
HEADLINES EXPLAINED

What has really changed under USCIS Policy Memorandum PM-602-0199 (May 21, 2026)

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What Is Adjustment of Status?

Adjustment of Status (AOS) is the process under INA § 245(a) by which an eligible noncitizen **already inside the United States** applies for lawful permanent residence (a green card) without leaving the country.

Core mechanics

- Filed on Form I-485 with USCIS
- Requires an approved or concurrent immigrant petition (e.g., I-130, I-140)
- An immigrant visa number must be available (Visa Bulletin)
- Interim benefits: work authorization (EAD) and advance parole travel document

Eligibility floor

- Lawful admission or parole into the U.S.
- Maintenance of status (with limited exceptions)
- Admissibility under INA § 212
- Favorable exercise of agency discretion

What Is Consular Processing?

Consular Processing is the traditional pathway in which the applicant attends an immigrant visa interview at a U.S. embassy or consulate abroad and enters the United States as a lawful permanent resident.

Core mechanics

- Requires approved immigrant petition by USCIS forwarded to the Department of State
- DS-260 filed with the National Visa Center
- Interview and medical exam at a U.S. consulate abroad
- Admission as LPR upon entry to the United States

Trade-offs

- No interim EAD or advance parole during the wait
- Applicants already in the U.S. must rely on existing nonimmigrant status, then exit to attend interview
- Limited federal court review of consular denials (doctrine of consular nonreviewability)
- Often viewed as more predictable on discretion post-PM-602-0199

AOS vs. Consular Processing

	Adjustment of Status (I-485)	Consular Processing (DS-260)
Where filed	USCIS, inside the U.S.	U.S. embassy/consulate abroad
Who can use it	Lawfully admitted or paroled, present in U.S.	Any beneficiary of an approved petition
Interim work / travel	EAD and advance parole available	None — depend on existing nonimmigrant status if in the U.S.
Typical timeline	~10–24 months (2025–26 ranges)	~12–18 months, varies by post
Discretion (post-memo)	Heightened — 'extraordinary relief' proposed	Framed as the 'ordinary' pathway
Judicial review	Limited; further narrowed by memo	Very limited (consular nonreviewability)

PM-602-0199 — The May 2026 Discretion Memo

*"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."*

— USCIS Policy Memorandum PM-602-0199, issued May 21, 2026

What the memo does

- Sets the tone for the adjudicator – adjustment is no longer a “given” absent negative factors
- Directs officers to weigh AOS choice itself as a negative discretionary factor
- Requires written analysis for discretionary denials
- Asserts limited judicial review of discretionary decisions

What the memo does NOT do

- Does not change the law (INA § 245) or any regulation
- Does not include all the law ... (for example ... Matter of Arai 13 I&N Dec. 494 (BIA 1970))
- Does not bar I-485 filings or eliminate interim EAD/AP

What Has Changed at the Adjudication Desk

Officers on Notice

Statutory eligibility is the floor. Officers must separately find a favorable exercise of discretion based on totality of circumstances.

Adverse factors elevated

Overstays, status gaps, unauthorized work, prior misrepresentations, and 'failure to depart' are explicit negative factors.

Dual intent visas favored

Applicants in H1B and L Status arguably fare better although language is not 100% clear

More RFEs, NOIDs, interviews

Increased workload for adjudicators. Officers will likely issue more requests for evidence and employ additional mechanisms.

Immigration history more scrutinized

Heightened scrutiny questioning an immigrant's prior visa history, statements made to obtain non-immigrant visa and upon entry.

Expect longer timelines

I-485 commonly 10–24 months; expect supervisory review and written discretionary denials in technically eligible cases.

Building a Discretion-Ready Record

01

Audit before filing – have a “Heart to Heart” with the applicant

Review the full immigration history: I-94s, status gaps, unauthorized work, prior fraud allegations, criminal hits. Disclose proactively.

02

Lead with positive equities

Document tax compliance, U.S. family ties, employer letters, community contributions, national-interest economic value.

03

Address the AOS choice head-on

Affirmatively explain why consular processing is impractical or harmful — separation, role criticality, retrogression risk.

04

Prepare for delays

Adjudications will likely take longer – maintain nonimmigrant status throughout.

05

Plan a consular fallback

Identify a viable post abroad and assess inadmissibility/3-10 year bar exposure before any departure or denial.

Key Takeaways & Next Steps

■ **AOS is alive, but no longer routine. Adjust strategy for expats to provide more flexibility.**

The statute is unchanged; the lens is not. Every I-485 now requires affirmative proof of favorable discretion. May affect initial visa choice.

■ **Pending cases are not grandfathered.**

Discretion is judged at final adjudication, so the standard reaches every unapproved I-485. Consider filing I-824 now.

■ **Consular processing may be the new default.**

Build every case to also work abroad — identify the post, assess bars, plan for separation.

■ **Prepare for friction.**

Expect interviews, RFEs, NOIDs, biometrics, public-charge scrutiny, and longer timelines across the board.

■ **Consult counsel before filing or traveling.**

Small missteps — a B-2 entry, a gap, an unauthorized side gig — can decide the case.

Thank you for your attention.

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