



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

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

In Re: 22974758

Date: SEP. 06, 2022

Motion on Administrative Appeals Office 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 her “U” nonimmigrant status as the victim of domestic violence who assisted law enforcement in the investigation and prosecution of the offense. The Director of the Vermont Service Center denied the Form I-485, Application for Adjustment of Status of U Nonimmigrant (U adjustment application). The Applicant then appealed the matter to us; we initially rejected the appeal and then reopened the matter on a service motion. On motion, the Applicant submits new evidence and asserts that she has established her eligibility for the adjustment of status to that of an LPR. Upon review, we will dismiss the motion.

I. LAW

U.S. Citizenship and Immigration Services (USCIS) may adjust the status of a U nonimmigrant to that of an LPR if, among other requirements, they have been physically present in the United States for a continuous period of three years since the date of her admission as a U nonimmigrant and have not unreasonably refused to provide assistance in the investigation or prosecution of the qualifying criminal activity that formed the basis of the underlying U nonimmigrant status. Section 245(m) of the Act.

The applicant bears the burden of establishing their eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 245.24(b)(6); *Matter of Chawathe*, 27 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The Applicant, a citizen of Russia, was first admitted to the United States in October 2010 on a visitor visa. In March 2014, the Applicant filed a petition for U nonimmigrant status based upon an act of domestic violence perpetrated against her in [] 2012 (the qualifying crime). She was subsequently granted U nonimmigrant status from October 2016 until October 2020. The Applicant filed the instant U adjustment application in July 2020, and the Director subsequently denied it, concluding that she had not established her continuous physical presence in the United States during the requisite period or shown that she had complied or had not unreasonably refused to comply with,

requests to provide assistance in the investigation or prosecution of the qualifying crime which formed the basis for her underlying U nonimmigrant status.

A. Continuous Physical Presence

To establish eligibility for adjustment of status to that of an LPR under section 245(m) of the Act, an applicant must have been physically present in the United States for a continuous period of three years since the date of her admission as a U nonimmigrant. Section 245(m)(1)(A) of the Act. To establish continuous physical presence for the requisite period, relevant regulations require that the applicant submit “a signed statement . . . attesting to continuous physical presence” and “additional documentation.” 8 C.F.R. § 245.24(d)(9). The regulations further specify that, “[i]f additional documentation is not available, the applicant must explain why in an affidavit and provide additional affidavits from others with first-hand knowledge who can attest to the applicant’s continuous physical presence by specific facts[.]” *Id.*

The Director denied the instant U adjustment application, concluding that the record lacked evidence sufficient to establish the Applicant’s continuous physical presence in the United States for a period of three years since the date of her admission in October 2016. Upon review of the record, the Applicant has not overcome the Director’s determination that she had not established her continuous physical residence in the United States for the requisite period. The record before the Director included the following relevant evidence: a statement signed by the Applicant attesting to her continuous physical presence in the United States from October 2010 until the present; a Fictitious Business Name Statement filed in December 2017; State of California Direct Deposit slips for service periods in September 2018 and December 2018; a 2019 wage and earnings statement,; page one of the Applicant’s 2019 Federal income tax return; a vehicle registration notice dated March 2020; and March 2021 correspondence from the certifying agency.

On motion, the Applicant further submits: an April 2013 Certificate of Participation and Completion of Domestic Violence Education; December 2014 Welfare-to-Work plan; an executed lease with a term of August 2015 to July 2016; verification of Applicant’s noncredit coursework taken from February 2016 to June 2016; October 2016 receipt for an oil change; 2016 Airbnb earnings statement for January through December; 2016 1099-Ks from [redacted] and [redacted]; a month-to-month lease agreement commencing in April 2017; August 2017 community college payment receipt; December 2017 medical documentation; an April 2019 notice of eligibility for Medicare; and 2015, 2016, and 2020 Federal income tax returns.

This evidence remains insufficient to establish that the Applicant has been continuously physically present in the United States for a period of three years since the date of her admission as a U nonimmigrant in October 2016. The April 2013 certificate, December 2014 Welfare-to-Work plan, August 2015 to July 2016 lease, verification of the Applicant’s coursework taken from February 2016 until June 2016, and 1099-Ks from [redacted] and [redacted]¹ assist in confirming her physical presence in the United States prior to October 2016, but do not speak to her presence after that date.

¹ These 1099-Ks do not indicate that the Applicant generated income as an independent contractor during the months of October, November, and December 2016.

The Annual earnings statement from Airbnb indicates that the Applicant generated earnings from 62 nights worth of rentals, but does not indicate when these rentals occurred or otherwise demonstrate that they occurred during the requisite period. With regard to the Applicant's 2019 wages and earnings documentation and the 2015, 2016, 2019, and 2020 Federal income tax returns, in the absence of evidence showing that this tax documentation has been filed with the IRS, it is not sufficient to establish, by a preponderance of the evidence, her physical presence in the United States for those years.

Thus, although the record establishes the Applicant's physical presence during the relevant months of October 2016, April 2017, December 2017, September 2018, December 2018, April 2019, March 2020, and March 2021, it does not demonstrate her continuous physical presence in the United States continuously over the requisite three-year period. Absent an affidavit explaining why additional evidence of her continuous physical presence is not available; additional affidavits from others with first-hand knowledge attesting to her physical presence; or other documentation, such as utility bills, educational records, or other documentation relevant to her life in the United States since her admission as a U nonimmigrant in October 2016, the Applicant has not established her continuous physical presence during the requisite period.

Since the identified basis for denial is dispositive of the Applicant's motion, we decline to reach and hereby reserve her appellate arguments regarding her assistance in the investigation or prosecution of the crime on which the basis of her underlying U nonimmigrant status was formed. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach").

III. CONCLUSION

The Applicant has not established her continuous physical presence in the United States for a period of three years since the date of her admission as a U nonimmigrant. She therefore has not established her eligibility for adjustment of status to that of LPR under section 245(m) of the Act.

ORDER: The motion is dismissed.