Green Card Memo Warps Long-Standing Adjustment Process

By **Jack Jrada** (June 8, 2026)

Jack Jrada

On May 21, U.S. Citizenship and Immigration Services issued a policy memorandum characterizing noncitizens' ability to seek adjustment of status in the U.S. under Section 245(a) of the Immigration and Nationality Act as "a matter of discretion and administrative grace" and an "extraordinary" form of relief.

Policy Memorandum PM-602-0199 does not alter the statute or amend the regulations. Instead, it instructs officers to weigh, as part of Section 245(a)'s discretionary balance, the applicant's decision to remain in the U.S. and apply for adjustment to permanent resident status within the U.S. rather than departing for immigrant visa processing at a U.S. consular post abroad.

Notably, it issued its guidance to officers without engaging the full body of Board of Immigration Appeals precedent governing the exercise of that discretion.

This article examines what the memo may change in the discretionary framework, the doctrinal relationship between its framing and binding BIA precedent, the compounding risks for applicants directed toward consular processing, and the practical implications for pending and forthcoming cases.

What the Memo Reframes

Adjustment of status under Section 245(a) has been expressly discretionary since 1952. What the memo changes is the lens through which officers exercise that discretion.

The memo directs officers to consider whether an applicant's decision to adjust in the U.S. rather than seek consular processing contravenes congressional expectations that nonimmigrants and parolees depart once the purpose of their admission is fulfilled. It states that dual-intent nonimmigrant status — e.g., H-1B, L-1 — is relevant to eligibility but does not, on its own, warrant a favorable exercise of discretion.

The practical effect is to introduce a near-universal adverse factor into every adjustment case the memo addresses.

On May 29, the U.S. Department of Homeland Security partially walked back the policy's apparent breadth, characterizing the memo to reporters as "just a reminder to officers of their discretionary authority, which has always existed on a case-by-case basis."

That characterization is in inherent conflict with the memo's own framing of adjustment as extraordinary relief warranting individualized justification in every case. Press statements do not rescind a formal memorandum, and the memorandum itself rests on uncertain foundations given its inconsistency with binding BIA precedent.

The Doctrinal Relationship to Binding Precedent

The memo's doctrinal spine is the BIA's 1974 decision in Matter of Blas, affirmed by the U.S. Court of Appeals for the Ninth Circuit in 1977. Blas provides both the "extraordinary discretionary relief" and "administrative grace" framing that the memo purports to adopt, as well as the standard that adverse factors may need to be offset by "unusual or even outstanding equities."

The memo quotes Blas repeatedly. What it does not address is what Blas actually involved, how the BIA subsequently narrowed it, or the foundational precedent Blas itself reaffirmed.

Blas concerned a Filipino visitor in removal proceedings, who entered the U.S. with a visitors visa, after misrepresenting to the consular officer his family ties, both in the U.S. and the Philippines, and his intention to remain. After his arrival, he divorced his wife in the Philippines, abandoning four minor children, married a U.S. citizen and applied for a green card.

The BIA denied Section 245 relief because the family-tie equity was the product of the deception used to procure entry. The BIA referred the matter to the attorney general for review.

The attorney general affirmed on March 10, 1976, but wrote that eligibility "particularly where eligibility carries with it its own strong equities, as with immediate relative status, can have a positive influence on the exercise of discretion and in the absence of adverse circumstances should prevail."

The BIA and attorney general's decisions, as affirmed by the Ninth Circuit, undermine the memo's suggestion that each and every case needs to have a full discretionary intake regardless of the presence of adverse factors.

Blas itself reaffirmed the BIA's 1970 decision in Matter of Arai, a foundational decision the policy memo does not cite. Arai established the two-stage framework that has governed adjustment discretion for more than 50 years, which is left out of the memo entirely:

- Where adverse factors are present, the applicant may need to offset them with unusual or outstanding equities.

- Where no adverse factors are present, "adjustment will ordinarily be granted, still as a matter of discretion."

Arai expressly superseded the more restrictive framework of the BIA's Matter of Ortiz-Prieto decision in 1965, which had characterized adjustment as extraordinary relief reserved for cases with outstanding equities. In Arai, the board found the Ortiz-Prieto approach "too broad in its impact and probably more demanding than necessary."

Blas and Arai are published BIA decisions designated as precedent by the attorney general, and binding on USCIS under Title 8 of the Code of Federal Regulations, Section 1003.1(g). A policy memorandum is interpretive guidance; where it conflicts with published decisions, the decisions control.

