

Alert | Immigration & Compliance



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New USCIS Policy Memorandum Addresses Adjustment of Status Adjudications

On May 21, 2026, USCIS issued Policy Memorandum PM-602-0199, outlining a change to the adjustment of status (AOS) process under Form I-485. The Policy Memorandum (PM) states that applicants for permanent residence should generally process for immigrant visas at U.S. embassies and consulates abroad following immigrant petition approval, except in limited circumstances. The PM reframes AOS as an “extraordinary discretionary benefit.”

AOS is the procedure for applying for permanent residence, commonly referred to as a “green card,” while physically in the United States. It is used by applicants who are in the U.S. and relies on a statutory framework outlining AOS eligibility criteria and the administrative process for adjudicating applications. For those outside the U.S., applicants for permanent residence go through a similar process at a U.S. embassy or consulate abroad, known as “consular processing.” The PM states that AOS is not an entitlement but a discretionary form of “administrative grace,” even where statutory eligibility is met. The PM characterizes AOS as an “extraordinary” remedy that allows applicants to “bypass” the immigrant visa process through consular processing, which the memo describes as the “normal” procedure that “the Congress generally expects aliens to follow.” The PM instructs officers to apply a case-by-case discretionary analysis, weighing positive and negative factors, including immigration violations, failure to maintain status, and failure to depart, as part of a totality of the circumstances assessment.

Who Does This Impact

The PM applies to all AOS applicants, including individuals with:

- (1) pending or approved family-based immigrant petitions (Form I-130);
- (2) pending or approved employment-based immigrant petitions (Form I-140); and
- (3) pending or approved immigrant investor petitions (Form I-526/Form I-526E).

What Is New

The PM reframes AOS as secondary to consular processing. It characterizes AOS as an “extraordinary” form of relief, describes it as an exception that allows applicants to avoid consular processing and states that AOS should be granted sparingly.

What Is Important

The PM directs USCIS officers to evaluate whether an applicant should be granted AOS based on overall equities, including immigration compliance, moral character, family ties to the U.S., and conduct after admission as a nonimmigrant. Officers are instructed to conduct a totality of the circumstances analysis weighing positive against negative factors. The PM also confirms that discretionary denials must articulate why negative factors outweigh positive ones.

The PM elevates certain adverse factors, instructing officers to treat the following as "highly relevant":

- Failure to maintain nonimmigrant status;
- Failure to depart after admission or parole;
- Conduct inconsistent with the purpose of admission; or
- Immigration violations or fraud.

The PM states that maintaining lawful nonimmigrant status in dual-intent categories (such as H-1B or L-1) does not automatically guarantee AOS approval; officers are still instructed to apply the totality of the circumstances test using the discretionary factors listed in the PM.

The current Administration has indefinitely suspended the issuance of immigrant visas via consular processing to nationals of 75 countries citing public charge concerns. Notably, the AOS process already includes public charge-related questions, while consular processing currently does not. A finding that an applicant does not warrant the “extraordinary measure” of AOS, combined with the immigrant visa suspension affecting nationals of those 75 countries, could leave a significant number of applicants unable to pursue permanent residence through either pathway. Such a broad suspension of immigrant visas raises questions regarding Congressional intent, given that Congress has statutorily authorized the issuance of 480,000 family-based green cards and 140,000 employment-based each year.

The U.S. embassies and consulates worldwide are also facing capacity constraints following staff reductions, and applicants pursuing consular processing may encounter lengthy wait times for immigrant visas. Applicants with unlawful presence or status violations may trigger a three- or 10-year bar to reentry

if they travel abroad and may wish to carefully consider whether to depart and the potential impact on subsequent immigrant visa processing.

Impact on Pending AOS Applications

The PM does not address whether it applies to already pending or newly filed AOS applications. There is no stated effective date, and no specific changes have been made to the USCIS Policy Manual. Because USCIS may seek to apply the PM to pending applications, applicants may consider gathering evidence of positive discretionary factors, including U.S. employment, absence of immigration violations, family and community ties in the U.S., and U.S. investments (particularly for EB-5 investors). USCIS may issue Requests for Evidence (RFEs) seeking documentation to support the totality of the circumstances determination.

