or eliminate an applicant's ability to seek benefits otherwise authorized under the law.

EVERY IMMIGRATION CASE IS DIFFERENT

Please remember that every case is unique in its facts and circumstances. Immigration law and policy in the United States are constantly evolving and may change rapidly through new legislation, federal regulations, executive actions, agency policy memoranda, court decisions, and shifting enforcement priorities. The interpretation and application of these laws may vary significantly depending upon an individual's factual background, country conditions, procedural posture, and the jurisdiction in which a case arises. Policies implemented by agencies such as the Department of Homeland Security (DHS), United States Citizenship and Immigration Services (USCIS), Immigration and Customs Enforcement (ICE), the Executive Office for Immigration Review (EOIR), and the Department of State may be revised, expanded, limited, or rescinded with little notice.

For that reason, it is extremely important for applicants to have a qualified immigration attorney carefully review the specific facts of their situation, evaluate both positive and potentially concerning factors, and present the case in the strongest and most legally supported manner possible.

APPLICATION OF THE POLICY MEMORANDUM IN DIFFERENT TYPES OF CASES

It is also important to understand that this is a USCIS policy memorandum and does not directly govern Immigration Judges or proceedings before the Immigration Court, such as asylum defense matters before EOIR. Immigration Judges are governed primarily by statutes, regulations, and binding court and administrative precedent.

That said, policy memoranda can still reflect broader enforcement priorities and adjudicatory themes within an administration, and those underlying principles may influence how DHS attorneys present arguments or how discretionary issues are viewed in practice. In essence, the memorandum is guidance directed toward USCIS adjudications, but its broader policy focus may still be felt throughout different parts of the immigration system.

STATUTORY EXCEPTIONS REMAIN IMPORTANT

It is important to recognize that Congress itself created statutory exceptions within INA §245 permitting certain applicants — particularly immediate relatives of U.S. citizens — to pursue adjustment of status even where there may have been an overstay, unauthorized employment, or certain status violations.

These statutory provisions reflect clear congressional intent that such issues do not automatically prevent otherwise eligible individuals from seeking lawful permanent residence through adjustment of status.

POTENTIAL LIMITATIONS OF THE POLICY MEMORANDUM

Asylee and refugee adjustment cases are authorized separately under INA §209 and generally should not be directly affected by this memorandum. Adjustment under the Cuban Adjustment Act (CAA) of 1966 is also separately authorized by statute. In many of these categories, consular processing is either unavailable or not realistically possible, which may limit the practical application of the memorandum.

Additionally, some applicants may be affected by travel bans, humanitarian crises, or unsafe country conditions that make returning to their home country impossible or dangerous. In such situations, practitioners may argue that these humanitarian considerations strongly support the exercise of favorable discretion for adjustment of status.

These arguments may be especially important where the United States lacks a meaningful consular presence in the applicant's home country or were returning there would place the applicant at risk.

ASSESSMENTS AND CONSULTATIONS FOR NON-CLIENTS

If you are not currently a client of The Wilberforce Center and are not represented by immigration counsel, The Wilberforce Center is available to provide an individualized assessment regarding the potential application of this policy memorandum to your matter.

This assessment and consultation are designed to help individuals better understand whether the guidance may apply in their case, how it could affect their immigration strategy, and what considerations may be important based on the specific facts and procedural posture of the matter.

EXPECT CONTINUAL CHANGE

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In addition, policies implemented by agencies such as the Department of Homeland Security (DHS), United States Citizenship and Immigration Services (USCIS), Immigration and Customs Enforcement (ICE), the Executive Office for Immigration Review (EOIR), and the Department of State may be revised, suspended, expanded, or rescinded with little notice. For these reasons, it is critically important that individuals seek current and qualified legal guidance before

taking action on any immigration matter, as general information may not fully reflect the most recent legal developments or the specific factors applicable to a particular case.



This information is provided for general informational and educational purposes only and does not constitute legal advice. Immigration law is highly fact-specific and subject to frequent change. Individuals should not rely solely upon general information or policy summaries when making decisions regarding their immigration matters and are strongly encouraged to consult with a qualified immigration attorney or accredited legal representative to determine how the law may apply to their particular circumstances.