



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

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

In Re: 19903665

Date: MAR. 17, 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 brief reasserting his eligibility. The Administrative Appeals Office reviews 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

Section 245(m) of the Act contains the eligibility requirements for individuals seeking to adjust status to that of an LPR based on having been granted U status. In addition, an applicant for adjustment of status under 245(m) must comply with the general eligibility and documentary requirements to adjust status at 8 C.F.R. § 245.5, which requires that the applicant “have a medical examination by a designated civil surgeon, whose report setting forth the findings of the mental and physical condition of the applicant, including compliance with section 212(a)(1)(A)(ii) of the Act, shall be incorporated into the record.” The instructions to the Form I-693, Report of Medical Examination and Vaccination Record (medical examination), state that U.S. Citizenship and Immigration Services (USCIS) “will not accept Form I-693 unless it is in a sealed envelope that is not opened or altered in any way.” Form I-693, Instructions for Report of Medical Examination and Vaccination Record (Sep. 13, 2021 ed.), at 1, 7. Form instructions carry the weight of binding regulations. *See* 8 C.F.R. § 103.2(a)(1) (“Every form, benefit request, or document must be submitted . . . and executed in accordance with the form instructions The form’s instructions are hereby incorporated into the regulations requiring its submission.”); *see also* 8 C.F.R. § 245.24(d)(1) (stating that each applicant for U-based adjustment of status must submit a U adjustment application “in accordance with the form instructions” with such instructions requiring a medical examination).

An applicant must establish that they meet each eligibility requirement of the benefit sought 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 record reflects that the Applicant, a native and citizen of Mexico, was granted U-1 status from October 2015 until September 2019, and timely filed the instant U adjustment application in September 2019. In February 2021, the Director, in a request for evidence (RFE), determined that the Applicant's medical examination was not properly completed by the civil surgeon. The Director informed the Applicant that he should submit an updated medical examination in a sealed envelope. The Applicant responded to the RFE with an updated medical examination. However, the Director noted that, "it appear[ed] the civil surgeon sent the updated [medical examination] to [the Applicant's attorney's] office, where it was opened and then included in [his] RFE response." The Director then denied the Applicant's U adjustment application, concluding that the Applicant had not complied with 8 C.F.R. § 245.5, because he did not submit the medical examination in a sealed envelope, as required.

On appeal, the Applicant disputes the Director's conclusion. He contends that he went through "great lengths" to submit the updated medical examination in a sealed envelope. Through their statements, the Applicant's attorney and his attorney's legal assistant acknowledge that they received an RFE for an updated medical examination in February 2021. They confirm that the Applicant was instructed to return to the [redacted] (health center) to obtain an updated medical examination, per USCIS's request. They further confirm that the office received the updated medical examination, which a staff member inadvertently opened. They contend that they then informed the Applicant of the mistake and instructed him to return to the health center for another medical examination. They assert that the civil surgeon signed the updated medical examination and mailed it directly to the attorney's office. In a letter, the clinical director from the health center confirms that the civil surgeon signed the updated medical examination in April 2021 and mailed it to the attorney's office in a sealed envelope.¹ According to the Applicant's attorney, he then directed a former associate to finalize and mail the RFE response, which included the Applicant's sealed medical examination.²

While we acknowledge the Applicant's arguments and additional evidence, they are insufficient to overcome the Director's determination that he did not submit a properly executed medical examination. Rather, the Applicant's evidence on appeal indicates that the health center mailed a sealed medical examination to the Applicant's attorney's office in April 2021.³ The evidence further indicates that the Applicant's attorney received a copy of the sealed medical examination, which he directed a former associate to mail to USCIS with the RFE response. However, the Applicant did not submit any conclusive, objective evidence, other than a notation in a legal software program, that his medical examination was mailed to and received by USCIS in a sealed envelope from the civil surgeon. Our *de novo* review of the record does not otherwise indicate that the Applicant submitted a medical examination in a sealed envelope, as required. Absent such evidence, the Applicant has not overcome the Director's determination.

¹ The Applicant submits copies of his medical examination and the front of an envelope addressed to USCIS in St. Albans, Vermont with an illegible, handwritten signature and date of July 13, 2021. He contends that this evidence is "a sealed envelope containing a copy from [redacted] of the original form I-693 that was mailed to [his attorney's office] on or around April 28, 2021."

² The Applicant submits a screenshot from the legal software program used by his attorney's office as evidence of the time spent working on his RFE, and highlights a log entry indicating that a former associate "shipped RFE documentation and sealed medical documents to USCIS" on May 4, 2021.

³ The record includes the envelope in which the [redacted] mailed the Applicant's updated medical examination to his attorney's office in April 2021.

III. CONCLUSION

The Applicant has not established that he submitted a properly executed medical examination, as required. As such, he has not established his eligibility for adjustment of status under section 245(m) of the Act.

ORDER: The appeal is dismissed.