



CLIENT GUIDE

The USCIS Adjustment-of-Status Discretion Memo

Policy Memorandum PM-602-0199 — What It Means for Your Form I-485

Issued by USCIS May 21, 2026

Informational guide — current as of June 2026

Read this first

This handout explains a recent change in how U.S. Citizenship and Immigration Services (USCIS) reviews green-card applications filed inside the United States (Form I-485). It is **general information, not legal advice**. The right strategy depends on your visa category, immigration history, timing of entry, admissibility, and any negative factors. Please review your situation with our team before filing or traveling.

The Short Version

On May 21, 2026, USCIS issued Policy Memorandum PM-602-0199. It does **not** abolish adjustment of status — Form I-485 remains available under Section 245 of the Immigration and Nationality Act. What changed is how officers are told to exercise their discretion: adjustment is now to be treated as a **discretionary, “extraordinary” form of relief** rather than a routine, in-country alternative to processing an immigrant visa at a U.S. consulate abroad.

In practice, you should expect your I-485 to be reviewed less like a routine form package and more like a **discretionary legal submission** — one that affirmatively documents why USCIS should approve your case.

What stayed the same

- Adjustment of status has not been eliminated; it remains authorized by statute (INA § 245).
- The eligibility requirements for each green-card category are unchanged.
- The memo operates at the discretion stage — the judgment an officer makes after eligibility is established.

What changed in practice

- Officers are directed to weigh positive and negative factors in the “totality of the circumstances.”
- Conduct inconsistent with the temporary purpose of your admission may be treated as a negative factor.
- Where negative factors exist, officers look for “unusual or even outstanding equities” to offset them.
- Expect more scrutiny, more requests for evidence, and, in cases with negative factors, a greater risk of denial.

June 2026 update — a softer public tone, but not a safe harbor

After the memo issued, USCIS and DHS spokespeople described a **case-by-case approach**, indicating that applicants who present a clear economic-benefit or national-interest case — and who kept a compliant



employment-based status — are comparatively well positioned. These were statements to the press, **not a new rule, regulation, or withdrawal of the memo**. Officers still adjudicate under PM-602-0199, and some applicants already report tougher questioning at interviews. Do not treat the press statements as a guarantee.

Who Is Most Affected — Risk at a Glance

The memo applies broadly, but not every applicant is exposed in the same way. The biggest dividing line is whether your visa allows **dual intent**. The table below is a framework, not a substitute for legal advice.

Applicant category	Relative risk	Evidence / strategy focus
H-1B / L-1 (dual intent)	Lower–Moderate	Document maintenance of status, lawful employment, tax compliance, and positive equities.
F-1 / OPT / STEM OPT	Moderate–High	Explain timing, avoid “90-day” assumptions, document lawful student status.
B-1 / B-2 visitor	High	Review entry intent, timing, changed circumstances, and misrepresentation risk before filing.
TN professional	Moderate–High	Consider transition to H-1B or another strategy before the I-485 stage.
O-1	Unsettled	Document the extraordinary-ability basis, status compliance, and timing of immigrant intent.
K-1 fiancé(e)	Lower if properly used	Document timely marriage, a bona fide relationship, admissibility, and positive factors.
Immediate relative of U.S. citizen	Fact-dependent	Document the qualifying relationship, family unity, hardship, and a clean record.
EB-5 investor	Distinct statutory argument	Emphasize INA § 245(n) authorization, source-of-funds compliance, and visa availability.
Overstay / unauthorized work / arrest / prior misrepresentation	Highest	Address the issue directly with counsel, evidence, and rehabilitation or hardship documentation.

Dual-intent categories — principally **H-1B and L-1** (and dependents H-4/L-2) — start in a stronger position because pursuing a green card does not conflict with the terms of their admission. Single-intent categories such as B-1/B-2, F-1, J-1, and TN require nonimmigrant intent, so the timing and circumstances of a filing matter more. Dual intent helps, but the memo is explicit that it is **not, by itself, enough** to win a favorable exercise of discretion.

The Discretionary Factors USCIS Weighs

Because eligibility alone may no longer carry an application, plan to **affirmatively document the positive factors** in your case and to address any negative factors head-on.



Positive factors to document	Negative factors officers may weigh
• Consistent maintenance of status and a compliant immigration history • Close family ties in the United States • Length of residence and community connections • Tax-payment history and lawful employment • Military or community service and good moral character • Serious medical conditions or other humanitarian factors	• Immigration violations, such as overstays or unauthorized employment • Fraud, misrepresentation, or false testimony to a government agency • Conduct inconsistent with the temporary purpose of the original admission • Criminal history or other admissibility concerns • Facts suggesting an attempt to bypass the ordinary consular process • Anything suggesting concealed immigrant intent at entry

A note on clean records: longstanding USCIS guidance says that where there is **nothing negative to weigh** against an applicant, denial is generally an inappropriate use of discretion. Document a clean record fully — do not simply assume it speaks for itself.

Build a Discretionary Evidence Packet — Not Just a Form Packet

A strong post-memo filing has two layers. The **first** is the ordinary eligibility packet. The **second** is a discretionary packet showing why USCIS should choose to approve your case.

