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# Some USCIS officers ask green card applicants why they bypassed consular processing...

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Some USCIS officers have begun asking green-card applicants why they chose Adjustment of Status (AOS) rather than consular processing abroad following the agency's controversial May 22 policy memo, according to immigration attorneys.

Attorneys told TOI that while several field officers are questioning applicants on why they did not pursue immigrant visa processing in their home country, more recently a few others are approving cases without reference to the memo. Another section of USCIS officers are holding back decision making, pending further clarity and guidance on the policy memo.

TOI had reported on May 24 that the memo rolled out by the Trump administration did not abolish AOS for holders of dual-

intent visas such as H-1B and L visas. Instead, it created a more discretionary adjudication framework under which officers may require applicants to demonstrate why they merit adjustment of status from within the US.

Rajiv S. Khanna, managing attorney at Immigration.com, had earlier cautioned that USCIS officers would expect applicants to present affirmative evidence supporting adjustment of status, including tax compliance, economic contributions, family ties, professional standing and other indicators of strong roots in the US.

Subsequently, The New York Times quoted a DHS official as saying that the memo was not a blanket policy change and that individual immigration officers would determine whether an applicant should complete the green card process abroad rather than in the US.

However, the memo continues to remain in force, prompting immigration attorneys to help applicants prepare more comprehensive evidence files ahead of AOS interviews and possible requests for evidence (RFEs).

Xiao Wang, CEO at Boundless, said: “For employees who are cleared to proceed with an AOS application, a well-prepared filing that affirmatively documents positive factors is more important than ever. This means going beyond the standard forms such as including employer support letters that speak to an employee's specialized skills and economic contributions, documentation of long-term lawful employment and tax history, and any other evidence that tells a compelling story about why this employee's continued presence benefits the US.”

Mitch Wexler, senior counsel at Fragomen, a global immigration law firm, pointed out that AOS has always been discretionary as a matter of law, and the policy does not change the underlying eligibility requirements. EB-5 investors and employment-based applicants remain fully eligible to pursue AOS where they meet the statutory criteria.

“What has changed is the emphasis. USCIS is now directing officers to more explicitly evaluate whether an applicant merits a favourable exercise of discretion, including whether it is appropriate for the applicant to complete the process in the US rather than abroad,” he said.

According to Wexler, officers are expected to apply a “totality of the circumstances” analysis, weighing both positive and negative factors. Potential adverse considerations may include prior immigration violations or conduct inconsistent with status, while favourable factors include long-term lawful presence in the US, stable employment, strong community ties, good moral character and evidence that the applicant's presence benefits the country.

For EB-5 investors (applicants for the investment linked green cards), many of these positive factors are built into the programme itself, given its focus on capital investment and job creation. Similarly, H-1B professionals with established employment histories and long-term residence in the US may present strong equities under the framework.

Charles Kuck, founding partner at Kuck Baxter, said cases involving prior immigration violations, unlawful presence, unauthorized employment, criminal history or allegations of fraud could face heightened scrutiny.

“Some applicants may receive requests for evidence (RFEs) seeking information on positive equities such as family ties, employment history, tax compliance, community involvement and other favourable factors,” he said.

Immigration attorneys say applicants should collate documents such as tax returns, lease agreements, mortgage records, utility bills, bank statements, educational and professional credentials, children's school records and letters of support from employers or community organisations to demonstrate their ties to the US and strengthen their case for adjustment of status. These could also come in handy, should they need to submit additional information following a request for evidence.