U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18162475

Date: MAR. 01, 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 his "U" nonimmigrant status. The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status of U Nonimmigrant (U adjustment application), and the matter is now before us on appeal. On appeal, the Applicant submits a statement. We review the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will remand the matter to the Director for the issuance of a new decision.

I. LAW

U.S. Citizenship and Immigration Services (USCIS) may in its discretion adjust the status of an individual admitted into the United States as a U nonimmigrant to that of an LPR if, among other requirements, he or she has been physically present in the United States for a continuous period of at least three years since admission as a U nonimmigrant and establishes that his or her continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. Section 245(m)(1) of the Act; 8 C.F.R. §§ 245.24(b)(3), (b)(6), (d)(11).

Continuous physical presence is defined as the period of time that an applicant has been physically present in the United States and "must be a continuous period of at least 3 years since the date of admission as a U nonimmigrant continuing through the date of the conclusion of adjudication of the [U adjustment] application." 8 C.F.R. § 245.24(a)(1). A U adjustment applicant will be deemed to have not maintained continuous physical presence if he or she has departed the United States for any period in excess of 90 days or for any periods exceeding 180 days in the aggregate. Section 245(m)(2) of the Act; 8 C.F.R. § 245.24(a)(1). Such departures may be excused if the law enforcement agency that supported the applicant's U petition certifies that the applicant's absence was necessary to assist in the criminal investigation or prosecution or was otherwise justified. *Id.*

II. ANALYSIS

A. Relevant Facts and Procedural History

The Applicant was granted U nonimmigrant status from October 2014 to September 2018. He timely filed his adjustment application in November 2017.[1] The record indicates that he filed a Form I-131, Application for Travel Document, in July 2018, which USCIS approved in August 2018, issuing the Applicant a Form I-512L, Authorization for Parole of an Alien into the United States. The Applicant left the United States from October 2018 to January 2019, a period of 109 consecutive days. The Applicant was readmitted to the United States in U status in January 2019.[2]

In April 2020, the Director issued a Request for Evidence (RFE) requesting that the Applicant submit documents missing from his initial filing. The record indicated that he had submitted sufficient evidence of continuous physical presence for the years 2015, 2016, and up until September 2017. However, due to the passage of time since the Applicant filed his application, the Director required additional evidence. The Applicant responded to the RFE with a statement regarding his continuous physical presence and necessary copies of his passport. In his statement, the Applicant explained that he has continuously resided in the United States since his October 2014 grant of U nonimmigrant status, and left the United States on only the one occasion from October 2018 to January 2019. The Director subsequently issued a Notice of Intent to Deny (NOID) in October 2020, instructing the Applicant to submit certification from the law enforcement agency that certified his Form I-918, Supplement B, U Nonimmigrant Status Certification (Supplement B), that his absence from the United States for over 90 consecutive days was necessary to assist in the investigation or prosecution of the qualifying criminal activity or was otherwise justified. In response to the NOID, the Applicant submitted a letter from the Department of Police, [redacted] Virginia, confirming that the Applicant was a victim of an armed robbery and had always been cooperative with police investigations in his community.

The Director consequently denied the adjustment of status application in March 2021, determining that the Applicant has not established that he was physically present in the United States for a continuous period of at least three years at the time of the filing of his U adjustment application and continuing through the date of its adjudication. The Director further found that, in the alternative, the Applicant did not submit a law enforcement certification that his absences were necessary to assist in the criminal investigation or prosecution or were otherwise justified pursuant to section 245(m) of the Act and 8 C.F.R. §§ 245.24(a)(1), (b)(3), (d)(5)(iii).

On appeal, the Applicant apologizes for having departed the United States and states that his approved Forms I-131 and I-512L did not state that he was required to return to the United States within 90 days

[1] Although the Applicant's U nonimmigrant status was extended during the pendency of his U adjustment application pursuant to section 214(p)(6) of the Act (providing that an applicant's period of U nonimmigrant status "shall be extended during the pendency of an application for adjustment of status" under section 245(m) of the Act), the record indicates that the Applicant filed a Form I-539, Application to Extend/Change Nonimmigrant Status, in April 2021. USCIS approved this application, retroactively extending his U nonimmigrant status from October 2018 to November 2022.

