



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

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

In Re: 21780907

Date: APR. 19, 2022

Appeal of Vermont Service Center Decision

Form I-485, Application for Adjustment of Status of 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 her U” nonimmigrant status. The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status of a U Nonimmigrant (U adjustment application), and the matter is now before us on appeal. On appeal, the Applicant submits additional evidence and reasserts her eligibility.¹ Upon *de novo* review, we will dismiss the appeal.

I. LAW

To be eligible for adjustment of status as a U nonimmigrant, an applicant must demonstrate, among other requirements, that they were lawfully admitted to the United States as a U nonimmigrant and continue to hold such status at the time of application. 8 C.F.R. § 245.25(b)(2)(i)-(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; 8 C.F.R. § 245.24(a); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

U nonimmigrant status is generally granted for a maximum of four years and shall be extended beyond four years upon law enforcement certification of the U nonimmigrant’s continued assistance in the investigation or prosecution of qualifying criminal activity or by USCIS, in its discretion, due to exceptional circumstances. Section 214(p)(6) of the Act.

II. ANALYSIS

The Applicant, a native and citizen of Mexico, was granted U-1 nonimmigrant status from October 1, 2013, until September 30, 2017.² She filed the instant U adjustment application on April 14, 2020.

¹ The Applicant submits an updated personal statement and copies of federal income tax returns from 2012 to 2017, account transcripts from 2013 to 2015, and bank account statements from [REDACTED] Credit Union from 2016 and 2017.

² The record indicates that the Applicant filed a prior U adjustment application in August 2017. The Director denied the application in September 2018, concluding that the Applicant did not provide the proper documentation as required by regulation. While the Applicant states that she filed an appeal of this application, there is no indication from the record or in USCIS systems that she in fact did so.

The Director concluded that the Applicant did not continue to hold U nonimmigrant status at the time she filed her U adjustment application and, accordingly, could not establish her eligibility for U-based adjustment of status.

On appeal, the Applicant contends, among other things, that she was in U nonimmigrant status when she filed the instant U adjustment application in April 2020. Specifically, she references page 9 of the Form I-539, Instructions for Application to Extend/Change Nonimmigrant Status (Form I-539 instructions), which state that, “[e]xtensions of U nonimmigrant status based on the filing of Form I-485, Application to Register Permanent Residence or Adjust Status, do not require the filing of Form I-539. U nonimmigrant status is automatically extended when the Form I-485 is filed.” The Applicant is correct to the extent that she alleges that U nonimmigrant status is extended during the pendency of a U adjustment application. Section 214(p)(6) of the Act (providing that U nonimmigrant status “shall be extended during the pendency of an application for adjustment of status under 245(m)” of the Act). We note, however, that this provision contemplates the timely filing of a U adjustment application, and does not apply to U nonimmigrants who file their U adjustment applications *after* their period of U nonimmigrant status has expired. See 8 C.F.R. §§ 245.24(b)(2)(ii), (d)(7) (requiring that an applicant for adjustment of status under section 245(m) of the Act “continu[e] to hold [U nonimmigrant] status at the time of application”). Nor does it mean that the filing of a new U adjustment application restarts a period of U nonimmigrant status that has already expired. See *id.* In the Applicant’s case, her period of U nonimmigrant status expired in September 2017. She did not file for an extension of her U nonimmigrant status alleging exceptional circumstances, nor did she submit law enforcement certification of her continued assistance in the investigation or prosecution of the qualifying criminal activity—the only two circumstances under which a period of U nonimmigrant status may be extended under section 214(p)(6) of the Act. Instead, the Applicant filed the instant U adjustment application on April 24, 2020, more than two and half years after her U nonimmigrant status expired. Consequently, the Applicant was not in U nonimmigrant status when she filed her U adjustment application, as 8 C.F.R. § 245.24(b)(2)(ii) requires. Although we recognize the hardship to the Applicant and her family that this result may cause, we lack the authority to waive the requirements of the regulations. See *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265 (1954) (stating that immigration regulations carry “the force and effect of law”).

III. CONCLUSION

The Applicant no longer held U nonimmigrant status at the time she filed the instant U adjustment application, as 8 C.F.R. § 245.24(b)(2)(ii) requires. Accordingly, she was not eligible for adjustment of status to that of an LPR under section 245(m) of the Act. This decision is without prejudice to the filing of a new U adjustment application should the Applicant request, and receive approval of, an extension of her U nonimmigrant status.

ORDER: The appeal is dismissed.