



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

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

In Re: 26425111

Date: APR. 26, 2023

Motion on Administrative Appeals Office Decision

Form I-485, Application for Adjustment of Status of 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. The Director of the Vermont Service Center denied the Form I-485, Application to Adjust Status or Register Permanent Residence (U adjustment application). We dismissed the Applicant’s subsequent appeal. The matter is now before us on a combined motion to reopen and reconsider.<sup>1</sup> Upon review, we will withdraw the Director’s decision and remand the matter for entry of a new decision consistent with the following analysis.

A motion to reopen must state new facts to be proved and be supported by affidavits or other evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of the law or U.S. Citizenship and Immigration Services (USCIS) policy, and that the decision was incorrect based on the evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

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 they “ha[ve] 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 establish that 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)(1) of the Act; 8 C.F.R. § 245.24(b).

Continuous physical presence is defined as the period of time that an applicant 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 continuing through the date of the conclusion of adjudication of the [U adjustment] application.” 8 C.F.R. § 245.24(a)(1). A U adjustment applicant will be deemed to have not maintained continuous physical presence if they have departed the United States for any period in excess of 90 days or for any periods exceeding 180 days in the aggregate. Section 245(m)(2)

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<sup>1</sup> Although, the Applicant submitted a Form I-290B, Notice of Appeal or Motion, selecting the box indicating she was filing a motion to reconsider, she has also met the requirements for a motion to reopen and we will consider the submission as a combined motion to reopen and reconsider.

of the Act; 8 C.F.R. § 245.24(a)(1). Such departures may be excused if the law enforcement agency that supported the applicant's U petition certifies that the applicant's absence was necessary to assist in the criminal investigation or prosecution or was otherwise justified. *Id.*

An applicant bears the burden of establishing eligibility and that discretion should be exercised in their 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).

The Applicant is a citizen of Mexico who last entered the United States without inspection in 1996. In May 2017, the Director granted the Applicant U-1 nonimmigrant status with validity from May 8, 2017, through May 7, 2021.<sup>2</sup> The Applicant timely filed the instant U adjustment application in April 2021. The Director denied the application, finding that the Applicant had not complied with 8 C.F.R. § 245.24(d)(9) because she did not provide sufficient documentation to determine her physical presence in the United States. In denying the U adjustment application, the Director specifically relied on a lack of evidence of the Applicant's continuous physical presence for the following periods:

- May, September, October, and December 2017;
- January through March and May through December 2018;
- January, March, May, and August through December 2019;
- January through July and September through December 2020; and
- January through July 2021.

On appeal, the Applicant submitted additional relevant evidence of her physical presence in the United States. We dismissed her appeal, finding she did not submit evidence addressing each of the specific time periods listed by the Director in the denial. Specifically, the evidence on appeal did not establish her physical presence during the following periods:

- October and December 2017;
- January through March and May through December 2018;
- January and August through December 2019;
- January through July, September, and November 2020; and
- June and July 2021.

On motion, the Applicant submits a brief and additional documentation relevant to her continuous physical presence in the United States since her grant of U nonimmigrant status in May 2017. The Applicant has provided U.S. Bank monthly statements that identify her as the sole account holder and documenting regular transactions from February 2017 through August 2022. Additionally, the documentation from the County of [REDACTED] indicates that the Applicant received benefits from CalWORKs and CalFresh monthly from June 2017 through December 2022.<sup>3</sup>

Based on this evidence, the Applicant has established, by a preponderance of the evidence, her continuous physical presence in the United States for a period of at least three years since her May

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<sup>2</sup> The Applicant had been placed on a waiting list for U nonimmigrant status in September 2015 as the statutory cap for U-1 nonimmigrant status had been reached.

<sup>3</sup> The Applicant also submitted numerous credit card bills, insurance records and other miscellaneous items from various dates from 2017 to 2022.

2017 admission as a U nonimmigrant. Because the Applicant has overcome the only ground for the Director's denial, we will remand the matter to the Director for consideration of whether she satisfied the remaining eligibility requirements to adjust her status to that of an LPR under section 245(m) of the Act.

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