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USCIS NEW POLICY LIMITING ADJUSTMENT OF STATUS ELIGIBILITY IS BAD POLICY AND CONTRARY TO LAW

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As previously addressed here, on May 21, 2026, USCIS issued Policy Memorandum PM-602-0199 ("memo"), announcing that filing an I-485 adjustment of status (AOS) application in the United States will be treated as an "extraordinary" form of relief and emphasizing that most individuals seeking permanent residence should instead complete immigrant visa processing abroad through a U.S. consulate. USCIS presents this as a reaffirmation of a "consistent and longstanding approach" and a return to the "original intent" of INA 245, but the practical effect is a sharp break from decades of adjudicatory practice in which eligible applicants routinely adjusted status from within the United States in both employment-based and family-based categories. The policy is expected to have substantial consequences for employers, families, and individuals who have relied on adjustment of status as the central mechanism for obtaining permanent residence.

The standard set forth in this memo is not only an abrupt upheaval of established USCIS policy, but also in contravention of the law. INA 245(a), codified at 8 U.S.C. 1255(a), states only that "Any alien who has been lawfully admitted for temporary status… such status not having been terminated, may apply for adjustment of status…" Although adjustment of status is a discretionary benefit pursuant to INA 245(a), it has never been interpreted as an "extraordinary" form of relief. The characterization of adjustment of status as "extraordinary relief" is not present anywhere in the INA and would surely have been spelled out by Congress if this was, in fact, its intent. USCIS's interpretation of the word "may" in INA 245(a) to mean "extraordinary" is not

only illogical, but contrary to the meaning of the statute and to longstanding USCIS policy.

The memo's core message is that adjustment of status is not the norm but an exception. USCIS repeatedly characterizes AOS as "a matter of discretion and administrative grace," citing decisions such as *Matter of Blas*, where the BIA characterized adjustment as discretionary relief and described it as "extraordinary" because it allows a noncitizen to avoid the ordinary consular visa-issuing process. The memo quotes that adjustment "was not designed to supersede the regular consular visa-issuing process or to be granted in non-meritorious cases," and it points to federal cases like *Chen v. Foley* for the proposition that adjustment is not meant to replace consular processing. It then extends this characterization to current practice by stating that, as a general matter, nonimmigrants and parolees are expected to depart once the purpose of their admission or parole is fulfilled and that seeking AOS instead "contravenes" Congressional expectations.

Under the memo, remaining in the United States and applying to adjust status rather than departing and consular processing will often be treated as an adverse discretionary factor. USCIS says that, with limited exceptions, the statutory scheme suggests that Congress expects paroled and nonimmigrant entrants to depart and pursue immigrant visas abroad, and it notes that applicants who do not depart typically have violated status, overstayed, or engaged in unauthorized employment. The memo invokes *Matter of Blas* for the proposition that such adverse factors may need to be offset by "unusual or even outstanding equities," while explicitly stating that the mere absence of adverse factors is not enough to show such equities. What the memo does not mention, however, is that the BIA's precedent decision in *Matter of Arai* is still the law. In *Matter of Arai*, the Board held that where there are adverse factors weighing against the approval of an adjustment of status application, the applicant may need to offset those factors by showing "unusual or even outstanding equities," but in cases where there are no adverse factors present, adjustment of status will ordinarily be granted, albeit still as a matter of discretion. In other words, *Arai* makes clear that the presence of statutory eligibility and the absence of negatives should normally result in a grant. The memo adopts the "unusual or even outstanding equities" language while omitting *Arai's* equally important holding that, when there are no adverse factors, adjustment should generally be approved.

This is a significant shift assuming USCIS intends to implement the new policy. Historically, although adjustment under INA 245(a) has always been technically discretionary, USCIS adjudications in employment-based and family-based cases focused on statutory eligibility, inadmissibility, and policy-manual guidance on discretion. Eligible applicants in lawful status, particularly employment-based applicants in H-1B or L-1 status and family-based immediate relatives of U.S. citizens, were not treated as asking for "extraordinary" relief merely because they sought to adjust status rather than depart for consular processing. The new memo aims to reverse that presumption by recasting AOS as an act of "administrative grace" that should generally yield to consular processing.

