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NEW USCIS MEMO ABRUPTLY CHANGES ADJUSTMENT OF STATUS POLICY

Posted on May 23, 2026 by Cyrus Mehta

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On March 22, 2026, USCIS promulgated a policy memorandum entitled "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". The policy memorandum states that adjustment of status is a "matter of discretion and administrative grace not designed to supersede the regular consular processing of immigrant visa". The policy memorandum suggests that most noncitizens should leave the United States and process for immigrant visas at consulates abroad, framing this as the intent of Congress when the Immigration and Nationality Act was enacted. USCIS officers are directed to consider that "adjustment of status is an extraordinary discretionary relief to the regular immigrant visa process and is an act of administrative grace".

This new guidance appears to apply to most adjustment of status applicants, including employment-based and family-based applicants, those applying for adjustment of status based on self-petitions (such as EB-1), and dependent applicants. The memorandum specifically mentions that noncitizens who enter the U.S. on nonimmigrant visas or pursuant to parole are admitted only for a temporary period, and implies that they should ordinarily not be permitted to adjust status in the U.S., stating: "Congress, in establishing the nonimmigrant admission and parole processes, made it clear that aliens are expected to depart the United States when the purpose of their admission or parole has been accomplished. Generally, when a nonimmigrant or parolee fails to depart as required and instead seeks adjustment of status, it contravenes these Congressional expectations…" The memorandum states no effective date, and

does not clarify whether the guidance will be applied to the adjudication of adjustment of status petitions that have already been filed and are pending with USCIS.

Thie standard set forth in this policy memorandum is not only an abrupt upheaval of established USCIS policy, but is 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 resident 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 elucidated by Congress if this was, in fact, its intent. USCIS' 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 memorandum cites *Matter of Blas*, 15 I&N Dec. 626, 628 (BIA 1974) as support for the idea that adjustment of status is typically "granted only as 'a matter of discretion and administrative grace'". However, the memorandum, undoubtedly deliberately, omitted reference to BIA precedents such as *Matter of Cavasos*, 17 I&N Dec. 215 (B.I.A. 1980) and *Matter of Ibrahim*, 18 I&N Dec. 55 (B.I.A. 1981), which held that adjustment of status should generally be granted as a matter of discretion when the applicant was adjusting through an immediate relative.

The USCIS policy memorandum does not state that noncitizens are precluded from applying for adjustment of status, and many may still be able to apply by providing evidence of "extraordinary circumstances" that would prevent them from consular processing. Still, the policy will be disastrous for those who are not permitted to adjust status within the United States, and are unable to obtain an immigrant visa at a consulate, because, for example, of the Trump administration's pause on the issuance of immigrant visas for citizens of 75 countries. Applicants for adjustment of status are authorized to remain in the U.S. while the application remains pending and can apply for work authorization and advance parole, which are crucial benefits for noncitizens from backlogged countries, such as India and China.

The policy memorandum was issued without warning and has already gone into effect with hundreds of thousands of adjustment of status applications pending with USCIS.

It is anticipated that this policy will swiftly be challenged through litigation. In 2024, in *Loper Bright Enterprises v. Raimondo*, the Supreme Court abolished the long-standing *Chevron* doctrine, which required to defer to the government agency's interpretation of an ambiguous statute. The Supreme Court's holding in *Loper Bright* may present an opportunity for a court to strike down the new USCIS policy, which is both contrary to the statutory framework and was also promulgated without notice and comment rulemaking.

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