



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

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

In Re: 20613853

Date: MAR. 18, 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 Vermont Service Center Director denied the Form I-485, Application for Adjustment of Status of a U Nonimmigrant (U adjustment application). The matter is now before us on appeal. The Applicant bears the burden of demonstrating eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). 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 this matter to the Director for further proceedings consistent with this decision.

Section 245(m) of the Act contains the eligibility requirements for individuals seeking to adjust status to that of a LPR based on having been granted U status. The Applicant’s burden includes complying with and submitting the documentation described in the U adjustment application’s instructions. See 8 C.F.R. § 103.2(a)(1) (stating that every form, benefit request, or other document must be submitted and executed in accordance with form instructions which are incorporated into the regulations requiring its submission). The instructions for the U adjustment application specifically require applicants to submit a photocopy of their birth certificate issued by the appropriate civil authority from the country of their birth. Form I-485, Instructions for Application to Register Permanent Residence or Adjust Status (Mar. 31, 2023 ed.), at 9. Additionally, to establish an LPR applicant’s country of citizenship for visa chargeability, identity, and existence of derivative relationships, applicants must submit a copy of their foreign birth certificate or sufficient secondary evidence of birth that complies with the Department of State’s Reciprocity and Civil Documents by Country. 8 C.F.R. § 103.2(b)(2); see also 7 USCIS Policy Manual A.4(A)(3), <https://www.uscis.gov/policymanual> (discussing that a copy of the Applicant’s foreign birth certificate or sufficient secondary evidence of birth must be submitted to establish the applicant’s country of citizenship for visa chargeability, identity, and existence of derivative relationships).

The record reflects that the Applicant is a native and citizen of Honduras who was granted U-1 status from December 3, 2016 until December 2, 2020. In January 2020, he timely filed this U adjustment application. The Director denied the U adjustment application determining that the Applicant had not complied with the documentary requirements under the regulations and contained in the form’s

instructions. Specifically, the Director found that he had not submitted evidence of his birth in Honduras in the form of a *Copia de Folio del Libro de Nacimientos*, or an *Inscripción de Nacimiento*, issued by the *Registro Nacional de las Personas*, citing to the Department of State's Reciprocity and Civil Documents by Country as authority.

On appeal, the Applicant indicated that he submitted a document entitled "Birth Certificate" that was duly executed and issued by the Honduran government for his Form I-918, Petition for U Nonimmigrant Status, that was accepted and approved. The Applicant further states that the regulation at 8 C.F.R. § 103.2(b)(2) does not state that the Applicant must submit a birth record in the form of a *Copia de Folio del Libro de Nacimientos* (or *Inscripción de Nacimiento*). Nevertheless, on appeal, the Applicant provides an *Inscripción de Nacimiento* issued by the *Registro Nacional de las Personas*, as requested by the Director, accompanied by a certified translation as required by 8 C.F.R. § 103.2(b)(3). As the Applicant has provided new and material evidence that the Director has not had the opportunity to review, we will remand the matter to the Director to consider this evidence in the first instance and further determine whether the Applicant has satisfied the remaining eligibility requirements to adjust his status to that of an LPR under section 245(m) of the Act.

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