U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director
Camp Springs, MD 20588-0009

U.S. Citizenship and Immigration Services

May 21, 2026

PM-602-0199

Policy Memorandum

SUBJECT: 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

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.

Authority

- INA § 103(a)(3); 8 U.S.C. § 1103(a)
- INA § 245(a); 8 U.S.C. § 1255(a)

Background and Analysis

It has been long established that not every alien who meets all other eligibility criteria for adjustment of status will be granted adjustment, because adjustment under most provisions is granted only as "a matter of discretion and administrative grace." *Matter of Blas*, 15 I&N Dec. 626, 628 (BIA 1974; A.G. 1976), *aff'd*, 556 F.2d 586 (9th Cir. 1977) (table). The Board of Immigration Appeals (BIA) has consistently characterized adjustment of status as an "extraordinary" form of relief dispensing with ordinary immigration procedures, *id*. at 630, and stated that adjustment "was not designed to supersede the regular consular visa-issuing process or to be granted in non-meritorious cases." *Id*. (citing *Chen v. Foley*, 385 F.2d 929, 934 (6th Cir. 1967), *cert. denied,* 393 U.S. 838 (1968)). The Supreme Court has also consistently and routinely stated that adjustment of status is a matter of grace.[1] The lower courts, likewise, describe

[1] *See*, *e.g.*, *Patel v. Garland*, 596 U.S. 328, 332 (2022) ("[b]ecause relief from removal is always a matter of grace, even an eligible noncitizen must persuade the immigration judge that he merits a favorable exercise of discretion"); *Kucana v. Holder*, 558 U.S. 233, 247 (2010); *Elkins v. Moreno*, 435 U.S. 647, 667 ("adjustment of status is a matter of grace, not right"); see also *Santos-Zacaria v. Garland*, 598 U.S. 411, 426 (2023) ("[c]ancellation of removal,

adjustment in terms of being an "extraordinary act" of administrative grace.[2] Courts repeatedly describe adjustment as extraordinary relief.[3] The nature of adjustment of status relief remains best understood as extraordinary because it permits the alien applicant to avoid the prescribed, ordinary consular visa process to obtain lawful permanent residence without leaving the United States.[4] The BIA also continues to hold that adjustment is "not designed to supersede the regular consular visa-issuing processes."[5]

Congress laid out a detailed statutory scheme governing and limiting adjustment of status for aliens present in the United States, and has committed the administration of the lawful immigration system to the Secretary of Homeland Security (Secretary) and the Department of Homeland Security (DHS).[6] Accordingly, such authority must be exercised with the utmost caution and with a view towards national interests.[7] USCIS exercises the Secretary's authority

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voluntary departure, and adjustment of status are discretionary types of immigration relief available to noncitizens only as *a matter of grace*, not entitlement") (emphasis added).

[2] *See Patel v. I.N.S.*, 738 F.2d 239, 242 (7th Cir. 1984) ("a favorable exercise of discretion . . . is an extraordinary act and a matter of grace"); *accord Mamoka v. I.N.S.*, 43 F.3d 184, 188 (5th Cir. 1995); *Wing Ding Chan v. Immigr. & Naturalization Serv.*, 631 F.2d 978, 980 (D.C. Cir. 1980); *Eun-Hee Lee v. U.S.*, 651 F.Supp. 1264, 1267 (D.D.C. 1987); *Abdullaeva v. Garland*, No. 1:23-cv-741, 2023 WL 7221935, at *3 (N.D. Ohio Nov. 2, 2023) (citing *Patel*, 596 U.S. at 332).

[3] *See Jain v. Immigr. & Naturalization Serv.*, 612 F.2d 683, 687 (2d Cir. 1979), *cert. denied,* 446 U.S. 937 (1980); *Kim v. Meese*, 810 F.2d 1494, 1497 (9th Cir. 1987); *Randall v. Meese*, 854 F.2d 472, 474 (D.C. Cir 1988); *Rashtabadi v. I.N.S.*, 23 F.3d 1562, 1567–68 (9th Cir. 1994); *Howell v. I.N.S.*, 72 F.3d 288, 291 (2d Cir. 1995); *Eide-Kahayon v. I.N.S.*, 86 F.3d 147, 150 (9th Cir. 1996); *Ayanian v. Garland*, 64 F.4th 1074, 1081 (9th Cir. 2023) (citing *Kim*, 810 F.2d at 1498); *see also Baez v. United States*, 715 F. Supp. 2d 1165, 1181 (D. Or. 2010) ("the decision to grant an adjustment of status is 'purely discretionary' and constitutes an 'extraordinary remedy to be granted only in meritorious cases,' [so] the alien bears the burden of proof and of persuading the USCIS to exercise its discretion favorably") (citing *Eide-Kahayon*, 86 F.3d at 150); *Singh v. U.S. Dep't of Homeland Sec.*, No. 11-cv-325 PA-SSx, 2013 WL 1246814, at *2 (C.D. Cal. Mar. 27, 2013) ("'Adjustment of status is an extraordinary remedy to be granted only in meritorious cases, and the alien 'has the burden of persuading [USCIS] to exercise [its] discretion favorably.' ' ") (citing *Kim,* 810 F.2d at 1497), *aff'd sub nom. Vukov v. U.S. Dep't of Homeland Sec.*, 561 F.App'x 648 (9th Cir. 2014).

