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Policy Alert

SUBJECT: Clarifying Discretionary Factors in Certain Immigration Benefit Requests

Purpose

U.S. Citizenship and Immigration Services (USCIS) is updating policy guidance in the [USCIS Policy Manual](#) regarding the factors that officers may consider in certain benefit requests where an exercise of discretion is required, including factors relating to aliens' past requests for parole and any involvement in anti-American or terrorist organizations.

Background

For certain immigration benefit requests, such as adjustment of status, the alien bears the burden of proof to demonstrate that a favorable exercise of discretion is warranted.¹ For these benefit requests, the discretionary analysis is a separate component of adjudicating the benefit request which occurs after an officer determines whether all threshold eligibility requirements have been met. The act of exercising discretion involves weighing positive and negative factors and considering the totality of the circumstances in each case. There are various factors officers may consider when conducting a discretionary analysis, including facts relating to an alien's conduct, character, family ties, immigration history, and any humanitarian concerns.

USCIS guidance provides that an alien's compliance with immigration laws is a relevant factor when determining if a favorable exercise of discretion is warranted. USCIS is updating the Policy Manual to provide additional guidance for officers on the significant negative discretionary weight USCIS assigns in circumstances where an alien has endorsed, promoted, supported, or otherwise espoused the views of a terrorist organization or group, including those who support or promote anti-American ideologies or activities, antisemitic terrorism, antisemitic terrorist organizations, and antisemitic ideologies, in any case involving an exercise of discretion.²

In cases where the alien has engaged in such activities, USCIS will enforce all relevant immigration laws to the maximum degree, including the use of discretion, to deny the benefit request.

In addition, this update clarifies that a relevant factor in the discretionary analysis includes whether the alien's application for admission or parole was made in accordance with all laws, regulations, and policies in effect at that time. This update also explains that an exercise of discretion in the

¹ See [INA 291](#).

² See [INA 313\(a\)](#) for definitions of anti-American ideologies and activities.

adjudication of an employment-based petition is limited to cases where the alien is seeking a national interest waiver,³ and clarifies how an exercise of discretion is applied in the adjudication of certain EB-5 investor petitions and applications⁴ in cases involving threats to the national interest, fraud, deceit, misrepresentation, and criminal misuse.⁵

This guidance, contained in Volumes 1, 2, 7, and 10 of the Policy Manual, is effective immediately and applies to requests pending or filed on or after the publication date. The guidance contained in the Policy Manual is controlling and supersedes any related prior guidance.

Policy Highlights

- Affirms that USCIS considers factors involving circumstances where an alien has endorsed, promoted, supported, or otherwise espoused the views of an anti-American or terrorist organization or group, including those who support or promote antisemitic terrorism, antisemitic terrorist organizations, and antisemitic ideologies, to be an overwhelmingly negative factor in USCIS discretionary analyses.
- Clarifies that when conducting a discretionary analysis, officers consider whether an alien's application for admission or parole was made in accordance with all applicable laws, regulations, and policies in effect at the time.
- Explains that an exercise of discretion in the adjudication of an employment-based immigrant petition is limited to cases where the alien is seeking a national interest waiver.
- Clarifies how an exercise of discretion is applied in the adjudication of an EB-5 investor petition or application in cases involving threats to the national interest, fraud, deceit, misrepresentation, and criminal misuse.
- Clarifies that USCIS exercises discretion when adjudicating requests for extension of stay, change of status, reinstatement of F or M nonimmigrant status, and in certain employment authorization requests filed under [8 CFR 274a.12\(C\)](#).

Summary of Changes

Affected Section: Volume 1 > Part E > Chapter 8 > Section A, Applicability

- In the table (Immigration Benefits Involving Discretionary Review), revises content on employment-based immigrant petitions and immigrant investor petitions and adds content on Regional Center applications.
- Updates footnotes and adds new footnotes to revised and updated content.

³ See Immigrant Petition for Alien Workers ([Form I-140](#)). See [INA 203\(b\)\(2\)\(B\)](#).

⁴ See Immigrant Petition by Standalone Investor ([Form I-526](#)) or Immigrant Petition by Regional Center Investor ([Form I-526E](#)). See Application for Regional Center Designation ([Form I-956](#)) and Application for Approval of an Investment in a Commercial Enterprise ([Form I-956F](#)).

⁵ See [INA 203\(b\)\(5\)\(N\)\(i\)](#) and [INA 203\(b\)\(5\)\(O\)\(i\)](#).

Affected Section: Volume 1 > Part E > Chapter 8 > Section C, Adjudicating Discretionary Benefits

- In subsection 2 (Identifying Discretionary Factors), adds a new item and corresponding footnote to the bulleted list under the italicized subheading, “Factors That May Be Considered.”

Affected Section: Volume 2 > Part A > Chapter 4 > Section A, Extension of Stay or Change of Status

- Added text to affirm this adjudication involves an exercise of discretion by USCIS.

Affected Section: Volume 2 > Part F > Chapter 8 > Section A, General Eligibility for Change of Status to F-1 and Section C, Extension of Stay

- Added text to affirm this adjudication involves an exercise of discretion by USCIS.

Affected Section: Volume 7 > Part A > Chapter 10 > Section B, Adjustment of Status Applications Involving Discretion

- Added text at the end of existing subsection 1 (Determining Whether Favorable Exercise of Discretion is Warranted).

Affected Section: Volume 10 > Part A > Chapter 4, Adjudication

- Added text at the end of existing Section A (General).

USCIS may also make other minor technical, stylistic, and conforming changes consistent with this update.

Citation

Volume 1: General Policies and Procedures, Part E, Adjudications, Chapter 8, Discretionary Analysis [[1 USCIS-PM E.8](#)].

Volume 2: Nonimmigrants, Part A, Nonimmigrant Policies and Procedures, Chapter 4, Extension of Stay, Change of Status, and Extension of Petition Validity [[2 USCIS-PM A.4](#)] and Part F, Students (F, M), Chapter 8, Change of Status, Extension of Stay, and Length of Stay [[2 USCIS-PM F.8](#)].

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](#)].

Volume 10: Employment Authorization, Part A, Employment Authorization Policies and Procedures, Chapter 4, Adjudication [[10 USCIS-PM A.4](#)].