This interpretation depends heavily on a novel reading of the word "may" in INA 245(a). The statute provides that the status of an eligible alien "may be adjusted by the Secretary, in his discretion." That language plainly grants discretion, but it does not say that adjustment must be "extraordinary," rare, or disfavored. Elsewhere in the immigration statute, Congress has explicitly used heightened standards like "clear and convincing evidence" when it wished to impose special burdens or reserve relief for exceptional cases. Indeed, INA 245 itself contains provisions that require "clear and convincing" evidence in specific contexts. If Congress intended adjustment of status in 245(a) to be limited to "extraordinary" circumstances, it knew how to say so directly and did not. Interpreting "may" to mean "extraordinary" has no support in the statutory language of 8 U.S.C. 1255. It is a policy choice layered on top of the statute rather than an interpretation compelled by the statute itself.

The broader structure of section 245 and related provisions confirms that Congress saw adjustment as a central, normal mechanism for those already in the United States. Through 245(i), Congress allowed certain individuals who would otherwise be barred (for example, for unauthorized employment or unlawful presence) to adjust upon payment of a penalty, thereby expanding access to adjustment. Through 245(k), Congress created a targeted cure for certain employment-based applicants with limited status violations of 180 days or less from their last admission. Congress also affirmatively created and preserved dual-intent categories like H-1B and L, which only make sense if pursuing permanent residence, including through adjustment, while in nonimmigrant status is an anticipated and legitimate use of the system. At no point did Congress amend 245(a), 245(i), or 245(k) to say that adjustment in

those contexts is "extraordinary" or a disfavored exception. When Congress enacted INA section 204(j) portability through the American Competitiveness in the Twenty-First Century Act (AC21), it also included sections 104(c) and 106(a), specifically to allow H-1B workers pursuing permanent residence to extend status beyond normal limits while their adjustment cases remained pending. Those provisions reflect that adjustment of status for dual intent H-1Bs and Ls is routine and normal, not an extraordinary exception.

The structure of 245 and related AC21 provisions thus shows a legislative intent to use adjustment as a central pathway for those present in the United States who meet detailed eligibility criteria, not as a marginal, almost unattainable form of grace. By insisting that the ordinary, statutorily authorized use of these pathways is now disfavored "extraordinary" relief, the USCIS memo runs directly against what Congress actually did in INA 245 and AC21.

In the wake of the Supreme Court's *Loper Bright* decision overturning Chevron deference, this kind of aggressive agency reinterpretation of "may" in INA 245(a) should be especially vulnerable. Under *Chevron*, agencies received considerable leeway to interpret ambiguous statutes. Post-Chevron, courts will be far more willing to ask whether an agency's reading is consistent with the statutory text and structure. A court looking at 8 U.S.C. 1255 could reasonably conclude that USCIS's attempt to convert ordinary discretionary language "may" into a requirement that adjustment be rare, "extraordinary" relief is not a permissible interpretation but a rewriting of the statute. The lack of notice-and-comment rulemaking for a shift this sweeping strengthens an Administrative Procedure Act challenge, because the memo functions more like a substantive rule than a minor interpretive clarification.

The memo is also incomplete in its treatment of prior BIA case law. While it leans on decisions like *Matter of Blas* to characterize adjustment as an "extraordinary" remedy, it omits reference to BIA decisions that recognize the central role of adjustment for immediate relatives and other core categories. For example, BIA cases dealing with spouses and children of U.S. citizens, such as *Matter of Cavazos* and *Matter of Ibrahim*, required a favorable exercise of discretion but also acknowledged that strong equities in those relationships often warranted granting adjustment where statutory eligibility and admissibility were satisfied. These decisions do not treat immediate-relative adjustment as rare "extraordinary" relief but as the expected mechanism Congress intended for uniting U.S. citizens with close family. The memo's

silence about that line of cases underscores how selective its reliance on precedent is.