[4] *See Abdullaeva v. Garland*, No. 1:23-cv-741, 2023 WL 7221935, at *3 (N.D. Ohio Nov. 2, 2023) (citing *Chen*, 385 F.2d at 934) ("[b]ecause this form of relief circumvents ordinary immigration procedures, it is extraordinary and will be granted only in meritorious cases, and the burden is on the immigrant to prove that his case is meritorious"); *Sanchez-Trujillo v. I.N.S. of U.S. Dep't of Just.*, 632 F. Supp. 1546, 1553 (W.D.N.C. 1986) (quoting *Chen*, 385 F.2d at 934); *see also Lee v. U.S. Citizenship & Immigr. Servs.*, 592 F.3d 612, 614 (4th Cir. 2010) ("Congress has limited the use of the adjustment-of-status mechanism to lawfully present aliens in order 'to discourage intending immigrants from moving to the United States before becoming fully eligible for permanent residence and to encourage them to follow the orderly consular process for the issuance of immigrant visas.'") (citing *Matter of Briones,* 24 I&N Dec. 355, 359 (BIA 2007)); *accord Castro-Soto v. Holder*, 596 F.3d 68, 72 (1st Cir. 2010).

[5] *See Matter of Tanahan*, 18 I. & N. Dec. 339, 342 (BIA 1981); *see also, e.g.*, *Matter of Francisco Benitez A.K.A. Francisco Bernal Benitez A.K.A. Francisco Benitez Bernal A.K.A. Gato Unkown*, No. : AXXX XX0 457, 2018 WL 1872044, at *1 (BIA Jan. 11, 2018) (citing *Matter of Blas*, 15 I&N Dec. at 630); *Matter of Ruzdi Krkuti*, No. : AXX XX4 511, 2008 WL 3861951, at *1 n.1 (BIA July 14, 2008) (citing *Matter of Blas*, 15 I&N Dec. at 630).

[6] *See* INA § 103(a)(1), (3); *see also* 6 U.S.C. §§ 111(b) (mission of DHS), 112 (functions of the Secretary).

[7] *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 300 (BIA 1996) (an adjudicator "must balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be *in the best interests of this country*") (emphasis added) (citing *Matter of Marin*, 16 I&N Dec. 581, 584 (BIA 1978)).

over the lawful immigration system under this grant of authority.[8] When USCIS makes findings in the adjustment of status process they constitute an unreviewable "decision or action"[9] by the Secretary, as well as a "judgment regarding the granting of relief"[10] under the statute.

Congress established significant limitations on the eligibility of aliens to adjust status that do not apply to aliens seeking immigrant visas and admission from outside of the United States. Most aliens seek discretionary adjustment of status under section 245(a) of the INA, which states that their status "may be adjusted by [the Secretary], in his discretion" if they are present in the United States after having been "inspected and admitted or paroled into" this country and are admissible to the United States for permanent residence, among other requirements. As a result, aliens physically present in the United States who have not been inspected and either admitted or paroled are generally ineligible to adjust status.[11]

Even when aliens have been inspected and admitted or paroled, Congress has placed additional limits on their eligibility for adjustment of status which do not apply to aliens seeking immigrant visas and admission outside this country, further evidencing a preference for aliens seeking to immigrate through the ordinary immigration process from abroad through consular processing. Section 245(c) of the INA lists many classes of aliens precluded from even accessing adjustment of status under section 245(a) of the INA, despite otherwise proper inspection and admission or parole, with certain limited exceptions.[12]

A grant of adjustment of status under section 245(a) of the INA is discretionary. An alien bears the burden of showing why administrative discretion should be favorably exercised.[13] DHS