[2] According to the photocopy of the Applicant's passport contained in the record, he was re-admitted to the United States as "AOS" pursuant to his pending application for U-based adjustment of status.

to preserve his eligibility for U-based adjustment of status. He explains that the reason for his absence from the United States was that his mother-in-law was seriously hospitalized. He expresses remorse for his mistake and emphasizes that he has lived in the United States for approximately 28 years, is a law-abiding individual, and wishes to continue his life here.

Applicants for immigration benefits must establish their eligibility at the time of filing and at the time of adjudication. 8 C.F.R. § 103.2(b)(1). For U adjustment applicants, the Act, regulations, and form instructions all clarify that the applicant must show the accrual of at least three years of continuous physical presence in the United States since their admission in U nonimmigrant status at the time of filing. *See* section 245(m)(1)(A) of the Act and 8 C.F.R. § 245.24(b)(3) (stating the requirement of three years of continuous physical presence); *see also* 8 C.F.R. § 245.24(d)(5) and (d)(9) (requiring applicants to submit evidence of their three-year period of continuous physical presence with their application in order to establish eligibility for U adjustment); Form I-485, Instructions for Application to Register Permanent Residence or Adjust Status, at 28 (explaining that "applicants may file [a U adjustment application] only after they have been physically present in the United States for a continuous period of at least three years since being admitted as a U nonimmigrant [and must] continue to be physically present through the date of . . . decision on [the] application.").

At the time of filing, and as acknowledged by the Director, the Applicant submitted sufficient evidence to establish that he had been continuously physically present in the United States for the requisite period. The Applicant then left the United States for a period of 109 days after filing, thereby breaking his continuous physical presence pursuant to section 245(m)(2) of the Act and 8 C.F.R. § 245.24(a)(1). However, the Act allows an applicant to accrue continuous physical presence beginning from any admission in U status, including admissions made after departures that broke a prior period of continuous presence, and up until the conclusion of the adjudication of the U adjustment application. Section 245(m)(1)(A) of the Act specifically requires that U adjustment applicants have "been physically present in the United States for a continuous period of at least 3 years since the date of admission as a nonimmigrant under clause (i) or (ii) of section 101(a)(15)(U)." The regulation similarly states that the period of continuous physical presence accrues "since the date of admission as a U nonimmigrant." 8 C.F.R. § 245.24(a)(1). Finally, the regulation speaks to the accrual of continuous physical presence "through the date of the conclusion of adjudication of the [U adjustment] application." 8 C.F.R. § 245.24(a)(1). Thus, the Act and regulation do not require the accrual of continuous physical presence from the first admission as a U nonimmigrant, and instead, allow for accrual of continuous physical presence from any subsequent "date of admission as a U nonimmigrant" through adjudication of the U adjustment application.[3] Section 245(m)(1)(A) of the Act; 8 C.F.R. § 245.24(a)(1).

While acknowledging no error in the Director's decision at the time it was made, an additional three years have passed since the Applicant was last admitted to the United States as a U nonimmigrant. Because the Applicant established three years of continuous physical presence at the time of filing his U adjustment application, and because an additional three years have passed since the Applicant's last admission to the United States in U nonimmigrant status—facts material to the Director's ground for denial of the Applicant's U adjustment application—we will remand the matter for further

[3] For purposes of 8 C.F.R. §§ 103.2(b)(1) and 245.24(a)(1), the denial of a U adjustment application does not become administratively final until the appeal has been adjudicated. 8 C.F.R. § 245.24(f)(2).

consideration of whether the Applicant has met his burden of establishing three years of continuous physical presence in the United States and otherwise satisfied the remaining criteria at section 245(m) of the Act and 8 C.F.R. § 245.24.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.