



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 21518592

Date: APR. 19, 2022

Appeal of Vermont Service Center Decision

Form I-485, Application for Adjustment of Status of a U Nonimmigrant

The Applicant seeks to become a lawful permanent resident (LPR) under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m), based on his derivative “U” nonimmigrant status. The Director of the Vermont Service Center denied the Form I-485, Application to Register Permanent Residence or Adjust Status (U adjustment application). The matter is now before us on appeal. We review the questions in this matter *de novo*. *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a U nonimmigrant to that of an LPR if, among other requirements, he has been physically present in the United States for a continuous period of three years since the date of his admission as a U nonimmigrant and his continued presence is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. Section 245(m) of the Act. Implementing regulations further require that the U nonimmigrant “continue[] to hold such status at the time of [the filing of the U adjustment] application . . .” 8 C.F.R. § 245.24(b)(2)(ii). The burden of proof is on an applicant to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The Applicant is a native and citizen of Guatemala. His parent filed a derivative U petition on his behalf, and USCIS approved the petition indicating that petition’s validity dates spanned from March 29, 2017, to March 28, 2021. The Applicant was in Guatemala at the time his U petition was approved, and he subsequently obtained a U visa through consular processing with the U.S. Department of State (DOS). DOS issued the Applicant’s visa on May 25, 2017, with an expiration date of March 28, 2021. The Applicant entered the United States on June 15, 2017, and U.S. Customs and Border Protection (CBP) admitted him in U nonimmigrant status until June 14, 2020. Therefore, the Applicant’s U-3 status expired in June 2020 and not in March 2021. The Applicant filed his U adjustment application in July 2020 and the Director denied the application because the Applicant was no longer in U nonimmigrant status on the filing date. This appeal followed.

As is pertinent to this case, a derivative family member who is outside of the United States at the time their U petition is approved does not obtain U status until their entry and admission into this country on a U visa. 8 C.F.R. § 214.14(f)(6)(ii) (“When USCIS approves Form I-918, Supplement A for a qualifying family member who is outside the United States, USCIS will notify the principal alien of such approval . . . [and] forward the approved [petition] to the [DOS] . . .”). Subsequently, the derivative family member “should file for a U nonimmigrant visa with the designated U.S. Embassy or Consulate or port of entry. If granted, the visa can be used to travel to the United States for admission as a U nonimmigrant.” Interim Rule, New Classification for Victims of Criminal Activity: Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53,014, 53,014 (Sept. 17, 2007). The period of authorized stay is determined at the time of admission, and “as with all other nonimmigrant classifications, the U nonimmigrant’s Form I-94 issued to evidence status will indicate the approved period of stay.” *Id.* at 53,028.¹

On appeal, the Applicant asserts that he relied on the USCIS approval notice for his U petition as represented on the Form I-797, Notice of Action, and an accompanying Form I-797C to determine the validity period of his U nonimmigrant status. However, the U petition Form I-797 specified that “[t]he approval of this petition does not grant any immigration status and does not guarantee your derivative family member will be found eligible for a visa . . .” The Form I-797C similarly did not act to extend the Applicant’s U nonimmigrant status.² As noted above, CBP determined the Applicant’s period of U nonimmigrant status at the time of his admission into the United States. That status expired on June 14, 2020, prior to the filing of this U adjustment application.³ Accordingly, the Applicant was not in U nonimmigrant status at the time of filing, as required under 8 C.F.R. § 245.24(b)(2)(ii), and his U adjustment application must remain denied.⁴

ORDER: The appeal is dismissed.

¹ Additionally, the DOS website provides the following information: “If you came to the United States on a nonimmigrant visa and you want to extend your stay you must apply with USCIS before your authorized stay, denoted on your admission stamp or paper Form I-94, expires. It is recommended you apply well in advance of your expiration date.” *What the Visa Expiration Date Means*, U.S. Department of State Bureau of Consular Affairs (Apr. 6, 2022), <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/visa-expiration-date.html>.

² The Form I-797C provides “[i]f you were still in valid U or T nonimmigrant status on the date your [U adjustment application] was received, that status is extended until a decision is reached on your Form I 485. If your status was no longer valid by the date your Form I 485 was received, you will need to file the Application to Extend/Change Nonimmigrant Status (Form I 539) with this office to request an extension of your nonimmigrant status.”

³ After the Director denied the Applicant’s U adjustment application, he filed a Form I-539, Application to Extend/Change Nonimmigrant status. That application remains pending.

⁴ This decision is without prejudice to the filing of a new U adjustment application should USCIS approve an extension of the Applicant’s U nonimmigrant status at some future date.