Beyond the prevailing policy of this administration, adjustment of status under INA 245 is the linchpin of the modern legal immigration system for people already in the United States. For employment-based applicants, AOS permits continued work authorization and stable employment relationships while multi-year immigrant visa backlogs clear, sparing both employers and employees the disruption and risk of consular trips and administrative processing abroad. For family-based applicants, especially those with U.S. citizen spouses and children, adjustment is often the only realistic way to avoid lengthy family separation during the green card process. For noncitizens from countries that have faced travel bans or other entry restrictions, consular processing may be effectively impossible or extremely risky. Those who leave may be subject to a visa refusal under INA 221(f). In these circumstances, a USCIS policy that treats AOS as disfavored "extraordinary" relief threatens to leave many with no viable path at all. The US approves over 1 million people to become lawful permanents, and about half of them apply through adjustment of status. The policy memo, if implemented will bar over 600,000 people from getting green cards through adjustment of status.

The memo's approach is especially severe for applicants in long-backlogged categories who are already living and working lawfully in the United States and raising U.S. citizen children. For these families, a pending adjustment application functions as a lifeline: it anchors work authorization, travel permission, and a basic measure of stability in an otherwise precarious system. By recasting adjustment as a rare exception and steering applicants toward consular processing, the policy threatens to tear that safety net away. The harm is magnified by existing conditions at U.S. consulates, where many posts already struggle with long appointment queues, expanded security screening, and unpredictable administrative processing. Forcing large numbers of cases that historically would have adjusted domestically into these consular pipelines will almost inevitably worsen backlogs and delays, compounding the disruption.

The practical consequences for employers will be substantial. If officers, following the memo, routinely decline to exercise discretion favorably in adjustment cases and instead encourage or effectively require consular processing, employers can expect more frequent international travel disruptions, extended periods during which key employees are stuck abroad

awaiting immigrant visas, higher legal and logistical costs, and greater uncertainty in workforce planning and retention. These burdens will sit on top of the already-documented consular constraints, including resource limitations and enhanced social media and security vetting, which have made visa processing timelines increasingly unreliable.

For individuals and families, particularly those in backlogged preference categories who are lawfully employed and caring for U.S. citizen children here, the memo threatens to strip away a critical stabilizing mechanism. A pending adjustment application does more than just move a case forward. It provides employment authorization, travel permission, and a degree of protection that is especially vital for people who cannot safely or realistically return abroad for consular processing because of travel bans, persecution risks, or severe consular delays. Under a regime that treats adjustment as an extraordinary indulgence rather than an integral, congressionally designed component of the system, many families will be forced into impossible choices between prolonged separation and abandoning their pursuit of lawful permanent residence altogether.

Since the memo's release, there has already been an indication that USCIS is attempting to water down its message in response to immediate backlash, an implicit acknowledgment of how vulnerable the policy is under the statute and how disruptive it is likely to be for employers, workers, and families. A recent report on X describes USCIS officials as suggesting that those with applications that "provide an economic benefit or otherwise are in the national interest" will be permitted to continue on their current adjustment path, while others may be asked to apply for immigrant visas abroad depending on their individualized circumstances. Even this "watering down" is contrary to INA 245(a) and will result in more subjectivity and denials. Creating a vague, extra-statutory category of cases that supposedly serve "economic" or "national interest" goals does not cure the underlying legal defect. It simply adds another layer of unconstrained discretion. In addition to the new policy being driven by animus towards noncitizens, whether they are legal or not, it reflects sheer incompetence given the disruption it will cause to businesses and families.

In sum, INA 245 does not preclude adjustment of status, and the memo does not change the law. USCIS has always had discretion to approve or deny and adjustment of status application. *Matter of Arai* holds that if there are no adverse factors present, adjustment of status should be granted as a matter of

discretion. Applicants may still file adjustment of status applications, and respond to requests for evidence, if issued, regarding whether they merit the favorable exercise of discretion. We need to continue to evaluate how the USCIS will adjudicate currently pending adjustment of status applications and new applications. If there are arbitrary denials because USCIS has begun to view adjustment of status as "extraordinary" relief, applicants and their lawyers can challenge them in federal court. Until then, adjustment of status still remains a viable option as before and should not be foreclosed based on a USCIS memo that unlawfully reinterprets the law.

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