



July 15, 2020

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Policy Alert

SUBJECT: Applying Discretion in USCIS Adjudications

Purpose

U.S. Citizenship and Immigration Services (USCIS) is consolidating existing policy guidance in the [USCIS Policy Manual](#) regarding officers' application of discretion in adjudications.

Background

On June 22, 2020, the President issued a Proclamation that addresses, among other things, the Department of Homeland Security's (DHS's) administration of employment authorization benefits.¹ In addition to relying on statutory and regulatory provisions on employment authorization, USCIS reminds officers to refer to existing guidance, now consolidated in the USCIS Policy Manual, on the exercise of discretion in adjudications.

For many immigration benefits, such as certain applications for lawful permanent residence and employment authorization documents, the benefit requestor has the burden of demonstrating eligibility for the benefit sought, including that a favorable exercise of discretion is warranted.² If the requestor otherwise establishes eligibility, which may require a showing that the alien is not inadmissible under the law, and positive discretionary factors present in the particular case outweigh any negative factors, USCIS should favorably exercise discretion. For benefits involving discretion, a discretionary analysis is a separate component of the adjudication of the benefit request; it is typically assessed at the end of the review, after an officer has determined that the requestor meets all other applicable eligibility requirements.³

This guidance, contained in Volumes 1 and 10 of the Policy Manual, incorporates and replaces Chapter 10.15 of the Adjudicator's Field Manual (AFM), as well as the AFM's related appendices, and related policy memoranda.⁴ The guidance contained in the Policy Manual is controlling and supersedes any related prior guidance on the topic.

¹ See "[Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak](#)."

² See [INA 291](#).

³ See, for example, [INA 245\(a\)](#): "The status of an alien who was inspected and admitted or paroled into the United States . . . may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if . . ."

⁴ USCIS is also making minor technical updates in other Policy Manual parts consistent with this update.

Policy Highlights

- Provides an overview and general goals of the discretionary analysis, including the appropriate scope of discretion.
- Provides non-exhaustive lists of discretionary factors that officers should consider on a case-by-case basis.
- Explains how officers should generally weigh factors in a given case and properly document the discretionary determination.
- Explains that the ultimate decision to grant discretionary employment authorization depends on the facts and circumstances of each individual case.

Citation

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

Volume 10: Employment Authorization, Part A, Employment Authorization Policies and Procedures, Chapter 5, Discretion [[10 USCIS-PM A.5](#)].