PM-602-0199's structural effect is to reintroduce the Ortiz-Prieto posture that Arai declined to follow. The concern is not new. Former BIA Chairman Maurice Roberts, dissenting in Blas itself, warned that the majority's clarification of Arai was opening "the door to the vague standards which prevailed in our pre-Arai formulations."

What Roberts identified as a risk within a single high-adverse-factor case, the memo now extends to the adjustment framework as a whole. By treating the act of filing an I-485 permanent residence application as itself a potential adverse factor — the applicant having stayed and adjusted when consular processing was nominally available — the memo ensures that Stage One of the Arai framework resolves against the applicant in every case.

Every applicant must now justify the choice to adjust in the U.S. through individualized equities. The "ordinarily granted" threshold for otherwise clear-cut cases no longer functions.

The tension sharpens for immediate relatives. In the 1980 decision in Matter of Cavazos, the BIA held that "notwithstanding evidence establishing preconceived intent, an application for adjustment of status should as a general rule be granted in the exercise of discretion in the case of an immediate relative." The board's 1981 decision in Matter of Ibrahim reaffirmed, holding that preconceived intent does not, standing alone, defeat the discretionary grant for an immediate relative absent other adverse factors.

The memo instructs officers to weigh against the applicant something the BIA has held, in binding published decisions, cannot by itself justify denial. The memo cites neither Cavazos nor Ibrahim.[1]

The broader statutory structure reinforces this point. Congress has repeatedly expanded, not contracted, access to adjustment — through Section 245(i), allowing certain otherwise-barred applicants to adjust upon payment of a penalty; Section 245(k), curing limited status violations for employment-based applicants; and the American Competitiveness in the Twenty-First Century Act's provisions extending H-1B status specifically to accommodate pending adjustment cases.

These provisions reflect a legislative intent to use adjustment as a central pathway for eligible individuals already in the U.S., not as a marginal exception.

The Availability of Consular Processing

The memo implicitly recommends that applicants who cannot demonstrate a favorable exercise of discretion depart the U.S. for consular processing. For a significant share of the affected population, that alternative is either legally hazardous or operationally foreclosed. The memo presents three distinct risks.

The 90-Day Rule

Conduct within 90 days of nonimmigrant entry that is inconsistent with the visa used to enter creates a rebuttable presumption of willful misrepresentation under Section 212(a)(6)(C)(i). A finding of willful misrepresentation is a lifetime inadmissibility ground, waivable only under Section 212(i).

For an applicant who entered as a B-1 or B-2 visitor and married a U.S. citizen within 90 days, the misrepresentation issue would be raised at the consular interview without the Cavazos equities that would attach in the adjustment context.

Unlawful Presence

Section 212(a)(9)(B) imposes a three-year bar on reentry for noncitizens who accrued more than 180 days of unlawful presence in the U.S. and then departed, and a 10-year bar for those who accrued more than one year of unlawful presence. By granting lawful status without requiring departure, adjustment of status under Section 245(a) avoids this bar. Consular processing does not.

The I-601A provisional waiver under Section 212.7(e) of the regulations exists but adds significant time, requires a separate showing of extreme hardship and is itself discretionary.

Country-Based Restrictions

Presidential Proclamation 10998 on the entry of foreign nationals, effective Jan. 1, fully or partially suspended entry for nationals of 40 jurisdictions. A Jan. 14 U.S. Department of State cable added an indefinite immigrant visa processing pause for the nationals of 75 countries, citing public-charge concerns. The U.S. Centers for Disease Control's May 18, Title 42 order suspends the entry of noncitizens who were physically present in the Democratic Republic of the Congo, Uganda or South Sudan within the previous 21 days. Embassy operations across parts of the Middle East and Ukraine remain disrupted.

In the aggregate, over 100 jurisdictions face at least one form of consular restriction. For nationals of these jurisdictions, departing to consular process may result in a re-reviewed petition, an indefinite Section 221(g) refusal or the inability to obtain an interview.

A single applicant may face all three risks simultaneously.

The "Where Consular Processing is Available" Qualifier

The policy memo frames adjustment by reference to whether the applicant "could have used the ordinary consular immigrant visa process." The phrase carries significant analytical weight without textual content.

Two interpretive arguments follow.

First, "where consular processing is available" could be read to require assessment of actual availability rather than nominal availability. The unlawful presence bars at Section 212(a)(9)(B) illustrate the point most clearly: An applicant who has accrued unlawful presence faces a three- or 10-year bar triggered by departure, representing a congressionally recognized harm that the Section 245(a) framework was structured to avoid.[2]

Similarly, an applicant whose filing timeline raises a rebuttable presumption of misrepresentation under the Department of State's 90-day rule faces a materially different risk profile at a consular post, where Cavazos equities do not apply, than in the adjustment context.