Impact on Travel and Work Authorization for AOS Applicants

The PM does not specifically address travel on an advance parole document (AP) or working pursuant to an employment authorization document (EAD) issued while an AOS applicant is pending with USCIS. However, applicants who use AP to travel internationally should be aware that if USCIS seeks to deny the AOS while they are abroad under this guidance, the applicant may face obstacles reentering the U.S. Travel on AP carries additional considerations considering the PM's publication.

Travel on AP may also disrupt certain types of underlying nonimmigrant status, including B, E, F, J, H-1B1, and O status. Applicants may wish to remain in the U.S. and forego international travel on AP to preserve underlying nonimmigrant status where possible.

What's Unclear

The PM is subject to a range of interpretations, and its practical application to specific nonimmigrant classifications, including long-term work-authorized categories (dual intent or otherwise), is presently unclear. The PM states that the current statutory framework and the validity of precedent appellate decisions remain unchanged; however, a number of the court decisions cited in the PM are dated or were decided in other contexts, such as removal proceedings and are not directly relevant to AOS applications.

Potential Court Challenges

The PM directs adjudicators to treat AOS as an extraordinary measure secondary to consular processing requiring a showing of “unusual or outstanding circumstances,” which represents a shift in agency practice. Both the statutory interpretation and the reading of case law cited in the PM may become subject to litigation, depending on how the agency's adjudication practices change.

The AOS statute includes certain exceptions permitting individuals to apply for permanent residence even where they may have violated status, overstayed a visa, or worked without authorization. For example, an immediate relative (such as a spouse or parent of a U.S. citizen) may still apply for AOS without having maintained status or where unauthorized employment occurred. Similarly, the statute provides an exception for certain employment-based applicants who have had a period of unauthorized stay or unauthorized employment of fewer than 180 days. Some of the “negative” factors listed in the PM, including failure to maintain nonimmigrant status and failure to depart after admission or parole, appear to conflict with these statutory exceptions and could form the basis for legal challenge.

Congress has expressly passed the AOS statute permitting these applications. USCIS administers the AOS applications. U.S. federal courts interpret whether policies by USCIS, such as the PM, conflict with Congressional intent or the language of the statute passed by Congress. Litigation in the federal courts may focus on claims under the Administrative Procedure Act (APA), including that the PM constitutes a rulemaking disguised as policy guidance (which would require public notice and comment procedures) and/or that the PM is not in accordance with the law (e.g. the “negative factors” listed in the PM conflict with statutory exceptions that still permit AOS approval).

From a policy standpoint, family reunification has been a longstanding principal of U.S. immigration law. Litigation may also focus on the PM’s expressed limitation of AOS as inconsistent with the statutory framework allowing AOS applications for family reunification, including in cases where an applicant violated status or accrued unlawful presence. For EB-5 applicants, Congress passed the EB-5 Reform and Integrity Act of 2022 (RIA), which explicitly permits the concurrent filing of AOS applications. There may be potential litigation challenges asserting that the PM conflicts with the plain text and Congressional intent of the RIA.

Any forthcoming litigation will likely seek a temporary restraining order (TRO), which could pause the PM from taking effect and being applied to pending cases.

Practical Considerations

1. Applicants may document positive discretionary factors in newly filed AOS applications, including family ties in the U.S., lawful employment, community involvement, and tax compliance.
2. Applicants should maintain their underlying nonimmigrant status where possible and may wish to forego international travel on AP.
3. Applicants with an approved immigrant petition (Form I-130, Form I-140 or Form I526/I-526E) may wish to file Form I-824 with USCIS to initiate an immigrant visa case with the National Visa Center, which may be used in the event of a subsequent AOS denial.
4. USCIS may issue additional guidance or clarification on the PM. The PM states that USCIS may issue further guidance on certain AOS categories or discrete populations to aid officers in identifying which applications may or may not be affected. USCIS may also clarify its policy positions following further review of the impact on applicants.

The PM may result in increased difficulty in obtaining a green card through the AOS process, particularly for applicants with prior immigration violations or those holding purely nonimmigrant intent visa categories (B-1/B-2, E-1/E-2/E-3, F-1, J-1, TN, H-1B1, and O-1). While the PM signals potential changes to the AOS process, the underlying statute remains unchanged and the PM may be subject to court challenge.

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