



News & Types: Client Advisories

USCIS Emphasizes That Adjustment of Status Processing Is Discretionary, Not Guaranteed, Regardless of Eligibility

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Practices: Immigration

On May 21, 2026, U.S. Citizenship and Immigration Services (USCIS) issued a new memorandum emphasizing that Adjustment of Status (AOS – the last stage of the green card process inside the United States) is *discretionary* and not automatically granted—even if the applicant meets the eligibility requirements. The underlying sentiment is that any green card applicant should complete processing through a U.S. consulate in their home country.

WHAT DOES THIS MEAN FOR INDIVIDUALS WITH AOS APPLICATIONS PENDING?

AOS applicants will need to wait for USCIS to process their application and see if USCIS schedules an interview and/or issues a Request for Evidence (RFE). While the “wait and see” approach may be frustrating, assessing potential negative and positive factors (discussed below) of their application may be beneficial.

- **Approval is not guaranteed.** Even if you qualify under the law, USCIS can still deny your application based on discretion.
- **Adjustment of Status is considered an “extraordinary benefit.”** USCIS indicated in the memorandum that it now views the AOS process as an exception and that immigrants should complete green card processing through a U.S. consulate in their home country.
- **USCIS Officers will assess the positive and negative factors of the entire case.** The memorandum indicates that AOS decisions are made based on the totality of the circumstances, including both negative and positive factors. The following may be some considerations (but are not limited to these factors):

Examples of Potential Negative Factors

- Has the applicant violated the terms of their visa or status?
- Does the applicant have any history of unauthorized work or overstays?
- Does the applicant have any immigration violations or ever made any misrepresentations to an employer in the I-9/E-Verify process, when applying for a visa or other government benefit?

- Did the applicant ever intend to remain permanently in the U.S. when entering temporarily, particularly individuals who ever entered as a visitor (B visa), student (F or M visa) or exchange visitor (J visa)?
- What is the character and overall background of the applicant? This may involve assessing social media and any activities considered “un-American.”
- Will the applicant be a burden on the U.S. health system – for example having any chronic health condition, cardiovascular disease, diabetes, cancer, obesity, metabolic and neurological disorders, and certain mental-health conditions, depression, long term diseases, etc.?
- Has the applicant received any public assistance?
- Did the applicant travel internationally while their AOS was pending? USCIS may view such international travel as the applicant has no restriction on their ability or means to travel and the applicant should be able to complete processing through a U.S. consulate in their home country.

Examples of Potential Positive Factors

- Has the applicant followed the terms of their visa or status?
- Can the applicant demonstrate sustained and valuable community involvement and contributions in the United States? For example, documentation of regular participation in religious organizations or volunteer work for a non-profit. One example could be regular participation in a fun run/walk that benefits a charity – it shows you support a cause by raising money, are fit and healthy, and are involved in your community (based upon the number of different people making donations that you collect).
- Does the applicant have family ties to the United States?
- Has the applicant resided in the United States for a long time (especially since a young age)?
- Will there be a hardship to the applicant and his/her family if relief is not granted?
- Does the applicant have a history of employment in the United States?
- Is the applicant fluent in English?
- Does the applicant have a business and/or property in the United States?
- Has the applicant paid all required taxes since entering the United States?
- If the applicant has had any criminal offenses (even if not resulting in a conviction), can the applicant demonstrate that he/she is rehabilitated?

USCIS specifically notes that:

- AOS should not be used to avoid consular processing when that option is available.
- Remaining in the U.S. after one’s authorized stay expires and then applying for a green card may be viewed negatively.

WHAT SHOULD INDIVIDUALS AT THE FORM I-140 STAGE CONSIDER?

- Individuals who will be filing for a Form I-140 in the employment-based green card process may now want to indicate that they plan to Consular Process, rather than apply for AOS, to save requesting a change in the future.

- Individuals with an approved Form I-140, indicating that the individual is present in the U.S. and would file for AOS, may wish to contact their sponsoring Form I-140 employer to file a request to change the green card processing from AOS to consular processing through a U.S. consulate in their home country.

FINAL

NOTE

AOS remains available, but USCIS is reinforcing that it is a privilege—not a right.

Individuals can anticipate that USCIS will now apply a stricter discretionary review through a Request for Evidence (RFE) and/or an in-person interview. Individuals should maintain underlying nonimmigrant status throughout the green card process.

The Masuda Funai Immigration Team will continue to monitor the “real world” implementation of this policy and AOS trends and provide future Monthly Business Immigration Updates and in Client Alerts.

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