



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

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

In Re: 21780935

Date: MAR. 22, 2022

Appeal of Nebraska Service Center Decision

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

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 Nebraska Service Center denied the Form I-485, Application for Adjustment of Status of Alien in U Nonimmigrant Status (adjustment application), concluding that the Applicant did not continue to hold U nonimmigrant status at the time he filed his U adjustment application, as required. The matter is now before us on appeal. Upon *de novo* review, as explained below, 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 the applicant establishes, among other requirements, that they were admitted to the United States as a U nonimmigrant. Section 245(m)(1) of the Act; 8 C.F.R. § 245.24(b)(2)(i). The applicant must also demonstrate that they continue to hold such status at the time of application for adjustment of status. 8 C.F.R. § 245.24(b)(2)(ii). The Applicant bears the burden of proof to establish eligibility for the requested benefit 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

In this case, the Applicant filed a Form I-918, Petition for U Nonimmigrant Status (U petition), in February of 2014 which was approved in April of 2017, with validity dates from April 27, 2017, to April 26, 2021.<sup>1</sup> Through counsel, the Applicant, who was living in Texas, filed his adjustment application with the Vermont Service Center on April 23, 2021. The Vermont Service Center rejected and returned the submission to the Applicant because it was not within the service center’s jurisdiction. On May 6, 2021, the Applicant resubmitted the adjustment application to the Nebraska Service Center, requesting that the filing be accepted as timely filed and explaining that it was inadvertently mailed to the Vermont Service Center. In November of 2021, the Director of the Nebraska Service Center

---

<sup>1</sup> The Petitioner had been placed on a waiting list for U-1 nonimmigrant status in January of 2015 as the statutory cap for U-1 nonimmigrant status had been reached.

denied the application because the Applicant was no longer in U nonimmigrant status on the filing date and was, therefore, ineligible to adjust status.

On appeal, the Applicant asserts that the Director erred in denying the application because it was received by USCIS while he was in U nonimmigrant status. According to counsel, the Applicant had previously lived in Illinois, where counsel is located, and the Vermont Service Center has jurisdiction over the state of Illinois; however, the Applicant moved to Texas and the correct filing location was the Nebraska Service Center. The Applicant argues that the Vermont Service Center “could have forwarded it to the correct Service Center,” that “the delay by USCIS Vermont Service Center in returning the I-485 filing resulted in the resubmission date lapsing past the Applicant’s validity date,” and that “the USCIS Nebraska Service Center could have accepted this filing with a priority date of when receipted at the Vermont Service Center.”

We find no error in the Director’s decision to deny the adjustment application. As the regulations make clear, “[e]very benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions” which have the weight of regulations. *See* 8 C.F.R. § 103.2(a)(1). Moreover, “USCIS will consider a benefit request received and will record the receipt date as of the *actual date of receipt at the location designated* for filing such benefit request [and a] benefit request which is rejected will not retain a filing date.” *See* C.F.R. § 103.2(a)(7) (emphasis added). Here, because the Applicant lives in Texas, his adjustment application must be filed with the Nebraska Service Center, as indicated in the form instructions.<sup>2</sup> The Applicant’s adjustment application was not filed until May 6, 2021, after his U nonimmigrant status had expired. 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 he is therefore ineligible for adjustment of status under section 245(m) of the Act.<sup>3</sup>

**ORDER:** The appeal is dismissed.

---

<sup>2</sup> Although counsel contends the Applicant had previously lived in Illinois (which is included in the Vermont Service Center’s jurisdiction), the Applicant’s address history in his adjustment application shows he lived in Indiana, not Illinois.

<sup>3</sup> USCIS regulations provide for the extension of a U nonimmigrant visa by filing a Form I-539, Application to Extend/Change Nonimmigrant Status. *See* 8 C.F.R. §§ 214.14(g)(2)(i) and (ii). Per USCIS policy, “[i]n the case of an untimely [extension of status application] filed after U nonimmigrant status has expired, [an approved] extension will be valid from the date the previous status expired and . . . the applicant will continue in valid U nonimmigrant status with all the associated rights, privileges, and responsibilities.” USCIS Policy Memorandum USCIS PM-602-0032.2, Extension of Status for T and U Nonimmigrants (Corrected and Reissued) 3-4, 10 (Oct. 4, 2016), <https://www.uscis.gov/laws/policy-memoranda>. This decision is without prejudice to the filing of a new Form I-485 if the Applicant is granted an extension of his U nonimmigrant status upon the proper filing of a Form I-539.