



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

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

In Re: 20946525

Date: MAR. 29, 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) based on her “U” nonimmigrant status under section 245(m) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255(m). The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status of U Nonimmigrant (U adjustment application), concluding that the Applicant did not demonstrate her physical presence in the United States for a continuous period of at least three years since her admission as a U-1 nonimmigrant. The matter is now before us on appeal. On appeal, the Applicant submits a statement and additional evidence. 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

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a U nonimmigrant “admitted into the United States . . . under section 101(a)(15)(U) [of the Act]” to that of an LPR provided that she “has been physically present in the United States for a continuous period of at least 3 years since the date of admission as a [U] nonimmigrant” and otherwise establishes that 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).

Implementing regulations require a U adjustment applicant to establish, among other requirements, that she “[w]as lawfully admitted to the United States” as a U nonimmigrant, she “[c]ontinues to hold such status at the time of application,” and she “[h]as continuous physical presence for 3 years” in the United States. 8 C.F.R. § 245.24(b)(2)(i)-(ii), (b)(3). An applicant bears the burden of establishing eligibility and that discretion should be exercised in her favor by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 245.24(d)(11); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The Applicant, a native and citizen of Honduras, was granted U-1 nonimmigrant status from May 31, 2017, through May 30, 2021. Less than three years later, she filed her U adjustment

application on March 6, 2020. The Director determined that the Applicant was not eligible to adjust her status to that of an LPR because, at the time of filing her U adjustment application, she did not demonstrate her physical presence in the United States for a continuous period of at least three years since her admission as a U-1 nonimmigrant.

On appeal, the Applicant states that she is submitting “additional evidence[] showing[her] continuous residence here in the United States since November 24, 2005” and further states that “[t]he form I-485 should have been sent to [USCIS] on June 1st, 2021, [sic] however such form was sent prior [to] that date because [she] was worried to be late.” The Applicant submits a statement indicating “[s]ince November 24, 2005, [she is] living here in [redacted] Florida, [and she has] not left the country nor [has she] traveled to another country.” She also submits evidentiary documentation dated from 2016 through 2021 including, but not limited to: tax documents; education records; identity documents; and utility statements.

As a threshold requirement, an applicant must be eligible for the requested benefit at the time of filing the application. 8 C.F.R. § 103.2(b)(1). When filing for adjustment of status, a U nonimmigrant must have been in valid U status for at least three years since the date of admission as a U nonimmigrant. *See* section 245(m)(1)(A) of the Act (stating that an individual must have “been physically present in the United States for a continuous period of at least 3 years since the date of admission as a [U] nonimmigrant”); 8 C.F.R. §§ 245.24(a)(1) (stating that continuous physical presence “means the period of time that the [individual] 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”), 245.24(d)(9) (stating that a U adjustment application must include, in part, “an affidavit from the applicant, that he or she has continuous physical presence for at least 3 years”). This requirement is reiterated in the relevant form instructions. *See* Form I-485, Instructions for Application to Register Permanent Residence or Adjust Status, at 29 (providing that “[b]oth principal and derivative 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”); *see also* 8 C.F.R. § 103.2(a)(1) (requiring that benefit requests must comply with form instructions, which are incorporated into the regulations).

Here, the Applicant was not physically present in the United States for a continuous period of at least three years since the date of her admission as a U-1 nonimmigrant until May 2020. She filed her U adjustment application in March 2020, two months and 25 days prior to that date. We recognize that the Applicant stated that her U adjustment application “should have been sent [] on June 1, 2021, [sic]” but was sent prior to that date because she was concerned about being late; however, neither the statute nor the regulations provide for an exception to the requirement that an applicant be in lawful U nonimmigrant status for at least three years at the time of filing. While we acknowledge the hardship to the Applicant that this may cause, we lack the authority to waive the requirements of the statute, as implemented by the regulations. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that both governing statutes and their implementing regulations hold “the force of law” and must be adhered to by government officials). Although the Applicant has submitted numerous documents reflecting her continuous presence in the United States while she was in U-1 status, at the time of filing her U adjustment application, she was not in U nonimmigrant status for at least three years since her admission as a U nonimmigrant, as required.

III. CONCLUSION

The Applicant has not established that she was in U nonimmigrant status for at least three years since the date of her admission as a U nonimmigrant when she filed her U adjustment application. Accordingly, she has not established eligibility for lawful permanent residency under section 245(m) of the Act.¹

ORDER: The appeal is dismissed.

¹ This decision is without prejudice to the Applicant's filing of a new U adjustment application should she request, and receive approval of, an extension of her U nonimmigrant status through the filing of a Form I-539, Application to Extend/Change Nonimmigrant Status.