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[8] DHS's Delegation to the Bureau of Citizenship and Immigration Services, Delegation No. 0150.1 (Jun. 5, 2003) (Delegation 0150.1), available at https://www.hsdl.org/c/view?docid=234775 (last accessed Apr. 23, 2026); *see also* 6 U.S.C. § 271 (establishing USCIS and its mission).
[9] *See* INA § 242(a)(2)(B)(ii).
[10] *See* INA § 242(a)(2)(B)(i); *Patel v. Garland*, 596 U.S. 328 (2022).
[11] *See* INA §§ 212(a)(6)(A) (with certain limited exceptions, aliens present in the United States without having been admitted or paroled are inadmissible), 245(a) (with certain limited exceptions, aliens present in the United States without having been admitted or paroled are not eligible to adjust status).
[12] INA § 245(c). "Other than an alien having an approved petition for classification as a Violence Against Women Act (VAWA) self-petitioner, subsection (a) shall not be applicable to (1) an alien crewman; (2) subject to subsection (k), an alien (other than an immediate relative as defined in section 201(b) or a special immigrant described in section 101(a)(27)(H), (I), (J), or (K)) who hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status or who is in unlawful immigration status on the date of filing the application for adjustment of status or who has failed (other than through no fault of his own or for technical reasons) to maintain continuously a lawful status since entry into the United States; (3) any alien admitted in transit without visa under section 212(d)(4)(C); (4) an alien (other than an immediate relative as defined in section 201(b)) who was admitted as a nonimmigrant visitor without a visa under section 212(l) or section 217; (5) an alien who was admitted as a nonimmigrant described in section 101(a)(15)(S), (6) an alien who is deportable under section 237(a)(4)(B); (7) any alien who seeks adjustment of status to that of an immigrant under section 203(b) and is not in a lawful nonimmigrant status; or (8) any alien who was employed while the alien was an unauthorized alien, as defined in section 274A(h)(3), or who has otherwise violated the terms of a nonimmigrant visa." *See also* INA § 245(d).
[13] *See Matter of Blas*, 15 I&N Dec. at 629.

evaluates applicants as to the exercise of "discretion and administrative grace," on a case-by-case basis.[14]

With a limited number of exceptions for specific categories of aliens,[15] most aliens who seek to adjust status under section 245 of the INA come from two distinct groups: those inspected and admitted, and those inspected and paroled under section 212(d)(5)(A) of the INA.

Aliens may be paroled into the United States "temporarily" on a case-by-case basis for "urgent humanitarian reasons or significant public benefit." Paroled aliens, "when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served" are expected to depart the United States or return (or be returned) to the custody of DHS.[16]

Aliens may be admitted to the United States as nonimmigrants "for such time and under such conditions" as DHS prescribes "to insure that at the expiration of such time or upon failure to maintain the status under which he was admitted…such alien will depart from the United States."[17]

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, though USCIS acknowledges exceptions including nonimmigrant categories with dual intent and immigrant categories where only adjustment of status provides a pathway to permanent resident status. While aliens who were inspected and admitted or paroled may request adjustment of status, as a general matter the discretionary approval of such a request is extraordinary given Congress's intent that aliens should depart once the purpose for which they sought parole or nonimmigrant admission from DHS has been accomplished.

With limited exceptions, the statutory scheme suggests that Congress expects aliens paroled into the United States or admitted into the United States as nonimmigrants to depart rather than pursue adjustment of status. Such aliens are generally expected to pursue an immigrant visa and admission from outside the United States if they wish to reside permanently in this country. While such aliens may be otherwise eligible for adjustment of status, their contravention of this expectation and attempt to avoid the ordinary consular immigrant visa process, usually accompanied by their violation of our immigration laws,[18] are adverse factors that the aliens may

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[14] *See Matter of Blas*, 15 I&N Dec. at 628 ("the . . . decision will depend, and must be based, on the facts of the particular case . . . [e]very adjudication must be on a case-by-case basis"); *see also Matter of Rajah*, 25 I&N Dec. 127, 132 (BIA 2009) ("the alien "must also demonstrate that adjustment should be granted in the exercise of discretion").
[15] *See, e.g.* INA §§ 245(h), (i), and (m).
[16] INA § 212(d)(5)(A).
[17] INA § 214(a)(1).
[18] Such aliens generally apply for adjustment of status after the expiration of their period of admission or parole, or after violating the terms and conditions of their admission or parole through unlawful employment or other activities inconsistent with the purpose of their admission or parole. Even when aliens apply for adjustment of status before

need "to offset…by a showing of *unusual* or *even outstanding* equities." *Matter of Blas*, 15 I &N Dec. at 641 (emphasis added). The absence of adverse factors, by itself, does not demonstrate such unusual or outstanding equities.

Guidance

Where consular processing is available to an alien based on the immigrant category in which he or she seeks adjustment of status, in determining whether the alien warrants a favorable exercise of discretion officers are to consider the consistent understanding of the courts and the BIA that adjustment of status is an extraordinary discretionary relief to the regular immigrant visa process and is an act of administrative grace.