Layer 1 — core eligibility (always required)

- The approved or pending immigrant petition, or proof of your immigrant category.
- Proof of lawful entry and inspection — passport, visa, and the I-94 admission record.
- The required medical examination and vaccination record.
- Identity and civil documents (birth certificate, passport biographic pages, marriage/divorce records where relevant).
- Evidence of your nonimmigrant status history and continued maintenance of status.

Layer 2 — discretionary evidence (newly important)

- **Compliant immigration history.** Records of maintained status, timely extensions, and no unauthorized employment.
- **Family ties.** Evidence of a U.S.-citizen or permanent-resident spouse, children, or close family.
- **Residence and community connections.** Lawful time in the U.S., a lease or property, and civic, religious, or volunteer ties.
- **Tax and financial compliance.** Tax filings and records showing lawful employment and no public-charge concern.



- **Good moral character.** Reference letters, performance reviews, awards, and community-service evidence.
- **Humanitarian considerations.** Documentation of serious medical conditions or hardship.
- **Category-specific evidence.** EB-5 investors should point to the statutory authorization for concurrent filing; dual-intent holders should document genuine status maintenance.

If your record has a negative factor

A past overstay, a status gap, an arrest, or a prior misrepresentation is generally **better explained than ignored**. The memo directs officers to look for strong positive factors to offset negatives — so the positive evidence above becomes more important, not less. Review these issues with counsel before filing.

Adjustment of Status vs. Consular Processing

There are two routes to a green card once a visa is available. **Adjustment of status** is filed with USCIS from inside the U.S. (Form I-485). **Consular processing** is completed abroad at a U.S. consulate. The memo states a preference for the consular route — but leaving the U.S. is not automatically safer.

⚠ Important: For applicants with unlawful presence, prior status violations, or admissibility concerns, **departing the United States can trigger multi-year bars on returning** and other serious consequences. Never decide between adjustment and consular processing — or book travel — without legal review.

The “90-day rule” is not a rule

The so-called “90-day rule” was never a statute — only a description of USCIS’s past practice of not generally challenging a filing made at least 90 days after entry on a single-intent visa. Nothing makes 90 days a safe harbor, and PM-602-0199 makes planning around that mark **riskier still**. Treat the timing of entry and filing as a question for counsel, not a matter of counting days.

Should you travel while your I-485 is pending?

- **Not in H-1B/L-1 status?** You generally need approved Advance Parole before leaving — departing without it can be treated as abandoning your application.
- **H-1B or L-1 holders** can generally travel on the underlying status while the I-485 is pending — a real practical advantage.
- Unlawful presence can convert a trip abroad into a multi-year bar. Confirm your position with counsel before booking.

A Simple Decision Framework

1. **Are you statutorily eligible?** Confirm lawful admission or parole, visa availability, admissibility, and category requirements.



2. **What was your status at entry?** Dual-intent (H-1B/L-1) differs from visitor, student, or TN admissions.
3. **How soon after entry are you filing?** A quick filing can raise questions about your original intent.
4. **Are there negative factors?** Overstays, unauthorized work, prior denials, arrests, or misrepresentation.
5. **Are there strong positive factors?** Family unity, long lawful residence, tax compliance, community ties, humanitarian concerns.
6. **Would consular processing create its own risks?** Unlawful-presence bars, separation, employment disruption.
7. **Can the filing be strengthened first?** Often the question is not “file or not” but whether to add a legal brief and evidence package.

What To Do Now

- **Prepare the I-485 as a legal submission** — affirmatively present your favorable factors.
- **Document a clean record** — lawful status, work authorization, and tax compliance.
- **Maintain your nonimmigrant status** where possible while the application is pending.
- **Don't over-rely on the June 2026 messaging** — it is encouraging but not binding.
- **Understand the risks before leaving the U.S.** Departure can trigger separate consequences.
- **Get advice on your specific facts.** This is a developing policy; strategy depends on your category, history, and timing.



Watch Our Videos on This Topic

We created two videos that walk through the PM-602-0199 changes in plain language. Use the links below to play them. **Click each address to open and watch.**

▶ Video 1

Video 1 — PM-602-0199 Explained: Understanding the USCIS Discretion Memo

A lesson-style breakdown of the memo, the legal background, and the key categories.

Watch here: <https://www.youtube.com/REPLACE-WITH-VIDEO-1>

(Replace this address with the published video link, then click to play.)

▶ Video 2

Video 2 — Preparing a Discretionary I-485 Packet: Evidence, Timing & Travel

A teaching walkthrough of how to assemble a strong, well-documented adjustment application.

Watch here: <https://www.youtube.com/REPLACE-WITH-VIDEO-2>

(Replace this address with the published video link, then click to play.)

Subscribe and check the playlists for ongoing updates

U.S. immigration law continues to change. Visit our YouTube channel and open the **playlists** for additional videos on PM-602-0199, Form I-485, and other updates to U.S. immigration. New videos are added as USCIS publishes guidance and as courts rule.

Channel / playlists: <https://www.youtube.com/REPLACE-WITH-CHANNEL>

(Replace the placeholder addresses above with your published channel and playlist links.)

Keep Learning with Botelho Immigration Courses

This guide accompanies our course materials on adjustment of status. Use it alongside the videos and lessons to understand how PM-602-0199 reshapes Form I-485 strategy.

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