



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

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

In Re: 23674437

Date: NOV. 30, 2022

Appeal of Vermont 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 Vermont Service Center denied the Form I-485, Application for Adjustment of Status of Alien in U Nonimmigrant Status (U adjustment application) and subsequently dismissed the Applicant’s motion to reopen and reconsider. The matter is now before us on appeal. 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 adjust the status of a U nonimmigrant to that of an LPR if they meet all other eligibility requirements and, “in the opinion” of USCIS, their “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) of the Act.

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.”

An applicant must establish that he or she meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. See *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

## II. ANALYSIS

The Applicant is a 28-year old citizen of Mexico who entered the United States without inspection in 2005. In October 2014, the Applicant was granted U-1 status from October 1, 2014 to September 30, 2018, based on his victimization and assistance to law enforcement. The Applicant filed his U adjustment application in 2018.

In September 2021, the Director denied the Applicant's U adjustment application, determining that the Applicant had not complied with the medical examination requirement as detailed in 8 C.F.R. § 245.5.<sup>1</sup>

On motion to reopen and reconsider, the Director determined that the Applicant had satisfactorily addressed the discrepancies in the record. Nevertheless, the Director dismissed the motion, finding that the Applicant had not complied with the medical examination requirement and had not submitted sufficient documentation regarding the discretionary concerns raised by the Director in the decision to deny the application.

On appeal, the Applicant provides a May 2022 medical examination and court documents establishing the final disposition pertaining to his [ ] 2021 arrest. As the Applicant has provided new 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 established that he merits approval of his U adjustment application.

**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.

---

<sup>1</sup> The Director also noted discrepancies in the record regarding the Applicant's manner, date, and place of his last arrival to the United States and discretionary concerns pertaining to the Applicant's possible gang affiliations/associations and an [ ] 2021 arrest. However, the Director determined that as the case was otherwise deniable as a result of not having complied with the medical examination requirement, as detailed above, these additional issues "will not be addressed in detail."