Where adjustment of status is in the discretion of USCIS, officers are reminded that they are to consider all relevant factors and information in the totality of the circumstances in exercising that discretion. For example, existing guidance[19] directs officers to consider violations of our immigration laws or the conditions of any immigration status held, current or previous instances of fraud or false testimony in dealings with USCIS or any government agency, whether an alien's application for admission or parole violated the laws, regulations, and policies in place at the time, and any conduct of the alien after admission as a nonimmigrant or parolee inconsistent with the purpose of that nonimmigrant status or parole or with representations made to consular or DHS officers when applying for a visa, admission, or parole. An alien's failure to comply with the conditions of their nonimmigrant admission or parole and an alien's failure to depart as expected are highly relevant to this analysis. This is particularly true when the failure is connected to the alien's intention to reside permanently in the United States and the alien could have achieved that goal through the normal immigrant visa process. USCIS reminds its officers that applying for adjustment of status is not inconsistent with simultaneously maintaining nonimmigrant status in a category with dual intent.[20]

Given the significant privileges granted to lawful permanent residents, USCIS reminds its officers that they must consider and weigh all the relevant evidence in the record, taking into account the totality of the circumstances to determine whether the alien is suitable for permanent residence and if approval of the alien's adjustment of status application is in the best interest of the United States.[21] Adjudicators must weigh all positive and negative factors, including family

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the expiration of their period of admission or parole, they usually fail to maintain their nonimmigrant or parole status while their adjustment of status applications are pending.

[19] *See* USCIS Policy Manual, Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 8, Discretionary Analysis [1 USCIS-PM E.8]. *See also* USCIS Policy Manual, Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 10, Legal Analysis and Use of Discretion [7 USCIS-PM A.10].

[20] However, maintaining lawful status in a dual intent nonimmigrant category is not sufficient, on its own, to warrant a favorable exercise of discretion.

[21] *See Matter of Mendez-Moralez*, 21 I&N Dec. at 300 (an adjudicator "must balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country") (citing *Matter of Marin*, 16 I&N. Dec. 581, 584 (BIA 1978)). *See also* USCIS Policy Manual, Volume 7,

ties, immigration status and history, the applicant's moral character, and any other relevant factor that bears on determining whether the alien warrants a favorable exercise of discretion.[22]

USCIS reminds officers that when they deny a benefit request, they must issue a denial notice explaining in writing the specific reasons for denial.[23] When the denial is based on an unfavorable exercise of discretion,[24] the denial notice must include an analysis containing the positive and negative factors considered, along with an explanation of why the negative factors outweigh the positive factors in the decision.

USCIS will carefully review the various pathways to discretionary adjustment of status as well as discrete populations of aliens applying for adjustment of status in the context of the consistent and longstanding finding that adjustment of status is an extraordinary matter of discretion and administrative grace not designed to supersede the regular consular processing of immigrant visas. USCIS may provide policy guidance specific to certain adjustment of status categories or discrete populations of aliens to aid officers in identifying those applications that may or may not warrant this act of grace and exception to the regular consular process.

Use

This policy memorandum is intended solely for the guidance of USCIS personnel in the performance of their official duties, but it does not remove their discretion in making adjudicatory decisions. It may not be relied upon to create any right or benefit, substantive or procedural, enforceable under law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 10, Legal Analysis and Use of Discretion [7 USCIS-PM A.10].

[22] *See Matter of Castillo-Perez*, 27 I&N. Dec. 664, 667 (BIA 2019) (discussing assessing good moral character) (citing *United States v. Francioso*, 164 F.2d 163 (2d Cir. 1947)); *Matter of Francois*, 10 I&N Dec. 168, 170 (BIA 1963) ("it cannot be denied that good moral character is a factor which must be considered in determining whether the Attorney General's discretion should be exercised [to grant adjustment of status] in a particular case").

[23] *See* 8 CFR § 103.3(a)(1)(i). *See also* USCIS Policy Manual, Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 10, Legal Analysis and Use of Discretion [7 USCIS-PM A.10].

[24] Certain adjustment of status provisions are non-discretionary. That is, if the applicant satisfies all statutory and regulatory eligibility requirements, USCIS must approve the application without considering whether the applicant warrants a favorable exercise of discretion. See Title II of Pub. L. 105-100, 111 Stat. 2160, 2193 (November 19, 1997); INA § 209(a)(2); Division A, Section 902 of Pub. L. 105-277, 112 Stat. 2681, 2681-538 (October 21, 1998); Section 7611 of the National Defense Authorization Act for Fiscal Year 2020, Pub. L. 116-92, 113 Stat. 1198, 2309 (December 20, 2019).