In either case, the applicant is not choosing between equivalent paths, and treating them as equivalent for purposes of the discretionary balance disregards the statutory consequences that distinguish them.

Second, where the consular alternative is materially adverse or operationally foreclosed, those circumstances should be capable of weighing as affirmative equities favoring adjustment, not merely as the absence of an adverse factor.

The memo itself directs officers to consider "all relevant factors and information in the totality of the circumstances." The memo treats the decision to adjust as one such factor. By the same logic, the foreclosure of the alternative path is plainly another, and the record should reflect it as such.

Practical Implications

For practitioners advising clients on pending or forthcoming adjustment filings, several steps are now essential.

First, practitioners should document the discretionary record at filing. Favorable factors that practitioners could previously afford to leave unstated, including family ties, U.S. citizen children, length of residence, employment history, tax compliance or community contributions, should now be affirmatively documented in the initial I-485 submission.

For employment-based applicants, economic contributions and national-interest equities should be specifically addressed.

Second, practitioners should preemptively address preconceived intent where the facts require it. Where the applicant filed within or shortly after the 90-day window, the application should invoke the Cavazos/Ibrahim framework, address the evolution of intent after entry and document the substantial equities of the relationship before the officer raises the question.

Third, practitioners should affirmatively document why consular processing is unavailable or materially adverse for the specific applicant — travel ban, unlawful presence bar exposure, 90-day rule risk, embassy closure — and frame this as a factor in the discretionary balance.

Fourth, any request for evidence response invoking PM-602-0199 should brief the precedent: Arai's threshold rule, the Cavazos/Ibrahim immediate-relative line, and the tension between the memo's framing and published BIA decisions. The response should preserve the argument that the memo constitutes a substantive rule change requiring notice-and-comment under the Administrative Procedure Act.

The Broader Stakes

Whether field offices will aggressively operationalize PM-602-0199 remains an open question. Early reports are mixed: Some adjudicators appear to be holding decisions pending implementation guidance; others have issued requests for evidence framed around the discretionary balance the memo describes.

The memo was issued without notice-and-comment rulemaking. The U.S. Supreme Court's 2024 decision in Loper Bright Enterprises v. Raimondo, overturning Chevron deference, means courts may independently assess whether the memo's extraordinary-relief interpretation of Section 245(a) is consistent with the statutory text — a question on which the statutory structure described above is directly relevant.

At the same time, the Supreme Court's 2022 decision in Patel v. Garland stripped federal courts of jurisdiction over individual, discretionary fact-finding in adjustment cases. The resulting dynamic creates a litigation landscape in which the legal framework may be challengeable even where individual adverse decisions are not.

The methodology of the memo — modifying a discretionary benefit through introduction of a near-universal adverse factor — is portable. Section 212(h) waivers, Section 212(i) waivers, cancellation of removal and voluntary departure all rest on similar two-stage discretionary frameworks calibrated by precedent over decades.

Practitioners should track the memo's reception in the courts, not only for its direct effect on adjustment practice, but for what it signals about the durability of the broader discretionary architecture.

The doctrinal tools for pushing back — Arai, Cavazos, Ibrahim and the body of law they anchor — remain binding precedent. But the practical posture has shifted, and practitioners must now build a favorable discretion record that the existing framework did not universally require.

Jack Jrada is the founder of Jrada Immigration PC.

[1] Notably, two of the decisions the memo cites for its totality-of-circumstances framework — Matter of Marin, 16 I&N Dec. 581 (BIA 1978), and Matter of Mendez-Moralez, 21 I&N Dec. 296 (BIA 1996) — are not adjustment-of-status cases at all; Marin arose under former INA § 212(c) and involved a drug felony, and Mendez-Moralez arose under INA § 212(h) and involved a sexual offense, contexts materially different from the routine adjustment inquiry. Both decisions, however, cite Matter of Arai's adverse-factor-dependent framework as the controlling standard for the discretionary analysis under INA § 245(a) — the same framework the memo neglects in its recounting of binding BIA precedent.

[2] See INA §§ 212(a)(9)(B)(i)(I)–(II) (imposing three- and ten-year bars on admission triggered by departure after accrual of unlawful presence); id. at 245(a) (permitting adjustment to permanent residence without departure).